



The Independent Accountability Mechanism for IFC & MIGA

Compliance Investigation Report

Regarding Community Complaint about IFC's
Investment in Baynouna Solar Energy
Company, Jordan

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 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:

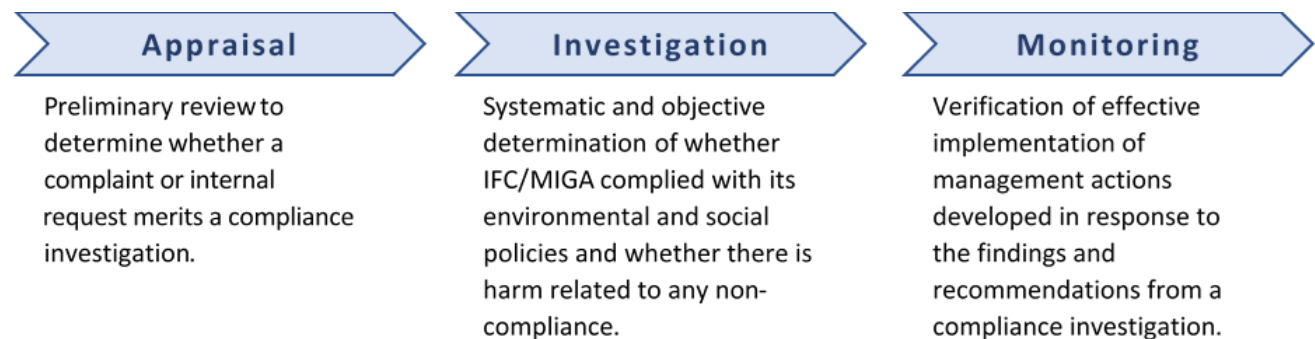


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Acronyms

AMR	Annual Monitoring Report
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
CLO	Community Liaison Officer
E&S	Environmental and Social
ESIA	Environmental and Social Impact Assessment
ESAP	Environmental and Social Action Plan
ESDD	Environmental and Social Due Diligence
ESMS	Environmental and Social Management System
ESMP	Environmental and Social Management Plan
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
FPIC	Free, Prior, and Informed Consent
GN	Guidance Notes to IFC's Performance Standards on E&S Sustainability
GoJ	Government of the Hashemite Kingdom of Jordan
GRM	Grievance Redress Mechanism
ICP	Informed Consultation and Participation
IFC	International Finance Corporation
LRP	Livelihood Restoration Plan
LTA	Lenders' Technical Advisor
MIGA	Multilateral Investment Guarantee Agency
PS	Performance Standards (IFC)
PS1	Assessment and Management of E&S Risks and Impacts
PS5	Land Acquisition and Involuntary Resettlement
PS7	Indigenous Peoples
SEP	Stakeholder Engagement Plan
SII	Summary of Investment Information



Executive Summary

This report documents CAO's investigation of a complaint by members of the Al Balqa tribes in Jordan regarding a solar energy plant operated by IFC client Baynouna Solar Energy Company (Baynouna/the client). The complaint alleges that IFC and the client failed to identify and engage the complainants as project-affected people resulting in land rights violations and livelihood impacts. CAO finds multiple IFC non-compliances and related harm in relation to these allegations and this case will remain open for monitoring. This investigation adds to the increasing global body of reports documenting adverse impacts of renewable energy projects on local communities,¹ highlighting the importance of IFC's Sustainability Framework commitments in order to achieve a just transition as IFC aims to align 100 percent of its investments with the Paris Agreement by FY2025.²

IFC Investment, the Complaint, and IFC's Response

1. Since 2013, IFC has supported the Government of Jordan's successful efforts to develop its renewable energy sector.³ In 2018, IFC invested senior A and B loans of up to US\$97.25 million in Baynouna Solar Energy Company to develop, build, and operate the country's largest single solar power plant.⁴ Baynouna is majority-owned by Masdar, a renewable energy company which, at the time of the investment, was owned by the Government of Abu Dhabi's Mubadala Development Company.⁵ The approximately 242 MWp solar photovoltaic power plant is located 30 kilometers southeast of Jordan's capital Amman in semi-arid steppe rangelands⁶ described in project documentation as "barren, almost entirely unused and lacking in any notable biodiversity or social features."^{7,8} In contrast, herders described the project land as land that is of better quality than its surroundings due to the presence of wadis (rainy season water channels) and topographic features suited to grazing such as fewer rocks and relative flatness.

2. CAO received a complaint in February 2020—nine months before the plant became operational—from 66 members of the Al Balqa tribes, some of whom are itinerant herders. The complainants state that the project land belongs to their tribes whose members have used the site for hundreds of years to cultivate barley for fodder and graze livestock.⁹ As the land's customary owners and users, they claim that IFC and the client improperly excluded them from project-related stakeholder engagement. They also allege that their land rights were violated,

¹ See, for example, Business & Human Rights Resource Centre, Sonen Capital, and Transform Finance. 2017. Investor Briefing: Renewable Energy Impacts on Communities—Managing Investors' Risks and Responsibilities. Available at: <https://bit.ly/3N82eLR>

² Paris Alignment at IFC. Available: <https://bit.ly/3NbCLkJ>

³ IFC. 2023. Powering Up Jordan's Renewable Energy Market. Available at: <https://bit.ly/4cxY7TF>

⁴ IFC. 2017. Summary of Investment Information (SII), Masdar Jordan, Project #39339. Available at: <https://bit.ly/3LN0kNU>.

⁵ As of December 2021, Abu Dhabi National Energy Company TAQA holds a 43% share in Masdar, Mubadala retains 33%, and Abu Dhabi National Oil Company (ADNOC) holds 24%. See: <https://bit.ly/3M8mnRk>.

⁶ The project ESIA (2017: 79) describes the location of the project land as semi-arid (200-350 mm annual rainfall) steppe rangelands.

⁷ IFC. 2017. E&S Review Summary (ESRS), Masdar Jordan, Project #39339. Available at: <https://bit.ly/3JloAoK>.

⁸ The UN Special Rapporteur on the rights of Indigenous Peoples (2023, para. 41) stated that it is common for governments and foreign investors to assume that land used by nomadic herders and pastoralists is "empty." UN OHCHR. 2023. Green Financing – A Just Transition to Protect the Rights of Indigenous Peoples. Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, A/HRC/54/31. Available at: <https://bit.ly/3Y5lONR>

⁹ Both the complaint submitted directly to IFC in October 2019 and the complaint submitted to CAO in February 2020 state that the land where the project is located belongs to the Al Balqa tribes as part of their tribal lands and that their tribal members had used the land for hundreds of years. See CAO case page for the full complaint, which is included as an annex in the CAO appraisal report: <https://bit.ly/Masdar-Baynouna-01>.

resulting in loss of livelihoods, assets, and access to land and natural resources, and that Baynouna failed to provide them with project-related development benefits and opportunities.

3. In its February 2022 Management Response¹⁰ to the complaint, IFC states that it considers the project to comply with all elements of Jordanian law and relevant IFC Performance Standards (PS). Regarding exclusion from the stakeholder consultation and engagement process, IFC states that its environmental and social due diligence (ESDD) met PS1 requirements for the Assessment and Management of E&S Risks and Impacts and that the project's Environmental and Social (E&S) Action Plan (ESAP)¹¹ included engaging with livestock herders and establishing an external communication mechanism. IFC's response does not address the complainants' assertion that they are the traditional owners and customary users of the project land. Regarding land rights violations, IFC states that it verified the Government of Jordan's ownership of the project site, adding that the client's E&S impact assessment (ESIA) consultant concluded there were no outstanding claims. Regarding exclusion from development benefits, IFC asserts that Baynouna and its contractor appropriately implemented the national law on local employment in development projects. The Management Response notes that local companies were included in the solar plant's commercial procurement processes, and that, as a result, most assigned sub-contractors and service providers were local. In addition, the project employed local residents as security guards and provided training for local engineers to prepare them for project employment. With respect to the distribution of non-employment-related development benefits, IFC notes that the project has a Corporate Social Responsibility (CSR) plan which is described as a "living document" and includes local community initiatives.

Findings of IFC Non-Compliance

4. CAO's investigation finds a series of IFC non-compliances with its Sustainability Framework obligations during both pre-investment due diligence and project supervision.

5. IFC's pre-investment E&S due diligence was not commensurate with the solar plant's scale and the level of E&S risks and impacts,¹² given that the project footprint was 600 hectares or six square kilometers and there was documented evidence of land use within the site. IFC failed to adequately undertake "due diligence of the level and quality of the risks and impacts identification process carried out by its client against the requirements of the Performance Standards,"¹³ in this case PS1, PS5 (Land Acquisition and Involuntary Resettlement), and PS7 (Indigenous Peoples). As a result, IFC was unable to assure itself that the project would be implemented in accordance with these relevant PS.¹⁴

During project due diligence

6. Specifically, during ESDD, IFC did not require its client to:

- Identify and address "all relevant...social risks and impacts of the project...and those who are likely to be affected by such risks and impacts,"¹⁵ despite evidence pointing to the use of project land by herders for fodder and livestock. IFC did not require its client to collect social baseline data and conduct an impact analysis on the herders as part of its ESIA, in accordance with PS1.¹⁶ This omission led to a lack of consideration of whether the project would likely generate potential significant adverse impacts on affected communities,

¹⁰ IFC's Management Response can be found as an annex to the CAO appraisal report.

¹¹ The project E&S Action Plan is available at: <https://bit.ly/3JloAoK>.

¹² Sustainability Policy, para. 26.

¹³ Sustainability Policy, para. 12.

¹⁴ Sustainability Policy, paras. 3 and 7.

¹⁵ PS1, para. 7.

¹⁶ Ibid.

including tribal groups as traditional owners and customary users of project land. It also prevented the development of mitigation measures to “anticipate and avoid, or where avoidance is not possible, minimize, and, where residual impacts remain, compensate/offset for risks and impacts to...Affected Communities,” as required by PS1.¹⁷

- “Identify individuals and groups that may be directly and differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status,”¹⁸ as part of the risk and impact identification process particularly in relation to Bedouin herders.¹⁹ The vulnerabilities facing pastoralists, including Bedouin herders, due to insecure land tenure rights, diminishing land suitable for grazing due to increasing infrastructure projects, and unpredictable rainfall due to climate change, among other factors, are recognized globally.
- “Identify the range of stakeholders that may be interested in [the client’s] actions,” including herders, tribal groups, and relevant district authorities, and identify the affected communities “[w]here projects involve specifically identified physical elements, aspects and/or facilities that are likely to generate adverse environmental and social impacts to Affected Communities.”²⁰ During ESDD, IFC did not require its client to develop a stakeholder engagement plan or consult with the affected communities to elicit their views on project risks, impacts, and mitigation measures, as well as on culturally appropriate development benefits and opportunities, as required of the client under PS1.²¹

7. During due diligence of an investment, IFC must also determine the applicable Performance Standards to ensure that the business activities it finances are implemented in accordance with the relevant PS requirements.²² In this case, IFC’s inadequate due diligence of the level and quality of the client’s risks and identification process²³ led to IFC having insufficient information, as described below, to determine the applicable standards.

8. IFC did not require Baynouna to assess land use and tribal customary land and usage rights, as required by PS5, as part of the project risks and impacts assessment process, despite clear signs that Bedouin herders used the project land. Nor did IFC require an assessment of economic displacement of herders who cultivated fodder on project land, or an assessment of traditional usage rights of grazing land and natural resources by tribal groups. In addition, IFC did not require its client to collect socio-economic baseline data to identify the persons the project would displace.

9. Had IFC required these actions and assessments, and subsequently determined that PS5 applied to the project, IFC oversight would have included ensuring that Baynouna complied with the following PS5 requirements:

- Minimize economic displacement by minimizing land take.²⁴ While Baynouna leased 10 km² from the government, the client only required 4.6 km² for the solar panels and

¹⁷ PS1, Objectives.

¹⁸ PS1, para. 12.

¹⁹ In the history of Jordanian state formation, Bedouins have enjoyed special political and legal status, with a large number in the Jordanian military including individuals holding key positions (Kark, R. and S. J. Frantzman. 2012. *Empire, State and the Bedouin of the Middle East, Past and Present: A Comparative Study of Land and Settlement Policies*). However, in this report, we refer specifically to Bedouin herders who have particular vulnerabilities due to insecure land rights, diminishing land suitable for grazing, and unpredictable rainfall due to climate change.

²⁰ PS1, para. 26.

²¹ PS1, paras. 27 and 30.

²² Sustainability Policy, para. 7.

²³ Sustainability Policy, para. 12.

²⁴ PS5, para. 8.

substation yet fenced off 6.3 km². During a site visit, CAO observed the cultivated land near a wadi east of the area covered by solar panels but within the fenced area where access is restricted. Moreover, the plant's former construction offices and current site offices, which were designed for temporary use, remain located outside the leased land.

- Develop a Livelihood Restoration Plan to ensure entitlements were provided to customary users in a transparent, consistent, and equitable manner.²⁵

10. IFC did not direct its client to undertake any assessments or studies, or to engage an external expert, to assess whether Bedouin herders or Al Balqa tribal members, including the complainants, met the PS7 criteria for Indigenous Peoples. IFC also lacked social data to determine whether its client should engage in a process of Informed Consultation and Participation (ICP) or FPIC with local land users—and did not require its client to collect such data.²⁶

11. This omission had significant consequences for project-affected people. If an assessment had resulted in a determination that the affected communities were Indigenous Peoples, IFC would have required Baynouna to comply with PS7 requirements in constructing and operating the solar plant, including engaging the Al Balqa in a culturally appropriate manner and potentially also in an FPIC process. Under a PS7 designation, IFC's client would needed to: minimize the area of land proposed for the project and the impacts on natural resources and natural areas of importance to the Al Balqa tribes; assess and document the affected tribal communities' resource uses prior to leasing land and without prejudicing any tribal land claim; provide compensation for lands and natural resources under customary use; and establish culturally appropriate sustainable development benefits.²⁷

12. Finally, the lack of a full analysis of the project's social risks and impacts during ESDD meant that IFC had no basis to determine whether the proposed investment activities could be expected to meet the relevant Performance Standards requirements within a reasonable period of time.²⁸ For the same reason, IFC was also unable to meet its obligation to determine the appropriate scope of E&S conditions attached to its financing in relation to the identification and management of project risks and impacts on Bedouin herders as potentially affected communities.²⁹ As a result, IFC did not specify any timebound conditions requiring Baynouna to mitigate social risks and impacts to Bedouin herders in a project E&S Action Plan (ESAP) or as an E&S condition of disbursement. The IFC Board of Directors approved the investment without sufficient understanding of the social risks and impacts of the proposed project and whether the investment could meet relevant PS requirements.

During project supervision

13. During project supervision, IFC fell short in its efforts to work with Baynouna to align the project with the Performance Standards and address adverse E&S impacts on project-affected people.³⁰

- Regarding stakeholder engagement, after becoming aware of local community protests and grievances, IFC met the Sustainability Policy requirement to work with the client to address changed business activity circumstances by recommending development of a

²⁵ PS5, para. 25.

²⁶ Sustainability Policy, paras. 30-31.

²⁷ PS7, paras. 13-14.

²⁸ Sustainability Policy, paras. 7 and 22.

²⁹ Sustainability Policy, paras. 7 and 24.

³⁰ Sustainability Policy, paras. 7 and 45.

Stakeholder Engagement Plan (SEP) and Grievance Redress Mechanism (GRM). However, the final SEP lacks a stakeholder analysis to identify affected communities and continues to not include herders and tribal groups in the stakeholder list and ongoing engagements. The basis on which IFC determined that Baynouna's SEP met PS1 requirements is therefore unclear to CAO.

- Regarding the project grievance mechanism established by Baynouna, IFC lacked the information needed to assess its effectiveness, in accordance with PS1 client requirements, due to inadequate client documentation on the grievance handling process. While IFC advised the client to adequately document all grievances, available information reveals significant gaps in documentation related to grievance handling, timely resolution, and disclosure about the GRM to stakeholders.
- Regarding economic displacement, IFC did not work with its client to bring the project into alignment with PS5 although IFC became aware of several indications of livelihood impacts occurring, including multiple claims of economic displacement from herders.

Findings of Related Harm to the Complainants

14. CAO finds that the IFC non-compliances summarized above are related to the harms alleged by the complainants. Shortcomings in IFC's ESDD, particularly the failure to require Baynouna to carry out a social impact assessment, resulted in the absence of a systematic approach to identify and address the social and economic impacts on project-affected tribal communities, including Bedouin herders. As a result, these project-affected people were not identified as stakeholders and were not engaged in any ESIA consultations during project design. This exclusion constitutes harm, as it resulted in a lack of knowledge among affected people of the solar plant's potential impacts on their livelihoods and limited their opportunity to raise concerns with the project sponsor so that adverse impacts could be avoided or minimized. With the plant now operational, herders continue to be excluded from accessing land to grow fodder for their livestock, as well as from stakeholder engagements, including information disclosure about the grievance mechanism.

15. IFC's deficiencies during project due diligence and supervision in relation to land acquisition and economic displacement have resulted in the likely underpayment of compensation and potential lack of livelihood restoration for three herders compensated by Baynouna after presenting land-related grievances to the company. Other herders have lost access to grazing land and natural resources within the fenced project site, including the wadis and natural fodder, without compensation and restoration of livelihoods. In addition, IFC's lack of adequate oversight and determination that PS5 was inapplicable to the project led to Al Balqa tribal communities losing their traditionally owned land without compensation.

16. CAO also finds indications of harm in relation to grievance redress. During supervision, IFC did not have sufficient documentation of its client's grievance handling process to ensure effective implementation of a GRM that met PS1 client requirements. As a result, herders who brought grievances to the GRM may have received inadequate consideration of their claims, and thus potentially inadequate compensation. Given that the project GRM is the only mechanism available for affected persons to lodge grievances related to economic displacement, the lack of an effective GRM may result in ongoing negative economic impacts.

17. IFC's failure to direct Baynouna to assess whether the Al Balqa tribes in the project area met PS7 criteria for Indigenous Peoples may have contributed to indications of harms including:

- Deprivation of Al Balqa herders' right to informed consultation and participation (ICP) and potentially to FPIC in relation to the project, given its impacts on tribal lands and natural resources that are traditionally owned or under customary use.

18. Loss of access to lands and natural resources (natural and cultivated fodder and wadis) traditionally owned and under customary use by the Al Balqa tribes, without adequate compensation. CAO finds indications of harm regarding development benefits and opportunities. IFC's inadequate ESDD led to a lack of consultation with the affected communities on culturally appropriate development benefits and opportunities. Similarly, IFC did not require Baynouna to provide displaced communities and persons access to appropriate development benefits and opportunities because it determined PS5 inapplicable to the project.

19. CAO also found indications of potential harm, including potential adverse social impacts to tribal integrity and cultural identity.

Recommendations

20. To remediate project-level IFC non-compliances and related harm, CAO recommends that IFC take the following actions regarding Baynouna's operating solar plant:

- Work with the client to conduct a social impact assessment (SIA) that includes an ethnographic assessment of Al Balqa tribes' and herders' customary land ownership and land use. The outcome of the SIA should inform development of adequate mitigation measures that address the impacts identified. IFC should ensure Baynouna provides appropriate compensation for the loss of customary land rights in line with PS5 and PS7 requirements, if determined to be applicable. In consultation with the affected Al Balqa herders, IFC should ensure that Baynouna develops culturally appropriate and sustainable development benefits, in line with PS1, PS5, and PS7 requirements.
 - i. If the SIA determines that PS7 applies to the project, IFC should work with Baynouna and a PS7 regional expert to establish an Indigenous Peoples Plan for the ongoing project that meets PS7 requirements, including a stakeholder benefits-sharing approach.
 - ii. IFC should also work with the client and a PS5 regional expert to develop and implement a Livelihoods Restoration Plan, as well as a livelihood restoration completion audit, in line with PS5 requirements. The compensation already provided to three herders should be assessed to determine whether it met PS5 requirements for loss of assets at full replacement cost, including compensation for the standing barley that was not allowed to be harvested after the area was fenced. In addition, the three herders should receive adequate livelihood restoration measures.
- Work with the client to develop adequate project stakeholder identification and analysis, with inputs from the SIA and an ethnographic assessment. IFC should ensure the outcomes of this process are reflected in both the project stakeholder engagement plan (SEP) and grievance mechanism (GRM).

21. To prevent future similar non-compliances, CAO recommends the following institutional actions:

- As recommended following other recent CAO investigations, strengthen internal guidance and controls within IFC Management to ensure that, prior to Board approval, all significant potential and known E&S risks and impacts of an investment and their proposed mitigation measures are identified and fully analyzed by IFC to determine that the investment

activities will meet relevant Performance Standards within a reasonable period of time. While the Sustainability Policy does not explicitly require IFC to review a complete and robust ESIA or other appropriate environmental and social analytical tools prior to Board approval, such a review is necessary for IFC to deliver on its obligations under the Sustainability Policy. ESIA's and other related analytical instruments were developed to make informed decision making. Their importance has long since been recognized as key to helping financial and other institutions ensure that the projects they support consider the environmental and social impacts and risks as early as possible, in order to effectively avoid, reduce, or compensate for those effects. IFC should include in its guidance explicit expectations regarding the responsibility of project teams to review ESIA's and other related instruments to ensure that they are fit for purpose and effectively inform IFC's due diligence, monitoring, and supervision. Having such internal guidance and controls in place will also strengthen IFC's leverage to ensure client conformance with relevant Performance Standards through loan covenants, the project E&S Action Plan, and other relevant means.

Next Steps

22. In accordance with the CAO Policy, IFC will prepare for Board approval a Management Action Plan following consultation with Baynouna and the complainants. CAO's compliance function will monitor the effective implementation of the Management Action Plan. CAO will publish the investigation report on its website, in English and Arabic, at <https://www.cao-ombudsman.org/cases>

1. Background

1.1 IFC Investment

1. Since 2013, IFC has supported the Government of Jordan's successful efforts to develop its renewable energy sector and the country now ranks first in the Middle East for electricity sourced from solar and wind generation.³¹ In 2014, IFC invested in and mobilized financing for the Seven Sisters program, then the largest private-sector-led solar program in the region, which aggregated seven relatively small solar power projects. In 2018, IFC supported Baynouna Solar Energy Company (Baynouna/the client) to develop, finance, construct, operate, and maintain a 242-megawatt solar photovoltaic plant (the project), covering an area of approximately 6 km², 30 kilometers southeast of Amman (Figure 1). Baynouna's majority shareholder (70 percent) is Masdar, a renewable energy company that was owned at the time of the investment by the Government of Abu Dhabi's Mubadala Development Company.³² Baynouna sells all its electricity to Jordan's National Electric Power Company (NEPCO) under a 20-year power purchase agreement.

2. In December 2017, IFC arranged a financing package of up to US\$188 million for the project, which included IFC senior A and B loans of up to US\$97.25 million.³³ Other lenders included the Japan International Cooperation Agency (JICA), Dutch development bank FMO, Europe Arab Bank, OPEC Fund for International Development (OFID), and German development bank DEG.

3. IFC's Board of Directors approved the investment in November 2017, and the loan was disbursed in seven tranches between October 2018 and August 2021. Construction began in early 2019 and operations in December 2020. The investment remains active.³⁴

1.2 Complaint Issues and History

4. CAO received a complaint in February 2020 lodged by a local community member on behalf of himself and 66 members of the Al Balqa tribes (described in detail in Box 1). The complainants state that the project site belongs to the Al Balqa tribes whose members have used the lands for hundreds of years to cultivate barley for fodder and to graze livestock.³⁵ As the land's customary owners and users, they claim that IFC and the client improperly excluded them from project-related stakeholder engagement, including the E&S Impact Assessment (ESIA) process. They also allege that their land rights were violated as a result of the solar plant's development, resulting in loss of livelihoods, assets, and access to land and natural resources, and that Baynouna failed to provide them with project-related development benefits and opportunities.

³¹ IFC. 2023. Powering Up Jordan's Renewable Energy Market.

³² As of December 2021, Abu Dhabi National Energy Company TAQA holds a 43% share in Masdar, Mubadala retains 33%, and Abu Dhabi National Oil Company (ADNOC) holds 24%.

³³ IFC. 2017. Summary of Investment Information.

³⁴ While IFC completed its loan disbursements in August 2021, Baynouna has yet to complete its repayment of the loan. As such, the IFC project remains active.

³⁵ Both the complaint submitted directly to IFC in October 2019 and the complaint submitted to CAO in February 2020 state that the land where the project is located belongs to the Al Balqa tribes as part of their tribal lands and that their tribal members had used the land for hundreds of years.

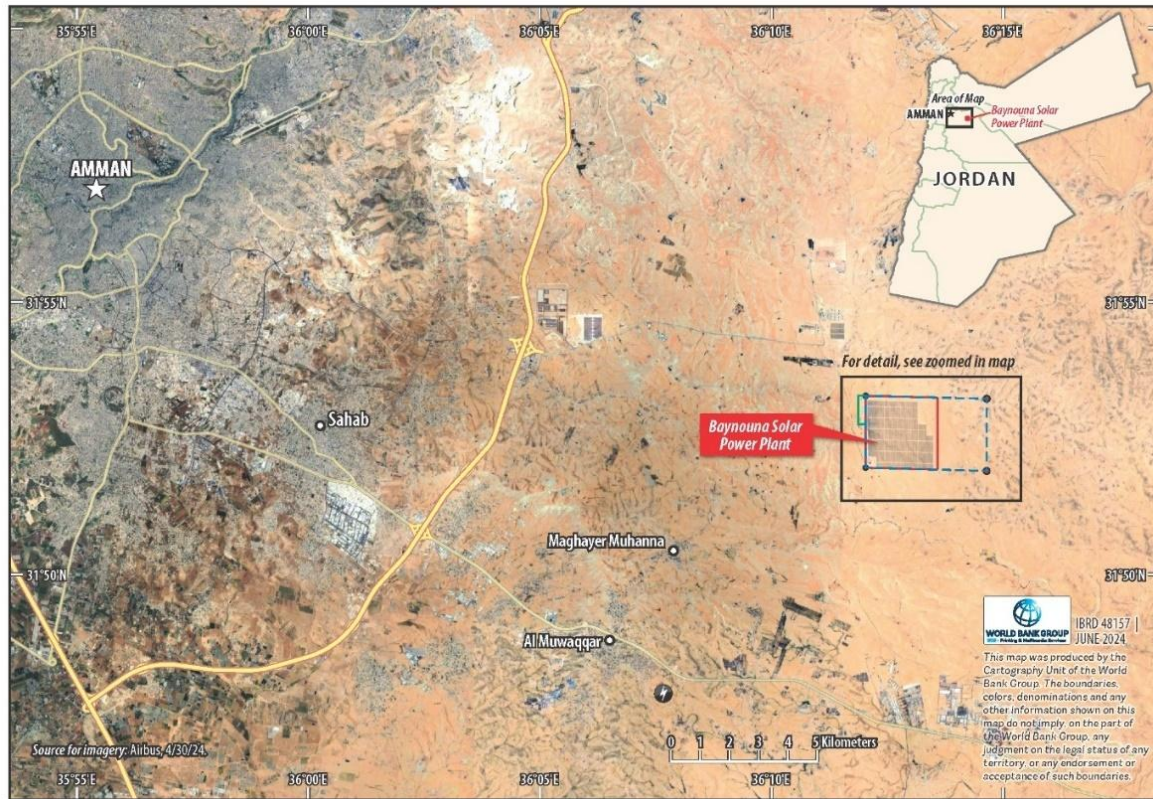


Figure 1. Map showing the location of the Baynouna solar plant.

5. IFC and Baynouna assert that the solar plant sits on government-owned land and IFC states that it verified the Government of Jordan's ownership of the project site. However, the complaint states that tribal members, who include pastoralists (see Box 2), regularly used the project land for grazing and to grow crops for fodder. It states that the tribes were not identified as project-affected people and that as a result they were improperly excluded from stakeholder engagement and subjected to collective and individual land rights violations resulting in harmful livelihood impacts. The complainants also allege that the IFC client did not provide an effective project grievance mechanism. The complaint issues are described in further detail in Section 2 alongside CAO's analysis.

6. The complainants state that they came to CAO for redress after raising their concerns in multiple discussions from late 2018, during project construction, with Baynouna, IFC, government officials, and FMO (Dutch Entrepreneurial Development Bank), another project lender. In September 2019, IFC met with the lead complainant, who subsequently submitted the complaint directly to IFC in October 2019, to the company through its grievance mechanism in November 2019, and then to CAO in February 2020.

7. The complainants and Baynouna took part in a CAO-facilitated dispute resolution process from August 2020 to September 2021, during which time the solar plant began commercial operations, but failed to reach a final agreement. CAO then transferred the complaint to its compliance function for appraisal in February 2022 and initiated a compliance investigation in May 2022. In November 2022, CAO conducted an investigation mission to the project area to inform the findings of this report.³⁶

³⁶ CAO reports related to this case are available on the CAO case page: <https://bit.ly/Masdar-Baynouna-01>

Box 1. The Al Balqa Tribes

Jordan's Al Balqa tribal confederation—locally also referred to as the Balqawiyeh^a—are the customary inhabitants of the region between the Zarqa River to the north and Wadi Mujib to the south, encompassing the governorates of Balqa, Amman, and Zarqa. Confederation members number between 100,000 and 350,000^b and encompass several dozen tribes.^c

The CAO complainants identify themselves as the East Balqawya (see Annex 2 for the tribal group structure), a group of tribes east of the Hejaz railway,^d and also consider themselves to be Bedouin (“desert dweller”) as opposed to Hadir (“settled farmers”). The Al Balqa tribal members include itinerant herders^e who graze their livestock on the naturally growing fodder and barley they plant near the wadis.^f

As asserted in the complaint and based on a rapid ethnographic assessment conducted by CAO's expert consultant, the East Balqawya tribes claim as their customary tribal lands the area east of the settled areas,^g which abuts the western side of the Baynouna project land.^h The complainants claim to have owned and used this land for “hundreds of years.” Starting with the agricultural and settled lands in the west of the country and expanding to the eastern rangelands, the GoJ privatized and registered rights to land and water from 1952, under the Lands and Water Settlement Law (no. 40) until 2006, when a decree ended all land settlements in response to complaints from the Bedouins.

The CAO complainants belong to the Daboubi, Daaje, Raqad, Marashdeh, Zfafah, Hadeed, Qatarneh, and Qehawyeen tribes and describe these lands under their customary ownership as divided into three areas based on the associated tribal ownership. The fenced-in Baynouna project land occupies almost a quarter of an area referred to as Qa'fur,ⁱ which seven Al Balqa tribes collectively own. These tribes are the Raqad, Al Hadeed, Marashdeh, Houwayan, Qatarneh, Zfafah, and Qehawyeen.^j The lands of the Al Balqa extend north of the Qa'fur area in an area called Al Madouneh and south of the Qa'fur area, which is referred to as the Al Alia area, and both are collectively owned by different combinations of the Al Balqa tribes. The lands further south are tribal lands of the Beni Sakhar. While there are no official maps designating tribal lands,^k in 1973, the two tribal groups clarified the location of this border between the two tribal groups, which is at Wadi Mshash, a large wadi located about 1.75-2 km south of the Baynouna project land and runs roughly southeast-northwest.^l Thus the Baynouna project land, well as the surrounding area to the north and south, are the tribal lands of the Al Balqa and not the Beni Sakhar.

^a Also variably spelled Balqa', Balqa', Balqawiyah, Belqawiyah, and Belqawiyah

^b There are no official census population counts of tribal membership. The CAO complaint references 100,000. Bin Muhammad (The Tribes of Jordan at the Beginning of the Twenty-first Century, 1999) states the Belqawiyah numbered over 250,000, while Shryock (Popular Genealogical Nationalism: History Writing and Identity among the Balqa Tribes of Jordan, Comparative Studies in Society and History, 1995, pp. 325-357) estimate 350,000.

^c Bin Muhammad. 1999.

^d The Hejaz railway was built in the early 19th century under Ottoman rule, running from Damascus, Syria, to Medina in present day Saudi Arabia.

^e The term Bedouin herder is used in this report to reference a pastoralist who herds his livestock on his tribal lands. While there are some non-Bedouin herders, such as Syrian refugees, often they will work for Bedouins and/or graze their livestock on Bedouin lands if they have permission from the tribes.

^f Wadi is the Arabic term for a water channel that has water after a period of rainfall, and can also refer to the valley containing such a channel.

^g Settled areas are areas that are covered in the cadaster and owned by households. The plant is located in unsettled, i.e., tribal land. In contrast, for example, the associated transmission line runs through private land in settled areas.

^h Based on the cadastral map available on the Department of Lands and Survey website. Available at: <https://maps.dls.gov.jo/dlsweb/index.html>.

ⁱ Qa'fur is the also name of a wadi in the area (1960 Army Map Service, Washington, DC, map K502, based on a 1954 1:250,000 scale topographic map).

^j Madouneh (Madounah) is the local geographic name and is the name of the east-west road leading toward the Baynouna plant. That road intersects with the Amman Development Corridor and its interchange was named Madouneh Interchange.

^k Shryock. 1995. p. 329

^l Photographic copy of handwritten agreement between the two sheikhs of Al Balqa and Beni Sakhar tribes, signed by 12 tribal leaders and two government officials and dated January 12, 1973.

Box 2. Pastoralism in the project region, Middle Badia

Pastoralism is the use of extensive grazing in rangelands for livestock production. Its practice varies and is categorized by degree of movement from highly nomadic through transhumant (organized around the seasonal migration of livestock)^a to sedentary (agropastoral). Pastoralism is common across the Badia region of Jordan, which constitutes around 80 percent of the country's total land area and is made up of desert and desert steppe.^b

In Amman Governorate, a 2005 study found that transhumant (41.9 percent) and sedentary (34.2 percent) systems were more common, likely due to the proximity and accessibility of marketing channels for animals and their products.^c In the middle Badia,^d where the project land sits, sheep comprise on average 94.5 percent of flocks with goats making up the remaining 5.5 percent.^e

Most pastoralists in the middle Badia adhere to the same basic pattern of migration: from March to May/June, they travel eastward to the rangelands to take advantage of ephemeral plants in the Badia which grow in late winter to early spring following the rainy season of September through November.^f In June-August, and January/February, they travel westward to the settled areas to feed livestock on stubble grazing^g and residues of vegetable crops.^h Concentrates (purchased grains and wheat bran) provide an important feed resource for six to 10 months of the year from September through February for transhumant pastoralists and September to June for sedentary pastoralists.ⁱ

^a Definition of transhumance. Available at: <https://www.britannica.com/topic/transhumance>

^b See, for example, Ministry of Agriculture. 2013/2014. Updated Rangeland Strategy for Jordan, and USAID. Land Links: Jordan, Land Distribution, available at: <https://www.land-links.org/country-profile/jordan/#land>

^c Abu-Zanat, M. M. W., H. A. Miqdady, and M. J. Tabb'a. 2005. Production Systems of Small Ruminants in the Middle Badia of Jordan. *Dirasat, Agricultural Sciences* 32(2).

^d Jordan is divided into three desert (Badia) areas—southern, middle, and northern—and the Baynouna project is located in the middle Badia.

^e Abu-Zanat, et al. 2005.

^f Anbar, A. H., T. M. Al Antary, J. Sawwan, H. Khawaldah, N. Alzboun, and M. Abu-Dalhoun. 2020. Changing Rainfall Trends and the Impact on Cereal Farming in Jordan. *Fresenius Environmental Bulletin* 29 (12).

^g Stubble grazing refers to the grazing on basal parts of the cereal grasses post-harvest which contain remnant grains.

^h Abu-Zanat, et al. 2005.

ⁱ Ibid.

1.3 CAO Investigation Framework: Scope, Methodology, and Applicable E&S Requirements

8. CAO's investigation into IFC compliance with its E&S requirements focused on a range of complaint issues raised by tribespeople. These included identification of affected communities, including traditional owners and customary users of the project land, stakeholder engagement and consultation, grievance handling, economic displacement, land rights violations, and development of benefit-sharing arrangements. CAO assessed IFC's performance during ESDD and supervision against the 2012 Sustainability Framework—the Policy on Environmental and Social Sustainability (the Sustainability Policy) and Performance Standards. In determining IFC compliance with its Sustainability Policy, CAO also assessed, where appropriate, whether IFC deviated in a material way from its 2016 E&S Review Procedures (ESRP), which provides guidance to implement the Sustainability Framework requirements.³⁷

9. In conducting this investigation, CAO staff worked with three external experts: a social specialist with experience in renewable energy projects in the Middle East; an anthropologist with expertise on Bedouin tribal land tenure in Jordan; and a legal specialist with expertise on Jordanian laws and regulations particularly in relation to non-settled rangelands and customary tribal lands as well as investment obligations to local communities.

10. For this investigation report, CAO conducted:

- A review of IFC's project documentation and other project-related materials
- Interviews with IFC project staff and consultants, and with Baynouna staff
- Interviews with the complainants
- A review of materials submitted by the complainants
- A visit to the project site and surrounding areas
- A rapid ethnographic assessment³⁸ of tribal land ownership in the project area, including identification of local tribal group structure
- Legal analysis of Jordanian land laws and requirements for provision of local community benefits by private developers.

11. IFC invested in Baynouna under the 2012 Sustainability Policy and Performance Standards. The former states that “efforts to carry out investment and advisory activities with the intent to ‘do no harm’ to people and the environment” are “central to IFC's development mission.”³⁹ To achieve its mission and these goals, IFC is required to conduct pre-investment E&S due diligence of all its investment activities (see Figure 2). This process must be “commensurate with the nature, scale, and stage of the business activity, and with the level of environmental and social risks and impacts.”⁴⁰ The Sustainability Policy also requires IFC only to “finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time.”⁴¹ Through its due diligence and supervision efforts,

³⁷ CAO Policy, para. 112.

³⁸ A rapid ethnographic assessment (REA) is a research tool that consists of qualitative data collection from a range of methods, including interviews, focus groups, mapping, observations, and brief surveys in a relatively short period of time (e.g., Sangaramoorthy, T. and K. Kroger. 2020. Overview of Rapid Ethnographic Assessment).

³⁹ Sustainability Policy, para. 9.

⁴⁰ Sustainability Policy, para. 26.

⁴¹ Sustainability Policy, para. 22.

IFC seeks to ensure that “the business activities it finances are implemented in accordance with the requirements of the Performance Standards.”⁴²

12. During project implementation, IFC supervises the client's E&S performance against the conditions of financing.⁴³ If the client fails to comply with its E&S obligations, IFC will “work with the client to bring it back into compliance, or if the client fails to reestablish compliance, IFC will exercise its rights and remedies, as appropriate.”⁴⁴ If business activity circumstances change and may result in adverse E&S impacts, “IFC will work with the client to address them.”⁴⁵

13. The following Performance Standards are relevant to the complaint regarding IFC's investment in the Baynouna solar power plant:

- PS1 (Assessment and Management of Environmental and Social Risks and Impacts)
- PS5 (Land Acquisition and Involuntary Resettlement)
- PS7 (Indigenous Peoples)

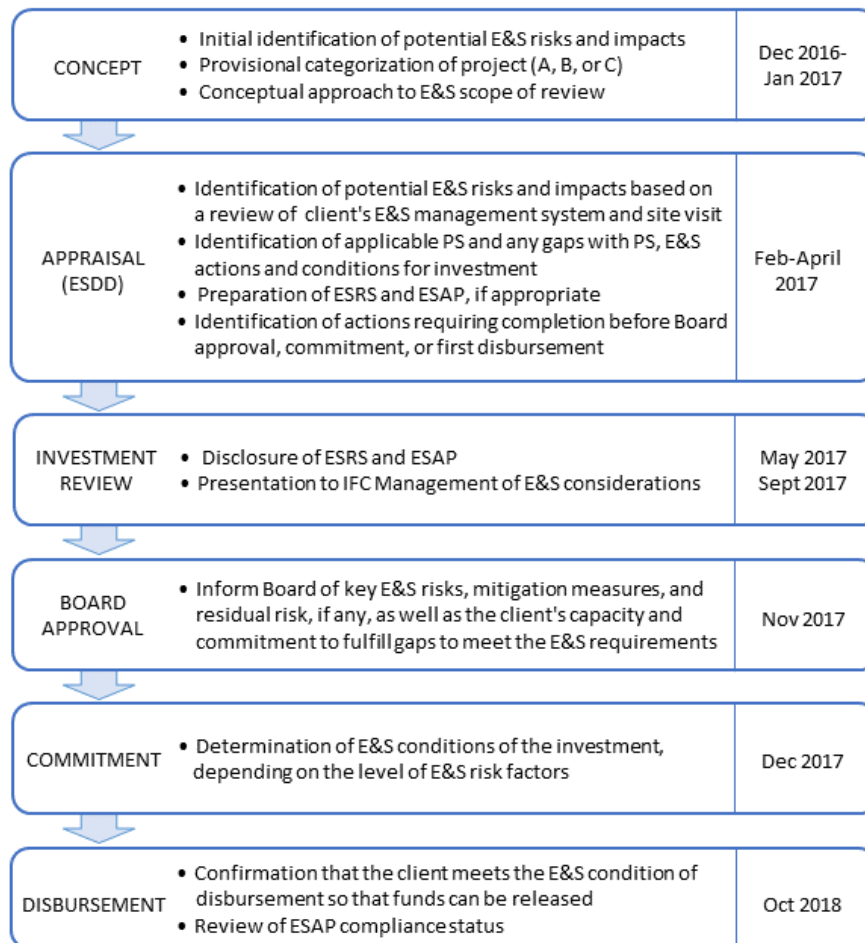


Figure 2. IFC investment operations project cycle and E&S activities (ESRP 2016), with relevant dates for the Baynouna project

⁴² Sustainability Policy, para. 7.

⁴³ Sustainability Policy, para. 45.

⁴⁴ Sustainability Policy, para. 24.

⁴⁵ Sustainability Policy, para. 45.

1.4 Overview of IFC Management Response

14. On February 23, 2022, CAO received IFC's Management Response to the complaint, which disputes the tribal communities' assertions. In summary, IFC's perspective is that the project complies with all elements of Jordanian law and with the relevant IFC Performance Standards. Its response to the various complaint issues is summarized below.

15. **Exclusion from the stakeholder identification and consultation process.** IFC's Management Response does not address the complainants' assertion that the project land belongs to Al Balqa tribes that tribal members have used the lands for hundreds of years, and that the project did not engage them as potentially affected communities.⁴⁶ IFC stated that its pre-investment E&S review met PS1 requirements, noting that no affected communities were identified. However, IFC confirmed that Baynouna completed conditions agreed in the project's E&S Action Plan to engage with local livestock herders and establish an external communication mechanism. IFC also confirmed with the client that the senior Community Liaison Officer had the necessary competences, experience, and skills to conduct stakeholder engagement in line with PS1. According to IFC, the project's grievance mechanism has functioned effectively, with three grievances resolved satisfactorily.

16. **Land rights violations and uncompensated economic displacement.** IFC's Management Response acknowledges that "[i]n Jordan, although property may be government-owned, tribal communities often maintain a customary or traditional relationship with the land that does not necessarily acknowledge legal ownership."⁴⁷ However, IFC rejects the complainants' asserted customary ownership of the Baynouna project site on the grounds that Land Lease Agreement verified by IFC confirmed the Government of Jordan's ownership of the land. According to IFC, Baynouna's ESIA consultant also reviewed legal claims to the project area and concluded that none were outstanding. During pre-investment due diligence, IFC concluded that the project did not warrant a Livelihood Restoration Plan because no economic displacement due to loss of access to natural and cultural resources, including grazing areas, was identified. Both the Management Response and ESIA state that nomadic herders have access to alternative land around the project site.

17. **Exclusion from development benefits and opportunities.** IFC asserts that Baynouna and its Engineering, Procurement, and Construction (EPC) contractor appropriately implemented the national law on local employment in development projects. Local companies were included in the solar plant's commercial procurement processes and most assigned sub-contractors and service providers were local. In addition, the project employed local residents as security guards and trained local engineers for project employment. Regarding other development benefits, IFC notes that the project's Corporate Social Responsibility (CSR) plan includes community initiatives and was developed in consultation with local stakeholders.

18. Baynouna did not submit a formal client response to the complaint as part of the CAO appraisal or investigation process. The company's rationale was that it had already provided extensive written responses to the complaint issues as part of the CAO dispute resolution process.

19. Section 2 details IFC's actions and its response to the complaint in relation to each issue, along with CAO's analysis of IFC compliance and related harm.

⁴⁶ The complainants' direct complaint submitted to IFC in October 2019 includes a claim that the project land belongs to the Al Balqa tribes who have used the land for "hundreds of years." CAO's assessment report, published in August 2020, notes the complainants' claim that "the project is located on land belonging to the Albalqa tribes."

⁴⁷ IFC. Management Response, para. 35.

1.5 Timeline of Key Events

Year	Month	Project Milestones, Events, and Key Documents
2016	October	Baynouna signs a 20-year power purchase agreement with NEPCO
	December	Baynouna consultant conducts a preliminary environmental assessment
2017	January	IFC conducts an initial visit to proposed project site Baynouna consultant conducts scoping meeting in Amman
	February	Baynouna consultant completes the ESIA and ESMP. The ESMP includes an assessment of land use and identification of the land users as a mitigation measure.
	March	IFC conducts field appraisal mission
	April	Lenders' technical advisor completes E&S due diligence report
	May	IFC publicly discloses project information including the E&S Review Summary (ESRS), which summarizes IFC's ESDD
	November	IFC Board approves project
	December	IFC signs debt investment legal agreement with Baynouna Lenders' consultant completes technical due diligence report
2018	August	Baynouna engages with herders as required by the ESAP, reporting completion of this action to IFC in December
	October	IFC makes 1 st loan disbursement
	December	Baynouna meets complainant representative alleging exclusion from stakeholder consultations, land rights violations, and economic displacement
2019	Early	Baynouna starts project construction
	April	IFC makes 2 nd loan disbursement
	July	Independent complaints mechanism of FMO (Dutch development bank), another Baynouna lender, receives complaint and concludes it is not admissible
	August	Baynouna, Jordanian Ministry of Environment, and complainant representative meet IFC makes 3 rd loan disbursement
	September	Complainant representative meets separately with IFC and Baynouna
	October	IFC project team receives a complaint, which was subsequently submitted to CAO in February 2020
	November	Complainant files the complaint with the project's grievance mechanism IFC makes 4 th loan disbursement
	December	Baynouna and complainant representative meet
2020	February	Baynouna and complainant representative meet CAO receives complaint filed by 66 community members from the Al Balqa tribes
	August	CAO publishes Assessment Report Complainants and Baynouna begin a CAO dispute resolution process IFC makes 5 th loan disbursement
	November	Baynouna completes construction
	December	Solar plant starts commercial operation
2021	January	IFC makes 6 th loan disbursement
	August	IFC makes 7 th and final loan disbursement to Baynouna
	September	Complainants and Baynouna conclude the CAO dispute resolution process without an agreement
2022	February	CAO publishes the Dispute Resolution Conclusion Report CAO compliance function receives the complaint for appraisal
	May	CAO publishes the Compliance Appraisal Report
	November	CAO conducts compliance investigation field visit
2024	June	CAO completes compliance investigation

2. CAO Analysis and Findings by Complaint Issue

20. This section presents CAO's analysis and findings regarding IFC's compliance with its E&S requirements in relation to the complaint allegations of adverse impacts from the solar power plant on tribal communities. It is divided by issue, with each subsection summarizing the complainants' allegations, applicable IFC E&S requirements, IFC's actions and Management Response, and CAO's analysis of IFC's pre-investment due diligence and supervision. The issues analyzed include:

- Failure to identify and consult Al Balqa tribal groups and herders as affected communities, and assess project risks and impacts on them;
- Exclusion of Al Balqa tribes from the stakeholder engagement process;
- Failure to adequately assess whether the Al Balqa tribes may be considered Indigenous Peoples, as traditional owners and customary users of the project land;
- Land rights violations and associated livelihood impacts; and
- Failure to include Al Balqa tribal groups in development benefits and opportunities.

21. CAO finds IFC non-compliances in each of these areas spanning pre-investment E&S due diligence (ESDD) and project supervision. CAO's findings concerning harm to project-affected people related to IFC non-compliance are grouped together in subsection 2.6.

2.1 Failure to Identify and Consult Al Balqa Tribes as Affected Communities, and Assess Project Risks and Impacts on Them

2.1.1 Community Complaint to CAO

22. The complainants allege that IFC's ESDD and the project's environmental and social impact assessment (ESIA) process failed to identify and consult the Al Balqa tribes as project-affected people, as required by PS1. The 66 complainants are members of the Al Balqa tribal confederation (see Box 1) whose members herd livestock, with some local tribal members living in Bedouin tents. The complainants state that the project land belongs to the Al Balqa on the basis that it is situated entirely on land traditionally owned and under customary use by specific Al Balqa tribes. Fencing of the project site for construction displaced tribal members who use the project land seasonally to herd and graze livestock and deprived them of access to natural resources including wadis (seasonal water channels) and fodder for their livestock. In some cases, these herders plow the lands around the wadis and grow fodder crops such as barley through rainfed cultivation.

2.1.2 IFC Requirements

23. In accordance with the Sustainability Policy, IFC's ESDD is required to be "commensurate with the nature, scale, and stage of the business activity, and with the level of environmental and social risks and impacts."⁴⁸ In particular, IFC undertakes "due diligence of the level and quality of the risks and impacts identification process carried out by its clients against the requirements of the Performance Standards."⁴⁹ In accordance with the ESRP, IFC should verify that "there is sufficient IFC understanding of how project E&S risks and impacts will be managed for IFC to proceed to Investment Review and institutional disclosure."⁵⁰ IFC also commits to ensure,

⁴⁸ Sustainability Policy, para. 26.

⁴⁹ Sustainability Policy, para. 12.

⁵⁰ 2016 ESRP, para. 3.2.3.

through its due diligence, monitoring, and supervision, that “the business activities it finances are implemented in accordance with the requirements of the Performance Standards.”⁵¹

24. One of the objectives of PS1 (Assessment and Management of E&S Risks and Impacts) is to “adopt a mitigation hierarchy to anticipate and avoid, or where avoidance is not possible, minimize, and, where residual impacts remain, compensate/offset for risks and impacts to...Affected Communities...”⁵² To accomplish this objective, PS1 requires the client to assess the project’s social risks and impacts, including identification of all affected communities, and assess the vulnerability of these groups. This process must be “based on recent environmental and social baseline data at an appropriate level of detail...and will consider all relevant environmental and social risks and impacts of the project.”⁵³ Clients are directed to consider baseline data that is based on “current and verifiable primary information,” and while reference to secondary information is acceptable, primary information should be gathered from field surveys.⁵⁴ This gathering of baseline information is “an important and often a necessary step to enable the determination of the potential impacts and risks of a project.”⁵⁵

25. The PS1 Guidance Notes state that if the initial investment screening indicates potential risks and adverse impacts, “the scope of the identification process should be determined and further identification and analysis...of risks and impacts will be necessary to ascertain their nature and scale, Affected Communities, and possible mitigation measures.”⁵⁶ Limitations on data, including the extent and quality of available data along with assumptions and key data gaps, should be clearly identified.⁵⁷ Accurate and up-to-date baseline information is essential, as lack of data on disadvantaged or vulnerable individuals or groups can seriously affect the efficacy of social mitigation measures.⁵⁸

26. As part of the risk and impact identification process, IFC must ensure its client meets the PS1 requirement to “identify individuals and groups that may be directly and differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status.”⁵⁹ In cases where groups are identified as disadvantaged or vulnerable, PS1 requires the client to “propose and implement differentiated measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in sharing development benefits and opportunities.”⁶⁰

2.1.3 IFC Actions and CAO Analysis

IFC Actions during ESDD

27. IFC conducted E&S due diligence of its potential investment in the solar plant between signing the mandate letter in December 2016 and disclosing in May 2017 the E&S Review Summary (ESRS), the E&S Action Plan (ESAP) agreed with Baynouna, and the client-commissioned ESIA.

28. During its concept review of the project in early December 2016 (see Figure 2), IFC noted that land use and land ownership would be confirmed during due diligence. In late December

⁵¹ Sustainability Policy, para. 7.

⁵² PS1, Objectives.

⁵³ PS1, para. 7.

⁵⁴ PS1, GN20.

⁵⁵ PS1, GN19.

⁵⁶ PS1, GN18.

⁵⁷ PS1, GN20.

⁵⁸ Ibid.

⁵⁹ PS1, para. 12; see also PS1, GN20 and GN48.

⁶⁰ PS1, para. 12.

2016, the client's ESIA consultant completed a preliminary environmental assessment or scoping study, which included preliminary terms of reference (TOR) for a comprehensive E&S impact assessment of the planned large-scale solar plant.

29. In early January 2017, IFC carried out a site visit accompanied by the ESIA consultant. While there, IFC personnel photographically documented “cultivated plots” on the project site, and noted that the plowed area was “most probably for wheat/barley cultivation.” IFC's site visit report stated that the project ESIA would confirm land use and land ownership, noting that although the project site was government-owned, people were free to use the land.

30. In coordination with Jordan's Ministry of Environment, the ESIA consultant conducted a scoping session in late January 2017 to determine the ESIA's scope and finalize the TOR, reporting that the session included all stakeholders potentially affected by the project.⁶¹

31. The project E&S Impact Assessment was completed in late February 2017, and acknowledged potential land use by herders. Specifically, the report noted that “some signs of land ploughing have been observed within the project area and outside surroundings as well, mainly near the wadi routes” which “can be a result of locals/herders ploughing the land for livestock fodder purposes on [a] seasonal basis.”⁶² At the same time, however, the ESIA stated that “no identified use” was observed on site, noting the lack of “residential dwellings or settlements.”⁶³ It added that, “the project area is far from the populated areas. Hence, there is no population (people) utilizing the project area.”⁶⁴ The ESIA, conducted by the client's consultant, did not reconcile these seemingly contradictory observations.

32. Moreover, despite the clear signs of seasonal herder land use noted during the IFC visit, the ESIA consultant did not collect any social baseline data on the herders that used the area or carry out any assessment of risks and impacts on herders as potentially impacted people. Instead, the ESIA consultant postponed this assessment until after the ESIA was completed, including it as a mitigation measure in the E&S Management Plan (ESMP), developed alongside the ESIA to address identified E&S issues.

33. This mitigation measure was to “undertake [an] appropriate assessment (recommended during spring season) to confirm the use of the site in terms of seasonal cultivation for producing livestock fodder and identification of such intermittent land users/project-affected persons.”⁶⁵ The ESMP recommended the assessment to be conducted during the spring,⁶⁶ when herder use would be most active, and prior to construction.

34. In early March 2017, IFC conducted its pre-investment field visit. Preparatory documents for this site visit indicate that IFC intended to meet with people using the project site and surrounding areas for formal or informal agricultural activities. However, no such meetings with land users took place and CAO has seen no evidence that IFC followed up with its client or the ESIA consultant to identify these project land users. Around the same time as the field visit, IFC

⁶¹ ESIA, Appendix A, Scoping Session Report, p. 4.

⁶² ESIA, p. 7.

⁶³ Ibid., p. 119.

⁶⁴ ESIA, table 29, p. 128.

⁶⁵ Ibid., table 37, p. 183.

⁶⁶ According to the ESIA consultant, herders in the local area plow lands near wadis for rainfed cultivation of barley in the fall (October to November) and return in the spring (April to May) to graze their livestock. The timing of the planting corresponds with the season when the rainfall is highest, which is September through November in Jordan (Anbar, et al. 2020. Changing Rainfall Trends and the Impact on Cereal Farming in Jordan, Fresenius Environmental Bulletin 29, no. 12).

carried out a contextual risk assessment, which highlighted the need for a current land use assessment that included communities who may not have legal land rights.

35. IFC tasked the project lenders' technical advisor (LTA)⁶⁷ with visiting the project site and reviewing the ESIA and ESMP against the Performance Standards, World Bank Group guidelines, and Jordanian E&S regulations. This LTA E&S review focused on the status of land acquisition and any formal or informal landowners/users, including any herders temporarily accessing the site, and any related community impacts and potential for cumulative impacts.

36. The LTA's E&S due diligence report, produced in April 2017, was generally positive, noting that the information required for Baynouna to comply with relevant IFC Performance Standards was for the most part present in the ESIA. The report did not raise any questions about the ESIA's identification of affected communities and project stakeholders. It included a PS checklist and related questions about whether the project land was used by local communities or semi-nomadic groups such as the Bedouin, and whether the company had a good understanding of land use by semi-nomadic peoples. The documented response was "no," without specifying to which question this responded, and referenced the ESIA as its source of information.

37. However, the LTA's site visit report from March 2017 painted a different picture. This firsthand report described land use at the project site as "partially agricultural" with evidence of plowing, "probably a result of locals⁶⁸ ploughing the land for livestock fodder purposes on [a] seasonal basis." Photos included in the report show plowed land in the northwest and southwest project areas. Yet, the LTA made no reference in its April 2017 ESDD report to the potential land use it documented in its site visit report a month earlier. In the ESDD report, the LTA stated that the project would cause no involuntary resettlement and therefore that PS5 (Land Acquisition and Involuntary Resettlement) did not apply.⁶⁹

38. IFC published an E&S Review Summary (ESRS) and E&S Action Plan (ESAP) for the project in May 2017, which summarized the results of its pre-investment due diligence. The ESRS stated that IFC considered the ESIA to be "generally fit for purpose"⁷⁰ despite the lack of social baseline data and gaps in information regarding social impact. It also stated that no affected communities were identified, as there were no local households living within the project boundaries of the project site, while at the same time recognizing that there were seasonal users of land the project would utilize. IFC refers to these "seasonal users of the land within the project area" as "other potential stakeholders,"⁷¹ and the ESRS acknowledges "signs of limited seasonal use of the site for forage cultivation purposes...nomadic Bedouins pass through the area periodically, sowing fodder grass over extensive areas to support their livestock after the rains."⁷² However, IFC then asserts in the ESRS, without providing supporting data and analysis, that the herders "will be able to continue accessing significant areas of undeveloped land around the project site once it is constructed." The ESRS added that the "follow-up assessment of informal land use in spring 2017" recommended in the ESMP was the client's responsibility. IFC did not

⁶⁷ The LTA, commissioned by IFC and paid by Baynouna and Masdar, supports IFC and other project investors by ensuring the technical integrity of the project from the pre-construction due diligence through construction, commissioning, and operational phases. The LTA is tasked to conduct a comprehensive review, including the E&S aspects, identify gaps with applicable E&S standards, and recommend improvements to rectify the gaps. The LTA monitors and reports on the construction quality, operational performance, and E&S integrity of the power plant, and to review Baynouna's compliance with E&S covenants or other obligations defined in the legal agreements.

⁶⁸ The text is unclear as to whether the LTA's use of the term "locals" refers to herders, tribal members, or other groups.

⁶⁹ During conversations with CAO, the LTA erroneously noted that PS5 only applies to physical displacement.

⁷⁰ IFC notes in the ESRS that the "ESIA is generally fit for purpose, though it does not consider the matter of operations phase water use, which is a relevant E&S impact given Jordan's water scarcity."

⁷¹ While IFC identified seasonal land users as Bedouin herders, the herders are categorized as "other potential stakeholders" rather than as potentially affected communities.

⁷² IFC determined PS5 was not applicable, as documented in the ESRS. See section 2.6 for further discussion.

include this assessment as a project ESAP item or a condition of loan disbursement to Baynouna. However, IFC's legal agreement with the client listed the ESMP as one of the E&S requirements for Baynouna to ensure compliance with the terms of the IFC investment.

39. In November 2017, at IFC's request, Baynouna's ESIA consultant prepared a proposal for the planned assessment of herders as project-affected persons. The E&S Management Plan described the task as an assessment of land use in relation to seasonal cultivation of livestock fodder. The original scope of the proposal consisted of developing a Resettlement Action Plan (RAP), including a detailed assessment of the herders' land use and establishment of compensation packages, if needed. However, because IFC did not find PS5 to be applicable to the project and thus deemed a RAP to be unnecessary, IFC advised the client to focus the study on the identification of and engagement with herders to inform them of the project. Consequently, the revised proposal did not include any assessment of land use and potential impacts on herders. While IFC states that it followed up with the client, the agreed stakeholder study did not materialize. Despite fulfillment of the ESMP being part of IFC's legal agreement with Baynouna, the client and its ESIA consultant failed to carry out any assessment of the project's social and economic impacts on herders, and IFC did not require its client to do so.

40. In the Board paper presenting the project for approval in November 2017, IFC noted that local Bedouin herders periodically pass through the project area and that the client would engage with them prior to construction. The paper stated that IFC had not had any issues with herders in other energy projects in Jordan and asserted that the herders' seasonal movements would allow them to continue to graze land around the project site. These statements were made, and the investment approved, without an IFC review of potential E&S risks and impacts on Bedouin herders.

CAO Compliance Analysis and Findings

41. Based on the evidence above, CAO finds that IFC did not conduct an ESDD "commensurate with the nature, scale, and stage of the business activity, and with the level of environmental and social impacts," as required by the Sustainability Policy.⁷³ In particular, IFC did not undertake adequate "due diligence of the level and quality of the risks and impacts identification process carried out by its clients against the requirements of the Performance Standards."⁷⁴ IFC's failure to require its client to collect social baseline data and conduct an analysis of social and economic impacts and risks as part of the ESIA was inconsistent with the Sustainability Policy. It resulted in IFC's inability to verify at the time the Board approved the project that the investment would be implemented in accordance with the Performance Standards within a reasonable period of time.⁷⁵ IFC's ESRP for this project acknowledged this obligation in requiring verification that "there is sufficient IFC understanding of how project E&S risks and impacts will be managed for IFC to proceed to Investment Review and institutional disclosure."⁷⁶ Yet, IFC went ahead with the investment without this understanding, and therefore IFC had no basis to know whether the proposed investment activities could be expected to meet PS requirements within a reasonable period of time.⁷⁷

42. Specifically, the absence of social impact and vulnerability assessments meant that IFC did not have sufficient information to understand how project-related land acquisition would affect Bedouin herders and to require its client to undertake measures to address these consistent with

⁷³ Sustainability Policy, para. 26.

⁷⁴ Ibid., para. 12.

⁷⁵ Ibid., para. 22.

⁷⁶ ESRP, 3.2.3.

⁷⁷ Sustainability Policy, paras. 7 and 22.

PS1 and PS5. IFC's ESDD shortcomings also led to a lack of understanding about the existence of tribal groups as customary owners and users of the project land and the potential application of PS7 to the project. Consequently, IFC was unable to determine the application of appropriate Performance Standards and apply relevant timebound conditions to its financing related to the identification and management of project risks and impacts on herders.⁷⁸

43. IFC's non-compliances during ESDD are presented in more detail below.

44. ***Failure to require a social impact assessment and identify affected communities.*** Contrary to ensuring Baynouna implemented its project in accordance with PS1, IFC did not require its client to "consider all relevant environmental and social risks and impacts of the project ...and those who are likely to be affected by such risks and impacts."⁷⁹ The risks and impacts identification process is an important component to achieve PS1's objective of adopting a mitigation hierarchy to anticipate and avoid, minimize, and, where residual impacts remain, compensate/offset for risks and impacts to affected communities. Given the large scale of the project—a footprint of 600 hectares or six square kilometers—combined with documented evidence of project land use, IFC erred in not requiring a social impact assessment (SIA) in relation to herders.

45. Despite indications of seasonal herder usage of the project land, as noted by its own field team, IFC did not require Baynouna to collect the necessary social baseline data, based on primary information.⁸⁰ or to conduct an impact analysis to identify users of the land and the project's associated social and economic impacts. Instead, the client's ESIA consultant relied on secondary information from one local stakeholder, not a herder, who commented that livestock grazing in the project area was "very minimal."⁸¹ Based on an observation that areas outside the project land showed similar signs of plowing, the ESIA stated the plowed areas were "not considered as a permanent asset for the local community,"⁸² and that project construction at the proposed location "does not comprise any losses for the local community."⁸³ IFC accepted the conclusion that herders were not affected people without requiring its client to conduct any assessment of project risks and impacts on them as required by PS1.⁸⁴

46. A social baseline study would likely have examined the tribes to which the herders belong, and potentially revealed that the project land comprised part of customary Al Balqa tribal territory. Such an assessment, recommended in the project E&S Management Plan, should have been conducted as part of the E&S Impact Assessment. It is unclear why IFC accepted this omission in the ESIA, which is not consistent with good practice and undermined the effectiveness of the ESIA. This omission led, in turn, to the failure to consider whether the project would likely generate potential significant adverse impacts on affected communities, including tribal groups who claimed traditional ownership and customary use.⁸⁵ IFC had no social data or impact analysis to determine whether its client should engage in an Informed Consultation and Participation (ICP) or Free, Prior, and Informed Consent (FPIC) process under P7 (Indigenous Peoples). For further discussion of this issue, see section 2.3.2.

⁷⁸ Sustainability Policy, paras. 7 and 24.

⁷⁹ PS1, para. 7; see also PS1 GN16, GN18, GN19, and GN23.

⁸⁰ PS1, GN20.

⁸¹ ESIA, p. 126, also p. 164.

⁸² ESIA, p. 164.

⁸³ Ibid.

⁸⁴ PS1, para. 7.

⁸⁵ PS1, paras. 31-32.

47. Based on the above analysis, IFC's due diligence of the "level and quality of the risks and impacts identification process carried out by its client"⁸⁶ was inadequate to comply with Sustainability Policy requirements. Despite the significant gaps in social baseline data and impact analysis, IFC accepted the client's ESIA as "generally fit for purpose."⁸⁷

48. **Failure to require its client to assess the vulnerability of herders.** IFC did not require Baynouna to assess whether the project may disproportionately affect the herders and their tribes because of their disadvantaged or vulnerable status, as required of the client under PS1.⁸⁸ The vulnerabilities facing pastoralists, including Bedouin herders,⁸⁹ are recognized globally and include insecure land tenure rights, diminishing land suitable for grazing due to increasing infrastructure projects, and unpredictable rainfall due to climate change, among other factors.⁹⁰ Because IFC and its client did not identify the herders and tribal groups as disadvantaged or vulnerable, IFC did not require Baynouna to propose and implement any differentiated measures to ensure that adverse impacts do not fall disproportionately on these groups and that they are not disadvantaged in sharing development benefits and opportunities, per PS1.⁹¹ (For further discussion, see section 2.5).

49. **Failure to include a social impact assessment in timebound E&S conditions for project financing.** Since it lacked full understanding of the project's social risks and impacts, and the associated mitigation measures required, IFC was unable to determine the appropriate scope of the timebound E&S conditions it attached to project financing in relation to identification and management of project risks and impacts on Bedouin herders as affected communities.⁹² As a result, IFC did not specify any timebound conditions requiring Baynouna to mitigate social risks and impacts on Bedouin herders in the project ESAP or as an E&S condition of disbursement. Including such binding conditions would have enabled IFC to review client performance on social risk mitigation for affected herders during project supervision.⁹³ Instead, IFC limited E&S conditions in relation to herders to a single ESAP item that required the client to "engage with livestock herders who have historically made use of the project area, in order to explain the establishment of the project and its boundaries and timing." This type of engagement does not replace the social baseline study and social impact assessment required under PS1 which, from a good practice standard, should have been conducted as part of the ESIA. The failure to include a social impact or land use assessment as a timebound condition of project financing meant IFC lost leverage to compel the client to conduct an assessment during project supervision.

⁸⁶ Sustainability Policy, para. 12.

⁸⁷ ESRS.

⁸⁸ PS1, para. 12.

⁸⁹ Historically, Bedouins have enjoyed special political and legal status in Jordan, with a large number in the Jordanian military including individuals holding key positions (Kark, R. and S. J. Frantzman. 2012. *Empire, State and the Bedouin of the Middle East, Past and Present: A Comparative Study of Land and Settlement Policies*). However, in this report, we refer specifically to Bedouin herders who have particular vulnerabilities due to insecure land rights, diminishing land suitable for grazing, and unpredictable rainfall due to climate change.

⁹⁰ See, for example, Al-Tabini, R., K. Al-Khalidi, and M. Al-Shudiefat. 2012. *Livestock, medicinal plants and rangeland viability in Jordan's Badia: through the lens of traditional and local knowledge*. Pastoralism: Research, Policy and Practice 2. Available at: <https://bit.ly/47PTZxo>. Zogib, L. 2014. *On the Move – for 10'000 years: Biodiversity Conversation through Transhumance and Nomadic Pastoralism in the Mediterranean*. Available at: <https://bit.ly/3TWwY6m>. UN OHCHR. 2023. *Green Financing – A Just Transition to Protect the Rights of Indigenous Peoples*. Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, A/HRC/54/31. Available at: <https://bit.ly/3Y5IONRUN>. UN OHCHR. 2024. *Report of the UN Special Rapporteur on the Rights of Indigenous Peoples, José Francisco Calí Tzay: Mobile Indigenous Peoples*, A/79/160. Available at: <https://bit.ly/3TPHjpl>.

⁹¹ PS1, para. 12.

⁹² Sustainability Policy, paras. 7 and 24.

⁹³ Ibid., para. 45.

50. The legal agreement between IFC and the client did contain a general covenant requiring compliance with the commitments made in the ESIA, which includes the E&S Management Plan. This plan included a recommended action for Baynouna to assess seasonal herder use of project land and identify the affected herders. However, IFC advised the client's consultant to narrow the focus of the assessment to a stakeholder identification and engagement study. During project supervision, Baynouna did not conduct either a land use assessment or a stakeholder study, and IFC did not urge its client to do so.

2.2 Exclusion of Al Balqa Tribes from the Stakeholder Engagement Process

2.2.1 Community Complaint to CAO

51. The complainants, who reside in the Sahab district of Jordan, allege that Baynouna excluded them from stakeholder engagement throughout development and operation of the solar project. They argue that Baynouna should have consulted the tribes whose herders were project-affected people during project design and in implementing a timely and adequate stakeholder engagement plan (SEP) and grievance redress mechanism (GRM) to respond to community concerns. While Baynouna eventually did establish both a SEP and a GRM, the complainants declare these to be inadequate because community access to project-related information was limited. The complainants also allege that the IFC client's Community Liaison Officers were not qualified or knowledgeable and failed to credibly represent the concerns of the Al Balqa tribal communities to Baynouna.

52. The complaint includes a grievance alleging that Baynouna had failed to gain consent from a landowner, who is one of the complainants, for a project access road that crossed his private land.⁹⁴

2.2.2 Relevant IFC Performance Standards Requirements

53. Under PS1, IFC clients must carry out stakeholder identification and analysis, develop a stakeholder engagement plan, and consult affected communities. Specifically:

- "Clients should identify the range of stakeholders that may be interested in their actions...Where projects involve specifically identified physical elements, aspects and/or facilities that are likely to generate adverse environmental and social impacts to Affected Communities the client will identify the Affected Communities."⁹⁵
- "The process of stakeholder identification includes...identifying legitimate stakeholder representatives, including elected officials, non-elected community leaders, leaders of informal or traditional community institutions, and elders within the Affected Community."⁹⁶
- "When Affected Communities are subject to identified risks and adverse impacts from a project, the client will 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, and allows the client to consider and respond to them."⁹⁷ "For a project with potentially significant adverse impacts on Affected Communities, the client will conduct an Informed Consultation and Participation (ICP) process that will build upon

⁹⁴ The project registered the grievance in the GRM in early June 2021.

⁹⁵ PS1, para. 26.

⁹⁶ Ibid., GN95.

⁹⁷ Ibid., para. 30.

the steps outlined...in Consultation and will result in the Affected Communities' informed participation.”⁹⁸

- “The client will develop and implement a Stakeholder Engagement Plan that is scaled to the project risks and impacts and development stage, and tailored to the characteristics and interests of the Affected Communities.”⁹⁹

54. PS1 also requires IFC clients to develop a grievance mechanism to “receive and facilitate resolution of Affected Communities’ concerns and grievances about the client’s environmental and social performance.”¹⁰⁰

2.2.3 IFC Actions and CAO Analysis

IFC's Actions During ESDD and Supervision

55. IFC's E&S Review Summary for the Baynouna solar plant states that the client's ESIA consultant was unable to engage with any herders in the project area during the pre-investment ESIA process because the herders “were not present in the project area” at the time and “could not be identified or contacted.” Therefore, IFC and Baynouna agreed to include in the project E&S Action Plan a client requirement to “engage with livestock herders who have historically made use of the project area” prior to construction.

56. The ESIA consultant commissioned by Baynouna held an initial community engagement in January 2017 with three parties: a local women's organization, the owner of a fertilizer workshop located 200 meters from the project site, and a representative from the Muwaqqar municipality, which includes part of the project area.¹⁰¹ This initial engagement was followed by a scoping session in Jordan's capital Amman, 30 kilometers from the proposed project site, where the only community members present were representatives of the same women's organization from the Muwaqqar municipality. No herders or tribal members participated. One participant commented that the lack of local community members may have been due to the distance from the project site.¹⁰²

57. While Muwaqqar municipality representatives did attend the scoping session, the ESIA suggests that Muwaqqar was not the only relevant administrative authority, describing the project site as located in the “Telal Al Rukban area, belonging *mostly* to Al Muwaqqar District”¹⁰³ (emphasis added).

58. The ESIA consultant's subsequent Preliminary Environmental Assessment (scoping study) listed tribal groups among the initial community stakeholders for the project. However, the final project ESIA identified local stakeholders by category in a table that lists “herders and farmers” as “community members”¹⁰⁴ but includes no specified tribal groups.

59. IFC noted in project documentation that the ESIA consultant visited the closest village to the project site, Maghayer Muhanna, 8 km away. The village members reportedly showed little interest in discussing the project on the grounds it would not impact their livelihoods or land, or

⁹⁸ Ibid., para. 31.

⁹⁹ PS1, para. 27.

¹⁰⁰ Ibid., para. 35.

¹⁰¹ As noted in section 2.2.1, the complainants reside in Sahab district, which is adjacent to Muwaqqar district.

¹⁰² ESIA, Annex A: 20–22.

¹⁰³ The Preliminary Environmental Assessment (PEA, scoping study) did not include the qualifier “mostly” which suggests that new but unclear information may have surfaced since the PEA in relation to the districts in which the project land is located.

¹⁰⁴ ESIA, pp. 123-124, table 27.

impact them via traffic or resource issues such as water use. The ESIA did not document the engagement with these village members.

60. IFC planned to meet with local stakeholders during its March 2017 field visit, including the women's association engaged by the ESIA consultant and any persons who use the project site or its immediate surroundings for formal or informal agricultural activities. However, IFC and the consultant decided against the need to consult the women's organization a third time and the field visit concluded without IFC meeting any land users.

61. Under the binding E&S Action Plan (ESAP) agreed with Baynouna, IFC required client engagement with "livestock herders who have historically made use of the project area in order to explain the establishment of the project and its boundaries and timing." IFC and the client agreed on this action because the herders were absent from the project area at the time of the ESIA stakeholder engagement process. IFC required completion of this action prior to construction starting on the solar plant. The objective of the engagement was to explain the project to herders, rather than to consult with them about potential project impacts on their seasonal use of the land.¹⁰⁵

62. Both the ESIA and E&S management plan, as well as the due diligence report prepared by the technical advisor to the project lenders (LTA) recommended that Baynouna develop a SEP and GRM despite the local sedentary population's distance from the project site. The ESIA and the LTA report also recommended appointing a community liaison officer (CLO) to manage community-related matters, with this role described in the SEP. However, in April 2017, IFC determined that requiring a SEP would be an "academic exercise only, with little or no practical value, mainly due to the rather unusual site location characteristics." IFC later clarified that it was referring to the lack of nearby settlements as well as a lack of interest in the project by the closest villagers given there were no impacts on their lands and livelihoods.

63. IFC finalized its pre-investment E&S due diligence the following month, in May 2017, and concluded that there were no affected communities within the project site because there were "no permanent dwellings in the project area" and the nearest population was 8.5 kilometers away. IFC further reasoned that this absence of permanent dwellings meant that "a full community Grievance Mechanism and Stakeholder Engagement Plan is not warranted."¹⁰⁶ As a result, IFC did not require the development of a SEP and GRM as binding ESAP items. Instead, IFC required Baynouna to establish an external communication mechanism and to designate an individual, preferably the project EHS officer, to engage project stakeholders and respond to grievances reported through the external communication mechanism. IFC also included in the ESAP, a requirement that the client engage with herders when they pass through the project area. In September 2018, Baynouna established an External Communication Procedure as required by the ESAP.

64. As discussed above in section 2.1.3, in November 2017, Baynouna's ESIA consultant prepared a proposal for a study designed to identify and engage with herders in order to inform them of the project.¹⁰⁷ The methodology consisted of weekly field surveys for 12 weeks, focus group discussions, and consultation with stakeholder representatives including from local tribes. While IFC stated that it followed up with the client, the study never took place. Given client inaction

¹⁰⁵ ESAP.

¹⁰⁶ ESRS.

¹⁰⁷ As discussed in section 2.2.3, the original scope of the proposal consisted of developing a Resettlement Action Plan, including a detailed assessment of the herders' land use and establishment of compensation packages, if needed. However, because IFC did not find PS5 to be applicable to the project and thus deemed a RAP to be unnecessary, IFC advised the client to focus the study on stakeholder identification and engagement, specifically on identification of and engagement with herders to inform them of the project.

on the proposed study to systematically identify and engage with herders, IFC asked Baynouna to fulfill the ESAP item to engage with herders at least two months prior to the start of construction.

65. IFC's client reported in December 2018 that it had engaged with herders who passed through the area during a topographic study in August 2018, noting that the herders had raised no concerns. Based on Baynouna's statement that it had completed this action, IFC closed the ESAP item,¹⁰⁸ despite the fact that in December 2018 Baynouna also met with a complainant representative alleging exclusion from stakeholder consultations, land rights violations, and economic displacement.

66. IFC did not provide CAO with records or documentation of Baynouna's August 2018 engagement with herders that demonstrated IFC working with the client to ensure this engagement met PS1 requirements.

67. IFC's first E&S site supervision visit in February 2019 reported that construction had started, and the company had hired a CLO who was engaging actively with local settled communities on employment opportunities. In March 2019, IFC received Baynouna's first annual monitoring report, which stated that there had been no grievances or complaints raised during the reporting period. During its next site supervision visit in September 2019, IFC met the CLO and concluded he had the necessary competences, experience, and skills (including speaking the local language, knowledge of the local context, and experience with challenging socio-economic environments) to liaise with the communities and perform stakeholder engagement in alignment with PS1.¹⁰⁹

68. However, in July and August 2019, a few months after construction began, community members engaged in road blockages and protests at the fenced-off project site. In July, Al Balqa tribal members who later submitted the CAO complaint lodged a complaint with another Baynouna lender, FMO, and in August the lead complainant shared his concerns with Baynouna by letter. In response to these grievances and protests, IFC recommended in September 2019 that Baynouna develop a project stakeholder engagement plan (SEP) and grievance redress mechanism (GRM).

69. In October 2019, the FMO complainant representative sent his complaint to IFC and in November, at Baynouna and IFC's request, he filed a complaint through the project's newly established GRM. His concerns included exclusion of Al Balqa tribes from stakeholder consultations, land rights violations, and economic displacement.

70. Baynouna's draft SEP was shared with IFC in September 2019 and revised several times in response to IFC feedback. To address the client's limited capacity, IFC provided support in developing the SEP. According to IFC's comments, the primary issue was that the plan was not tailored to the project and seemed to lack ownership by the company and its EPC contractor. In July 2020, IFC continued to provide the same feedback on the draft SEP, four months before construction work concluded. The SEP drafts did not include stakeholder identification and analysis. IFC's July 2020 review suggested to its client that the stakeholder list¹¹⁰ from the ESIA be used as a base and updated as needed. In December 2020, as the project reached the commercial operation date, and without a finalized SEP for the construction phase, IFC suggested that Baynouna adapt the construction SEP for the operation and maintenance phase. IFC again

¹⁰⁸ Original deadline for this ESAP item was set for December 31, 2017, as disclosed on IFC's disclosure website. However, the client and IFC agreed to a revised deadline of June 2018 after disclosure of the ESAP.

¹⁰⁹ IFC Management Response, para. 27.

¹¹⁰ The table of identified stakeholder categories in the project ESIA (pp.123-124, table 27) lists "herders and farmers" among the category "community members," but tribal groups are not included, and no specific tribes are named.

provided significant comments, suggesting Baynouna include and update the table of identified stakeholders from the ESIA.

71. In October 2019, by which time a GRM had been established for local community members, Baynouna received land-related grievances from three herders. IFC subsequently urged the client to strengthen its stakeholder engagement, prompting Baynouna to hire three additional CLOs, who were representatives of different local tribes nominated by their respective sheikhs, to assist the lead CLO. According to IFC and Baynouna, government representatives (the Administrative Rulers of Al Muwaqqar and Sahab districts) confirmed that the candidates had no criminal records and were well regarded members of their communities. The client also informed the lenders' technical advisor that these additional CLOs represented the three main tribal communities around the project site. However, this assertion was not based on a formal stakeholder analysis of the local tribal communities.

72. In January 2020, Baynouna informed IFC that the three herders who submitted land-related grievances were requesting compensation for crops they had planted on project land. IFC's follow-up questions related to the status of the grievances and whether the proposed compensation was accepted. CAO has not seen documentation from IFC to indicate whether it assured itself that the project GRM that dealt with these cases was functioning in line with PS1 requirements or that the compensation for economic displacement provided by its client met PS5 requirements. (see also section 2.4.3).

73. With regard to the access road-related grievance, project documentation shows that Baynouna, through its project management consultant, was aware of the issue in September 2019, and possibly as early as July 2019 when FMO received the complaint. The project registered the grievance in the GRM in early June 2021, and the EPC contractor removed the asphalt and restored the land to its original condition on July 1, 2021. Baynouna reported to IFC that it communicated the outcome of the grievance, including the reasons for non-eligibility for financial compensation, to the complainant in July 2021, and who voiced no objection.

74. By November 2021, IFC had verified that Baynouna's final SEP, covering project operations and maintenance, met Performance Standard requirements.

75. However, given that a final SEP was not completed for the construction phase, it is unclear what guidance the CLOs had in conducting stakeholder engagements during construction and with which stakeholders. On numerous occasions, IFC emphasized to the client the importance of documenting such engagements.

76. Nevertheless, IFC's Management Response states that the client's stakeholder identification and engagement with local communities, and consultations during ESDD, met PS1 requirements.¹¹¹ According to IFC, the GRM has also functioned effectively with three grievances resolved to the complainants' satisfaction.

CAO Compliance Analysis and Findings

77. CAO finds that IFC did not fulfill its Sustainability Policy obligations to conduct pre-investment due diligence of the level and quality of the risks and impacts identification process carried out by the client.¹¹² Specifically, IFC did not ensure Baynouna implemented the solar project in accordance with PS1 requirements in relation to stakeholder identification and analysis.¹¹³ This resulted in the exclusion of Bedouin herders as project-affected communities,

¹¹¹ IFC Management Response, para. 20.

¹¹² Sustainability Policy, para. 12.

¹¹³ PS1, para. 26.

the Al Balqa tribes and their leaders more broadly as potentially affected communities, and Sahab district officials as relevant stakeholders. IFC's non-compliance led to further shortcomings in ensuring client compliance with PS1 requirements for community consultation, establishing an effective grievance mechanism, and developing a stakeholder engagement plan.¹¹⁴

78. During project supervision, IFC followed Sustainability Policy requirements¹¹⁵ in working with the client to address changed business activity circumstances (namely, local community protests and grievances) and recommending the development of a SEP and GRM. IFC subsequently worked closely with the client on establishing a PS1-compliant SEP. However, the basis for IFC's determination that the final SEP met PS1 requirements is unclear, given that the plan still lacks a stakeholder analysis and continues to not include herders and tribal groups in the stakeholder list and ongoing engagements. Similarly, there is no evidence IFC assured itself that the project grievance mechanism met PS1 requirements for documentation, timely resolution, and disclosure about its existence to relevant stakeholders.

79. **Failure to require adequate stakeholder identification and analysis.** PS1 requires IFC clients to "identify the range of stakeholders that may be interested in [a project's] actions...[and to] identify the Affected Communities."¹¹⁶ Adequate stakeholder identification and analysis forms the basis for stakeholder engagement planning. Without the former, engagement with the appropriate stakeholders cannot take place, including consultation with affected communities as required by PS1.¹¹⁷

80. Contrary to ensuring that Baynouna implemented its project in accordance with PS1 requirements, IFC did not require Baynouna to conduct adequate stakeholder identification and analysis that identified and assessed the interests of the full range of stakeholders, including herders, tribal groups, and relevant district authorities. Stakeholder engagement during the client's ESIA process was limited to only three parties—a local women's group, a fertilizer workshop near the project site, and Muwaqqar municipality representatives.

81. During its pre-investment due diligence, IFC did not ensure that the client properly identified the relevant district authorities given that the project land is located in both Muwaqqar and Sahab districts. Proper identification of the project's administrative location is relevant because district authorities determine the stakeholders that participate in ESIA scoping and are the recipients of development benefits through the client's CSR program.¹¹⁸ The ESIA stated the project site is *mostly* sited in Muwaqqar district but provides no further information. Maps from the Jordanian Department of Land and Surveys (DLS)¹¹⁹ and the Royal Geographic Center (RGS) show that the project is either entirely in Sahab district (DLS map) or partially in both Muwaqqar and Sahab districts (RGS map). Project documentation only references Muwaqqar district.

82. During CAO's field visit in November 2022, Baynouna confirmed that the project is in both Muwaqqar and Sahab, and that it has engaged authorities and communities from both districts. Baynouna's stakeholder engagement log documents meetings in June 2020 and April, June, and

¹¹⁴ PS1, paras. 27, 30, and 35.

¹¹⁵ Sustainability Policy, para. 45.

¹¹⁶ PS1, para. 26.

¹¹⁷ PS1, para. 30.

¹¹⁸ Under Jordan's 2015 Civil Status Law (no. 18), Article 36, registration of a person's place of residence is included in civil status records which are maintained by the administrative districts. In this case Muwaqqar district, identified its local community members as those residing in the district. Thus, individuals living in Sahab district, such as the complainants, were excluded from the legal definition of a local community as Sahab district was not identified as the project location.

¹¹⁹ The land lease agreement (October 2016) signed between the Ministry of Finance and the Department of Lands and Survey on behalf of the Government of Jordan, and Baynouna, does not specify the district in which the leased land is located; it only lists the coordinates of the four corners.

July 2021 between the CLO and Sahab district and municipality authorities. However, IFC did not ensure that the client and ESIA consultant engaged Sahab officials during the pre-investment review, leading to the lack of participation of stakeholders relevant to Sahab district in the scoping session and ESIA process, including the complainants.

83. **Lack of consultation.** Since herders or tribal groups were not identified as affected communities or stakeholders during pre-investment due diligence, IFC did not require its client to develop a stakeholder engagement plan, and no consultation took place with these groups to elicit their views on project risks, impacts, and mitigation measures.¹²⁰ Had IFC required its client to assess the extent of the solar plant's potential impacts on Bedouin herders, and had the assessment shown potentially significant adverse impacts, the herders may have been entitled to an Informed Consultation and Participation process.¹²¹

84. During due diligence, IFC did not require the client, through its ESIA consultant, to consult directly with potentially affected seasonal herders because they were not in the project area when the impact assessment was conducted. Instead, the consultant took secondhand information about herders from other stakeholders at face value, concluding that “the plant would not interfere with the informal (seasonal) agricultural land use (principally plowing and grazing).”¹²²

85. IFC did include an ESAP item that required the client to engage with herders prior to construction. However, the engagement's limited focus on informing herders about the project did not amount to a consultation process as required under PS1.¹²³ This engagement took place before plant construction began in January 2019, but the details are unknown due to a lack of documentation. CAO concludes that it did not satisfy several elements required under PS1.¹²⁴ Namely, the client's engagement with herders did not take place early in the E&S risk and impact identification process, was not based on prior disclosure and dissemination of information, and was not documented. Moreover, there is no documentation showing how IFC satisfied itself that the ESAP item was complete.

86. **Inadequate stakeholder engagement during supervision.** In line with Sustainability Policy requirements,¹²⁵ IFC worked with the client to address changed business activity circumstances in the form of local community protests and grievances that may result in adverse E&S impacts. As described above, IFC supported Baynouna's efforts to develop a stakeholder engagement plan that met PS1 requirements. However, the process took two years, which meant that the client did not have a PS-compliant SEP in place during the plant's construction or first year of operation. IFC noted to CAO that COVID-19 circumstances during this period caused challenges in project supervision such as delays in responsiveness by both IFC and the client.

87. In addition, it is unclear on what basis IFC determined in November 2021 the final SEP met PS1 requirements. IFC did not ensure the client undertook an adequate stakeholder identification and analysis per PS1, and an appropriate SEP requires an understanding of who the relevant stakeholders are—in this case, the herders and the tribal groups who claim ownership of the land.¹²⁶ IFC missed an opportunity, prior to signing the loan agreement, to require the client to carry out a robust stakeholder analysis for which the ESIA consultant had prepared a technical and financial proposal in November 2017. IFC subsequently advised the client to add the ESIA stakeholder list to SEP drafts, but this list was inadequate due to the lack of robust stakeholder

¹²⁰ PS1, para. 30.

¹²¹ PS1, para. 31.

¹²² IFC Management Response.

¹²³ PS1, para. 30.

¹²⁴ Ibid.

¹²⁵ Sustainability Policy, para. 45.

¹²⁶ PS1, para. 26.

identification and analysis, and IFC did not require its client to undertake such analysis as part of the SEP's development. Consequently, the final SEP does not explicitly include herders and tribal groups in the stakeholder list. While IFC informed CAO that it considers "communities" listed in the SEP to implicitly include herders and tribal groups, herders continue to be excluded from any stakeholder engagements. Moreover, without an adequate stakeholder analysis, it is not clear whether the project's stakeholder engagements are adequately covering the relevant project stakeholders, including all relevant tribes¹²⁷ and district authorities.

88. As recently as March 2022, project documentation shows that IFC advised Baynouna to improve its records keeping and to adequately document the stakeholder engagement process. This was a recurring issue throughout project supervision, due in part to the client's lack of in-house E&S capacity. Without proper documentation, IFC is unable to provide adequate oversight to ensure the effective implementation of the stakeholder engagement process.¹²⁸

89. **Ineffective grievance mechanism.** CAO finds that IFC met the Sustainability Policy requirement¹²⁹ to work with the client to address changed business activity circumstances by recommending development of a GRM. However, at the same time, throughout project supervision, IFC did not have the information needed to assess whether Baynouna was implementing the mechanism effectively, consistent with PS1. While IFC advised the client to adequately document all grievances, significant gaps remained in documentation of grievance handling processes, timely resolution of complaints, and information disclosure about the GRM, as described below. Hence, IFC's inadequate supervision fell short of the Sustainability Policy requirement to "work with the client to bring it back into compliance to the extent feasible," if the client fails to comply with its E&S commitments in the conditions for investment, which include PS1 requirements.¹³⁰

- **Inadequate documentation related to the validity of grievances.** Baynouna compensated three herders in relation to their claims submitted in October 2019 that they had used project land to plant barley for fodder. Shortly thereafter, the company dismissed grievances submitted by four other herders in December 2019 who claimed they had used project land for grazing sheep and farming for decades.¹³¹ The company's rationale was that no other individuals aside from the three who were compensated earlier had planted crops on project land. However, there is no information about how the GRM committee arrived at this conclusion¹³² and no record of IFC reviewing how the company determined the validity of land use claims to ensure the GRM complied with the PS1 requirement of an "understandable and transparent consultative process."¹³³ IFC's good practice handbook on stakeholder engagement advises that the process of grievance management is important to ensure transparency and fairness, including around how decisions around grievances are reached.¹³⁴ In this case, good practice would have entailed IFC seeking assurance that its client's grievance resolution process included a

¹²⁷ Project documentation notes that tribal leaders participate in weekly meetings with the Administrative Ruler (a local government authority), where the project CLO is also present. However, there is no documentation of which tribes are represented.

¹²⁸ PS1, para. 35; Sustainability Policy, para. 12.

¹²⁹ Sustainability Policy, para. 45.

¹³⁰ Ibid.

¹³¹ One noted they used the project land since 1965 and another noted since 1984. The size of the land referenced in their claims range from 500 to 1500 dunums (1 dunum = 1,000 square meters) of project land.

¹³² CAO spoke with one of the three aggrieved people who had been compensated, who stated that he knows that the four other herders had used the project land but did not recall discussing this matter with the CLOs.

¹³³ PS1, para. 35.

¹³⁴ IFC. 2007. Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets, p. 70

conversation with complainants before deciding to reject a complaint¹³⁵ and did not use responses to previous complaints to decide the legitimacy and outcome of new complaints without looking into their particular circumstances.¹³⁶ There is no record of IFC seeking such assurance from Baynouna.

- **Delayed registration of grievances and lack of prompt resolution.** Baynouna became aware of the road-related grievance described in section 2.2.1 in September 2019, and possibly as early as July 2019 when FMO received the complaint. However, the company did not register it in its grievance log until early June 2021 and the EPC contractor did not remove the asphalt until July 2021, approximately 22 months after the grievance was received. This issue was also included in the complaint submitted to IFC in October 2019, but IFC did not raise it with the client. IFC's supervision in this case therefore failed to ensure that Baynouna's GRM met the PS1 requirement for prompt resolution of grievances.¹³⁷
- **Inadequate disclosure of the grievance mechanism to relevant stakeholders.** Two herders with whom CAO spoke near the solar plant did not know they could present grievances to Baynouna about their loss of access to project land. CAO concludes that given the focus on settled communities by IFC and its client, and the absence of herders on the SEP list of stakeholders, it is likely that herders have been excluded from the stakeholder engagement process, including receiving information about the grievance mechanism.

90. As recently as March 2022, project documentation shows that IFC advised the client to improve its records keeping and to adequately document the grievance management process. Given the information gaps summarized above, CAO concludes that IFC did not have the information needed to assess whether the client was implementing, and disclosing, the GRM in accordance with PS1.

2.3 Failure to Adequately Assess Whether the Al Balqa Tribes may be Considered Indigenous Peoples

2.3.1 Community Complaint to CAO

91. The complainants argue that IFC and its client failed to identify them as the traditional owners and customary users of the project area. As noted in their complaint to CAO as well as their direct complaint to IFC in October 2019, the complainants claim the project site belongs to the Al Balqa tribes as part of their tribal lands and that their tribes have used the land for hundreds of years.¹³⁸ As a result, they did not receive protections under Performance Standard 7 (Indigenous Peoples), including the right to free, prior and informed consent (FPIC) to the project and compensation for the land taken.

¹³⁵ CAO. 2008. A Guide to Designing and Implementing Grievance Mechanisms for Development Projects. Advisory Note. p.36.

¹³⁶ IFC. 2009. Good Practice Note: Addressing Grievances from Project-Affected Communities. Guidance for Projects and Companies on Designing Grievance Mechanisms, p.21.

¹³⁷ PS1, para. 35.

¹³⁸ The complainants' claim to the project land as their Al Balqa tribal lands was included in the complaint submitted directly to IFC in October 2019.

2.3.1 Relevant IFC Performance Standards Requirements

92. The outcome of IFC's pre-investment due diligence (ESDD) is an important factor in each project's approval process and determines the scope of E&S conditions attached to IFC financing, as specified in the action plans and legal agreement with the client.¹³⁹

93. As part of ESDD, IFC must review PS7 applicability to a project during the E&S risks and impacts identification process.¹⁴⁰ The stated "Objective" of PS7 is to "foster full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of Indigenous Peoples." It is an accepted fact that these persons often represent the most marginalized and/or vulnerable segments of the project-affected population.¹⁴¹ Where indigeneity is unclear, "[t]he client may be required to seek inputs from competent professionals to ascertain whether a particular group is considered as Indigenous Peoples" for the purpose of PS7.¹⁴² In determining whether a group or communities should be considered "indigenous" under the standard, the IFC client may undertake activities including investigation of the applicable national laws and regulations, archival and ethnographic research, and participatory approaches with the affected communities.¹⁴³ Both legal recognition and precedents that recognize a group or community as Indigenous should be given due consideration but are not necessarily determining factors for applying PS7.¹⁴⁴ Moreover, IFC may direct the client to undertake "additional assessments or studies needed to assess any number of issues", including specific assessments of certain significant impacts, such as on Indigenous Peoples.¹⁴⁵ IFC requires clients to identify all communities of Indigenous Peoples who may be affected by the project, as well as the nature and degree of the expected direct and indirect economic, social, cultural, and environmental impacts on them.¹⁴⁶

94. In cases where the IFC-financed business activity is likely to generate potential adverse impacts on Indigenous Peoples, the Sustainability Policy requires IFC to determine whether its client engaged in a process of Informed Consultation and Participation with the affected communities of Indigenous Peoples, leading to Broad Community Support.¹⁴⁷ If the proposed business activity triggers additional PS7 requirements for Free Prior and Informed Consent (FPIC) of Indigenous Peoples, IFC will undertake an in-depth review of the process conducted by the client as part of its environmental and social due diligence.¹⁴⁸

95. PS7 triggers specific requirements when a project may affect Indigenous communities in order to identify, avoid and mitigate project-related impacts. Specifically:

- Para. 13 requires FPIC when a proposed project may adversely impact lands and natural resources subject to traditional ownership or under customary use, including "seasonal or cyclical use, for their livelihoods, or cultural, ceremonial, and spiritual purposes that define their identity and community."¹⁴⁹
- Para. 14 outlines a mitigation hierarchy to anticipate and avoid adverse impacts on Indigenous Peoples. This states: to avoid and otherwise minimize the land take and

¹³⁹ Ibid.

¹⁴⁰ PS7, para. 3; see also ESRP, para. 3.2.3.

¹⁴¹ PS7, Objectives.

¹⁴² PS7, para. 7; see also PS7, GN6; ESRP 3.2.2.

¹⁴³ PS7, GN6.

¹⁴⁴ Ibid.

¹⁴⁵ ESRP 3.2.2.

¹⁴⁶ PS7, para. 8.

¹⁴⁷ Sustainability Policy, para. 30.

¹⁴⁸ Sustainability Policy, para. 31.

¹⁴⁹ PS7, para. 13.

impacts on the natural resources of importance to IPs; identify and review all property interests and traditional uses prior to purchasing or leasing land; assess and document the affected Indigenous Peoples communities' resources use; ensure affected Indigenous Peoples communities are informed of their land rights under national law; offer compensation and due process along with culturally appropriate sustainable development opportunities, including land-based compensation, continued access to natural resources and transit on land.

- Para. 18 requires the client and affected communities of Indigenous Peoples to identify mitigation measures aligned with the mitigation hierarchy in PS1 as well as opportunities for culturally appropriate and sustainable development benefits.

2.3.2 Indigenous Peoples Issues: IFC Actions and CAO Analysis

IFC's Due Diligence Review and Supervision

96. For the Baynouna solar project, IFC concluded that “PS7 is not applicable as no Indigenous Peoples have been identified in the project area.”¹⁵⁰ IFC made its determination regarding the standard's applicability to Bedouins based on the institutional knowledge and procedures of the World Bank Group, as described below. IFC reached this conclusion despite recognizing the presence of Bedouin herders in the project area, and in the absence of any specific assessment or analysis as to whether these herders or local tribal groups may meet PS7 criteria for Indigenous Peoples.¹⁵¹ During ESDD, IFC acknowledged that “Bedouin herders move through the area periodically.” As noted in section 2.1.3, site visits by IFC, the ESIA consultant, and the lenders' technical advisor all revealed “some cultivated plots” and “some signs of ploughing” on the project site presumed to be the work of “herders” and “nomadic Bedouins and sheep breeders” to feed their livestock.¹⁵²

97. IFC's decision not to require Baynouna to assess PS7 applicability during the ESIA and/or engage an external expert to evaluate whether Bedouin herders in the project area met the characteristics for Indigenous Peoples was based on advice from the World Bank. IFC's conclusion was made on the following basis:

- World Bank colleagues advised that the Bedouin do not meet the criteria for Indigenous Peoples under the World Bank's Indigenous Peoples policy OP 4.10 but that they may be considered a vulnerable group in the specific project context, which would be assessed as part of the ESIA.
- Past practice by IFC and the World Bank of not classifying Bedouins as Indigenous Peoples for project purposes except in the West Bank and Gaza.

98. It is not common for IFC to detail the reasoning for the lack of applicability of a Performance Standard. However, in this case, IFC explained its rationale to a Baynouna co-lender as follows:

- Collective attachment to ancestral lands is “weak or absent” because of the herders' use of wide areas of land that may not be the same each year.

¹⁵⁰ ESRS.

¹⁵¹ The Al Balqa Bedouin herders may possess most, if not all, of the characteristics of Indigenous Peoples under PS7. There is also precedent for the recognition of Bedouins in Jordan and in the region as Indigenous Peoples. See below for further discussion.

¹⁵² ESIA, pp. 7, 119, and 297; ESRS.

- Bedouins in Jordan are a “sizeable group” that “speaks Arabic” and is reasonably well integrated into Jordanian society and culture (including politics); thus, designating them Indigenous Peoples does not fit with the intent of PS7.
- Bedouins do not attend global gatherings for Indigenous Peoples and have not approached the World Bank Group requesting recognition as Indigenous Peoples.

99. IFC's 2022 Management Response does not address the CAO complainants' assertion that the project land belongs to their Al Balqa tribes and that their tribal members have used the lands for hundreds of years, nor does it address the applicability of PS7 during IFC's E&S due diligence of this project.

CAO Compliance Analysis and Findings

100. As discussed in sections 2.1.3 and 2.2.3 above, IFC's failure to undertake adequate “due diligence of the level and quality of the risks and impacts identification process carried out by its clients against the requirements of the Performance Standards”¹⁵³ left it with insufficient information to determine the applicability of relevant Performance Standards, including PS7. CAO finds that IFC determined the inapplicability of PS7 without sufficient information specific to the project area. Contrary to its own guidance for determining whether PS7 applies to a particular group or groups of people, IFC did not require Baynouna to undertake ethnographic research or participatory approaches with the potentially affected communities claiming tribal ownership and customary use of project land.¹⁵⁴ Nor did IFC direct its client to undertake any assessments or studies, or to engage an external expert, to assess whether Bedouin herders or Al Balqa tribal members, including the complainants, met the PS7 criteria for Indigenous Peoples.¹⁵⁵

101. IFC took this approach despite knowledge of the likely seasonal presence of Bedouin herders in the project area. Moreover, because it did not require Baynouna to conduct a baseline social assessment, IFC had no social data to determine whether its client should engage in a process of Informed Consultation and Participation (ICP) or FPIC in order to meet PS7 requirements.¹⁵⁶

102. **Seeking expert input.** CAO recognizes that IFC consulted with competent professionals at the World Bank on whether Bedouins may be classified as Indigenous Peoples under PS7. These colleagues offered their view that Bedouins in the Middle East, in general, do not meet the criteria of Indigenous Peoples under the World Bank Indigenous Peoples policy (OP 4.10).

103. However, having engaged with World Bank colleagues, IFC's project team did not independently examine whether Bedouins would meet IFC's own Indigenous Peoples' standard, which has an explicit difference from the World Bank standard. To be considered Indigenous Peoples under the World Bank standard (OP 4.10), all four criteria of indigeneity must be met, while IFC's Performance Standard 7 uses the same four characteristics but does not require them to be viewed in conjunction.¹⁵⁷ As the PS7 Guidance Note points out: “Each characteristic is

¹⁵³ Sustainability Policy, para. 12.

¹⁵⁴ ESRP 3.2.2; also PS1, para. 7; PS7, paras. 3 and 7; and PS7 GN6.

¹⁵⁵ PS7, paras. 3 and 7.

¹⁵⁶ Sustainability Policy, paras. 30-31; PS1, para. 32; and PS7, paras. 9 and 11.

¹⁵⁷ The World Bank Indigenous Peoples policy establishes the four characteristics in the following way: “(a) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; **and** (d) an indigenous language, often different from the official language of the country or region” (emphasis added, OP4.10, 2005). The IFC PS7 establishes the same four criteria but uses the

evaluated independently, and no characteristic weighs more than the others.”¹⁵⁸ Thus, by allowing the characteristics to be viewed independently, the IFC definition allows for a group to be considered Indigenous Peoples if they meet one or more of the four criteria. CAO notes that, in drafting PS7, IFC could have adopted the same criteria as the World Bank. Prior to the standard's adoption by the IFC Board, IFC applied OP 4.10, and required that all four characteristics be met, albeit in varying degrees. In drafting PS7, IFC chose instead to adopt a different eligibility formulation from the World Bank.

104. Moreover, while consulting World Bank colleagues may have provided general information at the regional level, CAO concludes that IFC should have required its client to seek expert advice that specifically examined whether the Bedouin herders and Al Balqa tribes in the project area met the distinct PS7 criteria.¹⁵⁹

105. In fact, CAO's compliance investigation generated evidence that the Al Balqa tribes may satisfy all four PS7 criteria to varying degrees. (See Annex 1 for a summary of this analysis).

106. ***Precedents in recognition of Bedouins as Indigenous Peoples.*** The PS7 Guidance Note states that precedents recognizing a group or community as Indigenous should be given due consideration but are not determining factors for triggering PS7.¹⁶⁰ In this case, contrary to IFC's contention that the World Bank Group's practice is not to classify Bedouins as Indigenous Peoples except for cases in the West Bank and Gaza, there is precedent for a World Bank project considering Bedouins as Indigenous Peoples in Jordan.¹⁶¹ While CAO recognizes that this precedent did not constitute a determining factor for triggering PS7, IFC should have given it due consideration.

107. The World Bank project in question identified Bedouins and the tribes in the Badia¹⁶² area as Indigenous Peoples, noting that they are deeply rooted in the land of their ancestors. The Disi-Amman Water Conveyor Project planned to transfer to Amman water resources traditionally owned and controlled by a specific Bedouin tribe. According to World Bank project information, the Indigenous Peoples policy was triggered to ensure the project obtained broad community support among the traditional owners of local water resources and provided tangible and culturally appropriate benefits to the Bedouin tribe. The project's development was halted when the investment's cost-benefit ratio did not meet expectations. As a result, no Indigenous Peoples Plan was implemented in Jordan.

108. In addition, Bedouins in southern Jordan were recognized by UNESCO in 2005 for their traditional pastoral culture and related skills, developed over millennia.¹⁶³ Other reports refer to

grammatical conjunction “or” instead of “and” as the World Bank policy states. PS7 notes: “Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; Customary cultural, economic, social, or political institutions that are separate from those of the mainstream society or culture; **or** A distinct language or dialect, often different from the official language or languages of the country or region in which they reside” (emphasis added, PS7, para. 5).

¹⁵⁸ PS7, GN5.

¹⁵⁹ PS7, para. 7 and ESRP 3.2.2; see also PS7, GN6.

¹⁶⁰ PS7, GN6.

¹⁶¹ Disi-Amman Water Conveyor Project, project number P051749. The ESIA (2004) identified Bedouins as Indigenous Peoples under World Bank Operational Directive (OD) 4.20 (1991). The criteria for classification as Indigenous Peoples under OD 4.20 differ slightly from the World Bank Operational Policy 4.10 and IFC PS7 in that OD 4.20 includes an additional characteristic of having primarily subsistence-oriented production.

¹⁶² Badia refers to the arid region, which receives less than 200 mm annual precipitation, and covers 80% of Jordan. Ministry of Agriculture. 2013/2014. Updated Rangeland Strategy for Jordan.

¹⁶³ While the term Indigenous Peoples is not used explicitly to reference the Bedouins in southern Jordan, UNESCO proclaimed in 2005 and inscribed in 2008 into the List of the 90 Masterpieces of the Oral and Intangible Heritage of

these same tribes specifically as Indigenous Peoples. They include, for example, the Bedul Bedouin who practice goat pastoralism and rainfall farming of wheat and barley and live near what is now the UNESCO World Heritage Site of Petra.¹⁶⁴

109. Beyond Jordan, Bedouins living in the West Bank,¹⁶⁵ the Negev (Naqab) in Israel,¹⁶⁶ and in Kuwait¹⁶⁷ and Egypt,¹⁶⁸ have all been recognized as Indigenous Peoples. In addition, mobile Indigenous Peoples, including Bedouins across the Middle East, have gained increasing international recognition and participate in international forums.¹⁶⁹ At the 2008 UN Permanent Forum on Indigenous Issues session, Bedouin from Jordan were among the 14 representatives sponsored by the Standing Committee of the Dana Declaration on Mobile Peoples and Conservation and the Secretariat of the World Alliance of Mobile Indigenous Peoples.¹⁷⁰ In 2005, Saudi Arabian Bedouins were among the 100 Indigenous Peoples representatives at the fifth IUCN World Parks Congress, whose concerns included assuming their rights of control over traditional lands.¹⁷¹ Given this readily available information, CAO finds that IFC fell short of its obligations to assess PS7 applicability to this project for the Al Balqa herders.

110. **PS7 criteria assessment.** Based on the CAO expert consultant's analysis and available evidence, CAO finds indications that the seven Al Balqa tribes who use the project area possess most, if not all, the characteristics that define Indigenous Peoples under PS7 (see also Annex 1).¹⁷²

111. One of the justifications IFC used for not triggering PS7 is the characteristic related to "collective attachment to geographically distinct habitats or ancestral territories...and to the natural resources in these habitats and territories."¹⁷³ The PS7 Guidance Note specifies that the "collective attachment" criteria may include "[c]ommunities of Indigenous Peoples who do not live

Humanity the "cultural space," including knowledge, skills and oral heritage, of the three tribes in Petra and Wadi Rum who use the cisterns and caves. UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, Intergovernmental Committee for the Safeguarding of Intangible Cultural Heritage, third session, Istanbul, Türkiye, 4 to 8 November 2008. ITH/08/3.COM/CONF.203/1. See: <https://bit.ly/4eOeflj>.

¹⁶⁴ See, for example, Koorring, S. and Simms, D. 2010. The Bedul Bedouin of Petra, Jordan: Traditions, Tourism and an Uncertain Future. Available at: <https://bit.ly/3TP7uI4>.

¹⁶⁵ See, for example, International Work Group on Indigenous Affairs (IWGIA). 2012, 2013, 2014, 2015. The Indigenous World, available at: <https://bit.ly/3XQUy5x>; also Amara, A. and M. Nasasra. 2015. Bedouin Rights under Occupation: International Humanitarian Law and Indigenous Rights for Palestinian Bedouin in the West Bank, Norwegian Refugee Council.

¹⁶⁶ See, for example, R. Stavenhagen and A. Amara. 2012. International Law of Indigenous Peoples and the Naqab Bedouin Arabs, in A. Amara, I. Abu-Saad and O. Yiftachel, editors, Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev, Harvard Law School, Cambridge; Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, August, 2011, pp. 24-31. UNGA Doc. A/HRC/18/35/Add.1

¹⁶⁷ The Kuwaiti Bedoon who have origins in the Bedouins of the northern tribes, fit within the definition of Indigenous Peoples, per the ILO Convention No. 169 concerning Indigenous and Tribal Peoples and the World Bank definition (2019 Written Submission to the UN Expert Mechanism on the Rights of Indigenous Peoples—Annual Study: Bedoon Indigenous Rights in the Context of Borders, Migration and Displacement).

¹⁶⁸ Justice House. 2023. Submission to the UN Expert Mechanism on the Rights of Indigenous Peoples: The Impact of Militarization on the Rights of Indigenous Peoples.

¹⁶⁹ UN OHCHR. 2024. Report of the UN Special Rapporteur on the Rights of Indigenous Peoples, José Francisco Calí Tzay: Mobile Indigenous Peoples, A/79/160. The report highlights the challenges faced by mobile Indigenous Peoples, including Bedouin herders, in the context of so-called renewable energy projects. Available at: <https://bit.ly/3TPHjpl>.

¹⁷⁰ Sternberg, T. and D. Chatty. 2008. Mobile Indigenous Peoples. Forced Migration Review, issue 31. Available at: <https://bit.ly/3BxGB56>.

¹⁷¹ DeRose, A. M. 2003. Fifth IUCN World Parks Congress, Durban South Africa. Special Bulletin on Global Processes, number 5. Available at: <https://bit.ly/4eRSSQi>.

¹⁷² See Chapter 5.8.2 on Bedouins in Jordan, in 2017. Are there people in World Bank's Middle East and North Africa Region that meet the characteristics of Indigenous Peoples? Report prepared for the World Bank by Social Science Solutions GmbH.

¹⁷³ PS7, para. 5.

on the lands affected by the project, but who retain ties to those lands through traditional ownership and/or customary usage, including *seasonal or cyclical use*” (emphasis added).¹⁷⁴ PS7 notes that the related natural resources may include “grazing” areas.¹⁷⁵ PS7 does not limit the size of the lands under traditional ownership or customary usage, or specify how often a community must return to the same lands under seasonal or cyclical use.

112. Without a study of the Al Balqa tribes who claim the project land, including pastoral Bedouin herders, IFC had no basis to determine key information on indigeneity including: whether these groups have a collective attachment to the project land; the geographical extent of the tribal lands to which the herders and their tribes maintain a collective attachment; and the seasonal movements of the herders.

113. Integration into mainstream society and being Arabic speakers were two additional factors that IFC noted in their rationale for not classifying the Bedouin herders as Indigenous Peoples. However, PS7 is clear that “integration” into mainstream society is not an explicit criterion and that PS7 requirements can still apply to Indigenous Peoples communities “who are substantially integrated with mainstream society.”¹⁷⁶ In any event, Bedouin herders should have been considered potentially marginalized and vulnerable due to their insecure land tenure rights and difficulties maintaining viable grazing lands for their livestock.¹⁷⁷ In addition, the Al Balqa tribes who claim customary ownership of the project land may be considered vulnerable because of the lack of an official verdict related to their tribal land rights. This matter has been under consideration since 2011 by Jordan’s Wajehat El Ashayeria Committee (see Box 3 below).

114. Regarding the language/dialect criteria in PS7, different Bedouin tribes and tribal confederations speak distinct Arabic dialects throughout the Middle East.¹⁷⁸ In Jordan, Bedouins use an Arabic dialect which, while understood by most Jordanians, includes distinct variations in pronunciation, grammar, and vocabulary.

115. Based on the evidence above, CAO concludes that IFC fell short of its obligations to assess PS7 applicability during its pre-investment due diligence. IFC should have required its client to seek inputs from competent professionals,¹⁷⁹ including conducting an assessment,¹⁸⁰ to ascertain whether the herders and their tribes may be considered Indigenous Peoples under the PS7 definition. Further, as information presented in Annex 1 suggests, IFC should have carried out its own PS7 assessment specific to the project area. If this had determined that the affected communities were Indigenous Peoples, IFC would have been required to ensure Baynouna complied with PS7 requirements in constructing and operating the solar plant, including engaging the Al Balqa in a culturally appropriate manner and potentially also in an FPIC process. Triggering PS7 would also have significantly affected the project’s approach to and outcomes for local herders and their tribes. Under PS7, the objectives would have been to: minimize the area of land proposed for the project and the impacts on natural resources and natural areas of importance to the Al Balqa tribes; assess and document the affected tribal communities’ resource uses prior to leasing land and without prejudicing any tribal land claim; provide compensation for

¹⁷⁴ PS7, GN7.

¹⁷⁵ PS7, para. 13, FN6.

¹⁷⁶ PS7, GN8.

¹⁷⁷ See, for example, Zogib, L. 2014. On the Move – for 10'000 years: Biodiversity Conversation through Transhumance and Nomadic Pastoralism in the Mediterranean.

¹⁷⁸ Herin, B. et al. 2022. The Classification of Bedouin Arabic: Insights from Northern Jordan. Languages 7(1).

¹⁷⁹ PS7, para. 7.

¹⁸⁰ ESRP 3.2.2.

lands and natural resources under customary use; and establish culturally appropriate sustainable development benefits.”¹⁸¹

2.4 Land Rights Violations and Associated Livelihood Impacts

2.4.1 Community Complaint to CAO

116. The complainants describe their tribes as the longstanding customary owners and users of the project area. They state that Al Balqa tribal leaders met with the head of Jordan's Royal Court in June 2011, in relation to their claim with the Wajehat El Ashayeria Committee and were promised their land rights would be respected and a government arrangement made available to them. Instead, they claim that the IFC-financed solar project has displaced them from their customary land and prevented them from accessing its natural resources. They state that this has affected their livelihoods since tribal members customarily use the project land for seasonal livestock grazing and the areas around the wadis to cultivate barley.

117. Seven herders submitted individual complaints to the project grievance mechanism in late 2019, prior to the 2020 complaint to CAO made by 66 tribal members. Three of them requested compensation for planting over several years on project land that was now unavailable. These three herders received compensation for seeds and the cost they incurred to plow and plant. Two of these herders, with whom CAO communicated, state that the compensation they received from Baynouna was inadequate. An additional four herders claimed they had used the project land for farming and grazing sheep for decades, dating back in one case to 1965, but received no compensation from Baynouna. Baynouna rejected these four cases on the basis that two of the herders who were compensated told the CLOs that no one else had planted in the area. According to the CAO complainants and herders with whom CAO communicated, additional families also used the land for cultivation and grazing before 2019.

118. The complainants claim Baynouna failed to prepare a Livelihood Restoration Plan (LRP), as required by Performance Standard 5, to compensate affected communities for loss of crops and access to natural resources, and to restore their lost livelihoods.

2.4.2 Relevant IFC Performance Standards Requirements

119. Land-related issues are covered under Performance Standard 5 (Land Acquisition and Involuntary Resettlement), and IFC must review a project's PS5 applicability during pre-investment E&S due diligence.”¹⁸²

120. During the same project phase, IFC reviews the client's identification of risks associated with relevant third parties, such as a government agency. As part of this review, IFC determines whether such risks are manageable, and if so, under what conditions, in order to create outcomes consistent with the Performance Standards.¹⁸³ In this case, relevant third parties included Jordan's Department of Lands and Survey of the Ministry of Finance, which leased the project land to Baynouna.

121. PS5 requirements seek to provide protection for project-affected households against impoverishment due to involuntary resettlement, particularly in relation to loss of access to common property and services. Specifically, PS5 aims to “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

¹⁸¹ PS7, paras. 13-14.

¹⁸² PS5, para. 4; see also ESRP, para. 3.2.3.

¹⁸³ Sustainability Policy, para. 23.

and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.”¹⁸⁴

122. Relevant to this case, PS5 applies to physical and/or economic displacement resulting from land-related transactions including:

- Project situations where involuntary restrictions on land use and access to natural resources cause a community or groups within a community to lose access to resource usage where they have traditional or recognizable usage rights.
- Restriction on access to land or use of other resources including communal property and natural resources such as grazing and cropping areas.¹⁸⁵

123. Clients have specific obligations when PS5 is triggered. They must “consider feasible alternative project designs to avoid or minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits, paying particular attention to impacts on the poor and vulnerable.”¹⁸⁶ For projects involving economic displacement only, clients must develop a livelihood restoration plan “to compensate affected persons and/or communities and offer other assistance that meet the objectives of this Performance Standard.”¹⁸⁷

124. As a first step, the client will carry out “a census...to collect appropriate socio-economic baseline data to identify the persons who will be displaced by the project [and] determine who will be eligible for compensation and assistance.” If land acquisition or restrictions on land use result in economic displacement defined as loss of assets and/or means of livelihood,¹⁸⁸ the following entitlements are due to affected people:

Compensation for lost assets:

- For affected persons with legal rights or claims to land recognized or recognizable under national law, replacement property (e.g., agricultural sites) of equal or greater value, or where appropriate cash compensation at full replacement value.¹⁸⁹

Livelihood restoration:

- For persons whose livelihoods are land-based, including grazing of livestock and harvesting of natural resources, replacement land with productive potentials, locational advantages, and other factors at least equivalent to that being lost.¹⁹⁰
- For those whose livelihoods are natural resource-based, continued access to affected resources or access to alternative resources with equivalent livelihood-earning potential and accessibility.¹⁹¹
- Alternative income earning opportunities may be provided, if circumstances prevent the client from providing land or similar resources.¹⁹²

¹⁸⁴ PS5, Objectives.

¹⁸⁵ PS5, para. 5; see GN18.

¹⁸⁶ PS5, para. 8.

¹⁸⁷ PS5, para. 25.

¹⁸⁸ PS5, para. 26.

¹⁸⁹ PS5, para. 27.

¹⁹⁰ PS5, para. 28, also FN12.

¹⁹¹ PS5, para. 28.

¹⁹² PS5, para. 28; see also PS5, GN60.

125. Where government acquires land for a project, as in this case, PS5 requires the IFC client “to collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with this Performance Standard.”¹⁹³ When a government provides a client with an unoccupied project site whose prior land users were displaced, PS5 requires the client to determine whether those resettled were compensated in a manner consistent with the PS5 requirements outlined above. If not, clients must undertake corrective measures prior to project implementation,¹⁹⁴ taking into account a range of factors. These should include the length of intervening period between land acquisition and project implementation, relevant laws, the number of people affected and significance of the impact, as well as the status and location of the people affected.¹⁹⁵ Where national law does not provide for compensation at full replacement cost, or other gaps exist between national law and PS5, the client must apply alternative measures, addressed in a supplemental action plan, to achieve outcomes consistent with PS5 objectives.¹⁹⁶

2.4.3 Land Rights and Livelihood Impacts: IFC Actions and CAO Analysis

IFC Actions during ESDD and Supervision

126. In its Management Response to the CAO complaint, IFC acknowledged that “in Jordan, although the property may be government-owned, tribal communities often maintain a customary or traditional relationship with the land that does not necessarily acknowledge legal ownership.” IFC noted that such customary land use is widespread and may include fodder cultivation and herd grazing by semi-nomadic tribes. IFC was also aware early in its 2017 pre-investment review that the general public may use government-owned land in Jordan when vacant.

127. In December 2016, at the concept review stage, IFC noted the need to confirm relevant land use and land ownership as part of its due diligence of the Baynouna project. Project documentation also shows that IFC raised concerns about land use and ownership given the prospective solar plant’s large footprint, including questions about the land’s use before and during government ownership and any existing land ownership claims. An internal IFC contextual risk assessment during ESDD highlighted potential land disputes due to insufficient legal enforcement of property rights in Jordan. It also suggested conducting an impact assessment on current community use of project land, particularly by those communities that may not have legally recognized land rights.

128. Despite these concerns, as discussed in section 2.1.3, IFC did not require its client to carry out a social impact assessment, including a social baseline study, in relation to seasonal herders using the project site or potential tribal usage rights or claims to the land. Moreover, despite IFC’s firsthand observations of cultivated areas within the project boundaries, and its documentation that this was likely the work of Bedouin herders,¹⁹⁷ IFC did not require the client to assess potential social and economic impacts, including economic displacement of herders or to develop a Livelihood Restoration Plan.

129. The project ESIA, conducted by the client’s consultant and completed in February 2017, dismissed potential economic displacement as an issue. It stated that “the project area is government-owned land which means there is no land ownership conflicts, [and] as a result, the development of the project at the proposed location does not comprise any losses for the local

¹⁹³ PS5, para. 30.

¹⁹⁴ PS5, GN70.

¹⁹⁵ PS5, GN70.

¹⁹⁶ PS5, GN71.

¹⁹⁷ ESIA and LTA’s ESDD report.

community.”¹⁹⁸ Based on a single interview with a local stakeholder who is not a herder, the ESIA concluded that the project area “does not support the livelihoods of the surrounding communities in a structured and continuous manner” because the plowing for forage cultivation and grazing of livestock on the cultivated fodder was described by the interviewed individual as “intermittent and very minimal.”¹⁹⁹

130. The ESIA did acknowledge that the project would restrict access to the cultivated land due to an encircling fence. However, based on observations of plowed areas elsewhere, it stated that herders would have access to alternative grazing sites around the project land. Without Baynouna conducting a baseline study, impact assessment, or consultations with herders, the ESIA concluded that the project would not cause herders lost income as “no economic income [is] obtained by them from the project land.”²⁰⁰

131. Based on the ESIA findings, IFC concluded that a Livelihood Restoration Plan for project-affected people was not warranted since the plant’s construction and operation would not result in any economic displacement or “deprivation to communities as a result of not being able to access their natural and cultural resources” including grazing areas.²⁰¹ IFC determined not only that the project site did not support the livelihoods of surrounding communities but also that herders could continue accessing alternative land outside the project site. IFC confirmed this position following Baynouna’s undocumented engagement in June 2018 with transient herders whom the client stated raised no concerns about the project.

132. IFC also determined that PS5 requirements did not apply to the project because the client leased the land from the Government of Jordan.²⁰² IFC verified government ownership by reviewing the land lease agreement, which was signed in October 2016.²⁰³ Regarding the potential for ongoing land claims, IFC determined that the ESIA consultant had addressed the issue, as described above. However, the ESIA included no supporting information for the consultant’s determination that the project presented no land ownership conflicts, including customary or traditional land or usage rights. Despite IFC raising concerns internally early during pre-investment review, CAO has seen no evidence that IFC inquired of its client about tribal land use and claims during the site’s government ownership.

133. After determining that PS5 did not apply to the project, IFC advised against the client consultant’s November 2017 proposal to develop a Resettlement Action Plan. The consultant proposed a detailed assessment of the herders’ land use followed by compensation packages, if needed. As discussed in sections 2.1.3 and 2.2.3, IFC instead advised Baynouna to conduct a stakeholder identification and engagement study focused on herders. The client subsequently failed to conduct the proposed stakeholder study or develop a RAP.

134. As part of the land lease agreement, Baynouna leased 10 km² of semi-arid steppe from the government and fenced off 6 km² in January or February 2019. Baynouna’s construction contractor noted that the eastern portion of the fenced-off area comprised “bad terrain,” likely referring to undulating topography due to the presence of wadis. During CAO’s field visit in November 2023, Baynouna confirmed that the solar panels and substation covered approximately 4 km² of the fenced-in land. CAO’s field team observed that the eastern fenced-in area contained

¹⁹⁸ ESIA, pp. 164-165.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ IFC Management Response, para. vii, also para. 37.

²⁰² ESRS.

²⁰³ IFC Management Response, para. iv.

cultivated land near a wadi and was not covered by solar panels or otherwise in project use at that time.

135. During project supervision, in January 2020, IFC learned of the grievances submitted to Baynouna by three herders in October 2019. In each case, the individual claimed to have planted fodder crops on project land for the past several years and requested compensation. In response, the Community Liaison Officer (CLO) formed a committee with himself and three junior CLOs to assess the grievances. This process consisted of inquiring with “surrounding communities” about the cost of seeds and their transportation to the land, the cost of plowing/planting, and the validity of the grievances. After meeting with the grievance holders, the committee agreed that Baynouna would cover the costs of seeds and plowing/planting. The IFC client provided compensation to each grievance holder in March 2020.

136. Against this backdrop of herder complaints, IFC requested information from Baynouna about “the situation on land use/claims of ownership/claims of loss of livelihood/claims of displacement.” After Baynouna responded by repeating that the project land is leased from the Government of Jordan, IFC asked in February 2020 for information to assure that the land was not taken from herders as well as details of the grievance compensation process. Baynouna then provided IFC the signed compensation agreements with the three herders, and IFC confirmed their receipt. However, CAO has not seen IFC’s review of these agreements and any subsequent guidance IFC gave to the client. Likewise, CAO has seen no additional information from Baynouna in response to IFC’s queries regarding land use or tribal ownership of the project land.

137. After this exchange in February 2020, and once the complaint was filed with CAO, IFC did not revisit the topic of PS5 application and herder compensation in supervision reports or documented exchanges with the client.

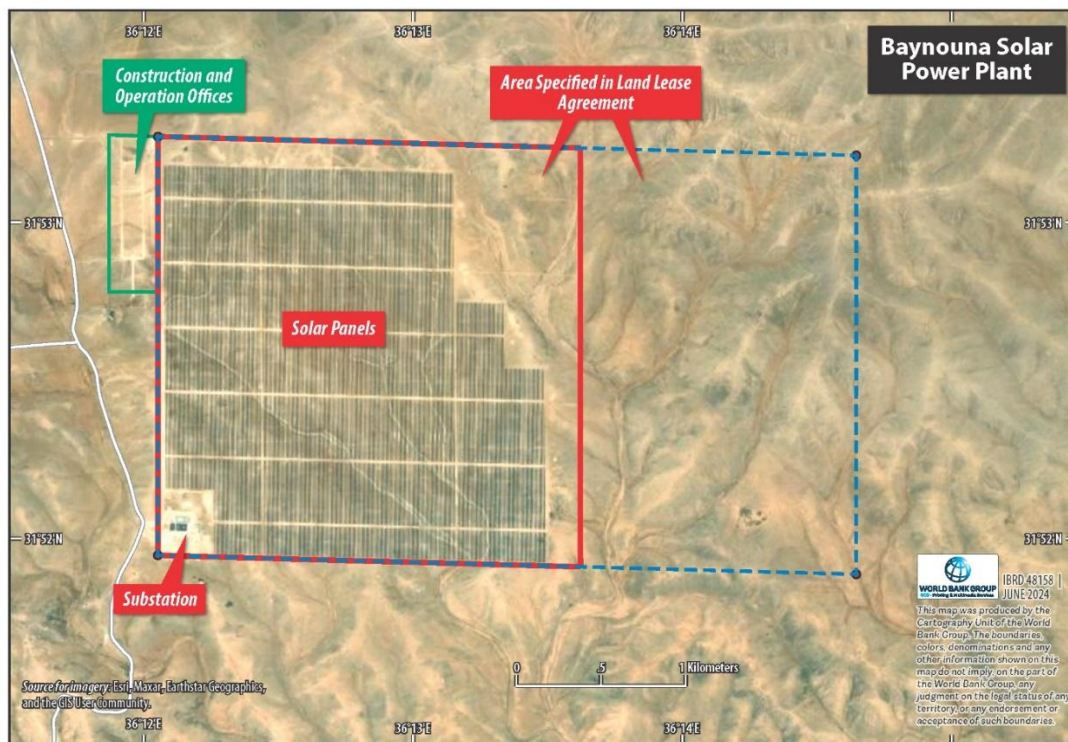


Figure 3. Map of the Baynouna solar plant, showing the fenced area in red solid line and the leased area in blue dotted line. The area occupied by the project, including the solar panels, substation, and

offices, covers about 4.9 km², while the area fenced off covers about 6.3 km². The total area leased to Baynouna is 10 km². The construction and operation offices are located outside the leased area. Note the wadis in the northeast corner within the fenced area (red box), where CAO and Baynouna both observed plow marks made by herders.

CAO Compliance Analysis and Findings

138. CAO's investigation finds that IFC's pre-investment due diligence was not commensurate with the solar plant's scale or the level of E&S risks and impacts as required by the Sustainability Policy.²⁰⁴ Specifically, IFC did not adequately assess the level and quality of the risks and impacts identification process carried out by its client against Performance Standards requirements,²⁰⁵ in particular PS1²⁰⁶ and PS5²⁰⁷ obligations for assessing project risks and impacts regarding land rights and livelihoods. IFC failed to require its client to assess land use and tribal customary land and usage rights, despite clear signs that Bedouin herders used the project site. As a result, it was unable to verify that "there is sufficient IFC understanding of how project E&S risks and impacts will be managed for IFC to proceed to Investment Review and institutional disclosure," in line with the ESRP.²⁰⁸ Without this understanding, IFC had no basis for assessing whether the proposed investment activities could be expected to meet the requirements of the Performance Standards within a reasonable period of time.²⁰⁹ Specifically, IFC did not require its client to prepare: (a) an assessment of economic displacement of herders who cultivated fodder on project land; or (b) an assessment of traditional usage rights of grazing land and natural resources by tribal groups. Moreover, IFC did not require Baynouna to collect socio-economic baseline data to identify the persons who would be displaced by the project, which is a client requirement under PS5.²¹⁰

139. **Applicability of PS5.** As discussed in section 2.1.3 above, due diligence by IFC and the LTA as well as the project ESIA all documented plowed areas near wadis on project land that indicated likely cultivation of livestock fodder by Bedouin herders. Despite this evidence of use of land and natural resources—both the wadis and the naturally growing fodder along these water channels—as well as IFC's knowledge that herders had usage rights on government land, IFC determined that PS5 did not apply to the project. This decision contravened PS5 application to "project situations where involuntary restrictions on land use and access to natural resources cause a community or groups within a community to lose access to resource usage where they have traditional or recognizable usage rights,"²¹¹ frequently without formal ownership.²¹²

140. Tribal lands and tribal usufruct rights are recognized in Jordan's civil legal framework, which combines elements of customary law and Islamic law. Civil law recognizes both tribal land (Wajehat El Ashayeria) which is claimed by a tribe and historically distributed by the sheikhs, and state land (Al Mawat), which allows free access to all its resources and may in some instances also be claimed by tribes.²¹³ State and tribal lands comprise over 80 percent of the country's territory and the boundaries are not clear.²¹⁴ The three relevant legal systems are summarized

²⁰⁴ Sustainability Policy, para. 26.

²⁰⁵ Sustainability Policy, para. 12.

²⁰⁶ PS1, para. 7.

²⁰⁷ PS5, para. 4.

²⁰⁸ ESRP, 3.2.3.

²⁰⁹ Sustainability Policy, paras. 7 and 22.

²¹⁰ PS5, para. 12.

²¹¹ PS5, para. 5.

²¹² PS5, FN7.

²¹³ Al-Oun, Salem. 2005. Land Tenure and Tribal Identity in the Badia of Jordan: Reality and Projections. In Community-based Optimization of the Management of Scarce Water Resources in Agriculture in West Asia and North Africa, Badia Benchmark Site – Jordan. ICARDA.

²¹⁴ Al-Oun, Salem. 2005.

in Box 3 below. Given the complexity surrounding land ownership in Jordan, CAO concludes that IFC should have required its client to examine the legal framework concerning project land use by tribal groups and herders, in accordance with the PS5 scope of application noted above.

141. With regard to the Baynouna investment, available evidence indicates that the land taken for the project is customarily used by several Al Balqa tribes (see Box 1). Based on CAO's expert consultant's rapid ethnographic assessment, the Baynouna project land sits squarely within an area known locally as Qa'fur,²¹⁵ based on a wadi with the same name. Qa'fur is bordered to the north by Al Alia and the south by Al Madduneh, both ancestral territories of other Al Balqa tribes. A confederation of seven Al Balqa tribes claim the Qa'fur area as their ancestral territory. In January 1973, in response to a land dispute, sheikhs from the Al Balqa and Beni Sakhar tribes signed an agreement that confirmed the border between the two tribal confederations as Wadi Mshash. This border forms the southern boundary of the Al Balqa tribes and the northern boundary of the Beni Sakhar tribes.²¹⁶ As the complainants pointed out to CAO during the 2022 field visit, Wadi Mshash is located south of the Baynouna project land and the lands north of that wadi belong to the Al Balqa tribes.

142. In 2011, the Jordanian government established the Wajehat El Ashayeria committee, led by the Minister of Interior, to resolve all disputes and issues related to customary land rights.²¹⁷ CAO was unable to verify the complainants' claim that they submitted an application to this committee to validate their customary land rights and met with the Royal Court in June 2011 to discuss their claim. No verdict has been reached or published for the Qa'fur area.

143. In 2019, the government issued the Real Estate Property Law (No. 13), which contains provisions for communities to submit a claim when the Department of Land and Survey decides to settle a certain area. According to this law and its relevant bylaws and regulations, local communities can claim property rights such as ownership or usufruct rights. However, this law postdated the 2016 lease agreement between the government and Baynouna. At that time, no clear provisions were in place on how to resolve claims received by the Wajehat El Ashayeria committee related to land the government wanted to privatize, develop, or lease.

144. **IFC client requirements under PS5.** IFC's failure to undertake adequate due diligence of the client's risks and impacts identification process led to IFC having insufficient information to determine the applicability of relevant PS, including PS5. If IFC had found PS5 applicable, the impact on the project would have been significant. IFC would have been required to ensure that Baynouna complied with PS5 requirements in relation to: (a) government-managed land acquisition and resettlement; (b) minimizing economic displacement by minimizing land take; and (c) developing a Livelihood Restoration Plan.

145. **Government-managed land acquisition and resettlement.** IFC's conclusion that PS5 did not apply to its investment in the Baynouna solar plant was based on the land being leased from the government.²¹⁸ In such circumstances where an IFC client's ability to achieve E&S outcomes that meet the Performance Standards is dependent on third-party actions, the Sustainability Policy requires IFC to review the client's identification of third-party risks and determine whether such risks are manageable and under what conditions. In this instance, IFC's

²¹⁵ Also spelled Ga'afur and Qa'fur on a topographic map (1:50,000 scale) from 1971 or earlier.

²¹⁶ Photographic copy of handwritten agreement between the two sheikhs of Al Balqa and Beni Sakhar tribes, signed by 12 tribal leaders and two government officials and dated January 12, 1973.

²¹⁷ The Council of Ministers activates the Tribal Interfaces Committee and forms the Services, Infrastructure, and Economic Development Committees, February 17, 2011. Available at: <https://bit.ly/3ZtpwmD>.

²¹⁸ ESRS.

due diligence of Baynouna's identification of third-party risks was required to support project outcomes consistent with PS5.²¹⁹

146. In situations where a government manages land acquisition and resettlement, PS5 requires the client to ensure that the land acquisition and any resulting economic displacement is managed consistent with both national law and PS5 requirements.²²⁰

147. Specifically, applying PS5 to the project would have required Baynouna to collaborate with the responsible government agency.²²¹ to identify and describe government measures to compensate affected communities and persons. If measures taken in these circumstances do not meet the PS requirements, the IFC client must develop an action plan to complement government action.²²² Despite being aware that herders were entitled to use government land, and were likely using the project site, IFC did not require Baynouna to ensure that land acquisition and the resulting economic displacement took place in a manner consistent with national law and PS5 requirements.²²³ Instead, IFC took at face value the land lease agreement between the client and the government as evidence that there were no tribal land claims or customary land use in relation to the project land. Given the circumstances described above, CAO finds that IFC should have required its client to carry out a gap analysis between national law and PS5.²²⁴

148. CAO's own compliance investigation finds indications that gaps exist between national law and PS5 regarding land acquisition related to tribal lands or traditional use rights. An earlier World Bank project compared the Land Acquisition Law (Decree No. 12) 1987, applicable to all cases of land acquisition in Jordan, with the World Bank policy OP 4.12 for the public sector, which is generally aligned with IFC's PS5.²²⁵ The Land Acquisition Law does not include specific provisions or guidelines on acquiring tribal or customary lands, and the study noted gaps in compensation value methodology, consultation, and livelihood restoration measures, among other issues.²²⁶

149. Further related to the question of customary use and economic displacement, the Agriculture Law (No. 13) 2015, which governs land management in Jordan, includes provisions to protect grazing rights on rangelands, defined as any state land receiving less than 200 mm of rain per year.²²⁷ Article 37 prohibits the government from exchanging or leasing rangeland to any person unless it is given or leased to local communities or agricultural cooperative associations for their livestock. In this case, the project site is considered rangeland²²⁸ yet CAO has seen no evidence that IFC required its client to ensure that the land acquisition followed national law.

150. ***Minimizing economic displacement by minimizing land take.*** Had IFC triggered PS5 for the project, it would have been required to ensure that Baynouna minimized economic displacement by minimizing land take.²²⁹ While Baynouna leased 10 km² from the government, the client only required 4.6 km² for the solar panels and substation yet fenced off 6.3 km². CAO observed that the cultivated land near a wadi is east of the area covered by solar panels but within

²¹⁹ Sustainability Policy, para. 23.

²²⁰ PS5, para. 30, GN4, and GN70-71.

²²¹ PS5, para. 30.

²²² PS5, para. 32.

²²³ PS5, para. 30, GN4, and GN70-71.

²²⁴ PS5, GN4 and GN70.

²²⁵ International Bank for Reconstruction and Development (IBRD). 2013. Emergency Services and Social Resilience Project, P147689, Resettlement Policy Framework, pp. 17-25, also Annex 4.

²²⁶ IBRD. 2013. Emergency Services and Social Resilience Project, P147689, Resettlement Policy Framework, pp. 17-25 and Annex 4.

²²⁷ Agriculture Law (No. 13) of 2015, Article 35.

²²⁸ ESIA, p. 117.

²²⁹ PS5, para. 8.

the fenced area, which restricts herder access to land that is not used by the project. Moreover, the former construction offices and current site offices, which were meant to be for temporary use, remain located outside the leased land (see Figure 2).

151. ***Developing a Livelihood Restoration Plan.*** If PS5 had been deemed applicable, IFC would also have required the client to develop a Livelihood Restoration Plan to ensure customary users received entitlements in a transparent, consistent, and equitable manner.²³⁰

152. ***Failure to address changed business circumstances that may result in adverse E&S impacts.*** CAO finds that IFC's failure to ensure the business activities it financed were implemented in accordance with PS5 continued during project supervision.²³¹ This was particularly the case in relation to economic displacement, as discussed below. To address any gaps in meeting PS requirements that emerge as a result of new information, IFC may require its client to take additional corrective actions, which are incorporated into the ESAP.²³² For this project, no new ESAP items were agreed or any additional corrective actions required despite changed circumstances in the form of herder economic grievances. IFC learned in January 2020 that the client received three grievances from herders related to economic displacement through the project grievance mechanism (GRM). However, IFC did not provide guidance to Baynouna to ensure that the redress provided met PS5 requirements for compensation at full replacement cost and restoration of lost livelihoods.²³³

153. CAO spoke with two of the three herders who received compensation. Both had used the project land for decades and stated that the compensation was nominal, as they have since had to purchase more supplemental feed resources to replace the natural fodder and planted barley on the project land. One of the herders explained that he was residing on and cultivating the project land in January 2017 and received two days' notice to relocate. The company provided a truck to assist him in his relocation. He also noted that he collected his compensation in Amman, incurring an added cost that was not considered in the compensation. He claimed that Baynouna did not allow him to harvest his planted barley in the spring 2019 after the project site was fenced. After losing access to the project land, he has been forced to take his herd farther afield to find suitable grazing, which has meant an added transportation cost. He described the project land as being of better quality than the surrounding steppe, due to the presence of wadis and topographic features amenable for grazing, such as fewer rocks and relatively flat ground.

154. As discussed in section 2.2.3, seven grievances were submitted to the GRM by herders who claimed they had used the project land for grazing. Baynouna dismissed four of the claims. There is no documentation on how the company determined the validity of the land use claims. However, the existence of seven grievances indicates that the issue of economic displacement was potentially widespread and should have triggered a systematic assessment including a proper socioeconomic study of the land users, as required by PS5.²³⁴

155. Rather than require the client to follow PS5 requirements to assess more broadly whether there were other affected persons and develop a Livelihood Restoration Plan, IFC acquiesced to the client's approach to address cases of economic displacement on a case-by-case basis as triggered by individual complaints, concluding in its Management Response that the GRM "functioned effectively." This approach is not consistent with PS5's provisions to avoid "long-term hardship and impoverishment for the Affected Communities and persons."²³⁵ IFC's lack of

²³⁰ PS5, para. 25.

²³¹ Sustainability Policy, para. 7.

²³² ESRP, 2016, para. 6.3.1 and Key terms and acronyms, p. 11, "Supplemental Actions."

²³³ PS5, paras. 9, 27-28.

²³⁴ PS5, para. 12.

²³⁵ PS5, para. 2.

responsiveness to the changed project circumstances that may result in adverse impacts also contradicts the Sustainability Policy requirement to work with the client to address the issue as part of project design.²³⁶

²³⁶ Sustainability Policy, para. 45.

Box 3. Legal frameworks governing tribal land ownership and usufruct rights in Jordan^a

Jordan's approach to land issues exhibits legal pluralism despite a centralized formal land system. Three different sources of legitimacy—customary law, Islamic law, and civil law—govern land issues and these can be sources of conflict,^b including in the rangelands where the Baynouna project is located.

Customary law. Historically, Bedouin concepts of territory were expressed by Dirah, the area throughout which a group migrated. The boundaries of the migratory area were fluid, as they were dictated by the size of the group and its alliances, the number and type of livestock owned, the nature and reputation of the tribal group's leader, and the weather. The Bedouins have traditionally used a grazing system known as Hima, in which heavily grazed land is allowed to lie fallow to recover, and good grazing areas, such as wadis and marabs, traditionally belong to individual tribes or tribal associations whose property rights are recognized and respected by others. In summary, the Bedouin concept of "land ownership" refers to access to resources and control over the surplus they generate, as opposed to absolute ownership with the right to sell. Ownership is established and defined through use and might best be described as "perpetual land use rights."^c

The Government of Jordan recognizes customary land rights by tribes as Wajehat El Ashayeria. The definition and management of such rights, however, has been subject to debates and conflict since Jordan's founding and the unclear legal situation has resulted in land speculation based on claims of absolute ownership and intertribal conflicts.^d Strategies to reduce and manage these conflicts have evolved. Most recently, on 17 February, 2011, during the Arab Spring, the Government of Jordan's Cabinet established a Wajehat El Ashayeria Committee (Committee) led by the Minister of the Interior to settle all disputes and issues related to customary land rights.^e

The heads of each governorate were tasked with establishing technical committees to document and review all claims. Public documents suggest the Committee received more than 4,000 demands between 2011 and 2016 including claims related to the Qa'fur zone where the Baynouna plant is located.^f Progress has been slow, and to date no verdict has been reached and/or published for the Qa'fur area. Also relevant to the CAO complaint, the Real Estate Property Law of 2019 (chapter 3) states that if the government wants to privatize or lease unsettled, untitled land it must obtain consent from those associated with the land and/or close out pending Committee claims.

Islamic law. Islamic principles and practices, which are based on an obligation to God and the Umma (Muslim society), influence everyday life in Muslim societies such as Jordan, including property and land rights. Under Islamic law, the state's role is to administer land, which belongs to God, in an efficient and fair manner for community benefit. Like the customary land tenure system, Islamic law emphasizes protecting user rights and land and resource use over land titles. All Jordanian citizens are subject to Islamic law provisions regarding inheritance, including of land.

Four main types of land tenure emerged from Islamic legal texts and were codified in the Ottoman Land Code of 1858: (1) Mulk, which is land in full private ownership that is developed in some manner with buildings, orchards, or gardens; (2) Miri, which is land owned by the state as a representative of God under which the population has usufruct (user) rights; (3) Waaf, land owned by a religious body the income from which goes to charitable enterprises; and (4) Mawat, unused or dead land, which encompassed much of the steppe and desert areas considered open access, where no taxes were claimed. Additional classifications included Mehlul (unused state land), Metruke (common land for public use or for settlements such as a village or town), and Musha (communal land). The British Administration of Transjordan and the Government of Jordan adopted these categories.

Civil law. The current civil land administration system is based on the inherited Ottoman processes and customary tribal rules, which are rooted in Islamic laws. Current land ownership in Jordan falls within three categories of tenure: (1) privately owned land (Miri and Mulk) that is registered and documented; (2) tribal

land (Wajehat El Ashayeria) which is customarily managed by one or more tribes; and (3) state land (Al Mawat), which provides free public access to all resources on the land and accounts for 80 percent of national territory. While the basis for securing land rights is land registration, tribal land and state land is poorly defined and documented. Beginning in 1952, the state began to register rights for (i.e., privatize) land and water based on the Lands and Water Settlement Law (No. 40) and its later amendments. This trend began with the western agricultural and settled regions, before expanding to the eastern rangelands claimed by Bedouin tribes. In 1973, Agriculture Law (No. 20) declared rangelands as state-owned and eliminated customary law. However, tribes continue to make de facto claims to these lands although they no longer divide and distribute lands among members.

^a Information in this box is compiled by CAO's expert consultant. For overviews, see also: FAO. 2002. An Overview of Land Tenure in the Near East Region, available at: <https://bit.ly/4drXj2R>. Also, USAID. 2018. Country Profile, Property Rights and Resource Governance, Jordan. Available at: <https://bit.ly/3TWvn0m>.

^b UN Human Settlements Programme (UN-Habitat). 2023. Jordan Land Sector Assessment, Background Paper. Available at: <https://bit.ly/3zyKaYb>

^c Shryock, A. 1997a. Nationalism and the Genealogical Imagination: Oral History and Textual Authority in Tribal Jordan; Shryock, A. 1997b. Bedouin in Suburbia: Redrawing the Boundaries of Urbanity and Tribalism in Amman, Jordan in Arab Studies Journal 5,1:40-56; Fischbach, M. 2000. State, Society and Land in Jordan; and Lancaster and Lancaster. 1999. People, Land and Water in the Arab Middle East.

^d FAO. 2002 (see a above).

^e The Council of Ministers activates the Tribal Interfaces Committee and forms the Services, Infrastructure, and Economic Development Committees, February 17, 2011. Available in Arabic: <https://bit.ly/3ZtpwmD>.

^f Al Naber, M. and F. Molle. 2016. The Politics of Accessing Desert Land in Jordan. Land Use Policy 59.

2.5 Failure to Include Al Balqa Tribes in Development Benefits and Opportunities

2.5.1 CAO Complaint

156. The complainants argue that, in line with standard procedures in Jordan and as the land's customary owner, they should have received priority access to project-related employment and procurement opportunities. They allege that Baynouna's failure to identify and engage with them as project-affected communities due to their tribal ownership and use of the project land over "hundreds of years" excluded them from consultations and prevented them from receiving development benefits.

2.5.2 Relevant IFC Performance Standards Requirements

157. The following are the key Performance Standards provisions on benefit-sharing that are pertinent to the complainants' claims:

- "In addition to meeting the requirements under the Performance Standards, clients must comply with applicable national law, including those laws implementing host country obligations under international law."²³⁷
- "For a project with potentially significant adverse impacts on Affected Communities, the client will conduct an Informed Consultation and Participation (ICP) process...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."²³⁸
- In cases of displacement, the client will provide opportunities to displaced communities and persons to derive appropriate development benefits from the project.²³⁹
- "The client and the Affected Communities of Indigenous Peoples will identify mitigation measures in alignment with the mitigation hierarchy described in Performance Standard 1 as well as opportunities for culturally appropriate and sustainable development benefits. The client will ensure the timely and equitable delivery of agreed measures to the Affected Communities of Indigenous Peoples."²⁴⁰
- "Various factors including, but not limited to, the nature of the project, the project context and the vulnerability of the Affected Communities of Indigenous Peoples will determine how these communities should benefit from the project. Identified opportunities should aim to address the goals and preferences of the Indigenous Peoples including improving their standard of living and livelihoods in a culturally appropriate manner, and to foster the long-term sustainability of the natural resources on which they depend."²⁴¹

2.5.3 Development Benefits and Opportunities: IFC Actions and CAO Analysis

IFC Actions during ESDD and Supervision

158. IFC asserts that Baynouna and its Engineering, Procurement, and Construction (EPC) contractor appropriately implemented national law on local employment in development projects. Specifically, Baynouna developed a local recruitment procedure compliant with the Jordanian

²³⁷ PS Overview, para. 5.

²³⁸ PS1, para. 31.

²³⁹ PS5, para. 9.

²⁴⁰ PS7, para. 18.

²⁴¹ PS7, para. 20.

Regulation for Obligatory Employment of Jordanian Workforce from Surrounding Communities in Development Projects (No. 131) of 2016.

159. IFC's Management Response notes that local companies were included in procurement processes for the solar power plant and that the majority of assigned sub-contractors and service providers were local.²⁴² IFC verified that its client kept a workforce distribution list to provide for relatively equal hiring across surrounding local communities.²⁴³ During supervision, IFC affirmed that it verified and continues to monitor that "local communities are sufficiently and equally represented in project employment," based on the workers' family origins as recorded in the workforce distribution list.²⁴⁴ IFC noted to CAO that this verification of family (tribal) names of workers to ensure equal representation in employment goes beyond the requirement in the aforementioned Jordanian Regulation for Obligatory Employment. In addition, the client employed local security guards and facilitated training for local engineers to prepare them for project employment.²⁴⁵

160. Regarding distribution of non-employment-related development benefits, IFC's Management Response highlights the project's client-led corporate social responsibility (CSR) plan, which includes local community initiatives.²⁴⁶ IFC states that the plan was developed in consultation with stakeholders in Al Muwaqqar, including "identified vulnerable groups (e.g., women, children, youth)."²⁴⁷ As a "living document," IFC notes that Baynouna regularly updates the CSR plan, demonstrating the client's long-term commitment to the economic well-being of local communities.²⁴⁸

CAO Compliance Analysis and Findings

161. Given that compliance with applicable national law is a PS requirement, CAO commissioned a legal analysis of Jordanian law and regulations relating to employment, local content, and CSR. The review focused on whether Jordanian investment laws have obligations on investors to the benefit of local communities of the project and whether there are any legal requirements governing the provision of CSR activities by investors.

162. CAO's legal analysis indicates that national legal requirements²⁵⁰ do not appear to explicitly impose obligations on Baynouna to provide job opportunities, local contracts, or other benefits specifically for, or with priority to, the complainants' tribal communities. In this regard,

²⁴² IFC Management Response, para. 38.

²⁴³ Ibid., para. 39.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ Corporate social responsibility, as defined by the United Nations Industrial Development Organization, refers to a business management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. It is generally understood as a way to achieve a balance of economic, environmental, and social imperatives—the triple-bottom-line approach. CSR may or may not include benefits sharing to local communities.

²⁴⁷ IFC Management Response, para. 40

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ The Investment Law (No. 30) of 2014, which was applicable at the time of Baynouna's project preparation and construction, does not explicitly impose obligations on investors to employ Jordanians. The 2014 law provided certain exemptions and incentives but were not linked to any in-country value to local communities, or local procurement and employment. While the GoJ repealed the 2014 law with the passage of the Investment Environment Law (No. 21) in 2022, which establishes obligations on local value addition such as local employment and procurement, it allows for customs or tax exemptions under the 2014 law to continue for the period granted or for seven years from the date the new law went into effect. Thus, if the Baynouna project received exemptions and incentives under the 2014 law, they are not linked to value addition to local communities and are not relevant to the complaint issue.

national law was not explicitly applicable to providing jobs or procurement opportunities to the complainant communities.

163. According to CAO's analysis, the Jordanian Regulation for Obligatory Employment of Jordanian Workforce from Surrounding Communities in Development Projects (No. 131) of 2016 is not entirely relevant to the complaint issue. The regulation requires developers and contractors to employ a local workforce during construction and defines "local workforce" as workers from the governate, and not restricted to the surrounding community of a project or, in this case, the affected Al Balqa tribal communities. Given the Baynouna solar plant's location, this regulation required the company or their contractor to employ workers from within the Amman Governorate, and only during the construction phase.

164. IFC's Management Response highlighted Baynouna's CSR plan in response to the complaint issue regarding development benefits. While CSR does not necessarily involve benefits sharing and is not a requirement under the Performance Standards, compliance with applicable national law is a PS requirement. However, CAO's legal analysis found no legal requirement for CSR activities.

165. CAO also examined IFC supervision of client obligations, established during ESDD, for sharing development benefits in line with Performance Standards requirements. IFC's inadequate due diligence led to its inability to ensure the project would be implemented in accordance with the relevant PS,²⁵¹ in this case benefit-sharing requirements under PS1, PS5, and PS7. Because IFC did not identify any affected communities, including vulnerable groups or tribal groups who could be considered Indigenous Peoples, IFC did not require its client to conduct an informed consultation and participation or FPIC process, which would have included consultation on culturally appropriate development benefits and opportunities.²⁵² Similarly, because IFC did not apply PS5 to the project, it did not require Baynouna to provide displaced communities and persons access to appropriate development benefits.²⁵³ While IFC reported that the client made efforts to go beyond national requirements and verified tribal representation among its workforce during construction, IFC should have ensured this process was based on adequate stakeholder analysis and identification of affected communities. Because no such analysis was conducted, Baynouna did not consult with the project-affected tribal groups on the sharing of development benefits and opportunities, as required by PS1,²⁵⁴ nor did IFC require the client to do so. Such consultations would potentially have included employment opportunities and benefits through the company's local CSR activities.

2.6 Consideration and Findings of Related Harm

166. This section describes CAO's findings of harm to people affected by the Baynouna solar power plant, related to the wide range of complaint issues documented above. A CAO compliance investigation includes findings of any harm related to IFC non-compliance. Harm is defined as "[a]ny material adverse environmental and social effect on people or the environment resulting directly or indirectly from a Project or Sub-Project. Harm may be actual or reasonably likely to occur in the future."²⁵⁵

167. In assessing whether there is harm related to a non-compliance finding, CAO takes into account whether such non-compliance contributed to an absence of data or information to verify the complainants' allegations of harm. In such circumstances, CAO may find there are indications

²⁵¹ Sustainability Policy, paras. 3, 7, and 12.

²⁵² PS1, paras. 12 and 31; PS7, para. 18.

²⁵³ PS5, para. 9.

²⁵⁴ PS1, para. 31.

²⁵⁵ CAO Policy, glossary.

of related harm or potential harm when it is reasonably likely that the alleged harm occurred or could happen in the future, given such non-compliance.²⁵⁶

168. The complainants' allegations of harm within the scope of this investigation relate to the following:

- Failure to identify and consult Al Balqa tribes as project-affected people, and assess project risks and impacts on them
- Exclusion from stakeholder engagement processes
- Inadequate grievance redress
- Failure to adequately assess whether the Al Balqa tribes may be considered Indigenous Peoples, as traditional owners and customary users of the project land
- Land rights violations and associated livelihood impacts
- Failure to be included in development benefits and opportunities

169. **Non-identification of Al Balqa tribes as project-affected people.** Because IFC and its client did not identify and assess the potential risks to and impacts on the Al Balqa tribes, any project-related risks and impacts on these affected people remain unmitigated. Moreover, because IFC and Baynouna did not identify the Al Balqa herders and tribes as affected communities, they were excluded from engagement during the ESIA process, which constitutes harm. Consequently, the herders and tribal members were uninformed of the project's risks and impacts and unable to engage with the ESIA consultant and project developers on the proposed plant's design and siting.

170. The Al Balqa herders have lost access to grazeland, planted barley, and the natural resources contained on the project land including the wadis and natural fodder, and planted barley, resulting in harm to their livelihoods. The Al Balqa tribes have also lost lands traditionally owned by them.

171. **Inadequate stakeholder engagement.** Exclusion of the herders and tribal members from stakeholder engagement processes in breach of PS1 requirements constitutes harm. The failure by IFC and Baynouna to conduct adequate stakeholder identification and analysis meant that the appropriate stakeholders were not consulted, including affected communities. As a result, tribal members who claim customary use over the project land, including the complainants, could not engage in the project design, raise concerns about its siting, or access any project information. This meant they lacked knowledge of the project's potential impacts on their livelihoods and limited their opportunity to raise concerns with the project sponsor so that adverse impacts could be avoided or minimized. Moreover, Baynouna's final stakeholder engagement plan does not explicitly include herders and tribal groups in the stakeholder list. While IFC considers the "communities" listed in the SEP to implicitly include herders and tribal groups, aside from the single undocumented engagement conducted in 2018 with one herder group on project land, herders continue to be excluded from stakeholder engagements, including information disclosure about the grievance mechanism. In the absence of an adequate stakeholder analysis, it is not clear whether the IFC client's stakeholder engagements are covering the relevant project stakeholders, including all relevant tribes and district authorities.

²⁵⁶ IFC's E&S policies establish the responsibility of IFC and its clients to collect or document information on the project's E&S performance, which CAO is required to assess and consider in order to make its determinations on harm (CAO Policy, para. 114).

172. **Inadequate grievance redress.** CAO finds indications of harm in relation to grievance redress. During supervision, IFC did not have sufficient documentation of Baynouna's grievance handling process to ensure it was implemented effectively and met PS1 client requirements. As a result, it is possible that herders who brought grievance to the GRM may have received inadequate consideration of their claims, and thus potentially inadequate compensation. Given that the solar plant's GRM is the only mechanism available for affected persons to lodge economic displacement grievances, its lack of effectiveness may result in ongoing negative economic impacts.

173. **Indigenous Peoples.** CAO finds that IFC's shortcomings assessing whether the Al Balqa tribes met the PS7 criteria for Indigenous Peoples may have contributed to indications of harm related to their natural resource-based livelihoods and pastoral culture, knowledge, and practices. IFC concluded that PS7 did not apply to the project without conducting an adequate, specific assessment of the Al Balqa herders against PS7 criteria. IFC's rationale for not triggering PS7 was not adequately substantiated with data and relied on generalized information from World Bank colleagues.

174. IFC's shortcomings during ESDD led to the following indications of harm:

- Deprivation of the Al Balqa herders' right to informed consultation and participation (ICP) and potentially to FPIC, given the impacts on tribal lands and use of natural resources that are traditionally owned or under customary use.²⁵⁷ Because there was no social impact assessment of the project's impact on Bedouin herders and their tribes, Baynouna did not consult with these affected people, including to explore alternatives to avoid adverse impacts.²⁵⁸ Without an assessment or consultation, there was no possibility of a culturally appropriate mitigation or compensation plan.
- Loss of access to lands and natural resources traditionally owned and under customary use by the Al Balqa tribes, without adequate compensation (see sections 2.3 and 2.4). The IFC client did not minimize the impacts on herders restricted access to their land and natural resources, as required by PS7.²⁵⁹ Instead, the area fenced off by the project remains greater than the area occupied by the solar panels. The total project land amounts to about a fourth of the Qa'fur area customarily owned and used by the Al Balqa tribes (see Box 1).
- Potential loss of access to culturally appropriate sustainable development opportunities and benefits (see section 2.5).

175. IFC's shortcomings during ESDD also led to indications of potential harm:

- Potential adverse social impacts to tribal integrity and cultural identity. Land and its natural resources are an integral component of pastoralists' livelihoods and culture. Reduction in access to grazing land burdens herders to seek new, viable lands, straining the limited available land and its resources in addition to generating potential tensions with fellow herders. Loss of specialized knowledge about animals, vegetation, and the environment, including rangeland management, may also be at risk as herders are forced to settle and work as wage laborers.

176. **Land rights violations and livelihood impacts.** IFC's shortcomings in its approach to land acquisition and economic displacement led to the determination that PS5 did not apply to

²⁵⁷ PS7, paras. 12-13.

²⁵⁸ PS7, paras. 8-9.

²⁵⁹ PS7, para. 14.

the project. This omission resulted in the likely underpayment of compensation and potential lack of livelihood restoration for the three herders compensated by Baynouna in March 2020. IFC should have required Baynouna to ensure the compensation provided met PS5 requirements for compensation at full replacement cost as well as to provide measures to restore lost livelihoods. IFC's shortcomings also led to other herders' loss of access to grazing land and natural resources on project land, without compensation and restoration of livelihoods. In addition, IFC's shortcomings in this area also led to Al Balqa tribal communities' loss of traditionally owned land without compensation. The 6.3 km² fenced-off land constitutes a significant portion of the rangelands under Al Balqa tribes' customary ownership and use. As affected people with legal rights or claims to land that are recognized or recognizable under national law, these tribal communities were entitled to land-for-land in-kind compensation of equal or greater value, or cash compensation at full replacement cost.

177. Moreover, because IFC did not require Baynouna to assess how the project might economically displace herders, including by conducting a socio-economic baseline study, the full scope of the impacts on herders and the individuals affected has not been quantified. Given that the project land is situated on Al Balqa tribal customary land, there may be more herders who have been economically displaced, in addition to the seven who submitted land use grievances. The CAO complainants state that additional families used the project land in past years. CAO communicated with one of them, who did not submit a complaint as they were unaware of this option.

178. Based on its determination that PS5 was inapplicable to the project, IFC did not require its client to minimize economic displacement by minimizing land take. This means the Al Balqa tribes have lost access to more land than is being used by the solar plant.

179. **Development benefits and opportunities.** CAO finds indications of harm stemming from IFC's inadequate ESDD. In particular, IFC's failure to require an assessment of the social and economic impacts and risks on herders resulted in the Al Balqa not being recognized as affected communities, and potentially as vulnerable groups under PS1 or Indigenous Peoples under PS7. This omission led, in turn, to a lack of consultation with the affected communities on culturally appropriate development benefits and opportunities. Similarly, IFC did not require Baynouna to provide displaced communities and persons access to appropriate development benefits and opportunities because it determined PS5 inapplicable to the project.

3. Underlying Causes and Recommendations

180. Based on the evidence presented in section 2, CAO finds that IFC's pre-investment review and supervision of the Baynouna solar plant fell far short of its responsibilities under the Sustainability Framework. This section discusses underlying causes for these non-compliances. The recommendations that follow seek to address the issues raised by this investigation at both project and institutional level.

3.1 Underlying Causes

181. Three fundamental shortcomings played a major role in contributing to IFC non-compliance with its Sustainability Policy in this case. These factors include: IFC's acceptance of an insufficient ESIA during pre-investment due diligence; a lack of attention on IFC's part to address the concerns of economic displacement, loss of livelihood, and exclusion in the stakeholder engagement process; and a lack of capacity on the part of IFC's client.

3.1.1 A deficient ESIA

182. IFC's acceptance of an ESIA that did not meet its own standards nor those of good international industry practice (GIIP) is at the root of the non-compliances identified in this report. IFC was aware that social baseline data on project-affected people were absent and that the client's social impact analysis was inadequate. Yet, IFC concluded its ESDD despite these critical gaps in knowledge and analysis.²⁶⁰ The acceptance of a flawed ESIA meant that the Board approved the investment without IFC having a sufficient understanding of the social risks in relation to herders and how these risks would be managed to comply with the relevant Performance Standards—PS1, PS5, and PS7.²⁶¹ This key omission also set the course for non-compliance with IFC's obligations during supervision. At the time of signing of the loan agreement, IFC had an incomplete picture of the level of effort required by its client to ensure that the project met relevant PS. IFC was therefore unable to put in place the appropriate conditions for financing the project, as required by the Sustainability Policy. As a result, IFC has not been able to work effectively with its client to address stakeholder concerns about economic displacement and recognition of tribal lands as articulated by the affected people during project implementation. While indications continue to point to ongoing gaps in PS alignment, IFC has been unable to effectively work with the client to close them. Had IFC insisted on receiving and reviewing a complete ESIA from its client, including data and analysis on affected people and the impacts and risks they face, IFC's ongoing supervision would have been better informed.

3.1.2 Lack of responsiveness to developments and changes in information

183. On a number of occasions documented in this report, IFC could have provided appropriate supervision and advice to Baynouna to ensure the investment was implemented in accordance with the PS. Instead, confronted with evolving circumstances that may have led to adverse E&S impacts, particularly when multiple claims of economic displacement were submitted to the project GRM, IFC did not revisit its initial conclusion that PS5 and PS7 did not apply.

3.1.3 Insufficient E&S client capacity

184. IFC's lack of understanding of the nature and scale of the project's social impacts and risks led it to underestimate the kind of capacity required by its client to effectively manage them. While the ESAP required the hiring of an EHS officer and the client fulfilled this action, IFC should

²⁶⁰ CAO notes that this is the 4th compliance investigation in 2023 and 2024 that points to inadequacies in IFC's review of a client ESIA as a major underlying cause for non-compliances.

²⁶¹ ESRP, para. 3.2.3.

have assessed during project supervision the adequacy of Baynouna's social technical capacity,²⁶² particularly in the areas of stakeholder engagement and grievance management. Moreover, during project supervision, IFC did not take advantage of opportunities to build client social capacity, such as during development of the SEP and implementation of the GRM. IFC's attention focused more on outputs (SEP and GRM's resolution forms, for example) and less on process, including the client's social technical capacity to design, develop, and implement a PS1-compliant SEP and GRM, contrary to IFC's Sustainability Policy commitment to build client capacity.²⁶³ Had IFC supported the client in building its social technical capacity more robustly, stakeholder engagement and grievance management may have been more effectively implemented.

3.3 Recommendations and Next Steps

185. The CAO Policy provides that:

Where CAO finds non-compliance and related Harm, CAO makes recommendations for IFC/MIGA to consider when developing a Management Action Plan (MAP). Recommendations may relate to the remediation of Project- [...] level non-compliance and related Harm, and/or steps needed to prevent future non-compliance, as relevant in the circumstances.²⁶⁴

186. Following this provision, CAO makes the following recommendations to IFC to: (a) remediate project-level non-compliances and related harm (project-level recommendations), and (b) prevent IFC future non-compliances (systemic recommendations).

3.3.1 Project-level recommendations

187. To address non-compliances and related harm at the project level, IFC should:

- 1a. Work with the client to conduct a social impact assessment (SIA) that includes an ethnographic assessment of Al Balqa tribes' and herders' customary land ownership and land use. The assessment should include: (i) consultations with herders and tribal members who claim ownership of the Qa'fur area where the project is located; (ii) a vulnerability assessment; and (iii) a study of customary usage rights and uses of the land occupied by the project, covering at least five years prior to the fencing. The assessment's outcome should inform the development of adequate mitigation measures that address the impacts identified, including appropriate compensation for the loss of customary land rights under PS5 and, if applicable, PS7 requirements. In consultation with the affected Al Balqa herders, culturally appropriate and sustainable development benefits should be developed, in line with the applicable PS requirements.
- 1b. If the SIA determines that PS7 applies to the project, IFC should work with the client and a PS7 regional expert to establish an Indigenous Peoples Plan for the ongoing project in line with PS7 requirements, including a PS7-compliant stakeholder benefits-sharing approach.
- 1c. Work with the client and a PS5 regional expert to develop a Livelihoods Restoration Plan (LRP) in line with PS5 requirements. The plan should be developed in close engagement with the Bedouin herders, those who plowed the land and planted barley, and the Al Balqa, should their customary usage rights be confirmed in point 1a above. In that case, the LRP

²⁶² PS1, GN73.

²⁶³ Sustainability Policy, para. 8.

²⁶⁴ CAO Policy, para. 113.

should also meet the land-related requirements of PS7.²⁶⁵ IFC should work with the client to procure the services of qualified experts to implement the LRP, monitor implementation, and conduct a livelihood restoration completion audit. As part of the LRP, the client may consider mitigation measures to reduce and offset the loss of fodder growing on the 6.3 km² of project land before it was fenced. Examples may include assessing the feasibility to produce fodder on the 2km² that is not occupied by solar panels, harvesting the grass that grows naturally under the solar panels, or allowing controlled access to herders to graze their livestock on the naturally growing grass under the panels. Because approximately 4km² of the land that is not fenced remains unused by the project, IFC should consider advising its client to relinquish its lease rights over this land, perhaps at least until a plan for future use is clear. The compensation paid to the three herders should be assessed to determine whether it met PS5 requirements for loss of assets at full replacement cost, including compensation for the standing barley that was not allowed to be harvested after the area was fenced. Informed by the outcome of 1a above, adequate livelihood restoration measures should be provided to the three herders.

- 1d. Work with the client to develop adequate stakeholder identification and analysis, with inputs from the above SIA and an ethnographic assessment. IFC should ensure the outcomes of this process are reflected in the project stakeholder engagement plan (SEP) and grievance mechanism (GRM).

3.1.2 Systemic-level recommendations

188. To address the underlying causes of the non-compliance findings in this investigation, CAO recommends that IFC:

2. In line with the findings of other recent CAO investigations, strengthen internal guidance and controls within IFC Management to ensure that, prior to Board approval, all significant potential and known E&S risks and impacts of an investment and their proposed mitigation measures are identified and fully analyzed by IFC to determine that the investment activities will meet relevant Performance Standards within a reasonable period of time. While the Sustainability Policy does not explicitly require IFC to review a complete and robust ESIA or other appropriate environmental and social analytical tools prior to Board approval, such a review is necessary for IFC to deliver on its obligations under the Sustainability Policy. ESIA's and other related analytical instruments were developed to make informed decision making. Their importance has long since been recognized as key to helping financial and other institutions ensure that the projects they support consider the environmental and social impacts and risks as early as possible, in order to effectively avoid, reduce, or compensate those effects. IFC should include in its guidance to staff explicit expectations regarding the responsibility of project teams to review ESIA's and other related instruments to ensure that they are fit for purpose and effectively inform IFC's due diligence, monitoring, and supervision. Having such internal guidance and controls in place will also strengthen IFC's leverage to ensure client conformance with relevant Performance Standards through loan covenants, the project E&S Action Plan, and other relevant means.

3.4 Next Steps

189. Based on the findings of this compliance investigation, and in accordance with the CAO Policy, IFC will prepare for Board approval a Management Action Plan to address the findings,

²⁶⁵ PS7, paras. 13-14.

following consultation with Baynouna and the complainants. CAO's compliance function will monitor the effective implementation of the IFC Management Action Plan.

190. CAO will publish the investigation report on its website, in English and Arabic, at <https://www.cao-ombudsman.org/cases>.

Annex 1: CAO Expert Assessment of the Complainants' Tribes against PS7 Characteristics for Indigenous Peoples

CAO commissioned a rapid assessment of the complainants' Al Balqa tribes against the PS7 characteristics for assessing indigeneity, which indicates that the tribes may possess all four characteristics.

- (a) Self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others:

The people in the larger project area refer to themselves as Balqawya or Al Balqa, which signifies that they are customary inhabitants of the Ottoman province of Balqa and specifically people living to the east of the historic Hejaz railway from Damascus to Medina. They also consider themselves Bedouin, which means from Badawi ("desert dweller") in differentiation from Hadir/Fellah ("settled farmers").²⁶⁶

- (b) Collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas:

The project land and the surrounding area is the ancestral domain of a confederation of seven Balqawya tribes well documented to be at least several centuries old and preceding any other known peoples or tribes. In 1965, agreements were reached between groups of Al Balqa tribes regarding the boundaries of tribal land ownership. In 1973, the Balqawya and Beni Sakhar tribes reached an agreement that the Wadi Mshash, a large wadi (river valley) to the south of the Balqawya lands, was the boundary between the Balqawya and the Beni Sakhar, a neighboring confederation. The Baynouna plant is located within an area called Qa'fur, belonging to the complainants' tribes of the Balqawya under the 1965 agreements among tribes. In June 2011, the Balqawya submitted a request to the Wajehat El Ashayeria Committee of the Government of Jordan for their customary land rights to be recognized and respected. To date, this request remains pending.

- (c) Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture:

Bedouins have an elaborated, egalitarian, and democratic system of governance that differs significantly from the hierarchical way the Hashemite Kingdom of Jordan is organized.²⁶⁷

- (d) A distinct language or dialect, often different from the official language or languages of the country or region in which they reside:

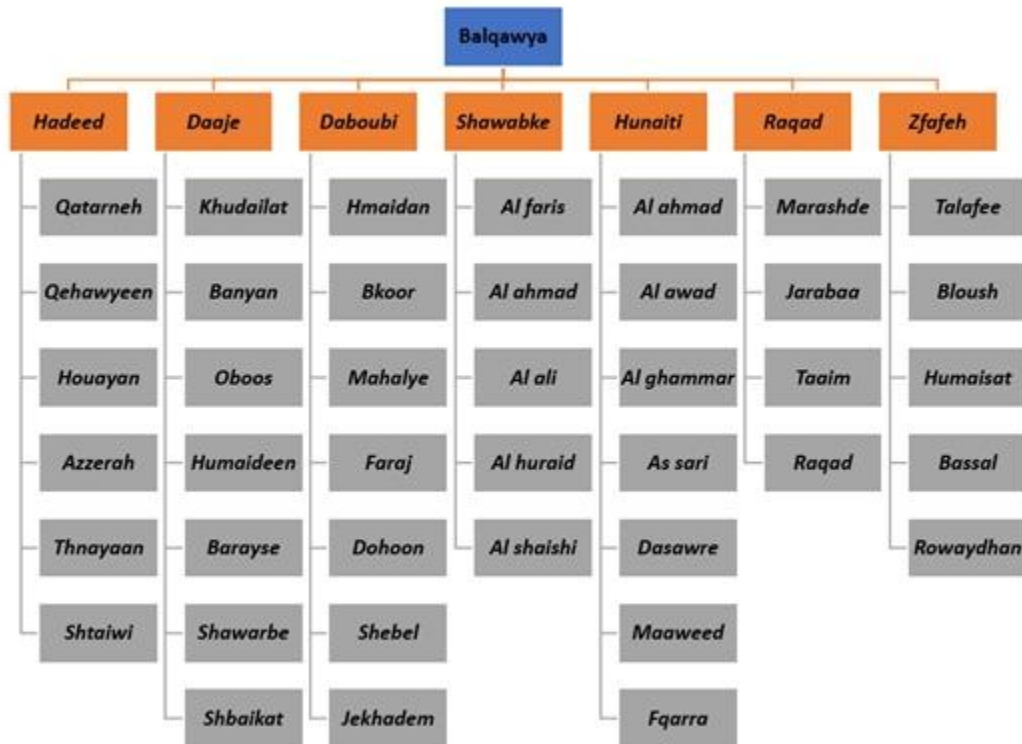
Bedouins in Jordan have a distinct Arabic dialect which, while understood by most Jordanians, includes distinct variations with differing pronunciation, grammar, and vocabulary.

²⁶⁶ Over the course of Jordanian state formation, Bedouins have enjoyed special political and legal status, with a large number in the Jordanian military and holding key positions (e.g., Kark, R. and S. J. Frantzman. 2012. *Empire, State and the Bedouin of the Middle East, Past and Present: A Comparative Study of Land and Settlement Policies*). However, in this report, we refer specifically to Bedouin herders (not all Bedouins are herders) who have particular vulnerabilities due to insecure land rights, diminishing land suitable for grazing, and unpredictable rainfall due to climate change.

²⁶⁷ Lewis, N. 1987. *Nomads and Settlers in Syria and Jordan 1800-1980*.

Annex 2. Tribal Composition of the Al Balqa (East Balqawya)

Based on interviews conducted by an expert consultant commissioned by CAO, the East Balqawya comprise a confederation of seven tribes, each of which consist of several subtribes, as shown below.



Annex 3. CAO Non-Compliance Findings, Related Harm, and Recommendations

In accordance with the CAO Policy, in response to this compliance investigation, IFC management is required to prepare a Management Report.²⁶⁸ For the purposes of addressing CAO findings of non-compliance and related harm, if any, the Management Report will include, for Board approval, a Management Action Plan (MAP) comprising time-bound remedial actions proposed by Management.²⁶⁹ Alternatively, the Management Report should include a reasoned response to CAO's findings or recommendations regarding non-compliance or related Harm that IFC is unable to address in the MAP.²⁷⁰ If the Board approves a MAP, CAO's monitoring will verify effective implementation of the actions set out in the MAP.²⁷¹ CAO compliance monitoring will not consider non-compliance findings for which there is no corresponding corrective action in the MAP.²⁷²

Table 1. CAO Findings of Non-Compliance and Related Harm and Corresponding IFC Remedial Actions or Justification for Not Pursuing Remedial Actions

CAO Findings of Non-Compliance and Related Harm
IFC Due Diligence – General
IFC's pre-investment E&S due diligence was not commensurate with the solar plant's scale and the level of E&S impacts, as required by the Sustainability Policy (para. 26), given that the project footprint was 600 hectares or six square kilometers and there was documented evidence of land use within the site. IFC failed to adequately undertake "due diligence of the level and quality of the risks and impacts identification process carried out by its clients against the requirements of the Performance Standards" (Sustainability Policy, para. 12), in this case PS1, PS5, and PS7. As a result, IFC was unable to assure itself that the project would be implemented in accordance with these relevant PS (Sustainability Policy, paras. 3 and 7).
IFC Supervision – General
During project supervision, IFC fell short in its efforts to work partially worked with Baynouna to align the project with the Performance Standards and address adverse E&S impacts on project-affected people (Sustainability Policy, paras. 7 and 45).
Complaint Issue 1. Identification of affected communities, risks and impact assessment, and vulnerability assessment
Failure to require a social impact assessment and identify affected communities. Contrary to ensuring Baynouna implemented its project in accordance with PS1, IFC did not require its client to identify and address "all relevant...social risks and impacts of the project...and those who are likely to be affected by such risks and impacts" (PS1, para. 7; see also PS1 GN18, GN19, and GN23). Despite evidence pointing to the use of project land by herders for fodder and livestock, IFC did not require Baynouna, as part of its ESIA, to collect the necessary social baseline data

²⁶⁸ CAO Policy, para 130

²⁶⁹ Ibid., para. 131

²⁷⁰ Ibid., para. 132

²⁷¹ Ibid., para. 140

²⁷² Ibid., para. 141

and conduct an impact analysis on the herders. This led to a lack of consideration of whether the project would likely generate potential significant adverse impacts on affected communities, including tribal groups as traditional owners and customary users of project land.

Finding of related harm. Because IFC and its client did not identify and assess the potential risks to and impacts on the Al Balqa tribes, any project-related risks and impacts on these affected people remain unmitigated. Moreover, because IFC and Baynouna did not identify the Al Balqa herders and tribes as affected communities, they were excluded from engagement during the ESIA process, which constitutes harm. Consequently, the herders and tribal members were uninformed of the project's risks and impacts and unable to engage with the ESIA consultant and project developers on the proposed plant's design and siting so that adverse impacts could be avoided or minimized. With the plant now operational, herders continue to be excluded from accessing land to grow fodder for their livestock, as well as from stakeholder engagements, including information disclosure about the grievance mechanism.

Failure to require its client to assess the vulnerability of herders. IFC did not require Baynouna to assess whether the project may disproportionately affect the herders and their tribes because of their disadvantaged or vulnerable status, as required of the client under PS1 (para. 12). The vulnerabilities facing pastoralists, including Bedouin herders, are recognized globally and include insecure land tenure rights, diminishing land suitable for grazing due to increasing infrastructure projects, and unpredictable rainfall due to climate change, among other factors. Because IFC and its client did not identify the herders and tribal groups as disadvantaged or vulnerable, IFC did not require Baynouna to propose and implement any differentiated measures to ensure that adverse impacts do not fall disproportionately on these groups and that they are not disadvantaged in sharing development benefits and opportunities, per PS1 (para. 12).

This lack of vulnerability assessment on the herders meant that no differentiated measures were developed to avoid adverse impacts falling disproportionately on them and ensure they are not disadvantaged from sharing development benefits and opportunities.

Failure to include a social impact assessment in timebound E&S conditions for project financing. Finally, the lack of a full analysis of the project's social risks and impacts during ESDD meant that IFC had no basis to determine whether the proposed investment activities could be expected to meet the relevant Performance Standards requirements within a reasonable period of time (Sustainability Policy, paras. 7 and 22). For the same reason, IFC was also unable to meet its obligation to determine the appropriate scope of E&S conditions attached to its financing in relation to the identification and management of project risks and impacts on Bedouin herders as potentially affected communities (Sustainability Policy, paras. 7 and 24). As a result, IFC did not specify any timebound conditions requiring Baynouna to mitigate social risks and impacts to Bedouin herders in a project E&S Action Plan (ESAP) or as an E&S condition of disbursement. The IFC Board of Directors approved the investment without sufficient understanding of the social risks and impacts of the proposed project and whether the investment could meet relevant PS requirements.

Complaint Issue 2. Exclusion from the stakeholder engagement process

Failure to require adequate stakeholder identification and analysis. Contrary to ensuring that Baynouna implemented its project in accordance with PS1 (para. 26) requirements, IFC did not require Baynouna to conduct adequate stakeholder identification and analysis that identified and assessed the interests of the full range of stakeholders, including herders, tribal groups, and relevant district authorities.

Lack of consultation. Since herders or tribal groups were not identified as affected communities or stakeholders during pre-investment due diligence, IFC did not require its client to develop a stakeholder engagement plan, and no consultation took place with these groups to elicit their views on project risks, impacts, and mitigation measures (PS1, para. 30). Had IFC required its client to assess the extent of the solar plant's potential impacts on Bedouin herders, and had the assessment shown potentially significant adverse impacts, the herders may have been entitled to an Informed Consultation and Participation process (PS1, para. 31).

Inadequate stakeholder engagement during supervision. In line with Sustainability Policy (para. 45) requirements, IFC worked with the client to address changed business activity circumstances in the form of local community protests and grievances that may result in adverse E&S impacts. IFC supported Baynouna's efforts to develop a stakeholder engagement plan that met PS1 requirements. However, the process took two years, which meant that the client did not have a PS-compliant SEP in place during the plant's construction or first year of operation. IFC noted to CAO that COVID-19 circumstances during this period caused challenges in project supervision such as delays in responsiveness by both IFC and the client. In addition, it is unclear on what basis IFC determined in November 2021 the final SEP met PS1 requirements. IFC did not ensure the client undertook an adequate stakeholder identification and analysis per PS1 (para. 26), and an appropriate SEP requires an understanding of who the relevant stakeholders are—in this case, the herders and the tribal groups who claim ownership of the land. IFC subsequently advised the client to add the ESIA stakeholder list to SEP drafts, but this list was inadequate due to the lack of robust stakeholder identification and analysis, and IFC did not require its client to undertake such analysis as part of the SEP's development. Consequently, the final SEP does not explicitly include herders and tribal groups in the stakeholder list. While IFC informed CAO that it considers "communities" listed in the SEP to implicitly include herders and tribal groups, herders continue to be excluded from any stakeholder engagements. Moreover, without an adequate stakeholder analysis, it is not clear whether the project's stakeholder engagements are adequately covering the relevant project stakeholders, including all relevant tribes and district authorities.

Ineffective grievance mechanism. CAO finds that IFC met the Sustainability Policy (para. 45) requirement to work with the client to address changed business activity circumstances by recommending development of a GRM. However, throughout project supervision, IFC did not have the information needed to assess whether Baynouna was implementing the mechanism effectively. While IFC advised the client to adequately document all grievances, significant gaps remained in documentation of grievance handling processes, timely resolution of complaints, and information disclosure about the GRM. Hence, IFC's inadequate supervision fell short of the Sustainability Policy (para. 45) requirement to "work with the client to bring it back into compliance to the extent feasible," if the client fails to comply with its E&S commitments in the conditions for investment, which include PS1 requirements.

Finding of indications of related harm. CAO finds indications of harm in relation to grievance redress. During supervision, IFC did not have sufficient documentation of its client's grievance handling process to ensure effective implementation of a GRM that met PS1 client requirements. As a result, herders who brought grievances to the GRM may have received inadequate consideration of their claims, and thus potentially inadequate compensation. Given that the project GRM is the only mechanism available for affected persons to lodge grievances related to economic displacement, the lack of an effective GRM may result in ongoing negative economic impacts.

Complaint Issue 3. Failure to adequately assess whether the Al Balqa tribes may be considered Indigenous Peoples

IFC's failure to undertake adequate "due diligence of the level and quality of the risks and impacts identification process carried out by its clients against the requirements of the Performance Standards" (Sustainability Policy, para. 12) left it with insufficient information to determine the applicability of relevant Performance Standards, including PS7. CAO finds that IFC determined the inapplicability of PS7 without sufficient information specific to the project area. Contrary to its own guidance for determining whether PS7 applies to a particular group or groups of people, IFC did not require Baynouna to undertake ethnographic research or participatory approaches with the potentially affected communities claiming tribal ownership and customary use of project land (ESRP 3.2.2). Nor did IFC direct its client to undertake any assessments or studies, or to engage an external expert, to assess whether Bedouin herders or Al Balqa tribal members, including the complainants, met the PS7 criteria for Indigenous Peoples (PS7, paras. 3 and 7).

IFC took this approach despite knowledge of the likely seasonal presence of Bedouin herders in the project area. Moreover, because it did not require Baynouna to conduct a baseline social assessment, IFC had no social data to determine whether its client should engage in a process of

Informed Consultation and Participation or FPIC in order to meet PS7 requirements (Sustainability Policy, paras. 30-31; PS1, para. 32; and PS7, paras. 9 and 11).

Finding of indications of related harm and potential harm. IFC's failure to direct Baynouna to assess whether the Al Balqa tribes in the project area met PS7 criteria for Indigenous Peoples may have contributed to indications of harm including:

- Deprivation of Al Balqa herders' right to informed consultation and participation (ICP) and potentially to FPIC in relation to the project, given its impacts on tribal lands and natural resources that are traditionally owned or under customary use.
- Loss of access to lands and natural resources (natural and cultivated fodder and wadis) traditionally owned and under customary use by the Al Balqa tribes, without adequate compensation.
- Potential loss of access to culturally appropriate sustainable development opportunities and benefits.

CAO also found indications of potential harm, including potential adverse social impacts to tribal integrity and cultural identity.

Complaint Issue 4. Land Rights Violations and Livelihoods Impacts

Because IFC failed to undertake adequate due diligence of the level and quality of the client's risks and identification process (Sustainability Policy, para. 12) it had insufficient information, to determine the applicability of relevant PS, including PS5.

IFC did not require its client to assess land use and tribal customary land and usage rights, per PS5 client requirements, as part of the project risks and impacts assessment process, despite clear signs that Bedouin herders used the project land. IFC did not require an assessment of economic displacement of herders who cultivated fodder on project land, or an assessment of traditional usage rights of grazing land and natural resources by tribal groups. IFC did not require its client to carry out a census to collect socio-economic baseline data to identify the persons the project would displace.

Had IFC determined that PS5 applied to this project, IFC would have been required to ensure that Baynouna complied with the following PS5 requirements:

- Minimizing economic displacement by minimizing land take (PS5, para. 8).
- Developing a Livelihood Restoration Plan to ensure entitlements were provided to customary users in a transparent, consistent, and equitable manner (PS5, para. 25).

Finding of related harm. IFC's deficiencies during project due diligence and supervision in relation to land acquisition and economic displacement have resulted in the likely underpayment of compensation and potential lack of livelihood restoration for three herders compensated by Baynouna after presenting land-related grievances to the company. Other herders have lost access to grazing land and natural resources within the fenced project site, including the wadis and natural fodder, without compensation and restoration of livelihoods. In addition, IFC's lack of adequate oversight and determination that PS5 was inapplicable to the project led to Al Balqa tribal communities losing their traditionally owned land without compensation.

Complaint Issue 5. Exclusion from Development Benefits and Opportunities

CAO's legal analysis indicates that national legal requirements²⁷³ do not appear to explicitly impose obligations on Baynouna to provide job opportunities, local contracts, or other benefits specifically for, or with priority to, the complainants' tribal communities. In this regard, national law was not explicitly applicable to providing jobs or procurement opportunities to the complainant communities.

While corporate social responsibility (CSR) does not necessarily involve benefits sharing and is not a requirement under the Performance Standards, compliance with applicable national law is a PS requirement. However, CAO's legal analysis found no legal requirement for CSR activities.

IFC's inadequate due diligence led to its inability to ensure the project would be implemented in accordance with the relevant PS (Sustainability Policy, paras. 3, 7, and 12), in this case benefit-sharing requirements under PS1, PS5, and PS7. Because IFC did not identify any affected communities, including vulnerable groups or tribal groups who could be considered Indigenous Peoples, IFC did not require its client to conduct an informed consultation and participation or FPIC process, which would have included consultation on culturally appropriate development benefits and opportunities (PS1, paras. 12 and 31; PS7, para. 18). Similarly, because IFC did not apply PS5 to the project, it did not require Baynouna to provide displaced communities and persons access to appropriate development benefits (PS5, para. 9). While IFC reported that the client made efforts to go beyond national requirements and verified tribal representation among its workforce during construction, IFC should have ensured this process was based on adequate stakeholder analysis and identification of affected communities. Because no such analysis was conducted, Baynouna did not consult with the project-affected tribal groups on the sharing of development benefits and opportunities, as required by PS1 (para. 31), nor did IFC require the client to do so. Such consultations would potentially have included employment opportunities and benefits through the company's local CSR activities.

Finding of indications of related harm. CAO finds indications of harm regarding development benefits and opportunities. IFC's inadequate ESDD led to a lack of consultation with the affected communities on culturally appropriate development benefits and opportunities. Similarly, IFC did not require Baynouna to provide displaced communities and persons access to appropriate development benefits and opportunities because it determined PS5 inapplicable to the project.

²⁷³ The Investment Law (No. 30) of 2014, which was applicable at the time of Baynouna's project preparation and construction, does not explicitly impose obligations on investors to employ Jordanians. The 2014 law provided certain exemptions and incentives but were not linked to any in-country value to local communities, or local procurement and employment. While the GoJ repealed the 2014 law with the passage of the Investment Environment Law (No. 21) in 2022, which establishes obligations on local value addition such as local employment and procurement, it allows for customs or tax exemptions under the 2014 law to continue for the period granted or for seven years from the date the new law went into effect. Thus, if the Baynouna project received exemptions and incentives under the 2014 law, they are not linked to value addition to local communities and are not relevant to the complaint issue.

Table 2. CAO Project-Level and Systemic Recommendations

Project-Level Recommendations
<p>1a. Work with the client to conduct a social impact assessment (SIA) that includes an ethnographic assessment of Al Balqa tribes' and herders' customary land ownership and land use. The assessment should include: (i) consultations with herders and tribal members who claim ownership of the Qa'fur area where the project is located; (ii) a vulnerability assessment; and (iii) a study of customary usage rights and uses of the land occupied by the project, covering at least a period of five years prior to the fencing. The assessment's outcome should inform the development of adequate mitigation measures that address the impacts identified, including appropriate compensation for the loss of customary land rights under PS5 and, if applicable, PS7 requirements. In consultation with the affected Al Balqa herders, culturally appropriate and sustainable development benefits should be developed, in line with the applicable PS requirements.</p> <p>1b. If the SIA determines that PS7 applies to the project, IFC should work with the client and a PS7 regional expert to establish an Indigenous Peoples Plan for the ongoing project in line with the PS7 requirements, including a PS7-compliant stakeholder benefits-sharing approach.</p> <p>1c. Work with the client and a PS5 regional expert to develop a Livelihoods Restoration Plan (LRP) in line with PS5 requirements. The plan should be developed in close engagement with the Bedouin herders, those who plowed the land and planted barley, and the Al Balqa, should their customary usage rights be confirmed in point 1a above. In that case, the LRP should also meet the land-related requirements of PS7 (paras. 13-14). IFC should work with the client to procure the services of qualified experts to implement the LRP, monitor implementation, and conduct a livelihood restoration completion audit. As part of the LRP, the client may consider mitigation measures to reduce and offset the loss of fodder growing on the 6.3 km² of project land before it was fenced. Examples may include assessing the feasibility to produce fodder on the 2km² that is not occupied by solar panels, harvesting the grass that grows naturally under the solar panels, or allowing controlled access to herders to graze their livestock on the naturally growing grass under the panels. Because approximately 4km² of the land that is not fenced remains unused by the project, IFC should consider advising its client to relinquish its lease rights over this land, perhaps at least until a plan for future use is clear. The compensation paid to the three herders should be assessed to determine whether it met PS5 requirements for loss of assets at full replacement cost, including compensation for the standing barley that was not allowed to be harvested after the area was fenced. Informed by the outcome of 1a above, adequate livelihood restoration measures should be provided to the three herders.</p> <p>1d. Work with the client to develop adequate stakeholder identification and analysis, with inputs from the above SIA and an ethnographic assessment. IFC should ensure the outcomes of this process are reflected in the project stakeholder engagement plan (SEP) and grievance mechanism (GRM).</p>

Systemic-Level Recommendations

To address the underlying causes of the non-compliance findings in this investigation, CAO recommends that IFC:

2. In line with the findings of other recent CAO investigations, strengthen internal guidance and controls within IFC Management to ensure that, prior to Board approval, all significant potential and known E&S risks and impacts of an investment and their proposed mitigation measures are identified and fully analyzed by IFC to determine that the investment activities will meet relevant Performance Standards within a reasonable period of time. While the Sustainability Policy does not explicitly require IFC to review a complete and robust ESIA or other appropriate environmental and social analytical tools prior to Board approval, such a review is necessary for IFC to deliver on its obligations under the Sustainability Policy. ESIA's and other related analytical instruments were developed to make informed decision making. Their importance has long since been recognized as key to helping financial and other institutions ensure that the projects they support consider the environmental and social impacts and risks as early as possible, in order to effectively avoid, reduce, or compensate for those effects. IFC should include in its guidance to staff explicit expectations regarding the responsibility of project teams to review ESIA's and other related instruments to ensure that they are fit for purpose and effectively inform IFC's due diligence, monitoring, and supervision. Having such internal guidance and controls in place will also strengthen IFC's leverage to ensure client conformance with relevant Performance Standards through loan covenants, the project E&S Action Plan, and other relevant means.