

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

SUMMARY

In February 2020, CAO received a complaint from a local community member in East Amman, Jordan, representing himself and 66 other affected individuals (the "Complainants") regarding Baynouna Solar Energy Company (the "Company"), to which IFC has provided financing. The complaint raised a range of environmental and social concerns about the Baynouna solar photovoltaic (PV) plant (the "Project"), including the Company's stakeholder engagement, environmental and social impact assessment (ESIA), and project grievance mechanism. The complaint also raised concerns about the lack of employment opportunities for the local communities and fear of reprisals against community members.

During the assessment, the Complainants and the Company (the "Parties") expressed interest in engaging in a voluntary dispute resolution process to enable the Company to understand the substance of the complaint and for the Parties to try to resolve the issues raised. Due to COVID-19-related travel restrictions and health concerns, the dispute resolution process was conducted via videoconferencing, with the assistance of a regional mediator and interpreter.

For nearly 12 months, CAO facilitated several bilateral and joint meetings between the Parties and their representatives.

Despite the Parties' goodwill, the mediation process concluded without a final agreement on the issues raised in the complaint. In September 2021, CAO facilitated a final online joint meeting, during which 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. Therefore, in accordance with CAO Policy transitional arrangements,¹ the complaint is being transferred to CAO Compliance for appraisal of IFC's environmental and social performance related to the project.

This Conclusion Report gives an account of the dialogue process and various outcomes achieved, and offers some reflections and lessons learned from the Parties and the CAO team.

BACKGROUND

The Project

According to IFC, Baynouna Solar Energy Company is mandated to develop, finance, construct, operate, and maintain a greenfield solar photovoltaic (PV) plant with

¹ The implementation of the new CAO Policy, effective July 1, 2021, includes transitional arrangements for CAO cases that pre-date the policy. For more information, please refer to:

<https://www.cao-ombudsman.org/sites/default/files/downloads/CAOPolicy-TransitionalArrangements.pdf>

a capacity of 200 Megawatts of AC power (MWac) 30 kilometers (km) 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. Out of a total of US\$188 million in debt financing, IFC's financing comprises senior A and B loans to the Company of up to \$97.25 million to support the project. Baynouna's majority shareholder is Abu Dhabi Future Energy Company PJSC–Masdar, a renewable energy company which holds a 70 percent interest in Baynouna.

The Complaint

In February 2020, a complaint was lodged with CAO by a local community member (the lead Complainant) on behalf of himself and 66 other community members in East Amman regarding IFC's financing of the Baynouna project. He acted as the sole representative of the Complainant group for the whole duration of the assessment until the dispute resolution process started. Upon encouragement from the CAO team, he invited additional members of the Complainant group to participate in the preparatory meetings for the mediation.

The three major areas of concern raised in the complaint related to the Company's alleged: a) non-compliance with environmental and social regulatory requirements; b) lack of economic opportunities for the community members; and c) incidents of threats and reprisals against some of the Complainants.

Lack of Compliance with Environmental and Social Regulatory Requirements: The Complainants argued that the Company did not comply with the applicable national and international regulatory requirements, including IFC Performance Standards.

They raised concerns over the Company's approach in implementing the Stakeholder Engagement Plan (SEP), the Environmental and Social Impact Assessment (ESIA), and the Environmental and Social Management System (ESMS). Additional concerns related to the project's grievance mechanism and the selection and appointment of the Community Liaison Officer (CLO). They also mentioned that they did not have access to the Arabic version of any of the Company's public reports and requested that they be made available.

Lack of Economic Opportunities: The Complainants stated that the Company's actions resulted in a lack of economic opportunities for them and their community. They believed that the Company did not prioritize local contractors to provide supplies and services during the construction of the plant and preferred to use providers from outside the community. The Complainants also stated that the Company's tenders for services were not openly publicized, resulting in local contractors not knowing about the available opportunities. The Complainants further noted that the Company failed to employ local community members in meaningful technical and professional positions. Instead, they were only employed in low-paying jobs, and the Complainants felt that there were no clear and fair criteria for selection.

The Complainants further expressed that the Project did not provide access to benefits that could improve the community's standard of living, including, for example, through the implementation of corporate social responsibility (CSR) programs. They also raised concerns that the Company had not offered a "Livelihood Restoration Plan" to compensate them for the loss of livelihood and economic

displacement of community members affected by restrictions on accessing land previously used for livestock grazing.

Some Complainants also cited several personal grievances regarding the impacts on their personal income from losing access to the land for grazing.

Threats and Reprisals: The lead Complainant informed CAO that he and other Complainants had faced threats against themselves and their family members due to publicly raising concerns about the impacts of the Project with government and multilateral organizations, including CAO. The lead Complainant alleged that the Company had filed a complaint against him with the Governor of Amman and that he believed that this might have resulted in threats and reprisals against him and the East Amman Society for Environmental Protection (EASEP), the local environmental organization that he led.

ASSESSMENT

In March 2020, CAO determined that the complaint met its three eligibility criteria and began an assessment of the complaint. With consent from the Parties, CAO conducted the assessment remotely due to COVID-19-related travel restrictions. The CAO team relied on phone and video calls with the Parties and other relevant stakeholders, and on the documentation made available through the assessment process.

² For more information about the assessment of this complaint:

<https://www.cao-ombudsman.org/cases/jordan-masdar-baynouna-01east-amman>

³ In response to the allegations of threats and reprisals raised by the Complainants, CAO

CAO's assessment does not entail any judgment on the merits of the complaint.² Instead, CAO aims to develop a thorough understanding of the issues and concerns raised in the complaint and determine whether the Parties wish to address the complaint through a CAO dispute resolution or compliance process.

With the Complainants' consent, CAO raised the reprisal concerns with the Company and IFC. The Company denied filing a complaint with the Governor of Amman and clarified that it was not aware of any such threats of reprisal and nor would it, in any circumstances, condone such actions. They further noted that the Company has a zero-tolerance policy for such behavior.³ With the Complainants' consent, CAO also shared the reprisal concerns with the World Bank Executive Director's office responsible for Jordan, which committed to relay the information to the relevant government authorities in Jordan. In the following months, the lead Complainant informed CAO that the threats had stopped and that the Complainants no longer felt at risk.

During the assessment, both the Complainants and the Company agreed to pursue a voluntary dispute resolution process facilitated by CAO.

THE DISPUTE RESOLUTION PROCESS

Process Design and Capacity Building

After the conclusion of the assessment in August 2020, CAO began facilitating

conducted its assessment in accordance with the principles of the CAO *Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations*:

<https://www.cao-ombudsman.org/about-us/approach-reprisals>

meetings with the Complainants and the Company, both separately and jointly.

As a preliminary step, the Parties were encouraged to designate trusted representatives to participate in the process. The representatives received capacity-building support from CAO's mediation team, including training on conflict resolution and communication skills. In November 2020, CAO sadly received news that the lead Complainant had passed away due to illness. As a consequence, the dispute resolution process was paused for the time needed for the complainant group to re-organize themselves and elect new representatives. In January 2021, the process resumed. CAO convened a bilateral meeting with the newly elected Complainant representatives and offered them a capacity-building workshop.

As a result of the capacity-building support, the Parties' representatives developed the knowledge and skills necessary to engage more effectively and constructively in the dialogue process and make informed decisions about the process and outcomes.

CAO's mediation team worked with the Parties to set up the framework of the dialogue process. This included reaching an agreement on which issues would be discussed, how the meetings would be structured, and ground rules to guide the process.

The early meetings facilitated by the CAO team were cordial, and the Parties expressed a genuine interest in building a relationship and finding joint solutions.

The Mediation Process

CAO convened the first joint meeting in January 2021 during which the Parties agreed on the framework of the dialogue process and exchanged their views regarding the three main areas of concern raised in the complaint.

The second joint meeting, held in April 2021, resulted in a meaningful and comprehensive overview of the issues, with a commitment from the Company to provide written responses to the issues and concerns raised by the Complainants. Following the second joint meeting, the Company provided CAO with a written summary of its understanding of each of the Complainants' issues and its responses to each point raised.

In May 2021, CAO convened a third joint meeting, during which the Parties focused on the issue of employment opportunities for the local community and the appointment of the Company's CLOs. The Company explained to the Complainants that the majority of the employment opportunities during construction are with the Engineering, Procurement and Construction (EPC) contractor and with the Operations & Maintenance (O&M) contractor during the operations phase. The Company also noted that it only employs five full-time employees. Further, they explained that there might be limited employment opportunities available due to the technical expertise required for the roles needed for the Project.

The Company also explained that the EPC contractor and O&M contractor are independent legal entities. While the Company can, and allegedly did, encourage these entities to consider suitably qualified local candidates, it cannot oblige these entities to do so. The Company also remarked that the Project is moving from the construction phase to the operations phase and that members of the local community had been employed during construction. The Company expressed openness to receiving CVs of candidates and sharing them with the O&M contractor for their consideration in relation to any future employment opportunities which might arise.

Regarding employment of local contractors, the Company explained that, similar to employment opportunities, the majority of activities related to the procurement of goods and services are also undertaken by the EPC and the O&M contractors. The Company also explained that strict governance processes dictate that the procurement of any goods or services is conducted via a fair and competitive tender process. The Company stated that it is not obliged to issue public tenders or announcements related to procurement activities. Nonetheless the Company promised to put the Complainants in touch with their main service provider to ensure that technically qualified local contractors are notified of any requests for supplies or services.

The Company claimed that it had conducted all necessary environmental assessments consistent with relevant national and international regulatory requirements applicable to the Project. The Company explained to the Complainants that if they had specific suggestions as to how environmental practices might be enhanced or improved, they were willing to hear those suggestions. The Company also reiterated its commitment to CSR initiatives and its interest in continuing to work with established nongovernmental organizations (NGOs) in Jordan.

In response to the Complainants' criticisms about the selection process of the Community Liaison Officer (CLO), the Company explained that the appointment of a CLO is at the Company's discretion in accordance with national regulations, and that the current representatives are members of the local community. The Company explained that it had increased the number of CLOs in order to obtain representation from a wider cross-section of the many diverse groups in the local community.

Generally, the joint meetings between the Parties ended on good terms, due to the commitments for action by the Company and the willingness of the Complainants to support their efforts.

Nevertheless, frustrations arose due to what the Complainants perceived as a lack of action with regard to community representation at the CLO level and CSR initiatives, as well as a lack of progress on hiring local talent and an absence of requests for the provision of local services to the Project from the community. The Complainants explained to CAO that they believe that the Company does not provide clear job requirements that would make employment and other economic opportunities more accessible for community members. The Complainants also stated that some candidates may benefit from coaching and training to reach the level of competency needed for the job.

From the Company's point of view, and considering the Project's current stage, the Company believes that it has met its obligations on the regulatory and employment issues. As to personal grievances and losses shared by the Complainants, the Company noted that it had encouraged the Complainants to submit these via the existing grievance mechanisms and that formal responses were provided to specific individual complaints, based on an investigation of the claims and their legitimacy. However, one Complainant expressed concern regarding the Company's assessment of his individual grievance and the absence of a written response to his claims.

Regarding long-term relationship building between the community and Company, some suggestions were proposed by the Complainants to mitigate the lack of technical expertise in the community, such as providing training for young talent in preparation for future employment needs at

the Company. However, an underlying challenge persisted concerning who represented “the local community” and who Baynouna/Masdar should engage as its CLOs. From the Company’s point of view, the local community comprises not only the Complainants’ group, but many different tribes and diverse groups, and it is important to the Company that all members of the local community are treated equally and that preferential treatment is not granted to one particular group.

A final joint meeting, which took place in September 2021, concluded without an agreement and with a request from the Complainants to terminate the mediation process and transfer the case to CAO’s Compliance function. Following the final joint meeting, the Complainants explained to CAO that they felt that the Company did not make adequate efforts to respond to their requests and find solutions that would satisfy both Parties. The Complainants are of the view that all of the issues raised in the complaint still remain unresolved.

DIALOGUE AND NEGOTIATION OUTCOMES

Despite the lack of a final settlement agreement, the CAO team observed that the efforts made by the Parties throughout the process achieved some results:

- A trusted and safe space for dialogue was created between the Company and the Complainants, which allowed them to listen, provide input, and gain insights into the issues.
- The Parties’ capacities to be effectively engaged in dialogue processes were developed and strengthened.
- The 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.

- The Company agreed to establish mechanisms to receive CVs of suitably qualified individuals from the complainant group for consideration for future employment. The Company reciprocated by sharing information about current job vacancies at the Project. In turn, the Complainants submitted CVs of candidates for the Company’s consideration.
- The Complainants received written responses to all of the issues raised in the complaint, including published information in both English and Arabic.
- The Company agreed in principle to continue its CSR efforts in the local community.
- The Parties expressed an interest in nurturing positive relationships throughout the lifetime of the Project and onwards.

LESSONS LEARNED

The case presented several challenges and learning opportunities for the CAO mediation team, including:

Trust building through process design

The mediation team worked with the Parties to understand their needs and preferences before designing an acceptable framework. The Parties’ involvement in the design of the process, including the dialogue structure and ground rules, gave them ownership of the process and resulted in a deeper level of engagement throughout the mediation.

Consistent communication with all of the Parties ensured the timely exchange of

information between them and the CAO team.

Effective stakeholder representation

The involvement of the Chief Financial Officer of Masdar, who also serves as the Chairman of Baynouna, and the former and current Chairs of EASEP in the dispute resolution process enabled the mediation team to proceed with confidence that individuals with authority to make decisions were at the table. The consistent participation of each of the Parties' representatives at every joint meeting ensured that there was knowledge of the progress made and demonstrated the commitment and good faith of the Parties. Additional representatives were included to ensure input where needed.

Working under COVID-19 conditions and risks

Due to the rise of COVID-19 cases in Jordan, the Complainants encountered difficulties in meeting in person and organizing their efforts. The closure of some ministerial offices in the country delayed some of the Complainants' efforts to produce formal documents supporting their grievances. Understandably, timelines were pushed and schedules were accommodated.

More importantly, the loss of the lead Complainant at the beginning of the dispute resolution process saddened everyone involved. The mediation team made efforts to handle this development with sensitivity and care. It was equally important to provide the necessary time and space for all Parties to realize the implications of the event for the process and reorganize themselves. Given the large number of complainants involved in the process, CAO had encouraged the lead Complainant to consider expanding the representatives of the Complainant group to include other

community members. However, it was only after the start of the dispute resolution process that five additional community members joined the meetings with CAO. Despite everyone's efforts to cooperate in the difficult times following the loss of the lead Complainant, the CAO team believes that the mediation process suffered because the new Complainants' representatives had not directly participated in the CAO assessment and had not acted as representatives of the Complainants until after the passing of the lead Complainant.

Ongoing capacity building

Capacity building is relevant at every stage of the dispute resolution process. While it is an important part of the early convening phase to prepare the Parties for dialogue, it should be an ongoing effort throughout the process to ensure effective engagement between the Parties and their ownership of the outcomes. To this end, the mediator played an important role in identifying capacity gaps emerging during the process and offering training and support to each party in bilateral sessions.

Use of technology

Extensive team preparation and technical support from CAO were essential to ensure that the mediator could effectively facilitate all meetings via online conferencing with simultaneous interpretation. Given the cross-cultural nature of the discussions, the cultural competency and fluency of the team played a major role in reconciling competing worldviews and facilitating mutual understanding where needed.

CONCLUSION AND NEXT STEPS

Despite all the Parties' good faith efforts in seeking to resolve all the issues raised in the complaint, a final agreement was not reached. CAO's Dispute Resolution

function has concluded its involvement in this case, and the case will be transferred to CAO Compliance in accordance with CAO Policy transitional arrangements.

All documentation relevant to this case is available at CAO's website at www.cao-ombudsman.org.

In MEMORIAM: ENGINEER FARHAN AL DABOUBI

CAO honors the memory of engineer and Chairman Farhan Al Daboubi, who submitted the complaint to CAO on behalf of the community members and represented them during the assessment process and part of the dispute resolution process. We extend our deepest condolences to Mr. Al Daboubi's family, colleagues, community, and friends.

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 the IFC/MIGA Independent Accountability Mechanism (CAO) Policy,¹ the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** 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 business days).

Step 3: **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 90 business days, with possibility of extension for a maximum of 30 additional business days if after the 90-business day period: (1) the Parties confirm that resolution of the complaint is likely; or (2) either Party expresses interest in dispute resolution, and there is potential that the other Party will agree.

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.²

OR

Compliance Appraisal/Investigation: If the parties opt for an investigative process, the complaint is transferred to CAO's Compliance function. The complaint is also transferred to the Compliance function when a dispute resolution process results in partial or no agreement. At least one Complainant must provide explicit consent for the transfer, unless CAO is aware of Threats and Reprisals concerns. CAO's Compliance function reviews IFC/MIGA's compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate following a three-step process. First, a compliance appraisal determines whether further investigation is warranted. The appraisal can take up to 45 business

¹ For more details on the role and work of CAO, please refer to the full IFC/MIGA Independent Accountability Mechanism (CAO) Policy: <https://tinyurl.com/mr369wuc>

² 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 concluded the dispute resolution process and transferred it to CAO Compliance for appraisal.

days, with the possibility of extending 20 business days in exceptional circumstances. Second, if an investigation is warranted, the appraisal is followed by an in-depth compliance investigation of IFC/MIGA's performance. An investigation report will be made public, along with IFC/MIGA's response and an action plan to remediate findings of non-compliance and related harm. Third, in cases where non-compliance and related harm are found, CAO will monitor the effective implementation of the action plan.

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

Step 6: **Conclusion/Case Closure**