



## 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

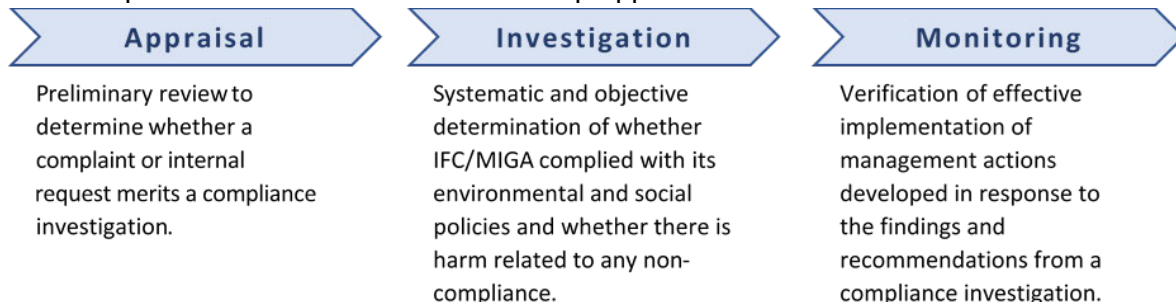
The Office of the Compliance Advisor Ombudsman (CAO) is an independent recourse and accountability mechanism for people and communities affected by projects financed by the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). CAO works to address complaints 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.