



CAO ASSESSMENT REPORT

**Regarding Concerns in Relation to
IFC's Investment in Masdar Baynouna (#39339) in Jordan**

August 2020

Office of the Compliance Advisor Ombudsman
for
the International Finance Corporation and the
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA-supported projects in a manner that is fair, objective, and constructive, and to enhance the social and environmental outcomes of those projects.

For more information, see www.cao-ombudsman.org

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LIST OF ACRONYMS

| | |
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| CAO | Office of the Compliance Advisor Ombudsman |
| CLO | Community Liaison Officer |
| CSR | Corporate Social Responsibility |
| EASEP | East Amman Society for Environmental Protection |
| EHS | Environmental Health and Safety |
| ESAP | Environmental and Social Action Plan |
| ESIA | Environmental and Social Impact Assessment |
| ESMS | Environmental and Social Management System |
| GM | Grievance Mechanism |
| IFC | International Finance Corporation |
| JAS | Jordanian Accreditation System |
| KPI | Key Performance Indicators |
| MIGA | Multilateral Investment Guarantee Agency |
| MOE | Ministry of Environment |
| SEP | Stakeholder Engagement Plan |

1. OVERVIEW

In February 2020, CAO received a complaint from a local community member in East Amman, Jordan, representing 66 complainants regarding IFC's investment in Baynouna Solar Energy Company.¹ The complaint raises a wide range of environmental and social concerns about the Baynouna solar photovoltaic plant, including concerns about the Company's stakeholder engagement, environmental and social impact assessment, and grievance mechanism, as well as regarding the lack of employment opportunities for the local communities.

In March 2020, CAO determined that the complaint met its three eligibility criteria. During CAO's assessment, both the Complainant and the Company expressed an interest in engaging in a dispute resolution process convened by CAO. In keeping with CAO's Operational Guidelines, the complaint will now be handled by CAO's Dispute Resolution function. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and the next steps.

2. BACKGROUND

2.1 The Project

According to IFC, Baynouna Solar Energy Company (the Company) is mandated to develop, finance, construct, operate, and maintain a greenfield renewable project in Jordan with a capacity of 200MWac, in an approximately 248 MWp solar photovoltaic (PV) plant 30km southeast of Amman, Jordan (the project). The Company signed a 20-year Power Purchase Agreement with the Jordanian National Electric Power Company (NEPCO) to sell all electricity generated by the PV plant to NEPCO. IFC's investment consists of senior A and B loans of up to US\$97.25 million to the Company to support the development, financing, construction, operation, and maintenance of the Baynouna PV plant. Baynouna's majority shareholder is a renewable energy company called Masdar, which holds a 70-percent interest in the Company.

2.2 The Complaint

In February 2020, a complaint was lodged by a local community member (the lead Complainant) on behalf of himself and 66 community members in East Amman, Jordan, regarding IFC's investment in Baynouna. The complaint raises a wide range of environmental and social concerns concerning the project, including how the Company carried out and implemented the stakeholder engagement plan (SEP), the Environmental and Social Impact Assessment (ESIA), and the Environmental and Social Management System (ESMS). Additional issues raised in the complaint relate to the Company's failure to set up an effective project-level grievance mechanism, to appoint a Community Liaison Officer (CLO) selected by the community members, or to provide employment opportunities and livelihood restoration to the local community. The Complainant also informed CAO that he has received threats and been intimidated as a result of raising concerns about the project.

The issues raised during the assessment are described in more detail below.

¹ While the complaint was initially registered by CAO as "Jordan: Masdar Jordan-01/ East Amman," CAO subsequently renamed and henceforth referred to the complaint as "Jordan: Masdar Baynouna-01/ East Amman," based on the understanding that Baynouna is the company to which the complaint relates and which is an independently operated business of Masdar. CAO was further informed that Masdar is Baynouna's majority shareholder, holding a 70-percent interest in the Company.

3. ASSESSMENT SUMMARY

3.1 Methodology

The CAO assessment aims to clarify the issues and concerns raised by the Complainant by gathering information and views from different stakeholders without making a judgment on the merits of the complaint. The assessment also seeks to determine whether the Complainant and the Company would like to pursue a dispute-resolution process facilitated by CAO, or whether the complaint should be handled by CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process).

In this case, CAO's assessment of the complaint included:

- a desk review of project documentation;
- telephone conversations with the Complainant and other affected community members;
- telephone conversations with Baynouna's and Masdar's management; and
- telephone conversations with IFC's project team.

Due to COVID-19-related restrictions on travel and social gatherings, CAO's staff and consultants could not arrange in-person meetings with the relevant stakeholders involved in this case. However, CAO, in consultation with the parties, decided not to delay the assessment of the complaint and to conduct the assessment via phone and other virtual platforms.

This report is a record of the views heard by the CAO team and an explanation of the next steps. This report does not make any judgment on the merits of the complaint.

3.2 Summary of views

Complainant's perspective

The Complainants raised a wide range of issues in the complaint. These included a lack of compliance with environmental regulatory requirements, threats and reprisals, and a lack of economic and social opportunities.

Lack of Compliance with Regulatory Requirements

The Complainants stated that, during the project's assessment, the Company and its contractors did not identify, adhere to, or implement the applicable Jordanian environmental and social laws, regulatory requirements, international law, and the applicable IFC performance standards which are more stringent than the local legislation. The Complainants explained that the project is located on land belonging to the **Albalqa tribes**, which include more than 100,000 people. The Albalqa tribes are made up of the Aldabaibah, Aldaja, Alragad, Almarashdah, Alzfifa, Alhadeed, Alqatarnah, and Alghaiweein tribes, which have used the land for hundreds of years. The Complainants, who are members of the Albalqa tribes, explained that the Company did not organize a consultation with them regarding development of the Environmental and Social Impact Assessment (ESIA), Stakeholder Engagement Plan (SEP), or the Grievance Mechanism (GM). The Complainants stated that, apart from two people, all stakeholders who attended the Company's consultation session were government officials and client representatives. The Complainants said that the East Amman Society for Environmental Protection (EASEP), an environmental organization working with the local communities in East Amman and chaired by the lead Complainant, was also deliberately excluded from consultations. The Complainants also shared that the Company did not make a reasonable effort to appoint knowledgeable and credible community liaison officers (CLO) who represented the affected communities' views. Instead, the Company appointed CLOs

suggested by the local governor and these CLOs include the Sabah governor. As a result, the community does not feel represented and does not have an avenue to raise concerns about the project and receive appropriate responses. The Complainants stated that they raised the issues of lack of consultation with the Company project management but received no response.

The Complainants expressed that the ESIA prepared by the Company, which they obtained from IFC's website (only the English version was available), did not specify the assessment tools used to measure, screen, and analyze the potential environmental and social risks, and the potential adverse impacts of the project. The ESIA did not identify the communities that were directly and disproportionately affected by the project, nor did it propose or implement measures to avoid, compensate, or offset the project risks and adverse environmental and social impacts. The Complainants believe that the Company ought to have built the local community's capacity to consider and manage the social and environmental risks of the project. However, this did not happen, and the Company rejected the request to fund any environmental and social mitigation and adaptation initiatives proposed by the East Amman Society for Environmental Protection (EASEP) to build the community's capacity.

The Complainants also stated that the Company did not disclose or disseminate the project information, potential benefits, and risks and development impacts associated with the project. Furthermore, the Complainants pointed out that the Company failed to translate the ESIA into Arabic or make it readily available and accessible to affected communities. The Complainants claim that even when asked, the Company's project manager refused to provide a copy of the ESIA to the Complainants or to disseminate it through the Company website, stating that it is confidential.

The Complainants highlighted other areas where they believe the Company failed to comply with the regulatory requirements and IFC performance standards. These include failure to adopt an Environmental and Social Action Plan (ESAP) or establish and maintain an Environmental and Social Management System (ESMS). The Complainants also expressed that some claims made by the Company in the ESIA that a lab accredited by the Jordanian Accreditation System (JAS) conducted air quality monitoring is incorrect because Jordan does not have an accredited air monitoring laboratory.

Threats and Reprisals

The Complainants alleged that the Company failed to resolve the dispute with the Complainants. Instead, the Complainants claim that when they raised issues of non-compliance with the Company's project manager, the Company threatened them and filed a complaint against the lead Complainant, through the Amman governor. In turn, the governor intimidated, harassed, and threatened the lead Complainant, and instructed him not to send any complaints to the Company, financial institutions, or any other stakeholder. The lead Complainant shared that he was intimidated by the government officials. The government also allegedly froze the account of his NGO and accused him of obstructing investment in Jordan by filing complaints against the project. The Complainants also shared that the East Amman Society for Environmental Protection was prevented from doing any activities, receiving funding, attending workshops, or using any venues to conduct business and that people who wish to work with them have been threatened.

Lack of Economic Opportunities

The Complainants stated that the Company did not prioritize local contractors to provide supplies and services during the construction of the plant and preferred to use contractors

located outside the community. The Complainants also stated that the Company tenders for services were not openly publicized, so local contractors did not know about the available opportunities. The Complainants further noted that the Company failed to employ locally affected people in meaningful technical and professional positions. Instead, local community members were employed in low-paying jobs, and there were no clear, fair criteria for selection.

The Complainants shared that the Company did not provide benefit-sharing so that the local community could benefit from the project and improve its standard of living. It also did not implement the corporate social responsibility programs. The Company allegedly did not put a "Livelihood Restoration Plan" in place to compensate the local affected communities for the loss of their livelihood resulting from the alienation from or exploitation of their land and access to natural and cultural resources. No voluntary resettlement was offered to the people who suffered economic displacement due to project-related land acquisition and land-use restrictions, which caused adverse impacts on the complainants and affected communities that use this land for livestock grazing.

Company's perspective

Compliance with Regulatory Requirements

It is the Company's view that the project is compliant with all relevant national and international environmental and social standards, including IFC's Performance Standards, and is being monitored regularly by an independent third party and by the IFC. The Company explained that the official clearances and permits to develop the project were duly obtained under the applicable regulations and were based on a comprehensive ESIA study, which was implemented according to the environmental laws and processes in Jordan.

The Company indicated that in the context of the ESIA, reasonable efforts were taken to identify all the relevant project stakeholders through scoping sessions carried out with the assistance of the Ministry of Environment (MOE). This was followed by subsequent site visits aimed at identifying temporary land users and meeting with the local communities. The Company notes that the identified stakeholders were invited to engage in discussions and raise any concerns they had about the project and that no individual or corporate entity was either knowingly, or deliberately, ignored, or excluded from this process. The Company questioned the Complainants' claim that the appointed CLOs were not representative of the local communities. The Company explained that while only one CLO was initially appointed after concerns were raised about the representation of the local communities, three additional CLOs were appointed, who were selected by each of the three communities they represent.

The Company explained that the management of environmental and social risk is part and parcel of the project. It is included in the project's key performance indicators (KPI), it guides the Company's decisions on corporate social responsibility (CSR), and it is also integrated into the training provided to workers and their code of conduct. With regards to the Complainants' allegation that the Company rejected EASEP's request for funding the community's awareness and capacity about environmental risk mitigation, the Company responded that it did not receive a formal written request from EASEP. The Company further indicated that any funding proposals need to be submitted in writing to the Company to ensure proper follow up.

In response to the concerns raised about the dissemination of project information, the Company explained that, under IFC's Access to Information Policy, the Summary of Investment Information, Environmental and Social Review Summary (ESRS), E&S Action Plan (ESAP), E&S Project Categorization and Applicable Standard, and E&S Mitigation Measures were duly disclosed. In addition, the Company indicated that the ESIA, the scoping session,

and the Arabic executive summary are available on Masdar's website as the Baynouna's website is currently under development. The Company further noted that the lead Complainant was informed as to how and where the relevant ESIA documentation could be accessed.

With regards to the concerns raised about the ESAP, the Company reported that the ESAP was developed based on the outcomes of IFC's appraisal and the ESIA and that a comprehensive project-specific ESMS and associated E&S Management and Monitoring Plan (ESMMP) were developed by the Company and reviewed and approved by IFC. The implementation of the ESAP, ESMS, and ESMMP are regularly audited by an independent third party and by the IFC. As part of the ESAP, the Company explained that an external complaint mechanism was created to respond to any reported grievances and, later on, as part of the Company's commitment to continuous improvement, a more formal and comprehensive Grievance Mechanism (GM) was set up.

In response to the Complainants' concerns about the lack of accredited laboratory testing for air quality monitoring, the Company noted that the Hima Laboratory for Environmental Testing is accredited by the Jordanian Accreditation System (JAS) and conforms to Jordanian Standard JS EN ISO/IEC 17025:2012, which is equivalent to the international standard ISO/IEC 17025:2005.

Threats and Reprisals

The Company strongly refutes any allegations that it has threatened or intimidated anyone and affirmed that at no stage were complaints raised by the Company with any governmental or other organization regarding the lead Complainant or the EASEP. The Company stated that all the Company's interactions with the lead Complainant and all grievances raised through the project's GM were dealt with confidentially, and opportunities were given to those who raised grievances to resolve them transparently and ethically, free of manipulation, threat, or harassment.

Lack of Economic Opportunities

The Company affirmed that the project did not rule out dealing with local contractors, nor did it deliberately deal with certain contractors. The Company explained that procurement activities conducted on behalf of the project by the EPC Contractor were conducted in a fair & balanced manner. Due consideration was given to facilitating the participation of local contractors and to ensuring that any local requirements (e.g. local content requirements) were fully complied with. The Company explained that it had no obligation to announce tenders publicly. However, as a private project, every effort was made to ensure that local contractors were invited to participate in the tender process. The Company also indicated that both business/contracting and employment opportunities were made available to those community businesses and community members who fulfilled the relevant technical requirements required for the contracts/jobs. The Company further explained that provided the criteria for the project execution timelines and budgets were met, and bids were suitably competitive, priority was given to local businesses.

Furthermore, individual members of the local community who demonstrated the required technical capabilities were given priority over other job applicants. The Company further explained that many members of the local community were employed in varying capacities within the project during the construction phase. When the time of operation comes, the Company aims to provide employment opportunities to suitably capable and committed members of the local community, with support to be provided through continuous on-the-job training.

The Company explained that the Livelihood Restoration Plan was not warranted, because the scoping carried out in the context of the ESIA showed that the project site area did not support the livelihoods of the surrounding communities systematically. The Company further indicated that during the project development, some land users who demonstrated their loss for planted land submitted a complaint via the project's GM and received monetary compensation from the Company to their satisfaction. The Company reported that a CSR Plan was developed based on a strategy integrating relevant stakeholders' views, including identified groups within the community that are considered most in need and an essential component of local society (e.g., women, children, youth). The Company views the CSR Plan as a live document that is continuously updated to identify and respond to key areas in which it can continue to support the local communities. The Company believes that what is appropriate is to work with community representatives to identify areas, initiatives, and elements within the community, that are most in need and most vulnerable and to implement CSR initiatives in support thereof.

4. NEXT STEPS

Both the Complainant and the Company have agreed to participate in a dispute resolution process. CAO will proceed to establish a trusted facilitation team to begin working with the parties in designing a process focused on the resolution of the issues related to the complaint.

ANNEX A. CAO COMPLAINT-HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO dispute resolution specialists. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the Complainant(s), (2) gather information on how other stakeholders see the situation, and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,² the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgment** of receipt of the complaint.

Step 2: **Eligibility**: Determination of the complaint's eligibility for assessment under the mandate of CAO (no more than 15 working days).

Step 3: **CAO assessment**: Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement**: If the parties choose to pursue a collaborative process, CAO's Dispute Resolution function is initiated. The dispute resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact-finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected.³

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**

² For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

³ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.