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# **CAO Compliance Appraisal Report - Baynouna IFC Project 39339 in Jordan**

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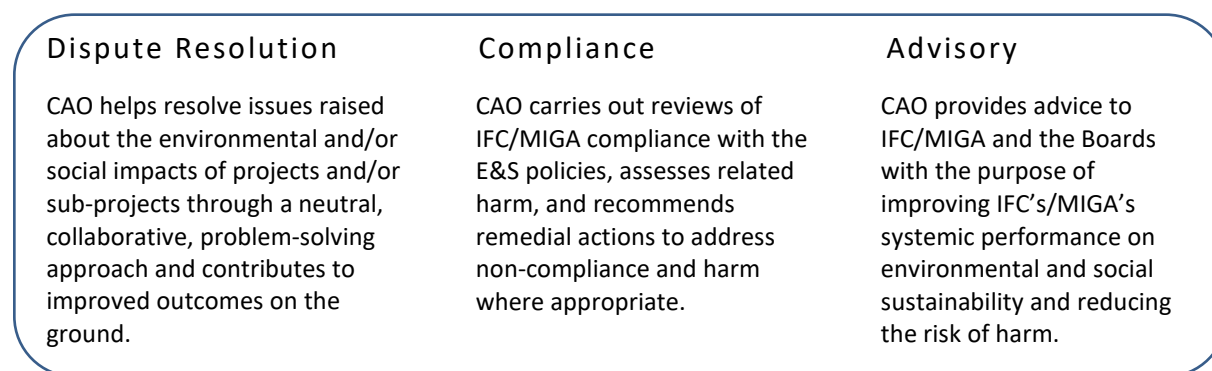
May 10, 2022

## About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is an independent recourse and accountability mechanism for people and communities affected by projects financed by the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). CAO works to address complaints fairly, objectively, and constructively while enhancing the social and environmental outcomes of IFC and MIGA projects and fostering public accountability and learning at these institutions.

CAO's independence and impartiality are essential to fostering the trust and confidence of stakeholders involved in complaint processes. CAO is independent of IFC and MIGA management and reports directly to the IFC and MIGA Boards.

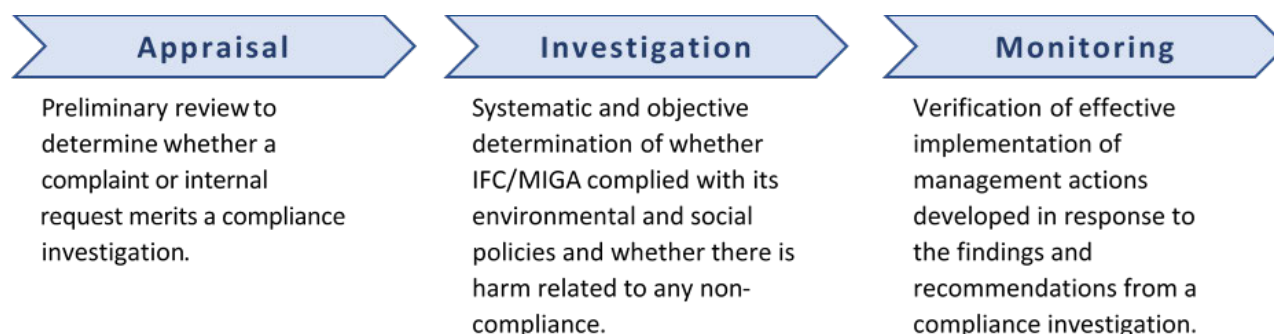
CAO carries out its work in accordance with the IFC/MIGA Independent Accountability Mechanism (CAO) Policy, and has three functions, shown below. For more information, visit: [www.cao-ombudsman.org](http://www.cao-ombudsman.org).



## About the CAO Compliance Function

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

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



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## Acronyms

<b>Acronym</b>	<b>Definition</b>
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
ESIA	Environmental and Social Impact Assessment
ESAP	Environmental and Social Action Plan
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
FPIC	Free, Prior, and Informed Consent
IFC	International Finance Corporation
LRP	Livelihood Restoration Plan
MIGA	Multilateral Investment Guarantee Agency
PS	Performance Standards (IFC)
SEP	Stakeholder Engagement Plan
SII	Summary of Investment Information

## Executive Summary

For the past decade, IFC has invested in developing the renewable energy sector in Jordan, working with a diverse range of stakeholders to help the country meet growing energy demand. This CAO compliance appraisal responds to a complaint from communities about IFC's investment in Jordan's largest solar installation, Baynouna, a 248-megawatt photovoltaic power plant located approximately 30 kilometers southeast of the capital, Amman. The complaint alleges exclusion from stakeholder engagement and project benefit sharing, land rights violations, and a failure to recognize the complainants' claims to indigeneity. *As set out in this appraisal report, CAO concludes that the community complaints about the project merit a CAO compliance investigation.*

### Context and Investment

In December 2017, IFC arranged a financing package of up to US\$188 million to build and operate the Baynouna solar photovoltaic facility in Jordan's Al Muwaqqar district, an area of arid steppe southeast of Amman. IFC financing consisted of senior A and B loans of up to \$97.25 million. Other funders include the Japan International Cooperation Agency, Dutch development bank FMO, Europe Arab Bank, OPEC Fund for International Development, and German development bank DEG.

The 600-hectare plant was built on land formally owned by the Government of Jordan. It supplies electricity to the Jordanian National Electric Power Company (NEPCO) under a 20-year power purchase agreement. Baynouna Solar Energy Company was created to develop and operate the plant. Abu Dhabi Future Energy Company – Masdar, which is fully owned by the Government of Abu Dhabi's Mubadala Development Company, holds a 70-percent interest in Baynouna Solar Energy Company. The remaining 30-percent interest is held by Taaleri Aurinkotuuli, a Finnish investment fund.

Construction began in 2019 and the power plant became operational in late 2020. IFC completed its disbursements for the project between October 2018 and August 2021, and its investment remains active.

### The Complaint

In February 2020, CAO received a complaint from members of the Al-Balqa tribe raising a range of environmental and social (E&S) concerns with the Baynouna project. The 66 complainants assert that their tribe is an Indigenous group and that they have been the traditional owners and users of the project area for hundreds of years. They state that they herd livestock and reside between one and 18 kilometers from the solar plant, with some tribal members closest to the project living in Bedouin tents.

The complaint raises a range of concerns regarding the project's E&S impacts on tribal members and IFC's compliance with E&S policies, which are subject to this appraisal. Specifically, the complainants allege that:

- a). Their tribe was overlooked as an impacted community and improperly excluded from the stakeholder consultation process for the project;

- b). They suffered collective and individual land rights violations and were subject to uncompensated economic displacement due to the project; and
- c). They have been excluded from development benefits and opportunities arising from the project.

Early in the project's life, community complaints included environmental and health and safety concerns as well as charges of intimidation. However, for the compliance appraisal process, the complainants requested that CAO exclude the following issues:

- Threats and reprisals;
- Non-compliant Environmental and Social Management System (ESMS);
- Cumulative environmental degradation;
- Air pollution; and
- Threats to worker health and safety.

In March 2020, CAO determined that the complaint met the eligibility criteria for an initial assessment. During CAO's assessment, the complainants and Baynouna Solar Energy Company agreed to a dispute resolution process, which resolved community concerns regarding threats and reprisals but did not result in a final settlement agreement. With the complainants' consent, the case was transferred to CAO's compliance function for appraisal in February 2022.

### **IFC and Client Responses**

On February 23, 2022, CAO received IFC's management response to the complaint. In summary, this stated IFC's view that the solar plant project complied with all elements of Jordanian law and with relevant IFC Performance Standards. Baynouna Solar Energy Company elected not to submit a formal client response to the complaint as part of the CAO appraisal process.

### **CAO Analysis**

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

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

- a). There are preliminary indications of harm to the complainants**, specifically in relation to the complainants' allegations of:
  - Being overlooked as an affected community and thus being excluded from consultations related to the development of the project;
  - Uncompensated impacts on land-based livelihoods and traditional access to land and natural resources;

- Lack of acknowledgement of legitimate claims to recognition as Indigenous Peoples and associated right to Free, Prior, and Informed Consent (FPIC) with respect to the project; and
  - Exclusion from development benefits and opportunities arising from the project.
- b). There are preliminary indications that IFC may not have complied with its environmental and social policies**, specifically its responsibility to review and supervise the application of the following IFC Performance Standards to the project:
- *Performance Standard 1 (PS1) – Assessment and Management of E&S Risks and Impacts* which includes requirements to assess the project’s social impacts, including identification of all affected communities, the conduct of community consultations, and the development of benefit-sharing arrangements. These requirements may not have been properly applied considering the limited scope and level of detail in the project Environmental and Social Impact Assessment (ESIA) and the apparent absence of consultations with the complainants’ tribe.
  - *Performance Standard 5 (PS5) – Land Acquisition and Involuntary Resettlement* which includes requirements to assess and mitigate economic displacement arising from project related land acquisition or restrictions on land use. These requirements may not have been properly applied considering that IFC did not require a land use assessment or the development of a Livelihood Restoration Plan for affected land users, despite evidence of land use.
  - *Performance Standard 7 (PS7) – Indigenous Peoples* which includes requirements to apply PS7 when Indigenous communities are impacted by a project, and to seek Free, Prior, and Informed Consent (FPIC) when a project impacts lands under customary ownership or use by Indigenous Peoples. These requirements may not have been properly applied considering the complainants’ claims to indigeneity and the lack of assessment of their claims to be recognized as Indigenous Peoples in the project ESIA.
- c). The alleged harms to the complainants are plausibly linked to IFC’s potential non-compliance**, as the issues raised by the complainants relate directly to the potential shortcomings in IFC’s review and supervision of the application of Performance Standards 1, 5, and 7 to the project as outlined above.

## Next Steps

As the appraisal criteria are met, CAO will proceed to conduct a compliance investigation following the CAO Policy. Terms of reference for the investigation can be found in the appendices to this report along with the community complaint and IFC response. The draft compliance investigation report will be completed by May 2023.

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

## 1. Introduction

This section provides an overview of IFC investments in the Jordan renewable energy sector and the solar power project in question. It then describes the scope and methodology for CAO's compliance appraisal as covered in this report.

### a). Overview of IFC Investment

For almost a decade, IFC has arranged financing for Jordan's emerging renewable energy sector, including solar photovoltaic (PV) and thermal power projects. To date, IFC's investments total over US\$300 million across 13 projects, enabling well over \$1 billion in additional private sector investments.<sup>1</sup>

In 2011, IFC and the Government of Jordan established 'Seven Sisters,' a renewable energy public-private partnership under which multiple solar PV projects have been launched under a single standardized financing structure.<sup>2</sup> Baynouna Solar Energy Company ("Baynouna," "the Company," or "the client") is one of these projects, and Jordan's largest single solar power plant to date.<sup>3</sup>

The Company is a special purpose vehicle mandated to develop, finance, construct, operate, and maintain a new 248-megawatt solar PV power plant, occupying a six-square-kilometer (600 hectare) area, in the Al Muwaqqar district, approximately 30 kilometers southeast of the capital, Amman.<sup>4</sup> The area is a transitional zone of arid steppe between the Jordan highlands to the west and the eastern desert region, characterized by wadis (seasonal streams) and limited vegetation. The land used for the project is formally owned by the Government of Jordan and leased to Baynouna.

In December 2017, IFC arranged a financing package of up to \$188 million for the project, which included IFC financing of loans of up to \$97.25 million.<sup>5</sup> Other lenders include Japan International Cooperation Agency (JICA), Dutch development bank FMO, Europe Arab Bank, OPEC Fund for International Development (OFID), and German development bank DEG.<sup>6</sup> IFC's Board approved the investment in November 2017.<sup>7</sup>

Baynouna was created to develop and operate the plant. Abu Dhabi Future Energy Company – Masdar, which is fully owned by the Government of Abu Dhabi's Mubadala Development Company, holds a 70-percent majority interest in Baynouna while Taaleri Aurinkotuuli, a Finnish investment fund, holds a 30-percent minority interest.

Baynouna supplies electricity to the Jordanian National Electric Power Company (NEPCO) under a 20-year power purchase agreement. Construction started in 2019 and the plant began

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<sup>1</sup> IFC (2018). "IFC Supports Jordan's Largest Renewable Energy Project with Landmark Financing Package," January 16, 2018. Available at: <https://bit.ly/3ramamO>.

<sup>2</sup> IFC (2018). Seven Sisters (Jordan): Amplifying the Voices of Developers. Available at: <https://bit.ly/3umzNAY>.

<sup>3</sup> IFC SII, Masdar Jordan, Project #39339. See also IFC (2018), "IFC Supports Jordan's Largest Renewable Energy Project with Landmark Financing Package," January 16, 2018.

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

<sup>5</sup> CAO Dispute Resolution Conclusion Report, p. 2. Available on CAO case page at: <https://bit.ly/Masdar-Baynouna-01>.

<sup>6</sup> IFC (2018), "IFC Supports Jordan's Largest Renewable Energy Project," January 16, 2018.

<sup>7</sup> IFC SII, Masdar Jordan, Project #39339.



commercial operations in late 2020.<sup>8</sup> IFC completed its disbursements for the project between October 2018 and August 2021, and its investment remains active.

IFC applied a Category B Environmental and Social (E&S) risk classification to the project.<sup>9</sup> This classification indicated IFC's view that the project had limited potential adverse E&S risks and/or impacts that were few in number, generally site-specific, largely reversible, and readily addressable through mitigation measures. Based on its E&S due diligence, IFC deemed the following Performance Standards (PSs) to be applicable: PS1 (Assessment and Management of Environmental and Social Risks and Impacts), PS2 (Labor and Working Conditions), and PS3 (Resource Efficiency and Pollution Prevention).<sup>10</sup>

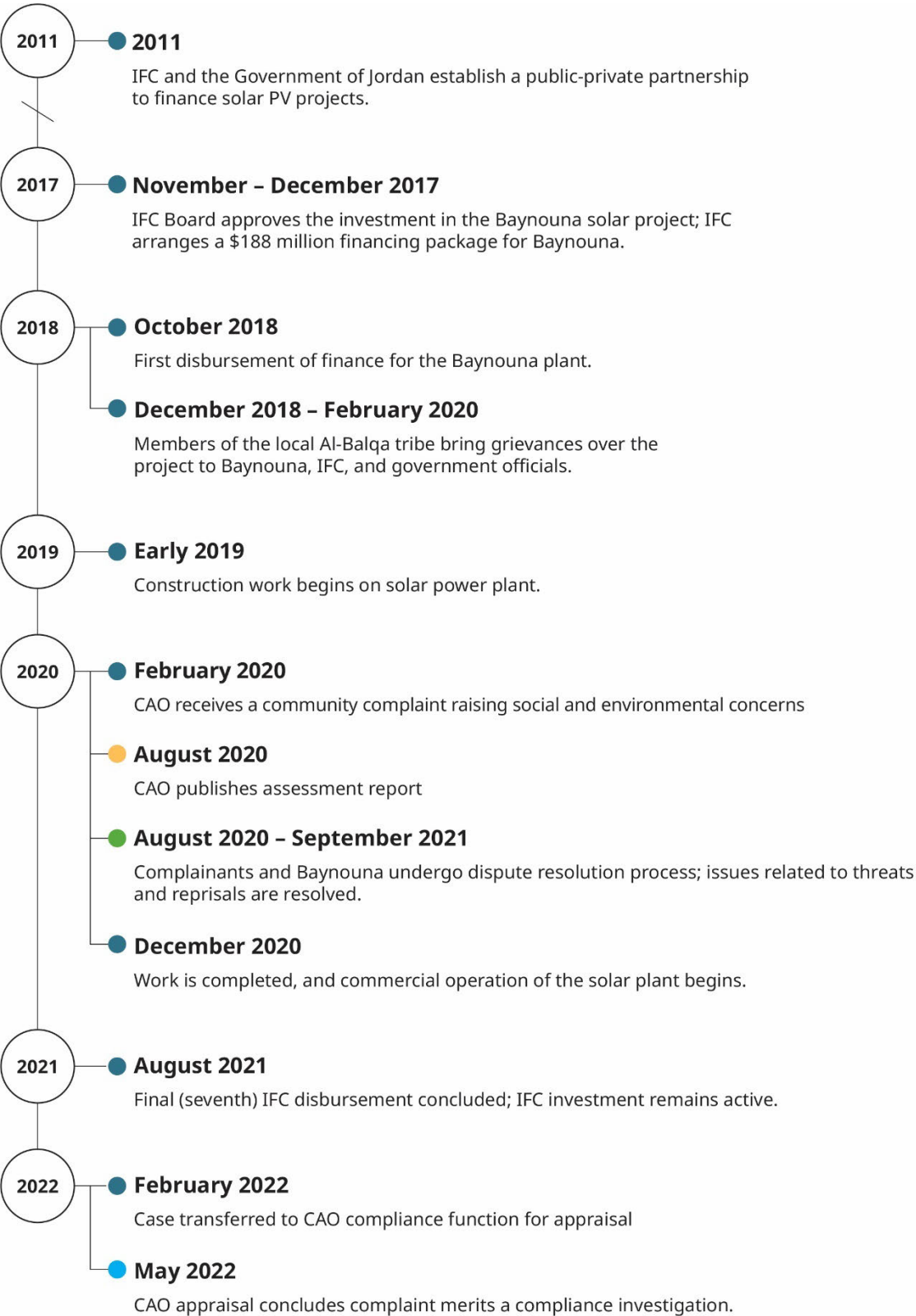
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<sup>8</sup> Baynouna project information on Masdar website. Available at: <https://bit.ly/3jjnejD>.

<sup>9</sup> IFC Environmental and Social Review Summary (ESRS), Masdar Jordan, Project #39339. Available at: <https://bit.ly/3JloAoK>.

<sup>10</sup> IFC ESRS, Masdar Jordan, Project #39339.

**Figure 1. Project and Complaint Timeline**



## **b). Compliance Appraisal Scope and Methodology**

The scope of this compliance appraisal<sup>11</sup> is limited to issues raised in the complaint (attached in Appendix 1) and CAO's subsequent Assessment Report. It does not include issues raised by the community that were resolved during CAO's dispute resolution process,<sup>12</sup> nor does it include any matter subsequently excluded from the appraisal at the complainants' request, as detailed in Section 2(d) of this report.

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

- Documentation related to the complaint, including the complaint, CAO's Assessment Report, CAO's Dispute Resolution Conclusion Report, and IFC's Management Response to the complaint;
- IFC and client documentation related to the implementation of project E&S requirements; and
- Relevant media and other publicly available documentation, including academic literature.

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

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

## **2. Concerns Raised in Complaint from Project-Affected Communities**

In February 2020, while construction was underway, CAO received a complaint about a range of environmental and social issues relating to the Baynouna project. The complaint was submitted by a member of the Al-Balqa tribe who was also the Chairman of the East Amman Society for Environmental Protection (EASEP). The complaint was submitted on behalf of this lead complainant and 66 named local community members in their capacity as members of the Al-Balqa tribe (and particular groups within the tribe). The complainants assert that the Al-Balqa are Indigenous Peoples with a population of over 100,000, and that they are the traditional owners and users of the project area and surrounding lands which they have claimed and used for hundreds of years. The complainants claim to reside one to eighteen kilometers away from the project site in various parts of East Amman, with some tribal members closest to the project living in Bedouin tents.

The complainants state that they came to CAO for redress after engaging in multiple discussions about their grievances with Baynouna, IFC, government officials, and others since late 2018. Despite submitting a formal complaint to the project's grievance mechanism in November 2019,

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<sup>11</sup> CAO Policy, para. 88.

<sup>12</sup> CAO Dispute Resolution Conclusion Report. Available on CAO case page.

they state that their environmental and social grievances remained outstanding, as outlined in section (a) below.<sup>13</sup>

In March 2020, CAO determined that the complaint met the eligibility criteria for an initial CAO assessment. During the assessment, the complainants and Baynouna agreed to a dispute resolution process to address the issues raised in the complaint.<sup>14</sup> While the dispute resolution process did not conclude with a final settlement agreement, all concerns regarding threats and reprisals were resolved.<sup>15</sup>

The dispute resolution process was delayed by the passing of the lead complainant in November 2020 and the appointment of five new lead complainants from the original 66 named complainants. As reflected in CAO's Dispute Resolution Conclusion Report, in September 2021, "the complainants informed CAO that they would like the case to be transferred to CAO's compliance function, due to what they perceived as a lack of concrete actions from the Company."<sup>16</sup> At this juncture, the complainants considered all issues other than those related to threats and reprisals to be unresolved, and the case was transferred to CAO for appraisal on February 11, 2022, per the complainants' expressed request.

The complaint raises a range of concerns regarding the project's environmental & social (E&S) risks and impacts on tribal members, specifically:

**a). Exclusion from the Stakeholder Identification and Consultation Process**

The complainants allege that IFC's pre-investment due diligence and the project's Environmental and Social Impact Assessment (ESIA) process failed to identify them as vulnerable project-affected communities and Indigenous Peoples, and that Baynouna failed to include, consider, and consult with their tribe. They state that these flaws lie at the heart of their project-related grievances, alleging that the failure of identification resulted in the Al-Balqa tribe's exclusion from consultation processes and violations of their rights to free, prior, and informed consent (FPIC). Specifically, they argue that Baynouna should have consulted them at the outset of the project design phase to establish and implement a Stakeholder Engagement Plan (SEP) and grievance mechanism. Although Baynouna did belatedly establish such a plan and grievance mechanism, the complainants claim these to be inadequate. In addition, they allege that access to project-related information was limited and the project's Community Liaison Officers were not qualified or knowledgeable and failed to credibly represent the concerns of the Al-Balqa tribal communities.

**b). Land Rights Violations and Uncompensated Economic Displacement**

The complainants assert that the project's location on land that they traditionally own and use violates their collective and individual land rights, and that the solar plant's presence has decreased their land's economic value. Their complaint argues that the tribal communities' livelihoods substantially rely on livestock grazing and the cultivation of wheat, barley, and vegetables, supported in part by access to the project site. In addition, it states that the project

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<sup>13</sup> CAO complaint. See Appendix 1 of this report. Available on CAO case page. Clarifications were provided to CAO in additional materials submitted by the complainants.

<sup>14</sup> CAO Assessment Report. Available on CAO case page.

<sup>15</sup> CAO Dispute Resolution Conclusion Report, p. 6. Available on CAO case page.

<sup>16</sup> CAO Dispute Resolution Conclusion Report, p. 1.

land—which includes water channels in an otherwise arid desert climate—is uniquely suited for crops and livestock grazing, and that the plant’s construction has therefore caused them to be economically displaced without compensation.

The complainants allege that Baynouna failed to consult them at the outset of the project design phase in order to establish and implement a Livelihood Restoration Plan (LRP). Such a plan, they argue, would have provided for the appropriate compensation and restoration of their livelihoods, through means such as project-related employment of tribal members and direct material support to tribal communities.

### **c). Exclusion from Development Benefits and Opportunities**

The complainants argue that fair employment and procurement opportunities should have flowed to their tribal communities as part of the large-scale project. They allege that Baynouna’s failure to identify and engage with them as vulnerable and Indigenous project-affected communities prevented them from being consulted on, and receiving, development benefits to which they are entitled under the IFC Performance Standards.

### **d). Other Community Concerns Not Considered in this Appraisal**

Early in the project’s life, community complaints included environmental and health and safety concerns as well as charges of intimidation. However, for the compliance appraisal process, the complainants requested that CAO exclude the following issues, for the reasons described below:

- **Threats and reprisals:** The lead complainant alleged that he and other complainants faced threats and intimidation against themselves and family members due to their public opposition to the project. Specifically, he alleged that Baynouna filed a complaint against him with the Governor of Amman, that the Company encouraged government officials to intimidate, threaten, and harass him, and that additional threats and reprisals were aimed at EASEP, the local environmental organization he led. All concerns regarding threats and reprisals were resolved early in the dispute resolution process.<sup>17</sup>
- **Non-compliant Environmental and Social Management System (ESMS):** The complainants assert that the design, underlying baseline assessments, and monitoring of the project’s ESMS, including its Environmental and Social Action Plan, all fall short of relevant standards. Specifically, they argue that the project’s E&S systems and action plan fail to satisfy applicable Jordanian environmental and social laws, Jordanian regulations, international law, and the IFC’s own Performance Standards. In addition, they argue that these core E&S instruments broadly fail to consider the specific E&S risks the tribal communities face. The complainants still consider this issue to be valid and unresolved but requested that the appraisal focus on concerns related to stakeholder identification and engagement.
- **Cumulative environmental degradation:** The complainants assert that the project contributes to cumulative environmental degradation of the project area, making its current location environmentally unsuitable. They allege that a Cumulative Impact Assessment

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<sup>17</sup> CAO Dispute Resolution Conclusion Report, p. 6.

and a Strategic Environmental and Social Assessment should have been undertaken during the project's due diligence to evaluate the site's environmental suitability. The complainants still consider this issue to be valid and unresolved but requested that the appraisal focus on concerns related to stakeholder identification and engagement.

- **Air pollution:** The complainants allege that dust generated by the project during construction constitutes air pollution exceeding the level allowable under the IFC Performance Standards, that this pollution poses health risks to complainant communities, and that air pollution risks were not properly prevented and mitigated. However, the complainants requested that this issue be omitted from the appraisal because "the project does not have a significant impact on air pollution."<sup>18</sup>
- **Threats to worker health and safety:** The complainants claim the project violates IFC Performance Standards related to workers' safety. Their allegations include the presence of military explosive devices on the site, the absence of an Emergency Response Plan, and inadequate safety training for employees. The complainants did not state whether they consider this grievance to be resolved but did request that the appraisal focus on other matters, particularly those related to stakeholder identification and engagement.

### 3. Summary of IFC Response

On February 23, 2022, CAO received an IFC Management Response<sup>19</sup> to the CAO complaint ("the Management Response"), which disputes the tribal communities' assertions. In summary, the Management Response states that IFC considers the project to comply with all elements of Jordanian law and with the relevant IFC Performance Standards.

IFC's response to the specific issues submitted to CAO for appraisal are summarized below, by the area of community complaint.

#### a). Exclusion from the Stakeholder Identification and Consultation Process

- The Management Response does not address the complainants' assertion that they are Indigenous Peoples and that the IFC's Indigenous Peoples' standard (Performance Standard 7) should have been applied to their community.
- IFC states that the IFC project team confirmed the completion of the project's agreed environmental and social conditions outlined in the Environmental and Social Action Plan. These measures included engaging with livestock herders and establishing an external communication mechanism to account for possible later identification of land users.
- IFC's pre-investment E&S review concluded that there were no affected communities. The Management Response states that the E&S review's stakeholder identification, engagement, and consultations were conducted in line with the requirements of Performance Standard 1 (Assessment and Management of Environmental and Social Risks and Impacts). IFC also confirmed that the senior Community Liaison Officer had the

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<sup>18</sup> The complainants' submission to CAO on March 9, 2022 (translated from Arabic to English).

<sup>19</sup> See Appendix 2 of this report.

necessary competences, experience, and skills to liaise with local communities and conduct stakeholder engagement in line with PS1.

- The project's Environmental and Social Impact Assessment (ESIA) and scoping session report were publicly disclosed on IFC's disclosure website in compliance with IFC's Access to Information Policy. In addition, Baynouna published an executive summary of the ESIA in Arabic on its project website.
- IFC asserts that the project's grievance mechanism has functioned effectively, noting that three grievances have been resolved and closed to the satisfaction of the individuals that filed those complaints.

#### **b). Land Rights Violations and Uncompensated Economic Displacement**

- IFC 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."<sup>20</sup> These communities may include semi-nomadic tribes who use the land for fodder cultivation and herd grazing, and that this land use is a widespread practice throughout the country.
- However, with respect to the complainants' asserted customary ownership of the project area land, IFC states that it verified land ownership of the project site by the Government of Jordan based on the receipt and review of the Land Lease Agreement. IFC also notes that the ESIA consultant reviewed legal claims to the project area land and concluded that there were no conflicts in land ownership.
- IFC's due diligence concluded that a Livelihood Restoration Plan was not warranted because no economic displacement was identified as a result of loss of access to natural and cultural resources including grazing areas. Both the Management Response and ESIA state that nomadic herders have access to alternative land around the project site.

#### **c). 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. 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 security guards who were local residents and provided training for local engineers to prepare them for project employment.<sup>21</sup>
- 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. IFC states that the CSR Plan was developed in consultation with stakeholders, including community representatives and non-governmental organizations in Al Muwaqqar, and aims to

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<sup>20</sup> IFC Management Response, para. 35.

<sup>21</sup> IFC Management Response, para. vii.

incorporate stakeholders' views, including "identified vulnerable groups (e.g., women, children, youth)."<sup>22</sup>

#### **4. Client Response**

IFC informed CAO that Baynouna Solar Energy Company elected not to submit a formal client response in relation to this appraisal. The Company's rationale was that it had already provided extensive formal responses to the issues submitted to CAO for appraisal, including a detailed written response to the complainants in May 2020. Baynouna's perspective on the complaint issues is also included in the CAO Assessment Report and CAO Dispute Resolution Conclusion Report.<sup>23</sup>

#### **5. CAO Analysis**

This section summarizes CAO's analysis of the complaint, based on research, document review, and interviews conducted in February–April 2022. It provides an overview of relevant IFC policy requirements and standards. It then presents analyses of the three appraisal criteria required for CAO to determine whether to initiate a compliance investigation.<sup>24</sup> These criteria are:

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

The section concludes with CAO's decision on whether the issues raised merit a compliance investigation based on the appraisal criteria and other considerations outlined in the CAO Policy.

Based on the analysis below, CAO finds that this complaint regarding IFC's investment in the Baynouna solar plant meets the criteria for a compliance investigation.

##### **a). Relevant IFC Policy Framework and Performance Standards**

IFC invested in Baynouna under its 2012 Policy on Environmental and Social Sustainability (the Sustainability Policy) and Performance Standards—together referred to as the Sustainability Framework. The Sustainability Policy 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."<sup>25</sup>

To achieve its mission and these goals, IFC is required to conduct pre-investment environmental and social due diligence of all its investment activities. This process must be "commensurate with the nature, scale, and stage of the business activity, and with the level of environmental and social

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<sup>22</sup> IFC Management Response, para. 40.

<sup>23</sup> CAO Assessment Report and CAO Dispute Resolution Conclusion Report. Available on CAO case page.

<sup>24</sup> CAO Policy, para. 91.

<sup>25</sup> Sustainability Policy, para. 9.



risks and impacts.”<sup>26</sup> IFC requires compliance with its Performance Standards as a condition of financing. Based on the outcomes of the E&S due diligence, it commits only to “finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time.”<sup>27</sup> During project implementation, IFC supervises the client’s E&S performance against the conditions of financing.<sup>28</sup> 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.”<sup>29</sup>

The following Performance Standards are relevant to the complaint regarding IFC’s investment in the development and operation of the Baynouna solar power plant:

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

## b). Preliminary Analysis of Harm

A CAO compliance appraisal is required to consider whether a complaint raises “preliminary indications of Harm or potential Harm.”<sup>30</sup> In this case, CAO finds that there are preliminary indications of harm. The complainants make the following allegations regarding project impacts that could constitute harm:

- **Exclusion from consultations and violations of their right to free, prior, and informed consent (FPIC).** The complainants consistently allege that Baynouna should have identified and consulted with them as members of vulnerable project-affected Indigenous communities. They argue this point based on their alleged status as the Indigenous customary owners of the project area, their land-based livelihoods, and their traditional use of the project site and its surrounding land. As a result, they argue that Baynouna should have sought the tribe’s free, prior, and informed consent before starting to build the project and throughout its implementation.
- **Collective and individual land rights violations.** The complainants claim they are Indigenous Peoples and the traditional owners of the project area and surrounding lands. They claim the project’s location violates their collective customary land rights. In addition, at least one complainant alleges individual land rights violations to his private property.
- **Uncompensated impacts to land-based livelihoods.** The complainants allege uncompensated harm to their livelihoods due to lost access to natural resources, especially water, and to land that, as customary owners, they used to cultivate forage, barley, and wheat, and for livestock grazing. They claim that their tribal communities’ livelihoods substantially rely on livestock grazing and rain-fed agriculture sustained in part

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<sup>26</sup> Sustainability Policy, para. 26.

<sup>27</sup> Sustainability Policy, para. 22.

<sup>28</sup> Sustainability Policy, para. 24.

<sup>29</sup> Sustainability Policy, para. 24.

<sup>30</sup> CAO Policy, para. 91.

by access to the project area land, and that the new solar plant has caused economic displacement. They emphasize that this land, which includes water channels in an otherwise arid desert climate, is particularly well suited for crops and livestock grazing.

- **Exclusion from development benefits and opportunities.** The complainants claim they have not received development benefits and opportunities to which they are entitled under the Performance Standards as project-affected, vulnerable, Indigenous communities. They argue that these should have been provided in the form of employment and procurement opportunities for their tribal communities.

CAO concludes that the above allegations of harm are plausible, based on the following considerations:

- 1). A review of the project ESIA indicates that the complainants and their tribe were not included in the stakeholder identification and consultation process. As a result, they were also not included in consultations on mitigation measures and development benefits, including employment opportunities which followed the ESIA process.
- 2). Both the preliminary and final ESIA Reports identified evidence of cultivation and hunting on the project site.<sup>31</sup> Similarly, the project hydrological and technical studies describe the site as including cultivated areas. These observations are consistent with the complainants' claims to use the project lands for agriculture and other subsistence activities.
- 3). IFC acknowledged, in its Management Response, that it is not uncommon for Bedouin tribes to maintain customary relationships with lands that are formally government-owned under Jordanian law.<sup>32</sup>
- 4). The customary ownership and uses alleged by the complainants are consistent with CAO's research on Bedouin tribes' traditional land-based livelihoods and on customary land ownership claims that are commonplace across Jordan although not recognized by Jordanian law.<sup>33</sup> Such livelihoods may involve sedentary, semi-nomadic, or fully nomadic practices reliant on natural resources.
- 5). The project area is significant in size (measuring 600 hectare) and includes scarce natural resources such as *wadis* or seasonal streams that are important for nomadic herders. The project site is now largely covered with solar panels, and outside use of the site is limited.
- 6). CAO is not aware of any study commissioned by the Company, IFC, or any other party that provides evidence to contradict the complainants' claims to usage and traditional ownership of land within the project site.
- 7). As discussed further below, the complainants could, subject to more detailed assessment, potentially be considered Indigenous Peoples under IFC Performance Standard 7.

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<sup>31</sup> Preliminary and Final ESIA Reports. ESIA report is available at: <https://bit.ly/3JloAoK>.

<sup>32</sup> IFC Management Response, para. 35.

<sup>33</sup> For example, see: Haddad, Fidaa F. "Rangeland resource governance – Jordan," in *The Governance of Rangelands: Collective Action for Sustainable Pastoralism*, eds. Jonathan Davies, Pedro M. Herrera, and Pablo Manzano Baena (New York: Routledge, 2014), pp.45–61.

Considering the issues raised by the complaint and the considerations summarized above, CAO concludes that the complainants' claims to usage and traditional ownership of the project land are plausible. As the alleged impacts on herders were not addressed as part of the project ESIA and it is not apparent that measures to mitigate the alleged impacts on the complainants were put in place, CAO concludes that there are preliminary indications of harm in this case.

### **c). Preliminary Analysis of IFC Policy Compliance**

A CAO compliance appraisal must also consider whether there are “preliminary indications that IFC/MIGA may not have complied with its E&S Policies.”<sup>34</sup> In this case, CAO finds preliminary indications that IFC may not have adequately reviewed and supervised the Company with respect to IFC's E&S requirements. These potential failures relate to the issues and Performance Standards outlined below:

#### **Compliance with requirements for social impact assessment and stakeholder engagement**

CAO finds preliminary indications that IFC may not have verified the proper application of Performance Standard 1 (PS1) to the project as relates to social impact assessment, the identification of affected communities, stakeholder engagement and consultation, and benefit sharing.

IFC's PS1 requires environmental and social impact assessment of a project following “good international industry practice” based on “recent environmental and social baseline data at an appropriate level of detail.”<sup>35</sup> Specifically, the impact assessment should include potential risks to, and impacts on, people that may be disproportionately affected by a project because of their disadvantaged or vulnerable status. The aim is to ensure that such groups are not disadvantaged in sharing the development benefits and opportunities that flow from the project.<sup>36</sup> PS1 also requires consultation with affected communities on project risks, impacts, and mitigation measures, including the sharing of development benefits and opportunities.<sup>37</sup>

Preliminary indications that the above PS1 requirements may not have been properly applied in the case of Baynouna are as follows:

- The ESIA for Baynouna contains only a limited assessment of the project's social impacts. The impact assessment did not include any detailed or systematic baseline assessment of existing land use or analysis of claims to traditional ownership in the project area. In addition, the assessment did not include engagement with tribal groups, such as the complainants, who lack formally recognized land rights but claim traditional use and residence in the project area.
- There is an apparent contradiction between IFC's Environmental and Social Review Summary (ESRS) which states that the project has “no affected communities” and other

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<sup>34</sup> CAO Policy, para. 91.

<sup>35</sup> PS1, para. 7.

<sup>36</sup> PS1, para. 12.

<sup>37</sup> PS1, paras. 30–31.

project documentation which refers to historic use of the project area by livestock herders and as well as evidence of plowing and hunting activities in the project area.<sup>38</sup>

### **Compliance with requirements to assess, minimize, and mitigate economic displacement**

CAO finds preliminary indications that IFC may not have verified the proper application of Performance Standard 5 (PS5) to the project as relates to the requirement to assess, minimize, and mitigate project impacts on land use.

The objective of IFC's PS5 is to avoid, minimize, and mitigate the adverse social and economic impacts of project-related land acquisition or restrictions on land use.<sup>39</sup> PS5 applies to economic displacement resulting from restrictions on land use and access to natural resources where a community or groups within a community have traditional or recognizable usage rights.<sup>40</sup> The applicability of PS5 is determined as part of the ESIA process.<sup>41</sup>

In this case, as documented in the ESRS, IFC concluded that PS5 did not apply because "the land is being leased from the Government."<sup>42</sup> IFC's response to the CAO complaint continues to focus on the legal status of the project land. IFC's approach to this issue appears to be inconsistent with the requirements of PS5 as outlined in the paragraph above, which can apply to informal users of state land.

Further, the project ESIA focused on formal land ownership and contains minimal assessment of potential informal land use in the project area. The ESIA concluded that any seasonal use of the land by herders are intermittent and "very minimal." This conclusion is presented without any assessment or supporting evidence other than consultation with three people, none of whom used land in the project area themselves or were from the tribal groups represented by the complainants. IFC's ESRS does state that "follow-up will be undertaken with the temporary land users (Bedouin herders) who move through the area periodically."<sup>43</sup> However, to date CAO has not seen evidence that this commitment resulted in a land use assessment that would satisfy the requirements of PS1 or PS5. IFC's position is that community claims of economic displacement could be handled by the project grievance mechanism without the implementation of a Livelihood Restoration Plan. However, this position is arguably inconsistent with PS5.<sup>44</sup>

### **Compliance with the requirements to identify Indigenous Peoples potentially impacted by the project**

CAO finds preliminary indications that IFC may not have verified the proper application of Performance Standard 7 (PS7) to the project in relation to the identification of Indigenous Peoples.

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<sup>38</sup> See project ESRS and ESAP. Available at: <https://bit.ly/3JloAoK>.

<sup>39</sup> PS5, Objectives.

<sup>40</sup> PS5, para. 5.

<sup>41</sup> PS5, para. 4.

<sup>42</sup> IFC ESRS, Masdar Jordan, Project #39339

<sup>43</sup> Ibid.

<sup>44</sup> PS5, para. 25. "In the case of projects involving economic displacement only, the client will develop a Livelihood Restoration Plan to compensate affected persons and/or communities and offer other assistance that meet the objectives of this Performance Standard."

PS7 applies when a project has potential impacts on Indigenous Peoples, which is determined as part of the ESIA process.<sup>45</sup> The Performance Standard describes Indigenous Peoples as “a distinct social and cultural group” that possess defined characteristics “in varying degrees.”<sup>46</sup> Recognizing the complex and technical nature of determining indigeneity, PS7 states that “the client may be required to seek inputs from competent professionals to ascertain whether a particular group is considered as Indigenous Peoples.”<sup>47</sup> Where IFC projects do impact Indigenous Peoples, PS7 lays out specific requirements. Such projects must “ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of Indigenous Peoples”<sup>48</sup> including a requirement for Free, Prior, and Informed Consent (FPIC) and the development of benefit-sharing agreements in defined circumstances.<sup>49</sup>

For the Baynouna solar plant, IFC concluded in its ESRS that PS7 was not applicable since no Indigenous Peoples were identified in the project area. The ESIA does not contain any analysis or assessment of this issue and CAO has not seen any other assessment of potential project impacts on Indigenous Peoples conducted as part of project preparation.

For their part, the complainants self-identify as Indigenous. They claim characteristics of Indigenous Peoples as set out in PS7 to varying degrees, particularly a collective attachment to geographically distinct habitats or ancestral territories in the project area, and the natural resources that these areas contain. In this context, CAO finds that a professional assessment of the applicability of PS7 specific to the tribal groups in the project area may have been required.

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

Lastly, a CAO compliance appraisal must consider whether “the alleged Harm is plausibly linked to the potential non-compliance.”

In this case, CAO concludes that the alleged harms to the complainants—violations of their rights and entitlements as vulnerable, project-affected Indigenous Peoples under the Performance Standards and associated economic harm—are plausibly linked to potential shortcomings in IFC’s review and supervision of the application of the Performance Standards to the project. The relevant Performance Standards are as follows:

- PS1 in relation to the social impact assessment, the identification of affected communities, consultation, and benefit sharing;

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<sup>45</sup> PS7, para. 3.

<sup>46</sup> PS7, para. 5. The characteristics to be considered in determining whether a particular group is Indigenous under PS7 are: (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 mainstream society or culture; or (d) A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

<sup>47</sup> PS7, para. 7.

<sup>48</sup> PS7, Objectives.

<sup>49</sup> PS7, paras. 11–14.

- PS5 in relation to the assessment and mitigation of impacts resulting from economic displacement; and
- PS7 in relation to the complainants' claims that they should be treated as Indigenous Peoples.

#### **e). Additional Policy Requirements for Consideration in the Appraisal**

According to the CAO Policy, a CAO compliance appraisal must take into account a series of additional considerations.<sup>50</sup> In this case, CAO finds that none of the additional Policy considerations impact the decision to investigate. For the sake of completeness, analysis of each of these considerations is presented in Appendix 3.

### **6. CAO Decision**

CAO will proceed with a compliance investigation into IFC's financing of the Baynouna solar PV plant in Jordan on the basis that the complaint meets the three appraisal criteria, as described above.

This appraisal report will be shared with the Board, the World Bank Group President, IFC management, the client, and the complainants. CAO will also publish this appraisal report and IFC's Management Response on its website.<sup>51</sup>

Terms of reference for the compliance investigation are attached in Appendix 4.

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<sup>50</sup> CAO Policy, para. 92.

<sup>51</sup> CAO Policy, para. 106.

## Appendix 1: Complaint

**From:** Farhan Dabobi <[chairman\\_farhan@easep-jo.org](mailto:chairman_farhan@easep-jo.org)>  
**Sent:** Tuesday, February 11, 2020 5:53 PM  
**To:** CAO <[cao@worldbankgroup.org](mailto:cao@worldbankgroup.org)>  
**Subject:** Re: Baynouna Solar Power Plant complaint

[External]

**Dear CAO,**

Reference is made to Masdar / Baynouna solar power plant in East Amman / Jordan.

In the last quarter of 2018, we realized that there is an activity in our land fronts in East Amman, so we went to see the project team & asked them about the type of project to be installed as we knew nothing about it & then we knew that a solar power plant was to be built at the location where the project is constructed.

We held many meetings with the project management of the said project including the main subcontractor "Environmena" & tried our best to solve the disputes & concerns in a constructive dialogue between the complainants " names are attached" & Baynouna / Masdar, but after more than five meetings & many correspondences "as attached" sent to the client, they refused any kind of discussions & completely ignored our requests & informed us that they will **only deal with "the local governor & security authorities" & warned us not to contact the company.**

According to this misconduct of the project management, we raised our concerns to the official authorities represented by the Ministry of Environment, but they too ignored our requests & didn't respond at all.

On 19/07/2019 we had no choice, but file an official PCM complaint to FMO bank signed by "36" persons affected by the said project & authorized me to raise & follow the complaint.

FMO requested us to raise our complaint directly to IFC / CAO as the complaint was not admissible under the complaints policy of FMO according to the attached notice which states that FMO does not enter into a contractual relationship with the client under a B-Loan commitment.

Early August, I was summoned by the Governor of Amman through the police authorities & he intimidated, warned & harassed me to withdraw the complaint & refrain from contacting Baynouna and/or the financing banks & accused me of obstructing the investment in Jordan through these illegal acts "PCM complaints".

The next day, Mr. [REDACTED] / FMO called me to make sure that the security authorities represented by Amman & Sahab Governors didn't detain me & I told him what happened with me.

Mr. [REDACTED] / FMO also suggested to meet me along with IFC & Baynouna staff in IFC headquarters in Amman on 23/9/2019 & thus I agreed & asked him to **freeze the complaint** until we see the results of the said meeting.

On 23/09/2019, I met with IFC/FMO/Baybouna at IFC headquarters in Amman & went through the items of the complaint & agreed to solve five urgent items of urgent concern &

need immediate solution " Employment, SEP, Grievance Mechanism & Liaison Officer, ESMMP " & Baynouna manager Mr. Al Buhaji committed to solve these issues immediately.

During the meeting, IFC & FMO told me that the claimed ESIA is published in English on IFC web site but **wasn't disclosed on the company's website or any other means & no Arabic version was made.**

Baynouna broke their promise & refused to get into a dialogue with us & on the contrary they went back to hide behind the security & governors' authorities to protect them & prevent any community complaints or even grievances & didn't even respond to any calls.

In Nov. 2019, IFC / Mr. [REDACTED] requested me to file a "Grievance Mechanism Complaint" through the project management in the site "they had no Grievance Mechanism before we met on sep/2019 & realized that they use this mechanism in order to buy more time" & I agreed **in the hope that a goodwill dialogue between us & the client will solve the disputes & establish a lasting good respectful relationship between Baynouna power plant & the local affected communities** & accordingly sent our complaint to the project site was delayed until this moment except one meeting with two junior personal of the subcontractor who have no authority nor they know an idea about the IFC performance standards or the contents & details of the complaint.

It is very obvious that the client doesn't recognize the rights & concerns of the local affected communities & stakeholders & they are hiding behind the government security authorities to prevent anyone from raising their voice & IFC have played an observatory role during this period.

I believe giving the client & the government authorities such a long time "17 months" in the hope to solve the disputes & concerns through a bilateral dialogue between the complainants & the client with the support of the government & the retaliation of the government by warning, harassing & intimidating me & the ignorance of the client & their cover up behind the local governors & security authorities, we have no choice but to file an official complaint to the office of CAO.

We the mentioned list of complainants, file a complaint against Masdar / Baynouna Solar Power Plant in East Amman after we have exhausted all possible direct positive constructive dialogue with the company & the government.

Attached with, please find, please find the following:

- Authorization letter of the complainants to Mr. Farhan Issa Ahmad Al-Daboubi.
- Complainants lists.
- The complaint Sheet.
- A table of "correspondences & meetings"
- A copy of the listed correspondences.
- A letter to Baynouna regarding requesting bilateral dialogue to solve the concerns & disputes.
- Summary of correspondences between Baynouna manager & me.
- Grievance complaint form submitted on 17/11/2019.
- A copy of the required Grievance Redress Mechanism Form with the covering letter.
- FMO Notice



Should you require any more information, feel free to contact me, I remain.

**Sincerely Yours**

Eng. Farhan I A Al-Daboubi

Chairman East Amman Society for Environmental Protection.

**Tel: +962 6 4021792**

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**Cell Phone: +962 796731284 & +962 777782236**

**P.O Box (52) Amman, (11511) Jordan**



East Amman Society For Environmental Protection

جمعية شرق عمان للحماية البيئية

East Amman Local Affected communities & Stakeholders' complaint for Baynouna Solar Power Plant in East Amman

No.	Issue	Complaint / violation / Risk / Impact	Remarks
1.	Regulatory Framework & Project Policy	<p>Companies should be mindful that agreements they negotiate with host governments, concessions, and similar entities not be drafted in a way that could interfere with the human rights of parties potentially affected by the project, and the state's bona fide efforts to meet its human rights obligations.</p> <p>When host country regulations differ from the levels and measures presented in the EHS Guidelines, clients will be required to achieve whichever is more stringent.</p> <p>Where national law establishes standards that are less stringent than those in IFC Performance Standards, or are silent, clients will meet the requirements of IFC Performance Standards.</p> <p>If less stringent levels or measures than those provided in the EHS Guidelines are appropriate in view of specific project circumstances, the client will provide full and detailed justification for any proposed alternatives through the environmental and social risks and impacts identification and assessment process. This justification must demonstrate that the choice for any alternate performance levels is consistent with the objectives of this Performance Standard.</p> <p>Contractors retained by, or acting on behalf of Baynouna, are considered to be under direct control of Baynouna and not considered third parties &amp; thus the CLO should be appointed by Baynouna &amp; must report to Baynouna.</p> <p>The project policy didn't specify that its activities shall comply with the applicable laws and regulations of the Jordanian jurisdictions implementing Jordan's obligations under international law.</p> <p>Where national law establishes standards that are less stringent than those in IFC Performance Standard 2 (Labor &amp; Working Conditions), or are silent, clients will meet the requirements of IFC Performance Standard 2.</p> <p>Evaluation of environmental impacts should be the responsibility of a neutral, accredited third party not of the M.O.E.</p> <p>The project's assessment process didn't identify the applicable environmental and social national Jordanian laws and regulatory requirements of the jurisdictions, including those laws implementing Jordan's obligations under public international law; and the applicable requirements under IFC PS.</p>	
2.	Stakeholder Engagement	Baynouna & M.O.E neglected engagement of local affected communities whose physical environment, their health & their livelihood are affected from the project.	

		<p>Baynouna didn't conduct an effective consultation with the local affected communities &amp; didn't enable meaningful participation &amp; wasn't free of external manipulation, interference, coercion, or intimidation.</p> <p>Socio-Economic Conditions: - The project site doesn't belong to Almuwaqar but the land belongs to Albalqa tribes' lands fronts that has been used for hundreds of years by these tribes (Aldabaibah, Aldaja, Alragad, almarashdah, alzfifa, alhadeed, alqatarnah, alghaiweein) residing in Madonah, Gafour, Alia, AlKhashafia, Albaida, Almanaker, Sahab, Alabdaliah &amp; East Abu Alanda &amp; the population exceeds 100,000. Therefore the stakeholders &amp; the main local affected communities were not engaged in the assessment at all.</p> <p>The Company failed to identify the real stakeholders &amp; the local affected communities from the project &amp; except two least concerned people from Almuwaqar, all stakeholders who attended the scoping session were government &amp; client representatives.</p> <p>There were no site visits &amp; no meetings with community representatives.</p> <p>East Amman Society for Environmental Protection (EASEP) wasn't engaged in the claimed ESIA deliberately &amp; ruled out by the government (MOE &amp; local governors).</p> <p>M.O.E didn't send any invitations to the real stakeholders &amp; local affected communities' representative despite knowing EASEP in East Amman.</p> <p>EASEP was intentionally ruled out from being engaged in the ESIA, SEP &amp; Grievance Mechanism.</p> <p>Consultation with local affected communities &amp; stakeholders wasn't free of external manipulation, interference, coercion, or intimidation, threatening &amp; didn't enable meaningful participation.</p> <p>M.O.E <u>intentionally ignored to identify the real stakeholders</u> potentially affected by and/ or have an interest in the project &amp; Baynouna didn't make sure that the participants in the scoping session do represent the real stakeholders &amp; local affected communities.</p> <p>The project management refused an effective engagement process that allows the views, interests and concerns of the local communities to be heard, understood, and taken into account in project decisions and creation of development benefits.</p> <p>We informed the project management that the real representatives of the local affected communities &amp; stakeholders should be engaged in the claimed assessment &amp; play a major role in collecting the social, environmental &amp; health base data as they will be vulnerable &amp; the assessment should be disseminated so we can see the various contents of it &amp; accordingly raise our concerns &amp; be heard, understood, and taken into account in project decisions and creation of development benefits, but they after making some fake</p>	
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		<p>promises refused to cooperate, ignored our concerns &amp; intimidated us that we should deal with them through local Governors &amp; security authorities.</p> <p>The project management externally manipulated the engagement &amp; made the local governors interfere in it &amp; it was biased &amp; didn't enable meaningful participation.</p> <p>Baynouna <u>project manager refused to identify</u> the real affected vulnerable communities &amp; stakeholders potentially affected by and/or have interest in the project, and he refused to <u>develop nor implement a real grievance mechanism despite sending a suggested Grievance Redress Form to the project manager upon his request.</u></p> <p>Biased selection of certain area inhabitants to suit the client's interests &amp; conceal the violations (a team of local governors, PM &amp; appointed locals).</p> <p>Baynouna didn't build or maintain any constructive relationship with the local affected vulnerable communities &amp; stakeholders.</p> <p>Baynouna didn't organize any meaningful consultation of affected persons with East Amman communities &amp; the project management refused to even recognize them or even pass their requests to the Company's headquarters.</p> <p><u>Baynouna didn't build the required channels of communication and engagement with affected communities &amp; real stakeholders</u> that should have been established during the risks and impacts identification process . (<u>Baynouna management ignored the local communities completely &amp; only satisfies government authorities &amp; certain people who really support Baynouna &amp; Baynouna didn't employ the local communities in the core work force</u>).</p>	
3.	ESIA	<p>Baynouna &amp; MOE failed to identify local affected people that are directly and disproportionately affected by the project as they are identified as disadvantaged or vulnerable &amp; didn't propose nor implement differentiated measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in sharing development benefits and opportunities.</p> <p>The claimed ESIA didn't mention the assessment tools used for identification, measurement, screening &amp; analyzing the potential environmental, social, health, safety, labor and security risks and adverse impacts associated with the project.</p> <p>Initial screening of the project and scoping of the assessment process weren't conducted properly as the real directly affected local communities &amp; stakeholders weren't identified &amp; intentionally ignored by M.O.E &amp; lack of gathering of environmental and social baseline data.</p> <p>No mitigation or adaptation measures or actions were taken to avoid, minimize, or compensate/offset for risks and adverse environmental and social impacts of the project.</p>	

		<p>The client should have accomplished SEA "Strategic Environmental &amp; Social Assessment" to discover that the area is a degraded area as huge number of non-compliant class "A" &amp; "B" projects were constructed &amp; thus a "No Project" alternative is a definite result as the area is a degraded one.</p> <p>The Grid Connection Location was installed in Almanaker village ten years ago &amp; the decision of installing all power plants in East Amman (IPP1, IPP3, IPP4, AES Solar PP, Baynouna Solar PP, Landfill Gas PP, Power Plant from waste incineration, Royal Court Solar PP &amp; much more in the future) was taken already &amp; these assessments are fake &amp; done just to get the required "MOE permits &amp; license" to get the required finance from IFIs.</p> <p>Cumulative Impact Assessment: The client claimed that there was no need to do it because no solar or wind power plants projects in close proximity to the project's site...Cumulative Impact Assessment should be conducted if the region where the proposed project's site reside has hundreds of non-compliant "A" &amp; "B" projects &amp; these projects don't have to be identical function "renewable energy plants".</p> <p>Neither the government nor the financing bank did conduct a <u>public consultation activities to gauge stakeholder views of the ESIA/SESA</u>.</p> <p>Baynouna didn't conduct a Strategic Environmental &amp; Social Assessment "<u>SESA</u>" as the area where the project reside contains a lot of non-compliant class "A" &amp; "B" &amp; thus the impacts &amp; risks are cumulative &amp; require Baynouna to implement "SEA".</p>	
4.	SEP, Grievance Mechanism & Liaison Officer "CLO"	<p>Baynouna didn't make any reasonable effort to verify that the community representatives do in fact represent the views of Affected Communities and that they can be relied upon to faithfully communicate the results of consultations to their constituents.</p> <p>Baynouna didn't employ qualified &amp; experienced personnel responsible for receiving and responding to grievances within Baynouna organization, separate from the personnel in charge of management of the business activities.</p> <p>No Grievance Mechanism was prepared prior to construction phase in compliance with IFC performance standards.</p> <p>No SEP was prepared prior to construction phase in compliance with IFC performance standards &amp; local affected communities &amp; stakeholders' representatives weren't engaged in the preparation of the SEP with the client.</p> <p>No CLO was appointed by Baynouna to report to Baynouna management.</p> <p>Baynouna didn't have SEP that should have been prepared mutually between the local affected communities' representatives &amp; Baynouna during the assessment phase.</p>	

Baynouna project management appointing & holding meetings with certain people selected by the government authorities "local governors" doesn't represent the type of SEP stated in IFC / PS.

Stakeholder engagement program "SEP" is an ongoing process that may involve, in varying degrees, the following elements: stakeholder analysis and planning, disclosure and dissemination of information, consultation and participation, grievance mechanism & ongoing reporting to affected communities. Baynouna should have identified the range of stakeholders that may be interested in their actions (not selected by local governors to meet client's interests).

Baynouna didn't provide an effective grievance mechanism for local affected communities & workers to raise their concerns & to be responded to and managed appropriately through a selected knowledgeable qualified credible "Liaison Officer".

We provided the project manager with a proposed "grievance form" upon his request, but he ignored it as with all other aspects & concerns.

Baynouna didn't appoint a Community Liaison Officer (qualified, knowledgeable, credible selected by the local affected communities & stakeholders not appointed by local governor or government) to communicate local concerns & complaints with the owner of the project "Baynouna" & address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned, without any retribution.

The contractors' project management appointed many liaison officers reporting to contractors who were unqualified, not knowledgeable & based on personal relationship or governors' recommendations).

Baynouna project manager promised to appoint a qualified, transparent, credible & selected person from the local affected communities as CLO, but as usual he broke his promise & claimed that "The Royal Court has appointed the local governor as a liaison officer for the project" & when we asked him for the proof of this, he refused to provide it & considered that we intervene in Baynouna's business & he denied that he said that & said that Baynouna knows their business & we don't have any right to ask for such things.

Baynouna didn't inform the workers of the grievance mechanism at the time of hiring, and make it easily accessible to them (simply because no grievance mechanism exists).

Baynouna didn't establish in conjunction with local communities representative a grievance mechanism to receive and facilitate resolution of affected communities' concerns and grievances about Baynouna's environmental and social performance. It should seek to resolve concerns promptly (The project management refers all complaints to the local

		<p><u>governors &amp; security authorities &amp; threatens us with the security authorities).</u></p> <p>Baynouna didn't establish any grievance mechanism that address human rights issues &amp; the project manager ignored the local communities' concerns.</p>	
5.	CSR & Livelihood Restoration.	<p>Baynouna didn't avoid or minimize the risks of impoverishment for the Affected Communities and persons and adverse socio-economic impacts in the project site to which the local affected communities have been economically displaced. &amp; didn't enhance the development impact of a project by enabling affected communities to share in various project benefits and improve their living standards.</p> <p>Baynouna didn't improve, or restore, the livelihoods and standards of living of displaced persons (compensation &amp; improvement of livelihood).</p> <p>Livestock breeders used to plant the land on which the project reside &amp; used to use this land for raising sheep. East Amman local affected communities used the land on which the project reside for fodder cultivation for their livestock.</p> <p>The land on which the project reside has been used by the local affected communities (Aldabaibah, Aldaja, Alragad, almarashdah, alzfifa, alhadeed, alqatarnah, alghaiweein) &amp; it is their land front.</p> <p>Baynouna didn't develop a Corporate Social Responsibility "CSR" in partnership with real stakeholders representatives &amp; didn't implement such system in order to manage our development expectations &amp; to maximize the employment opportunities expected in the maintenance &amp; operation phase of the project.</p> <p>The project didn't upgrade the local communities' economic status as claimed, in the contrary the land prices went down &amp; our welfare conditions were deteriorated.</p> <p>Payment of electric utility bill for AlMuaqar Municipality is an act of bribery.</p> <p>Robou Al-Ordon Workshop owner / Mr. Marwan Sandouga isn't considered as a local affected community party as it is a source of pollution &amp; shouldn't be considered as a credible source of information about the local affected communities &amp; the lands they have been using for hundreds of years on which partially the project is constructed on.</p> <p>Baynouna didn't carry out socio-economic surveys to describe the baseline circumstances of the affected people where the project may entail physical displacement and / or economic displacement to establish a social and economic profile of the affected communities, identify sources of livelihoods that have been affected and their significance to the overall livelihoods of affected people and identify relevant factors of vulnerability and establish a list of vulnerable groups.</p>	

Baynouna didn't provide any "Livelihood Restoration Plan" to compensate the local affected communities & stakeholders for the loss of their livelihood sources of the local affected communities that was vulnerable to the loss of, alienation from or exploitation of their land and access to natural and cultural resources & Baynouna didn't obtain the required FPIC of the affected communities.

The project management refused to determine on mutually agreed terms the benefits of the project. No development benefits in the form of compensation, employment, vocational training, and benefits pursuant to community development and mitigation & adaptation projects.

Baynouna didn't provide any involuntary resettlement to the people who suffered an economic displacement due to the project-related land acquisition and restrictions on land use which caused adverse impacts on the complainants & affected communities that use this land such as loss of raising livestock, cultivation of land, livestock grazing & loss of pastures.

Baynouna didn't provide their portion of CSR towards the Complainants (core employment of complainants &/or dependants, training, education, support of poor, LRP, health aid, zoning, compensation, development initiatives, fund of pollution prevention & climate change combat mitigation & adaptation initiatives to be implemented by East Amman Society for Environmental Protection "EASEP", selected community liaison officer "CLO", environmental representative to be engaged in the ESMS).

The economical displacement the project has caused & the livelihood restoration plan that should have been prepared by Baynouna, identification and evaluation of environmental and social risks and impacts of the project.

Baynouna didn't take any mitigation measures for the economic displacement as no audit was conducted to assure the affected persons or communities have received all of the assistance for which they are eligible, and have been provided with adequate opportunity to restore their livelihoods & the Company opened a road in the complainants agricultural lands without taking the land owners consent & the project manger claimed that he got the Royal Court order.

Baynouna & government didn't consider any feasible alternative project designs and sites to avoid or at least minimize physical and/or economic displacement as this is essential of East Amman socially or economically vulnerable affected communities & no improvements were taken to local living standards.

Baynouna didn't carry out any socioeconomic survey in order to determine pertinent vulnerability factors in the context of the project area, in cooperation with relevant stakeholders including East Amman affected communities & didn't identify the vulnerable groups.

Baynouna didn't conduct any consultations with vulnerable groups & didn't plan any assistance measures tailored to the different needs of vulnerable



		groups in order to improve, or restore, the livelihoods and standards of living of displaced persons (Land-based livelihoods, Wage-based livelihoods).	
6.	Disclosure & Dissemination of project environmental & social information.	<p>Baynouna didn't disclose or disseminate the project information &amp; didn't ensure access to such information in Arabic language &amp; to be available in known local media means (public libraries, public media, city hall, Company web site).</p> <p>Baynouna didn't disclose information to the affected communities about the project's potential benefits and developmental impacts.</p> <p>Baynouna <u>failed to disclose sufficient information about the risks and impacts arising from project</u> and <u>failed to engage with stakeholders in a meaningful and culturally appropriate manner.</u></p> <p>Access to Information &amp; Public Participation in Decision-Making were ignored by Baynouna &amp; the government.</p> <p>Baynouna project management didn't ensure that relevant project environmental and social information is disclosed and disseminated.</p> <p>Baynouna <u>project management didn't disclose any information about the environmental, social, health &amp; development risks and impacts arising from project &amp; didn't engage with stakeholders</u> in a meaningful, effective, inclusive and culturally appropriate manner.</p> <p>Baynouna didn't ensure that any <u>environmental and social information was disclosed</u>, and meaningful consultation was held with the project's stakeholders and feedback provided through the consultation which wasn't conducted.</p> <p>The project manager refused to provide me with a copy of the claimed ESIA or disseminate it on the Company web site &amp; considered it a Company protected document.</p>	
7.	Environmental & Social Management System "ESMS"	<p>Baynouna didn't conduct a sufficient &amp; appropriate environmental and social audits nor risk/hazard assessments to identify all risks and impacts of the project as no real base line data were measured, collected or surveyed by a neutral accredited third party with engagement of real stakeholders' representatives.</p> <p>The risks &amp; impacts of associated facilities "NEPCO Power Transmission from the project site to its final destination wasn't identified by Baynouna"</p> <p>The potential impacts and risks of the project were not properly determined due to the lack of real accurate baseline data &amp; lack of data of vulnerable &amp; disadvantaged local affected communities.</p> <p>The financier didn't conduct an independent due diligence (Audits) for the project with engagement of local affected communities representatives (EASEP).</p>	

		<p>Air quality/dust generation in construction phase: No mitigation measures were taken at all (speed control, water application, cover trucks, training, ....).</p> <p>Health &amp; Safety Risks: No training provided to workers on EHS policies &amp; procedures.</p> <p>No Emergency Preparedness Response.</p> <p>No Health care was provided for workers &amp; affected communities.</p> <p>The site contained remnants of non exploded bombs &amp; shells from military exercises.</p> <p>ESIA claims that Air quality monitoring was conducted by "Hima Laboratory for Environmental Testing" an accredited lab by Jordanian Accreditation system "JAS"...There is no air monitoring accredited laboratory in Jordan as Jordan has no accreditation signatory body "JAS" that have the ILAC or equivalent accreditation signatories to labs " ISO/IEC 17025". Ambient Air Monitoring isn't limited to PM only.</p> <p>Monitoring &amp; Reporting should be conducted by a neutral accredited third party with engagement of EASEP.</p> <p>Auditing should be conducted by a neutral accredited third party with engagement of EASEP (ESMS, HR &amp; Employment/non-discrimination &amp; equal opportunity, community &amp; occupational health &amp; safety, pollution prevention measures, supply chain, SEP, Grievance Mechanism).</p> <p>Baynouna <u>didn't adopt an environmental &amp; social action plan "ESAP" for the project which should include a series of technically and financially feasible and cost effective measures to achieve compliance of the project with IFC PS within a time frame acceptable set in the ESAP.</u></p> <p>Baynouna didn't establish nor maintain an Environmental &amp; Social Management System "ESMS" appropriate to the nature and scale of the project and commensurate with the level of its environmental and social risks and impacts which should include the policy.</p> <p>Baynouna <u>didn't adopt any mitigation hierarchy approach to address environmental or social risks and impacts from project activities on the local affected communities and the surrounding environment.</u></p> <p>Absence of implementation of the "Environmental &amp; Social Mitigation &amp; Monitoring Program""<u>ESMMP</u>" &amp; Baynouna project management didn't consider involving representatives from Affected Communities to participate in monitoring activities as they don't exist.</p> <p>Baynouna didn't monitor the environmental and social performance of the project.</p>	
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8.	Terms Of Reference.	<p>The scoping session didn't include the real stakeholders &amp; local affected communities &amp; the engagement isn't limited in attending a scoping session, but real engagement should include real involvement throughout the complete phases of the assessment, operation &amp; decommissioning &amp; thus the project scoping session couldn't be considered as T.O.R.</p> <p>Participating in the scoping session isn't the engagement that is needed as per IFC performance standards.</p>	
9.	Environmental, social & health base data.	<p>Air Quality:</p> <ul style="list-style-type: none"> <li>- Ambient Air Monitoring was used &amp; not CEMS.</li> <li>- Many pollutants are not included in the Ambient Air Monitoring like Methane, Dioxine, Furans, ...etc.</li> <li>- The Jordanian Standards don't comply with IFC &amp; WHO Ambient Air Quality standards. (Please refer to the table at the bottom of this table).</li> <li>- Air Quality Monitoring should have been conducted by an accredited neutral third party with engagement of local affected communities' representatives (EASEP).</li> <li>- Not all pollutants were monitored.</li> <li>- Ambient Air Monitoring depends on Different volatilization rates, Temperature, Wind speed, Humidity, duration of sampling period, equipment sensitivity &amp; need for calibration affect the accuracy of the results. It isn't sensitive, not accurate &amp; only give an idea of the air quality in a geographical area.</li> </ul> <p>The credibility of the data &amp; information sources &amp; the claimed field survey of the project area &amp; the surrounding area. No social or health base data were collected &amp; environmental base data isn't accurate at all.</p> <p>Baynouna didn't ensure that an adequate <u>true environmental, social, health &amp; development base data</u> &amp; information were really collected in order to undertake the required environmental and social impact assessment in accordance with IFC PS.</p>	

		<p>Neither M.O.E nor the financing bank reviewed Baynouna’s claimed base data &amp; information &amp; they didn't provide guidance to Baynouna to develop the appropriate measures consistent with the mitigation hierarchy to address environmental and social impacts to meet the relevant IFC PS.</p> <p>Absence of gathering of environmental and social baseline data, absence of impact identification, prediction, and analysis.</p> <p>The environmental &amp; social information &amp; baseline data isn't true at all as the M.O.E lacks the technical capability, the accreditation &amp; the credibility to monitor &amp; measure this data transparently.</p>	
10.	Project's risks & Impacts process	<p>Baynouna project management didn't adopt the 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, and the environment.</p> <p>Baynouna project management didn't identify the risks and impacts, management programs, emergency preparedness and response, stakeholder engagement and monitoring and review.</p> <p>We asked about the risks and impacts identification process used by Baynouna should use accepted sociological and health methods to identify and locate vulnerable individuals or groups within the Affected Community population.</p> <p>We asked about Baynouna assessment of potential impacts and their proposed specific measures in consultation with us to ensure that potential impacts and risks are appropriately avoided, minimized, mitigated or compensated.</p> <p>Baynouna didn't identify nor assess the project related risks and adverse impacts to the health and safety of the potentially project-affected communities and didn't develop protection, prevention and mitigation measures proportionate to the impacts and risks of the project.</p> <p>Baynouna didn't communicate with the project-affected communities and other relevant stakeholders, as appropriate, on mitigation measures and plans.</p>	
11.	Implementation of mitigation & adaptation measures & development initiatives.	<p>Baynouna didn't engage the main local affected communities &amp; stakeholders in the environmental, social, health &amp; safety assessments.</p> <p>Baynouna didn't take or accept proposals for any mitigation or adaptation measures to reduce the social, health &amp; safety impacts.</p> <p>Absence of generation of mitigation measures and actions.</p> <p>We enquired about how Vulnerable disadvantaged local affected communities be able to benefit from the project opportunities (differentiated benefit-sharing process).</p>	

		<p>Baynouna project management don't have the intention to develop nor implement any mitigation &amp;/or adaptation measures towards the affected vulnerable people of East Amman who are disproportionately impacted by the project.</p> <p>Baynouna didn't adopt any mitigation hierarchy approach to address adverse impacts on human health &amp; life arising from the project.</p>	
12.	Training & Employment	<p>About (30) people will be needed for operation &amp; maintenance of the power plant for the life-cycle (20) years : how many of these will be from the local communities &amp; will they need specialized training in early stage of the project!</p> <p>Baynouna didn't ensure that hiring, recruitment &amp; training meets IFC Performance Standards.</p> <p><u>Baynouna didn't train and/or recruit employees from the local affected communities for the purpose of operation &amp; maintenance purposes of the operation phase (operators, electrical technicians, mechanical technicians, maintenance, electronic technicians, module cleaners) in this stage.</u></p> <p>Baynouna should train candidates from the local affected communities in the vocational training centers &amp; OJT training during the construction phase to be employed for the operation &amp; maintenance of the power plant.</p> <p>Baynouna didn't train two candidates from the local affected communities in order to employ them for the purpose of monitoring the environmental measures throughout the construction &amp; operation phases of the project.</p> <p>The limited engagement of the employment part wasn't free of external manipulation &amp; interference &amp; didn't enable meaningful participation.</p> <p>Baynouna project management didn't provide any <u>vocational training</u> for individuals or groups who might lack the necessary skills to find a job with the project &amp; didn't identify the environmental and social training needs.</p> <p>The project management were very keen to fulfill &amp; employ the people who have been recommended by the Governor or through the people who were appointed by the governor as "<u>contracted workers</u>" for contracting duration mainly ad hock (workers, security) with low wages &amp; benefits &amp; not as "<u>direct workers</u>" with Baynouna and/or Enviromena for construction &amp; operation duration.</p> <p>Baynouna project management made their employment decisions on the basis of personal characteristics unrelated to inherent job requirements. Baynouna didn't base the employment relationship on the principle of <u>equal opportunity</u> and <u>fair treatment</u>, and discriminated with respect to recruitment and hiring, compensation (including wages and benefits), access to training &amp; job assignment.</p> <p><u>Main Contractors didn't apply the "equal opportunity" &amp; "fair treatment" principle in the employment actions of the project &amp; discriminated between</u></p>	

		<p><u>local affected communities &amp; others including recruitment and hiring, job assignment, compensation (including wages and benefits), working conditions and terms of employment, access to training &amp; promotion.</u></p> <p><u>Baynouna &amp; main contractors didn't offer core positions, equal wages, benefits &amp; conditions for local employed people to the rest of the workforce.</u></p> <p><u>The project management refused to employ local affected people on based on open fair announced opportunity &amp; they used the "local governor" &amp; security authorities to recruit the people in non-core positions &amp; with subcontractors &amp; ignored the role of the civil societies representatives through a selected liaison officer appointed in a mutually prepared "Grievance Mechanism" in the "SEP" which should have been mutually prepared in the ESIA/SEA phase.</u></p> <p><u>Baynouna &amp; Environmena project managers deliberately refused to hire or employ people from the local affected communities in the core workforce of the main contractors.</u></p> <p><u>Baynouna failed to identify individuals and groups that are directly and differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status &amp; thus recruited from non-vulnerable groups on personal basis.</u></p> <p><u>Project management intentionally discriminated in employment as they preferred people from non-affected communities in the core workforce &amp; excluded people of local communities from these core positions unrelated to inherent job requirements that nullifies or impairs equality of opportunity or treatment in employment or occupation.</u></p> <p>Baynouna project management didn't take any measures to prevent and address harassment and/or intimidation. On-the-contrary, they incited the local governors, the local appointed persons, Amman governor &amp; security authorities to indirectly intimidate, threaten, harass &amp; warn Mr. Farhan Al-Daboubi &amp; filed a baseless complaint against Farhan to harass &amp; intimidate him &amp; oblige him to stop complaining or even talking to the project management.</p>	
13.	<p>Preferential treatment of local suppliers &amp; service providers.</p>	<p>Project Management didn't consider adopting a preferential treatment to local contractors and/or suppliers to take part in the project phases based on compliance with the specs, standards &amp; competence prices.</p> <p>The project management deliberately deals with certain contractors for all procurement &amp;/or services needed for the plant &amp; they ruled out any local affected communities' contractors &amp; they don't even announce these tenders on public in transparent way.</p> <p>Project management refused to provide benefit sharing to be determined on mutually agreed terms as part of the process of securing FPIC.</p> <p>The project management denied the identified opportunities that should aim to address the <u>goals and preferences of the local affected people including</u></p>	

		<p><u>improving their standard of living and livelihoods</u> in a culturally appropriate manner, and to foster the long-term sustainability of the natural resources on which they depend.</p> <p>The project management didn't give priority for the local contractors / suppliers/service providers to provide their services to the project on a competitive rates basis, but ignored them completely considering us as illiterate people.</p>	
14.	Public Awareness, Capacity Building & Climate Change Combat .	<p>Baynouna didn't seek any opportunities to build capacity to consider and manage environmental and social risks, impacts and opportunities the area of project's operation &amp; didn't facilitate development of an enabling environment to achieve environmentally and socially sustainable outcomes in the project.</p> <p>Baynouna <u>ignored our proposal for funding a capacity building &amp; public awareness in combating climate change, mitigating pollution &amp; enhancing sustainable development goals in East Amman. (Project manager went around EASEP to one school to implement our proposal)</u></p>	
14.	Human Rights	<p>Companies should also be mindful that agreements they negotiate with host governments, concessions, and similar entities not be drafted in a way that could interfere with the human rights of parties potentially affected by the project, and the state's bona fide efforts to meet its human rights obligations.</p> <p>Baynouna impeded judicial and administrative mechanisms available in Jordan for resolution of disputes with Mr. Farhan Al-Daboubi &amp; (65) complainants as they refused to seek solutions to complaints in a collaborative manner with the involvement of the Affected Communities &amp; filed a fake baseless complaint against Farhan through Amman Governor where the latter intimidated, harassed &amp; threatened him not to send any complaints to the lenders or any other party.</p> <p>As the national environmental legislations falls short of the international performance standards in the treaties &amp; protocols, the national environmental law suffers from absence of a preventive nature deterrent and corrective policy &amp; doesn't force clients to implement the environmental &amp; social mitigation &amp; monitoring program, doesn't allow the private sector &amp; NGOs to accomplish the CEMS monitoring tasks, lacks the technical tools, equipment, specialized manpower &amp; accreditation, situated all non-compliant class "A" &amp; "B" in East Amman, marginalized the role of environmental societies (EASEP), excluded the real stakeholders &amp; local affected communities real representatives in the projects situated in East Amman, inciting the clients not to implement the CSR, violating the basic human rights of East Amman communities, intimidating &amp; threatening the environmental Human rights defenders as happened with Mr. Farhan Al-Daboubi twice in 2016 &amp; 2019 related to project complaints AES &amp; Baynouna respectively &amp; much more can't be considered neutral, credible, accredited party, but part of the problem.</p>	

		<p><u>Business should respect human rights, which means to avoid infringing on the human rights of others and address adverse human rights impacts business may cause or contribute to.</u></p> <p>Baynouna didn't provide a framework for the environmental and social assessment and management process, and specifies that the project will comply with the applicable laws and regulations of the jurisdictions in which it is being undertaken, including those <u>laws implementing host country obligations under international law</u>. The policy should be consistent with the principles of IFC Performance Standards.</p> <p>Baynouna should be mindful that the agreement they signed with the government, not be drafted in a way that could interfere with the human rights of parties potentially affected by the project.</p> <p>Baynouna Company didn't make any effort to respond to East Amman concerns &amp; didn't even agree to meet with us &amp; filed a fake baseless complaint against Farhan Al-Daboubi because "66" affected people filed a legitimate complaint to the financing bank FMO (intimidation, harassment, warning, violations of human rights).</p> <p>Baynouna project management ignores the local communities completely &amp; only satisfies government authorities &amp; certain people who really support them &amp; doesn't even permit local communities to be employed in the core work force.</p>	
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**Appendix 2: IFC Management Response**

**INTERNATIONAL FINANCE CORPORATION**

**MANAGEMENT RESPONSE  
TO THE CAO COMPLAINT**

**ON**

**MASDAR BAYNOUNA, JORDAN  
(PROJECT #39339)**

**February 23, 2022**

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## ABBREVIATIONS AND ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
CLO	Community Liaison Officer
CSR	Corporate Social Responsibility
EASEP	East Amman Society for Environmental Protection
EIA	Environmental Impact Assessment
E&S	Environmental and Social
ESAP	Environmental and Social Action Plan
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
ESMS	Environmental and Social Management System
GM	Grievance Mechanism
IFC	International Finance Corporation
LRP	Livelihood Restoration Plan
MoEnv	Ministry of Environment
MW	Megawatt
P-ESIA	Preliminary ESIA
PSs	IFC's Performance Standards (2012)
SEP	Stakeholder Engagement Plan
SSV	Supervision Site Visit

## EXECUTIVE SUMMARY

- i. In February 2020, CAO received a complaint from the chair of the East Amman Society for Environmental Protection (“EASEP”) on behalf of himself and 66 other community members (the “Complainants”). The complaint involved IFC’s investment in the Masdar Baynouna Solar Energy Company (“Baynouna” or the “Company”), the largest independent solar power plant in Jordan, under Project #39339 (the “Project”).
- ii. The Complainants allege: (i) a lack of compliance with environmental and social regulatory requirements; (ii) threats and reprisals; and (iii) a lack of economic opportunities for the local communities. CAO considered the complaint as eligible for further assessment in March 2020. CAO then released an Assessment Report in August 2020. The parties embarked on a CAO-facilitated mediation that ended in September 2021, when the Complainants expressed a request to terminate the mediation, as noted in a Dispute Resolution Conclusion Report shared by CAO. The case was then transferred to CAO’s compliance function.
- iii. It is notable that prior to filing the CAO complaint, the lead Complainant established contact with the Company, the Ministry of Environment (“MoEnv”) of Jordan, and one of the Project’s B-lenders related to his concerns, during July-August 2019. IFC was informed by the B-lender in July 2019, and subsequently contacted the Company and the lead Complainant. IFC organized, facilitated, and attended a multi-party meeting in its Amman office in September 2019. The lead Complainant and the Company subsequently agreed to participate in a constructive dialogue on a bilateral basis during September-November 2019. In response to concerns of threats and reprisals raised by the lead Complainant (who also filed a complaint through the Company’s Grievance Mechanism (“GM”) in November 2019), IFC began working through the Company’s GM, which CAO recognized as a positive contribution (*see vi*).
- iv. For this investment, based on IFC’s review of the environmental & social risks and impacts, the Project was categorized as a Category B project. IFC’s pre-investment appraisal, conducted in January 2017, noted that there had been a robust stakeholder engagement process which distinguished between communities and governmental representatives, including a Scoping Session with the MoEnv, which was aligned with IFC’s Performance Standard 1 (“PS1”) on early engagement. The Environmental and Social Impact Assessment (“ESIA”) approved by the MoEnv in February 2017,<sup>1</sup> was reviewed by IFC and found to be consistent with PS1 requirements. As part of its review, IFC verified evidence of the accreditation of the Jordanian laboratory that conducted the air quality baseline monitoring studies for the ESIA. IFC verified land ownership of the Project site by the Government of the Hashemite Kingdom of Jordan (“GoJ”) based on the receipt and review of the Land Lease Agreement,<sup>2</sup> and the consulting firm who conducted the ESIA verified during several occasions with the local stakeholders that the plant would

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<sup>1</sup> <https://disclosures.ifc.org/project-detail/ESRS/39339/masdar-jordan> (*see* ESIA Client Documentation).

<sup>2</sup> The Ministry of Finance and Department of Lands and Survey, acting on behalf of the GoJ, signed a Land Lease Agreement with the Company for the plant as part of the Project in October 2016.

not interfere with the informal (seasonal) agricultural land use (principally plowing and grazing). Based on the observations during a pre-appraisal visit (January 2017) and documentation in the ESIA, IFC concluded that there were no affected communities.<sup>3</sup>

- v. Findings from IFC’s appraisal visit in March 2017 informed the Environmental and Social (“E&S”) Review Summary (“ESRS”) and the E&S Action Plan (“ESAP”), which were disclosed in May 2017.<sup>4</sup> In accordance with IFC’s Access to Information Policy, both the above-referenced ESIA, including an Executive Summary, and Scoping Session Report were publicly disclosed, including on the Company’s website, which also published the Executive Summary in Arabic.
- vi. The Project’s GM was designed in accordance with PS1 requirements and outlined procedures for stakeholders to express concern free from retribution, and effectively managed cases that were presented. IFC recognizes the lead Complainant’s allegations of reprisal. IFC also noted that the GM provides for confidentiality, and IFC has sought to protect potential (and actual) complainants from threats or retaliation. Both before and after the lead Complainant filed the grievances through the Project’s GM (before the CAO complaint), the Project Manager engaged with him through (documented) calls, visits, and e-mails, displaying an open and constructive posture towards concerns. As confirmed in the CAO Conclusion Report, “[t]he concern over the risk of reprisals was resolved early in the process which indicated good-faith negotiation and the Parties’ commitment to the safety of everyone involved in the complaint”.<sup>5</sup>
- vii. With regard to the issue of alleged impacts on local livelihoods, IFC’s due diligence (January-May 2017) did not identify economic/physical displacement, resettlement or deprivation to communities as a result of not being able to access their natural and cultural resources, in this case grazing areas. Further, records of stakeholder consultations reviewed by IFC during due diligence confirmed that the Project site did not support the livelihoods of the surrounding communities, and that nomadic herders could continue accessing areas of undeveloped land, during and after construction. Consequently, IFC concluded that a Livelihood Restoration Plan (“LRP”) was not warranted.
- viii. Related to concerns regarding a lack of economic opportunities, IFC confirmed that the Company and its Engineering, Procurement and Construction (“EPC”) Contractor follow commercial procedures for the procurement of goods and services which were accessible to local contractors. Local companies were included in the Project’s commercial processes, resulting in most sub-contractors and service providers assigned on the Project being from the local area. For example, the Company developed a local recruitment procedure compliant with the *Jordanian Regulation for Obligatory Employment of Jordanian Workforce from Surrounding Communities in Development Projects 131/2016* and kept a workforce distribution list to assist in recruiting and hiring equitably in the surrounding local communities. This includes training for local engineers in preparation of their

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<sup>3</sup> <https://disclosures.ifc.org/project-detail/ESRS/39339/masdar-jordan> (see ESIA under Client Documentation).

<sup>4</sup> <https://disclosures.ifc.org/project-detail/ESRS/39339/masdar-jordan>

<sup>5</sup> CAO Dispute Resolution Conclusion Report Regarding IFC's Investment in Masdar/Baynouna Solar Energy Company in Jordan (IFC #39339), pg. 6, February 2022.

employment in the Project and hiring of local security guards.

- ix. IFC has applied its Sustainability Policy through its supervision of the Project, which has confirmed the Project's closure of ESAP action items and as such, that the Project's E&S performance is compliant with the PSs.

## I. INTRODUCTION

1. In February 2020, CAO received a complaint from an individual (on behalf of himself and 66 other community members (the “Complainants”)) who chaired the East Amman Society for Environmental Protection (“EASEP”). The complaint involved IFC’s investment in the Masdar Baynouna Solar Energy Company (“Baynouna” or the “Company”) under Project #39339 (the “Project”) and includes issues such as: (i) stakeholder engagement; (ii) environmental and social impact assessment; (iii) Grievance Mechanism (“GM”); (iv) lack of economic opportunities; and (v) threats and reprisals.

2. CAO considered the complaint eligible for further assessment in March 2020. CAO released an Assessment Report in August 2020,<sup>6</sup> after which the parties began a CAO-facilitated mediation. In February 2022, CAO shared a Dispute Resolution Conclusion Report (“CAO Conclusion Report”), noting that the Complainants had decided to terminate the mediation. The case was then transferred to CAO Compliance.<sup>7</sup>

## II. PROJECT BACKGROUND

### A. IFC Investment with Baynouna

3. Baynouna is currently the largest independent solar power plant in Jordan. The US\$235 million Project consists of the development, financing, construction, and operation and maintenance of a 200-megawatt (“MW”) greenfield solar photovoltaic plant located at *Tilal Al Rukban*, in the *Al-Muwaqar* district of the Amman Governorate. The plant occupies a 600-hectare plot 30 kilometers north of Amman and 8.5 kilometers from the nearest village. The Project supplies electricity to the Jordanian National Electric Power Company grid under a 20-year Power Purchase Agreement with Masdar.

4. Total Project costs were financed with US\$188 million in long-term debt (18.5 years) and US\$47 million in equity. The US\$188 million long-term debt component is broken down as follows: (i) US\$53.75 million in an IFC A loan; (ii) US\$43.50 million in IFC B loans, and (iii) US\$90.75 million in Parallel loans. Two B-Lenders participated in the B-Loans. In addition to IFC, the parallel lenders (“Parallel Lenders”) consisted of the Japan International Cooperation Agency (“JICA”), the OPEC Fund for International Development (“OFID”) and *Deutsche Investitions- Und Entwicklungsgesellschaft MbH* (“DEG”), a development finance institution. IFC, the Parallel Lenders together with the B-Lenders are referred to as the “Lenders”.

5. The Project was committed in December 2017, adding a ninth mandate to the existing “Seven Sisters” financing program<sup>8</sup> for the development of renewable energy in Jordan, and was

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<sup>6</sup> CAO Assessment Report Regarding Concerns in Relation to IFC’s Investment in Masdar Baynouna (#39339) in Jordan, August 2020.

<sup>7</sup> CAO Dispute Resolution Conclusion Report Regarding IFC's Investment in Masdar/Baynouna Solar Energy Company in Jordan (IFC #39339), February 2022.

<sup>8</sup> The “Seven Sisters” involved the development, construction, operation, and maintenance of seven relatively small solar photovoltaic plants (ranging from 10 to 50MW) in Jordan.

fully disbursed in September 2021. Construction of the plant is completed and the plant is generating electricity.

## **B. Environmental and Social Assessments and Activities**

6. The Project was implemented in accordance with IFC's Environmental and Social Performance Standards ("PSs").<sup>9</sup> An independent, third-party consulting firm accredited by the Ministry of Environment ("MoEnv") of Jordan conducted the Environmental and Social Impact Assessment ("ESIA") in February 2017 for the Company, applying the PSs and the Jordanian Environmental Impact Assessment ("EIA") Regulation 37/2005.<sup>10</sup>

7. IFC conducted a pre-appraisal site visit in January 2017 to determine the Project's environmental and social ("E&S") risk categorization. IFC participated as an observer in the ESIA Scoping Session organized by the MoEnv in Amman per Jordanian EIA Regulations (Article 9(c)). IFC found this session aligned with PS1 on early engagement with stakeholders.<sup>11</sup>

8. During the January 2017 visit, no settlements were observed on the Project site. However, IFC flagged the following factors for further examination and inclusion in the ESIA by the consulting firm: (i) a small building identified at approximately 1 kilometer from the northwestern border of the Project site; (ii) a cattle farm at 3 kilometers from the Project area; (iii) land ownership and potential land claims on the Project site; and (iv) informal (seasonal, semi-nomadic) land use of plowing plots for cultivation.

9. The final ESIA was approved by Jordan's MoEnv in February 2017.<sup>12</sup> IFC's review found that the ESIA was prepared in line with the PSs, and addressed the aspects that had been flagged by IFC to the consultant firm: (i) the small building to the northwest was found to be a fertilizer workshop, the owners of which were visited and had no concerns after being informed about the Project; (ii) the owners of the cattle farm, who were visited and expressed no concerns with the Project; (iii) land ownership by the Government of the Hashemite Kingdom of Jordan of the Project site was confirmed and no outstanding claims were identified,<sup>13</sup> and (iv) the plant would not interfere with the practice of plowing, which was verified with the local stakeholders. IFC made an appraisal visit in March 2017, and its findings informed the preparation of the Environmental and Social Review Summary ("ESRS") and the Environmental and Social Action Plan ("ESAP"), both of which were disclosed in May 2017.<sup>14</sup>

10. The Project's E&S category was assessed as B. IFC's pre-investment due diligence did not identify any potential project-affected communities on or nearby (i.e., within 8 kilometers) the Project site, and security risks were assessed to be low. The ESAP nevertheless incorporated two additional actions to address potential gaps on stakeholder engagement: (i) to establish an External

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<sup>9</sup> [https://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/ifcsustainabilityframework\\_2012](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ifcsustainabilityframework_2012)

<sup>10</sup> See <https://www.eia.nj/en/countries/jordan/esia-profile>.

<sup>11</sup> <https://disclosures.ifc.org/project-detail/ESRS/39339/masdar-jordan> (see Scoping Report under Client Documentation).

<sup>12</sup> <https://disclosures.ifc.org/project-detail/ESRS/39339/masdar-jordan> (see ESIA Client Documentation).

<sup>13</sup> The Ministry of Finance and Department of Lands and Survey, acting on behalf of the Government, signed a Land Lease Agreement with the Company for the plant as part of the Project.

<sup>14</sup> <https://disclosures.ifc.org/project-detail/ESRS/39339/masdar-jordan>



Communication Procedure including a grievance mechanism and assigning a person to interface with Project stakeholders and respond to any grievances reported through the mechanism (ESAP action #3); and (ii) to engage with any yet-to-be-identified livestock herders that might emerge, who had historically made use of the Project area, in order to explain the establishment of the Project, its boundaries and timing (ESAP action #7).<sup>15</sup> The latter ESAP action was closed after the Company reported to IFC about consultations held with herders passing through the area (2018, before construction), who were informed about the Project and did not raise concerns.

11. During its supervision activities, including missions and (in-person/virtual) meetings with the Company for Supervision Site Visits (“SSV”), review of the Lenders’ Environmental Advisor’s (a qualified third-party consulting firm) monitoring reports (quarterly during construction, semi-annual during operations) and the Project’s Environmental and Social Annual Monitoring Report (“AMR”), (calendar years 2018, 2019, and 2020), IFC verified that ESAP items identified during the appraisal were adequately addressed in accordance with conditions of the investment. IFC conducted the first SSV before construction (in September 2018), focusing on components of the E&S Management System (“ESMS”), to enable E&S Management Plans (“ESMP”) to be in place by the time construction started. IFC conducted two SSVs during construction and one SSV after the end of construction.<sup>16</sup> Throughout, IFC supervision found that the Project’s E&S performance was aligned with the PSs. Furthermore, IFC supervision found that the Company has adequate E&S capacity in place; the ESMS is well developed and functioning, and the Company’s management has a strong commitment to addressing E&S concerns. The final ESMPs have been updated for the operation and maintenance phase of the Project. All ESAP actions have been completed in a satisfactory manner.

### III. CAO COMPLAINT

12. In February 2020, CAO received a complaint filed by the lead Complainant and informed IFC of the complaint on March 25, 2020. Before filing the complaint, the same Complainant<sup>17</sup> had several interactions with IFC, the Company, one of the B-lenders who had initially been contacted by the lead Complainant, and the MoEnv related to his concerns. Below is a summary of the interactions:

- In late June 2019, the lead Complainant reached out to the B-lender soliciting support to engage in a dialogue with the Company. Following various interactions between the B-lender and the lead Complainant, the B-lender deemed the complaint inadmissible under the B-lender’s complaints policy and informed the lead Complainant of this outcome on August 16, 2019, offering him to redirect the complaint to IFC’s independent accountability mechanism (“CAO”) and/or to meet with the Lenders and

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<sup>15</sup> <https://disclosures.ifc.org/project-detail/ESRS/39339/masdar-jordan>

<sup>16</sup> Site visits by a qualified third-party consulting firm and/or IFC have been conducted every 3-4 months, beginning in October 2018 prior to construction starting. Exceptional circumstances due to COVID-19 have prevented this regular schedule, but remote supervision continued and site visits by the qualified third-party consulting firm have resumed.

<sup>17</sup> IFC joins CAO in extending its deepest condolences to the family and community of the lead Complainant’s passing in November 2020 following an illness.

the Company in Amman.<sup>18</sup> The lead Complainant formally confirmed that he did not want to proceed to CAO and opted for the latter.

- On August 12, 2019, the lead Complainant first informed one of the B-lenders of the reprisal risk he was facing related to raising concerns on the Project. The B-lender in turn informed IFC, who immediately raised this with the Company and received in-writing confirmation that they had not taken any retaliatory action and would continue to be open to engage with the lead Complainant.
- In September 2019, IFC organized, facilitated, and attended a multi-party meeting in IFC's Amman office between the lead Complainant, the Company, and the B-lender. The lead Complainant and the Company subsequently agreed to participate in a constructive dialogue process. Between September 2019 and November 2019, several interactions occurred separately (i) between IFC and the lead Complainant, (ii) between IFC and the Company, and (iii) between the lead Complainant and the Company.
- During the September 2019 meeting in Amman, the lead Complainant told IFC that he had received threats and had been intimidated by local authorities in response to sharing his concerns on this Project and other projects in the area.<sup>19</sup> IFC emphasized to all parties at the meeting and in the minutes that it takes the risk of reprisals very seriously and engaged with the lead Complainant. Between October and December 2019, the lead Complainant corresponded with IFC (by e-mail) about other reprisal allegations, to which IFC responded and/or queried with the Company.

13. During the above-mentioned exchanges, the lead Complainant reformulated the complaint several times, with recurring topics being employment and contract award opportunities, the ESIA methodology, the Project's implementation of mitigation measures ("ESMP"), the Stakeholder Engagement Plan ("SEP"), the GM, the Corporate Social Responsibility ("CSR") plan, absence of a Livelihood Restoration Plan ("LRP"), and community representation. Neither IFC nor the Company were able to determine with any clarity what harm, or anticipated harm, if any, the Complainants were experiencing from the Project, or what was the lead Complainant's desired outcome from the engagement, except for employment/procurement opportunities including funding for services proposed by the lead Complainant's organization, EASEP.

14. The Company and IFC made several requests to the lead Complainant to follow the Project's formal grievance procedures, since these were put in place to address stakeholder concerns and to avoid any perception of preferential treatment of one stakeholder over another by the Project. Following these requests, in November 2019, the lead Complainant filed a complaint through the Project's GM.

15. The complaint submitted to the CAO in February 2020 was similar to the one filed with the Project's GM in November 2019, raising E&S concerns in the following areas: (i) lack of

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<sup>18</sup> <https://www.fmo.nl/independent-complaints-mechanism>

<sup>19</sup> The lead Complainant made similar complaints to other independent power projects - see e.g., <https://www.ebrd.com/documents/occo/ipp4-cr-report.pdf>

compliance with environmental regulatory requirements; (ii) threats and reprisals; and (iii) lack of economic opportunities, as detailed below:<sup>20</sup>

- The consultation process relating to the ESIA, SEP and GM was inadequate, excluding the local communities and EASEP, and not distinguishing community representatives from those of the government.
- The lead Complainant raised issues of a lack of consultation with the Company without receiving a response.
- Community Liaison Officers (“CLOs”) were not credible to represent the community’s views.
- No LRP existed to compensate for economic displacement, alienation from land, natural and cultural resources. In addition, no resettlement was offered to the economically displaced.
- Disclosure of the ESIA was limited as was Project information related to risks, benefits, and impacts, which was only available in English, and not in the local language (Arabic).
- The Project’s ESIA was inadequate as related to: (i) details of the methodology used to assess risks and identify affected communities; (ii) lack of actions to address risks and impacts; and (iii) incorrect statements regarding accreditation of the air quality monitoring laboratory.
- There was no benefit sharing with local communities from the Company’s CSR plan; capacity building for communities was lacking; local employment was limited to low-paying jobs with unclear/unfair selection processes; and local contractors were not given priority.
- The Company failed to comply with regulatory requirements and IFC PSs, specifically to adopt an ESAP or establish an ESMS.
- There were reprisals, harassment, and threats by government officials, including freezing of EASEP’s accounts after the Company reported the complaint to government authorities.

16. A CAO-facilitated mediation on the above-listed concerns was initiated in August 2020 but terminated by the Complainants in September 2021. CAO then issued its Conclusion Report, referring the case to the CAO compliance function.<sup>21</sup>

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<sup>20</sup> CAO Assessment Report Regarding Concerns in Relation to IFC’s Investment in Masdar Baynouna (#39339) in Jordan, August 2020, pg. 1-3.

<sup>21</sup> CAO Dispute Resolution Conclusion Report Regarding IFC’s Investment in Masdar/Baynouna Solar Energy Company in Jordan (IFC #39339), February 2022.

#### IV. MANAGEMENT RESPONSE

17. This Management Response provides details in response to the issues raised in the complaint, as summarized in paragraph 15 above and listed in the CAO Assessment Report<sup>22</sup>: (a) lack of compliance with regulatory requirements; (b) threats and reprisals; and (c) lack of economic opportunities.

##### A. Lack of Compliance with Regulatory Requirements

18. *The Project's ESIA.* The ESIA was implemented in accordance with Jordanian regulations, approved by the MoEnv, and assessed by IFC to be aligned with the PSs. IFC reviewed the ESIA and found that previous comments to the draft had been addressed and that the approach and methodology to define the Project's area of influence, assess E&S risks and impacts, and identify affected communities were clearly outlined, and that it incorporated the mitigation hierarchy which is an integral objective of PS1. The ESIA includes an overview of the Project's ESMS and auditing protocol, which is implemented by the Company and its Engineering, Procurement and Construction ("EPC") Contractor. Evidence of its implementation is (i) independently audited by a qualified third-party consulting firm on a quarterly basis during construction (and semi-annually during operations); and (ii) assessed by IFC on a regular basis (at least semi-annually).

19. With regard to accreditation of the Jordanian laboratory that conducted the air quality baseline monitoring studies for the ESIA, IFC verified evidence that the laboratory is accredited by the Jordanian Accreditation System and conforms with Jordanian Standard JS EN ISO/IEC 17025:2012 (which is equivalent to the international standard ISO/IEC 17025:2005).

20. *Stakeholder Engagement.* IFC confirmed that stakeholder consultations during the Project design phase were carried out in line with PS1 requirements. This includes the ESIA process to identify any affected communities and stakeholder engagement to include the local communities. During the pre-appraisal site visit (held in January 2017), IFC requested the ESIA consultant to conduct additional interviews with local communities (including *Al-Muwaqar* municipality; a local women's association; and fertilizer workshop owners) to identify any potentially affected people (see ESIA chapter 6.1.3).<sup>23</sup>

21. As part of the ESIA process, and per Jordanian regulations, the MoEnv together with the ESIA consultant organized a Scoping Session (January 26, 2017).<sup>24</sup> This included a presentation in Arabic of the findings in the Preliminary ESIA ("P-ESIA") and collecting and responding to any concerns raised from participants to better inform the final ESIA and include any mitigation measures.

22. Seasonal land users who have historically used the Project area were also consulted through interviews during the Project's development. IFC verified and found that per the Company's stakeholder meetings log, CLOs had several meetings with the communities and their leaders ("sheikhs") from different local communities. The logs contain the names of members of several

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<sup>22</sup> CAO Assessment Report Regarding Concerns in Relation to IFC's Investment in Masdar Baynouna (#39339) in Jordan, August 2020, pg. 2-5. See [https://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=3288](https://www.cao-ombudsman.org/cases/case_detail.aspx?id=3288)

<sup>23</sup> <https://disclosures.ifc.org/project-detail/ESRS/39339/masdar-jordan>

<sup>24</sup> <https://disclosures.ifc.org/project-detail/ESRS/39339/masdar-jordan> (ESIA, Appendix A).

families, including the lead Complainant's. CLOs are native Arabic speakers and conduct all engagements in Arabic.

23. IFC regularly monitors the Company's stakeholder engagement and verifies through stakeholder meeting logs that local communities are sufficiently represented in consultations for the Project. This also includes regular review of the SEP. For example, IFC requested the Company to update its SEP in response to increased stakeholder attention in 2019. The SEP has been updated for the operational phase and will be disclosed on the Company's Project website by end March 2022 (in English and Arabic).

24. *Grievance Mechanism.* The Project's GM, part of the "External Communication Procedure",<sup>25</sup> provides for confidentiality and freedom from retaliation. It has functioned effectively on several occasions. During construction, three grievances were filed related to land use by seasonal users, which were resolved and closed to the complainants' satisfaction through the GM (as documented in grievance resolution forms).

25. Both before and after the lead Complainant filed the grievance through the Project's GM, the Project Manager engaged with the lead Complainant through phone calls, site visits, and email exchanges, which were documented in a log.

26. *Disclosure of Project Information.* In compliance with IFC's Access to Information Policy, both the ESIA and Scoping Session reports were disclosed on IFC's disclosure pages in May 2017, which the lead Complainant confirmed to have located after the meeting in Amman in September 2019. Both reports, including an executive summary in Arabic, were disclosed on the Company's Project website in May 2020. The Company has displayed an open and constructive posture to any queries for Project information or concerns, which was also confirmed by the lead Complainant during the meeting in Amman. Following the update of the SEP in 2019, meetings with the communities took place on a more regular basis. Similarly, the CAO Conclusion Report notes that during the dispute resolution process following the receipt of the complaint by CAO, the Company provided Complainants with "written responses to all of the issues raised in the complaint, including published information in both English and Arabic."<sup>26</sup>

27. *Community Liaison Officers.* During the SSV of September 2019, IFC met with the senior CLO and found that he had the necessary competences, experience, and skills (including speaking local language, knowledge of the local context, and experience with challenging socio-economic environments) to act as a liaison with the communities and perform stakeholder engagement in alignment with IFC PS1. IFC requested the Company to further formalize the CLO's role in the updated SEP so as to broaden stakeholder interaction. The Company subsequently hired three assistant CLOs, representative of different local communities who were nominated by their respective sheikhs, to assist the CLO with increased stakeholder engagement.

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<sup>25</sup> An "External Communication Procedure," outlining the procedures for stakeholders to express concern and/or queries about the Project free from retribution and including an effective, accessible GM, in line with IFC PS1, was established by the Company and implemented by CLOs, as requested by IFC at appraisal based on its due diligence (ESAP action #3).

<sup>26</sup> CAO Dispute Resolution Conclusion Report Regarding IFC's Investment in Masdar/Baynouna Solar Energy Company in Jordan (IFC #39339), pg.6, February 2022.

28. Jordan's Law 131/2016, relating to local employment in development projects (*Jordanian Regulation for Obligatory Employment of Jordanian Workforce from Surrounding Communities in Development Projects*), was implemented by the Company and its EPC Contractor through the CLOs, complemented by the local authorities in an advisory role. IFC has verified (and continues to monitor) through stakeholder meeting logs and local labor distribution lists, which record workers' family origin, that local communities are sufficiently and equally represented both in consultations and employment for the Project.

## **B. Threats and Reprisals**

29. As the possibility for retaliation in Jordan cannot be ruled out, IFC undertook several actions to identify potential risks and implement mitigation measures. This included a contextual risk assessment identifying the right of freedom of expression/opinion as a "high contextual" risk for projects in Jordan.

30. The Project's "External Communication Procedure" seeks to protect against retaliation by allowing anonymous submissions. IFC verified that this procedure was in place before construction started, to close out ESAP action #3, and continued monitoring it throughout implementation confirming that it was introduced and explained to the communities during the stakeholder meetings.

31. IFC was informed of the lead Complainant's report of retaliation at the hands of local authorities by one of the B-lenders in the Project in August 2019. IFC, after confirming that the lead Complainant had no concern about confidentiality, immediately contacted the Company, which had consulted with the local authorities only to clarify whether EASEP was a stakeholder NGO-participant of the Project and officially represented a local community. The Company strongly refuted any allegations of intimidation or harassment on the part of the Company and confirmed that it had not reported any complaint to a governmental or other organization about the lead Complainant or EASEP, which could have resulted in the alleged threats/intimidation.

32. In preceding phone calls with the Company, and during the multi-party meeting in IFC's Amman office in September 2019 and, as captured in the minutes, IFC reiterated to all parties that retaliation is a very sensitive topic for Lenders who take the risk of reprisals very seriously. During the same meeting, IFC engaged with the lead Complainant, requesting additional information on the threats, but none was received. IFC also met in person with representatives of the MoEnv and the Ministry of Interior to clarify their role in stakeholder engagement processes per Jordanian regulations.

33. Between October 2019 and May 2020, IFC responded to several emails from the lead Complainant, referencing threats and/or harassment by the local authorities against him, and IFC again sought further details. IFC engaged with the Company on several occasions to signal the importance of non-retaliation and to query specific allegations. IFC also pro-actively engaged with the B-lender to keep updated on the human rights situation on the ground in Jordan including concerns raised by the lead Complainant through social media.

34. The CAO Conclusion Report (February 2022, pg.6) notes: “[t]he concern over the risk of reprisals was resolved early in the process which indicated good-faith negotiation and the Parties’ commitment to the safety of everyone involved in the complaint.”<sup>27</sup>

### **C. Lack of Economic Opportunities**

35. In 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. Communities may continue to use such land as long as it is vacant. This includes semi-nomadic tribes who plow in the autumn to sow fodder grass after the rains and return in the spring to graze their herds there. This practice occurs across Jordan, and herders shift location to accommodate sites that are no longer available. Since herders may travel widely across the country and do not always return to the same areas, it was challenging for the ESIA consultant and the Company to identify them during the Project design phase. Notwithstanding, the Company was able to consult with and inform herders passing through the area before construction (2018), who did not raise concerns, thus closing ESAP item #7 – see next paragraph 36. In February 2019, the Company also reported to IFC on another occasion where a land user visited the Project site and queried the Company about the Project, after which he voluntarily shifted his activities with assistance from the Company. Herders would be able to continue accessing significant areas of undeveloped land around the Project site, during and after construction.

36. Nonetheless, to account for possible later identification of any potential land users, IFC included two actions in the ESAP – ESAP action #7 and action #3, see paragraph 10 above – requiring the Company to engage with any livestock herders who may have historically made use of the Project area. IFC verified that the deliverables under the ESAP actions were satisfactorily closed and has supervised their further implementation through its semi-annual monitoring activities.<sup>28</sup>

37. IFC’s due diligence and related consultation confirmed that there was no potential for physical displacement or resettlement and did not identify economic displacement or loss of livelihood for communities as a result of not being able to access their natural and cultural resources. During the Project’s development, the potential for deprivation was further assessed through consultation with land users which did not yield any issues. Residual risk mitigation was covered by an effective GM by which three land users who demonstrated their loss stemming from *previously* planted land were compensated to their satisfaction (per resolution forms). Regarding the LRP, IFC confirmed through ESIA stakeholder consultations that the Project site did not support the livelihoods of the surrounding communities. Consequently, IFC concluded that a LRP was not warranted.

38. With regard to the allegation that the Company did not prioritize local contractors to provide supplies and services during the construction of the plant but preferred to use contractors outside the community, IFC confirmed that the Company follows commercial procedures for the placement of orders for goods and services. Local companies were included in the EPC Contractor’s

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<sup>27</sup> CAO Dispute Resolution Conclusion Report Regarding IFC's Investment in Masdar/Baynouna Solar Energy Company in Jordan (IFC #39339), pg. 6, February 2022.

<sup>28</sup> <https://disclosures.ifc.org/project-detail/ESRS/39339/masdar-jordan> (see ESAP).

commercial processes as the majority of the subcontractors and service providers employed on the Project (during construction) were from the local area.

39. IFC verified and found that the Company developed a local recruitment procedure compliant with the *Jordanian Regulation for Obligatory Employment of Jordanian Workforce from Surrounding Communities in Development Projects 131/2016*, which the Company and its EPC Contractor have implemented through the CLOs, complemented by the local authorities in an advisory role. The Company kept a local workforce distribution list, which records workers' family origin, to provide for relatively equal hiring across surrounding local communities. IFC has verified (and continues to monitor) during its supervision activities as summarized in paragraph 11 above that local communities are sufficiently and equally represented in employment for the Project. During the construction phase of the Project, 40 percent of the Jordanian workforce (which represented 95 percent of the total Project workforce) was recruited from local communities for different types of jobs. The Company facilitated training for local engineers to prepare them for their employment in the Project and hired local security guards.

40. A CSR plan was developed, reflecting the Company shareholders' CSR objectives and including local community initiatives. This was based on a strategy of integrating relevant stakeholders' views, including identified vulnerable groups (e.g., women, children, youth). As such, the CSR plan was developed in consultation with stakeholders, such as community representatives and NGOs in *Al Muwaqar*. IFC verified and found that as a "living document," the CSR plan is being updated regularly as part of a long-term commitment by the Company to the economic wellbeing of local communities. Examples of CSR initiatives included: (i) supporting limited income families during the holy month of Ramadan with food packages; (ii) an Eid initiative providing clothes for orphans in the surrounding communities; and (iii) contributing to the *Women in Debt Fund*, which focuses on helping women out of debt to better support their families.

## V. CONCLUSION

41. IFC takes seriously E&S concerns regarding projects it finances and is committed to responding to stakeholder grievances and engaging with CAO and its complaint handling process. IFC appreciates CAO's efforts and outreach throughout the Assessment and Dispute Resolution stages and will continue to cooperate with the CAO Compliance team undertaking its work. IFC would also like to convey the Company's recognition of the quality of the mediation process, in particular CAO's appointed native Arabic-speaking mediator who, despite limitations often posed with online video conferencing (due to COVID-19 conditions), was able to manage the process in a professional and constructive manner.

42. IFC has confirmed that the Company undertook an appropriate stakeholder engagement process, which did distinguish between communities and governmental representatives, and which was commensurate with the Project's risks and impacts during each of the Project stages. This included early engagement through the Scoping Session organized by the MoEnv in which IFC participated. Findings from the P-ESIA, the ESIA, and in-person meetings with community members have informed both IFC's pre-investment and supervision E&S activities. IFC has applied its Sustainability Policy through its supervision of the Project, which has confirmed the Project's closure of ESAP action items and as such, that the Project's E&S performance is aligned with the PSs.



43. NGOs such as EASEP (which was chaired by the lead Complainant) have been formally recognized by the Project, and semi-nomadic, seasonal land users were consulted through interviews during the Project's development. IFC verified and found that, based on the Company's information of their selection procedure, CLOs (which were also increased in number) were representative of the communities and held several meetings with the communities and their sheikhs.

44. IFC verified that the ESIA was based on a rigorous and technical methodology and substantiated that the Project site did not adversely affect the surrounding communities. As for potential impacts on livelihoods, herders confirmed that they can continue accessing significant areas of undeveloped land around the Project site, during and after construction. As such, a LRP was not warranted. As for the lead Complainants' concerns, despite several rounds of engagement, neither IFC nor the Company were able to establish what (potential) harm, if any, the Complainants were experiencing, or any indications thereof.

45. IFC's Access to Information Policy has been observed through the sharing of reports on IFC's disclosure pages and the Project's website, both in English and Arabic.

46. IFC does not tolerate intimidation, harassment or threatening behavior under any circumstances, and its prompt action in contacting the Company and its response to the lead Complainant, including entering into several engagements with him, reflects this stance. As confirmed in the CAO Conclusion Report, "[t]he concern over the risk of reprisals was resolved early in the process which indicated good-faith negotiation and the Parties' commitment to the safety of everyone involved in the complaint."<sup>29</sup>

47. The Project's GM has shown to be accessible and effective, in regard to both the Complainants grievance and other grievances. Even before the lead Complainant lodged his grievance through the GM, the Project Manager entered into contact with the Complainants through phone calls, site visits, and email exchanges, as documented in a log. The Project Manager further consistently participated in the mediation process facilitated by CAO.<sup>30</sup> As the CAO Conclusion Report recognized in summarizing the mediation, "[t]he Complainants received written responses to all of the issues raised in the complaint, including published information in both English and Arabic."<sup>31</sup>

48. IFC has confirmed that the Project's EPC Contractor follows commercial procedures for local employment and contracting. In addition, a CSR plan was developed, reflecting the Company shareholders' CSR objectives and including local community initiatives. IFC will continue to monitor the implementation of this "living document" (CSR plan) to verify it reflects the socio-economic interests of local communities while enhancing the Project's stakeholder engagement.

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<sup>29</sup> CAO Dispute Resolution Conclusion Report Regarding IFC's Investment in Masdar/Baynouna Solar Energy Company in Jordan (IFC #39339), pg. 6, February 2022.

<sup>30</sup> As the CAO Conclusion Report states: "The parties expressed an interest in nurturing positive relationships throughout the lifetime of the Project and onwards." CAO Dispute Resolution Conclusion Report Regarding IFC's Investment in Masdar/Baynouna Solar Energy Company in Jordan (IFC #39339), February 2022.

<sup>31</sup> CAO Dispute Resolution Conclusion Report Regarding IFC's Investment in Masdar/Baynouna Solar Energy Company in Jordan (IFC #39339), February 2022.

49. Going forward, IFC will continue working with the Company to monitor and supervise the Project's E&S performance. The Company has demonstrated an open and continuous willingness to cooperate with the Lenders on all E&S matters.

## *Disclaimer*

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

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

*While reasonable efforts have been made to determine that the information contained in this IFC Management Response is accurate, no representation or warranty is given as to the accuracy or completeness of such information. CAO is not a judicial or legal enforcement mechanism. Its analyses, conclusions, and reports are not intended to be used in judicial or regulatory proceedings nor to attribute legal fault or liability and it does not engage in factfinding nor determine the weight that should be afforded to any evidence or information. No part of this IFC Management Response or the CAO Process may be used or referred to in any judicial, arbitral, regulatory, or other process without IFC’s express written consent.*

### Appendix 3: Considerations Relevant to the Appraisal per CAO Policy

The CAO Policy<sup>52</sup> provides for the compliance appraisal to take into account additional considerations, as outlined in the table below.

CAO Policy provision	Analysis for this case
For any Project or Sub-Project where an IFC/MIGA Exit has occurred at the time CAO completes its compliance appraisal, whether an investigation would provide particular value in terms of accountability, learning, or remedial action despite an IFC/MIGA Exit (para. 92a).	Not applicable
The relevance of any concluded, pending or ongoing judicial or non-judicial proceeding regarding the subject matter of the complaint (para. 92b).	One of the complainants' claims regarding a project road that incurs upon his private property remains before the project grievance mechanism. CAO will take any resolution of this specific grievance by the project grievance mechanism into account in the course of its compliance investigation.
Whether Management has clearly demonstrated that it dealt appropriately with the issues raised by the Complainant or in the internal request and followed E&S Policies or whether Management acknowledged that it did not comply with relevant E&S Policies (para. 92c).	As outlined in the body of this report, CAO finds preliminary indications of non-compliance. In this context, CAO concludes that IFC has not clearly demonstrated that it dealt appropriately with issues raised by the complaint, nor has IFC acknowledged non-compliance with relevant E&S Policies.
Whether Management has provided a statement of specific remedial actions, and whether, in CAO's judgment after considering the Complainant's views, these proposed remedial actions substantively address the matters raised by the Complainant (para. 92d).	IFC's Management Response does not include any statements indicating plans to undertake remedial actions to address issues raised by complainants for appraisal.
In relation to a Project or Sub-Project that has already been the subject of a compliance investigation, CAO may: (a) close the complaint; (b) merge the complaint with the earlier compliance process, if still open, and the complaint is substantially related to the same issues as the earlier compliance process; or (c) initiate a new compliance investigation only where the complaint raises new issues or new evidence is available (para. 93).	Not applicable

<sup>52</sup> CAO Policy, para. 92.



## Terms of Reference for Compliance Investigation of IFC’s Environmental and Social Performance in relation to its Investment in Baynouna Solar Energy Company, Jordan

IFC Project #39339

### About CAO and the Compliance Function

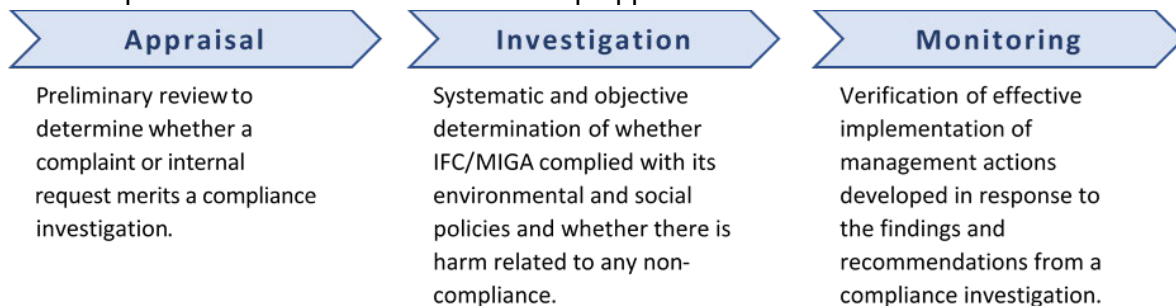
The Office of the Compliance Advisor Ombudsman (CAO) is an independent recourse and accountability mechanism for people and communities affected by projects financed by the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). CAO works to address complaints fairly, objectively, and constructively while enhancing the social and environmental outcomes of IFC and MIGA projects and fostering public accountability and learning at these institutions.

CAO’s independence and impartiality are essential to fostering the trust and confidence of stakeholders involved in complaint processes. CAO is independent of IFC and MIGA management and reports directly to the IFC and MIGA Boards.

CAO carries out its work in accordance with the IFC/MIGA Independent Accountability Mechanism (CAO) Policy (“the CAO Policy”). Its three functions are shown below. For more information, visit: [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

<p><b>Dispute Resolution</b> CAO helps resolve issues raised about the environmental and/or social impacts of projects and/or sub-projects through a neutral, collaborative, problem-solving approach and contributes to improved outcomes on the ground.</p>	<p><b>Compliance</b> CAO carries out reviews of IFC/MIGA compliance with the E&amp;S policies, assesses related harm, and recommends remedial actions to address non-compliance and harm where appropriate.</p>	<p><b>Advisory</b> CAO provides advice to IFC/MIGA and the Boards with the purpose of improving IFC’s/MIGA’s systemic performance on environmental and social sustainability and reducing the risk of harm.</p>
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CAO’s compliance function follows a three-step approach:



## The Investment

Baynouna Solar Energy Company (“Baynouna” or “the Client”) is a special purpose vehicle mandated to develop, finance, construct, operate, and maintain a greenfield 248-megawatt solar photovoltaic (PV) power plant in the Al Muwaqqar district of Jordan, approximately 30 kilometers southeast of Amman, Jordan.<sup>1</sup> The land used for the project is formally owned by the Government of Jordan and leased to Baynouna.

Baynouna was created to develop and operate the plant. Abu Dhabi Future Energy Company – Masdar, which is fully owned by the Government of Abu Dhabi’s Mubadala Development Company--holds a 70-percent majority interest in Baynouna while Taaleri Aurinkotuuli, a Finnish investment fund, holds a 30-percent minority interest.

In December 2017, IFC arranged a financing package of up to US\$188 million for the project, which included IFC financing of loans of up to \$97.25 million.<sup>2</sup> Other lenders include Japan International Cooperation Agency (JICA), Dutch development bank FMO, Europe Arab Bank, OPEC Fund for International Development (OFID), and German development bank DEG.<sup>3</sup> IFC’s Board approved the investment in November 2017.<sup>4</sup>

Baynouna supplies electricity to the Jordanian National Electric Power Company (NEPCO) under a 20-year power purchase agreement. Construction started in 2019 and the plant began commercial operations in late 2020.<sup>5</sup> IFC completed its disbursements for the project between October 2018 and August 2021, and its investment remains active.

IFC applied a Category B Environmental and Social (E&S) risk classification to the project.<sup>6</sup> This classification indicated IFC’s view that the project had limited potential adverse E&S risks and/or impacts that were few in number, generally site-specific, largely reversible, and readily addressable through mitigation measures. Based on its E&S due diligence, IFC deemed the following Performance Standards (PSs) to be applicable: PS1 (Assessment and Management of Environmental and Social Risks and Impacts), PS2 (Labor and Working Conditions), and PS3 (Resource Efficiency and Pollution Prevention).<sup>7</sup>

## The Complaint

In February 2020, while construction was underway, CAO received a complaint about a range of environmental and social (E&S) issues relating to the Baynouna project.<sup>8</sup> The complaint was submitted by a member of the Al-Balqa tribe who was also the Chairman of the East Amman Society for Environmental Protection (EASEP). The complaint was submitted on behalf of this lead complainant and 66 named local community members in their capacity as members of the Al-Balqa tribe (and particular groups within the tribe). The complainants assert that the Al-Balqa

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<sup>1</sup> IFC Summary of Investment Information (SII), Masdar Jordan, Project #39339. Available at: <https://bit.ly/3LN0kNU>.

<sup>2</sup> CAO Dispute Resolution Conclusion Report, p. 2.

<sup>3</sup> IFC (2018), “IFC Supports Jordan’s Largest Renewable Energy Project,” January 16, 2018.

<sup>4</sup> IFC SII, Masdar Jordan, Project #39339.

<sup>5</sup> Baynouna project information on Masdar website. Available at: <https://bit.ly/3jjnejD>.

<sup>6</sup> IFC Environmental and Social Review Summary (ESRS), Masdar Jordan, Project #39339. Available at: <https://bit.ly/3JloAoK>.

<sup>7</sup> IFC ESRS, Masdar Jordan, Project #39339.

<sup>8</sup> CAO complaint. Available on CAO case page at: <https://bit.ly/Masdar-Baynouna-01>. Clarifications were provided to CAO in additional materials submitted by the complainants.

are Indigenous Peoples with a population of over 100,000, and that they are the traditional owners and users of the project area and surrounding lands, which they have claimed and used for hundreds of years. The complainants claim to reside one to eighteen kilometers away from the project site in various parts of East Amman, with some community members closest to the project living in Bedouin tents.

In March 2020, CAO determined that the complaint met the eligibility criteria for an initial CAO assessment. During the assessment, the complainants and Baynouna agreed to a dispute resolution process to address the issues raised in the complaint.<sup>9</sup> While the dispute resolution process did not conclude with a final settlement agreement, all concerns regarding threats and reprisals were resolved early in the dispute resolution process.<sup>10</sup>

The complaint raises a range of concerns regarding the E&S risks and impacts of the project, specifically:

- Exclusion from stakeholder identification and engagement processes;
- Land rights violations and uncompensated economic displacement; and
- Exclusion from development benefits and opportunities .

During the appraisal process, the complainants requested that CAO exclude the following issues for the reasons specified in the CAO Appraisal Report:

- Threats and reprisals;
- Non-compliant environmental and social management system;
- Cumulative environmental degradation ;
- Air pollution; and
- Threats to worker health and safety.

### **Investigation terms of reference**

Where, as in the present case, the CAO appraisal process results in a decision to investigate, CAO's appraisal report includes terms of reference for the compliance investigation, outlining:

- a. *The objectives and scope of the investigation;*
- b. *Any limitations on the scope of the investigation that may be appropriate, considering, among others, issues closed at the appraisal stage, the presence of concurrent judicial proceedings, or an IFC/MIGA Exit;*
- c. *The approach and method of investigation, and specific consultant qualifications; and*
- d. *A schedule for the investigation tasks, timeframe, and reporting requirements. This schedule will include deadlines for the submission of information by IFC/MIGA to inform the compliance investigation process.*<sup>11</sup>

### **Objective and Scope of the Compliance Investigation**

As established in CAO's Appraisal Report, CAO will conduct a compliance investigation of IFC's investment in Baynouna in relation to the issues raised in the complaint and considered by CAO

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<sup>9</sup> CAO Assessment Report. Available on CAO case page.

<sup>10</sup> CAO Dispute Resolution Conclusion Report, p. 6. Available on CAO case page.

<sup>11</sup> CAO Policy, para. 118.

to merit investigation. These issues relate to social impact assessment, the identification of affected communities, stakeholder engagement and consultation, grievance handling, the development of benefit-sharing arrangements, economic displacement, and the identification of Indigenous Peoples potentially impacted by the project.

In relation to these matters, the objective of the investigation is to determine:

1. Whether IFC/MIGA has complied with its E&S Policies, including:
  - a. Whether IFC/MIGA has materially deviated from relevant directives and procedures; and
  - b. How IFC/MIGA reviewed and supervised the Project's compliance with its E&S requirements, including applicable national law where relevant to IFC/MIGA E&S requirements.
2. Whether there is harm or potential harm related to any IFC/MIGA non-compliance.<sup>12</sup>

Specifically, the investigation will consider whether IFC, through its review and supervision of the project, adequately verified the client's proper application of:

1. PS1 as relates to social impact assessment, the identification of affected communities, stakeholder engagement and consultation, grievance handling, and benefit sharing;
2. PS5 as relates to the need to assess, minimize, and mitigate project impacts arising from restrictions of access to and use of land and natural resources; and
3. PS7 as relates to the identification of Indigenous Peoples who are potentially impacted by the project.

In relation to any IFC non-compliance with these E&S requirements, the investigation will consider whether there is related harm or potential harm to the complainants.

## **Methodological Approach**

CAO will base the compliance investigation on information available to CAO from interviews, statements, reports, correspondence, CAO observations of activities and conditions, and other sources that CAO deems relevant.<sup>13</sup>

The compliance investigation process and compliance investigation report will include:

- a. *The investigation findings with respect to compliance, non-compliance, and any related Harm.*
- b. *Context, evidence, and reasoning to support CAO's findings and conclusions regarding the underlying causes of any non-compliance identified.*
- c. *Recommendations for IFC/MIGA to consider in the development of a MAP relating to the remediation of Project- or Sub-Project-level non-compliance and related Harm, and/or steps needed to prevent future non-compliance, as relevant in the circumstances. In case of a Project where the IFC/MIGA Exit has occurred, recommendations will take into account the implications of such an IFC/MIGA Exit.*<sup>14</sup>

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<sup>12</sup> CAO Policy, paras. 112–114.

<sup>13</sup> CAO Policy, paras. 115 and 117.

<sup>14</sup> CAO Policy, para. 120.



Sufficient, relevant evidence is required to afford a reasonable basis for CAO's compliance findings and conclusions. CAO will assess whether there is evidence that IFC/MIGA applied relevant E&S requirements considering the sources of information available at the time the decisions were made, and will not make findings and conclusions with the benefit of hindsight.<sup>15</sup>

### **External Expert(s)**

As per its established practice, CAO will engage one or more external experts for this investigation. For this compliance investigation, CAO considers the following qualifications as necessary:

- Significant expertise in social impact assessments including assessments of land use by people without formal land ownership, stakeholder engagement processes, consultations, and FPIC;
- Experience working with Bedouin tribal communities in the Middle East, preferably in Jordan;
- Knowledge of nomadic, semi-nomadic, or sedentary Bedouin tribal cultures as well as land and natural resource tenure practices in the Middle East, and particularly in Jordan;
- Knowledge of IFC's E&S policies, standards and procedures, particularly Performance Standard 1 (Assessment and Management of Environmental and Social Risks and Impacts), Performance Standard 5 (Land Acquisition and Involuntary Resettlement), and Performance Standard 7 (Indigenous Peoples);
- Experience and knowledge relevant to conducting compliance investigations;
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts; and
- Fluency in Arabic and English.

### **Field Visit and Potential Limitations of the Investigation**

A field visit to the Baynouna project area is anticipated during the compliance investigation, COVID-19 travel restrictions permitting. For such a visit, the CAO case team, external experts, and an interpreter/translator would be expected to participate.

### **Compliance Investigation Schedule, Timeframe, and Reporting Requirements**

According to the CAO Policy,<sup>16</sup> a draft compliance investigation report must be circulated within one year of the disclosure of an appraisal report. By May 2023, a draft compliance investigation report for this case will be circulated to IFC management and all relevant departments for factual review and comment. Management may share the draft report with the client on the condition that appropriate measures are in place to safeguard the confidentiality of the draft report prior to public disclosure.<sup>17</sup> IFC will have 20 business days to provide written comments.

At the same time, the draft investigation report will be circulated to the complainants for their factual review and comment, provided that appropriate measures are in place to safeguard the

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<sup>15</sup> CAO Policy, paras. 116–117.

<sup>16</sup> CAO Policy, para. 121.

<sup>17</sup> CAO Policy, para. 122.

confidentiality of the draft report prior to public disclosure. If such confidentiality measures are not in place, complainants will, at a minimum, receive a draft table of the investigation's findings for factual review and comment and as a source of information to inform future consultations on any IFC/MIGA Management Action Plan (MAP).<sup>18</sup>

Upon receiving comments on the consultation draft from IFC and the complainants, CAO will finalize the investigation report. The final report will be submitted to IFC senior management and circulated to the Board for information. The Board has no editorial input on the content of a CAO compliance investigation report. Once the investigation report is officially submitted to IFC management and circulated to the Board, CAO will notify the public on its website of the investigation's completion.<sup>19</sup>

Upon CAO's final submission of the compliance investigation report to IFC, IFC management has 50 business days to submit a management report to the Board for consideration. The management report must include a MAP for Board approval. A MAP contains time-bound remedial actions that IFC proposes for the purpose of addressing CAO findings of non-compliance and related harm. IFC must consult with complainants and the client during its MAP preparation process, and its management report must also include a reasoned response to CAO's finding or recommendations regarding non-compliance or related harm that IFC is unable to address in the MAP.<sup>20</sup>

CAO will submit comments on the proposed MAP to the Board, and the complainants may submit a statement to CAO on the proposed MAP and the adequacy of consultations for circulation to the Board.<sup>21</sup> Upon the Board's approval of the MAP, the compliance investigation report, management report, and MAP will be published on CAO's website.<sup>22</sup>

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<sup>18</sup> CAO Policy, para. 124–125.

<sup>19</sup> CAO Policy, paras. 123, 127–129.

<sup>20</sup> CAO Policy, paras. 130–132, 134.

<sup>21</sup> CAO Policy, para. 135.

<sup>22</sup> CAO Policy, para. 138.