

Redress



GREEN
CLIMATE
FUND

Independent
Redress
Mechanism

Compliance Appraisal Report

Case C-0009-Egypt

FP039: GCF-EBRD Egypt Renewable Energy Financing Framework

September 2024

ABOUT THE INDEPENDENT REDRESS MECHANISM

The Independent Redress Mechanism (IRM) is an accountability and redress mechanism established by the Green Climate Fund (GCF) to increase the effectiveness of the GCF's operations, and to be responsive to the concerns of people adversely affected by GCF funded projects or programmes.

The IRM is mandated to receive and consider complaints from people who believe they have been, or may be, adversely impacted by GCF projects or programmes failing to implement GCF policies and procedures.

The IRM is independent of the GCF Secretariat, and reports directly to the GCF Board, which oversees the GCF's investments and management.

ABBREVIATIONS

| Abbreviation | Definition |
|--------------------------|---|
| AE | Accredited Entity |
| AfDB | African Development Bank |
| AfDB Management Response | African Development Bank Management Response to the Notice of Registration of a Complaint Relating to Photovoltaic Solar Power Projects in Egypt, Under the Feed-in-Tariff (FiT) Program in Egypt, Complaint Number RQ2022/04 (Egypt) |
| AMA | Accreditation Master Agreement |
| APR | Annual Performance Report |
| Board Decision | Decision taken by the Board of Directors of the GCF |
| BSDA | Benban Solar Developers Association |
| EBRD | European Bank for Reconstruction and Development |
| EE | Executing Entity |
| EEAA | Egyptian Environmental Affairs Agency |
| ESP | GCF 2018 Environmental and Social Policy |
| ESAP | Environmental and Social Action Plan |
| ESIA | Environmental and social impact assessment |
| ESMP | Environmental and Social Management Plan |
| ESMFS | Environmental and Social Management Framework and System |
| ESS | Environmental and Social Safeguards |
| FAA | Funding Activity Agreement |
| FMC | Facilities Management Company |
| FP | Funding Proposal |
| FP039 | GCF Funded Programme FP039: GCF-EBRD Egypt Renewable Energy Financing Framework |
| GCF | Green Climate Fund |
| GRM | FP039 Benban Solar Park Grievance Mechanism |
| HSH | Health and Safety Home for Investment Company |
| IESC | Independent Environmental and Social Consultant |
| IFC | International Finance Corporation |
| Interim ESS | GCF Interim Environmental and Social Safeguards |
| IRM | Independent Redress Mechanism |
| Labour Law | Egyptian Labour Law No 12 of 2003 |
| MAF | GCF 2015 Monitoring and Accountability Framework |
| NREA | New & Renewable Energy Authority |
| Park | Benban Solar Park |
| PGs | Procedures and Guidelines of the Independent Redress Mechanism |
| PS | IFC 2012 Performance Standards |
| RMF | GCF Risk Management Framework |
| Secretariat Response | Written Response of the GCF Secretariat dated 30 August 2024 to the IRM Request for Response in Case C-0009-Egypt dated 26 July 2024 |
| SESA | Strategic Environmental and Social Assessment |
| TOR | Terms of Reference of the Independent Redress Mechanism of the GCF |

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I. EXECUTIVE SUMMARY

In December 2022, the Independent Redress Mechanism (IRM) declared eligible two complaints submitted in relation to Green Climate Fund (GCF) Programme FP039: *GCF-EBRD Egypt Renewable Energy Financing Framework*. The Accredited Entity for the Programme is the European Bank for Reconstruction and Development (EBRD). The complainants did not request confidentiality but as a result of the IRM's retaliation risk assessment and to protect personal information, the IRM is not disclosing the names of the complainants.

IRM Case C-0009-Egypt consists of two complainants (Complainant #1 and Complainant #2) who raised several issues that were grouped into concerns related to (i) community-development, and (ii) labour and working conditions. At the conclusion of the Initial Steps Phase, both complainants agreed to consider problem solving under the facilitation of the IRM.

The Problem-Solving Phase commenced on 7 April 2023 and concluded on 20 April 2024. Issues raised in the complaint regarding community development were resolved through the IRM's Problem-Solving function. Labour and working conditions issues raised by Complainant #2 were not resolved within the time period provided for under the IRM's Procedures and Guidelines and were transferred to the IRM's Compliance Review function on 27 April 2024 for compliance appraisal. On 12 July 2024 the IRM concluded that in respect of those issues there is *prima facie* evidence of adverse impacts and non-compliance with GCF operational policies and procedures. Accordingly, the IRM has commenced a compliance investigation in respect of Complainant #2's case.

Labour and employment-related issues raised by Complainant #1 were the subject of an agreement following problem solving. However, in July 2024 during the monitoring phase of the agreement the complainant communicated to the IRM that he wished to refer labour and employment-related issues in his complaint to Compliance Review. As a result, the IRM closed the Problem-Solving Phase and referred those issues to Compliance Review as of 14 July 2024.

GCF finance provided under FP039 has been disbursed by the Accredited Entity, EBRD, to provide loans to a total of eight subprojects at Benban Solar Park. The overall Park site has been allocated by the government of Egypt to a public authority, the New & Renewable Energy Authority. The site extends over some 37 square kilometres and is divided into 41 subplots, all of which have been allocated to developers. Common services and facilities are provided by a Facilities Management Company (FMC). Six of the eight loans provided by GCF were repaid in 2022 following refinancing through a green bond issuance, which GCF did not participate in.

This compliance appraisal report concerns labour and working conditions and grievance management systems relevant to the GCF-EBRD subproject sites in the Benban Solar Park in Aswan Governorate, Egypt. The IRM notes that the accountability mechanisms of two other international financial institutions, the African Development Bank and the International Finance Corporation, are also currently handling complaints regarding the Benban Solar Park.

The complaint that gives rise to this compliance appraisal was submitted to the IRM on 28 September 2022 by a former employee of a facilities management company at the Benban Solar Park, Health and Safety Home for Investment Company (HSH). The complainant initially worked there as a driver. His role and responsibilities then increased in seniority, but despite several requests, HSH did not increase his salary or update the description of his role in his contract. Following a period of absence, he was dismissed without warning. After complaining to the Labour Office, he was reinstated but then assigned to a role that he saw as humiliating, accompanying the driver of the wastewater truck. When the complainant refused to sign a decision confirming his assignment to this role, he was told to stop work. He did so but continued to receive his salary until the end of his fixed-term contract. The complainant took steps to make a formal complaint but says that in a meeting, threats were made towards him and that he did not receive a response when he sought to escalate his complaint. The

complainant additionally raises issues and problems with other workplace benefits and commitments, including food and health insurance, and deductions for transportation.

Adverse impacts raised by the complainant span psychological and harm resulting from workplace treatment and perceived loss in social standing in his community; financial loss during the period following first dismissal; improper transportation deductions and non-payment of health insurance and food allowance; and financial loss due to inability to engage in income-generating activities.

The complaint raises questions about the compliance of the Programme with: Performance Standards 1 and 2 of the GCF's interim environmental and social safeguards; the Initial Proposal Approval Process, including Criteria for Programme and Project Funding; the GCF Risk Management Framework and constituent policies (including initial and revised guidelines applicable during consideration of FP039 and subsequent revisions following approval and implementation of FP039);¹ GCF's 2015 Monitoring and Accountability Framework for Accredited Entities; and GCF's responsibilities under the 2018 Environmental and Social Policy.

The complainant's employer, HSH, was contracted by the Benban Solar Developers Association (BSDA), an association whose membership was formed of developers at Benban. BSDA further plays a role in the management of environmental and social safeguard risks for the projects financed under the GCF-funded Programme. Since the BSDA and FMC were not directly financed through the Programme, the IRM has considered whether acts or omissions regarding the BSDA and FMC could properly be considered to fall within the scope of Programme non-compliance. Taking account of Performance Standards 1 and 2, the IRM has concluded that on the basis of the information currently available to it, they can.

Both the BSDA and the FMC's roles flow directly from a Strategic Environmental and Social Assessment (SESA) prepared for the development of the Benban site. They played significant roles in the delivery of the SESA's Environmental and Social Action Plan and in developing and implementing common standards, including on labour and working conditions and the grievance management system at Benban. Lenders, including EBRD, did not have contractual relationships with either the FMC or the BSDA.

Information currently available indicates that there were gaps in the network and implementation of policies and systems regarding labour and working conditions and the grievance mechanism at Benban during the period since the appointment of the FMC for the operations and maintenance phase. Monitoring of the FMC on behalf of the Accredited Entity highlighted a need for corrective actions, though the monitoring situation during the key period of concern for the complainant is not yet clear. It appears that significant progress in addressing actions identified through monitoring had been made by early 2024, but this has not remedied the adverse impacts described by the complainant. GCF was aware that complaints had been filed with international accountability mechanisms, including with the IRM, and sometimes sought additional information from EBRD. However, at the time of writing, neither complaints nor the Accredited Entity's annual reports appear to have led the GCF to seek detailed insights into the FMC's performance or implementation of the grievance and redress mechanism at Benban.

After consideration of information currently available, the IRM concludes that there is *prima facie* evidence of adverse impacts and non-compliance with GCF operational policies and procedures by

¹ The Risk Management Framework consists of nine policies, a majority of which were adopted during or shortly after the approval of FP039 (during the 17th and 19th meeting of the GCF Board). In the period since FP039 approval, the GCF updated certain elements of its risk management policies and procedures. When considering roles and responsibilities, the IRM will need to analyse separately the applicable policy environment and relevant updates during (i) initial proposal consideration and (ii) post-approval project/programme monitoring. See <https://www.greenclimate.fund/about/policies/risk-management-framework>

GCF Programme FP039, *GCF-EBRD Egypt Renewable Energy Financing Framework*. Consequently, as stipulated in para. 55 of its Procedures and Guidelines, the IRM will commence a compliance investigation.

Each complainant has raised distinct facts, but both are former employees of HSH at the Benban Solar Park, and each complaint raises compliance questions concerning labour and working conditions and the grievance mechanism at the Park. The IRM will process the two compliance investigations concurrently. Efficient use of resources and alignment of timelines during the compliance investigation phase will be better served through the adoption of a consolidated Scope of Compliance Investigation. Accordingly, the Scope of Compliance Investigation set out in this report will apply to the further compliance phase investigation of both Complainant #1 and Complainant #2 complaints.

II. INTRODUCTION

1. This report documents the Green Climate Fund (GCF) Independent Redress Mechanism (IRM) compliance appraisal in IRM Case C-0009-Egypt.² It concerns a complaint received by the IRM in November 2022 regarding labour and working conditions at the Facilities Management Company (FMC) of the Benban Solar Park (the Park) in Aswan Governorate, Egypt.
2. Over a period beginning in 2017, GCF has provided loans to certain subprojects at the Park through its Accredited Entity (AE), the European Bank for Reconstruction and Development (EBRD), under GCF Programme FP039 - *GCF-EBRD Egypt Renewable Energy Financing Framework* (the Programme or FP039).³ The issues raised in the complaint that form the subject of this report were transferred to the compliance function of the IRM in April 2024 following an unsuccessful IRM problem-solving process.
3. This report provides a background to FP039 and to the complaint; describes relevant GCF operational policies and procedures; and assesses whether there is *prima facie* evidence of adverse impacts through non-compliance of the Programme with GCF operational policies and procedures. Since the IRM concludes that there is such evidence and recommends a compliance investigation, the report also includes terms of reference for a compliance investigation in the form of a statement of Scope of Compliance Investigation.
4. The compliance appraisal and this report have been prepared in accordance with the updated Terms of Reference (TOR) and Procedures and Guidelines of the IRM (PGs).⁴

III. BACKGROUND

Background to Programme FP039 – GCF-EBRD Egypt Renewable Energy

5. In July 2015, by means of Board Decision B.10/06, GCF's Board approved the accreditation of EBRD as a GCF Accredited Entity.⁵ Thereafter, GCF and EBRD signed an Accreditation Master Agreement (AMA) dated 22 April 2017. The AMA establishes the overall framework for EBRD's collaboration with GCF and the parties' respective roles and responsibilities. Pursuant to its accreditation, EBRD submitted a funding proposal FP039, *GCF-EBRD Egypt renewable energy financing framework*, to the GCF. The Secretariat assessed the proposal, and FP039 was approved by the Board on 15 March 2017 (Board Decision B.16/07/Add.02);⁶ a few weeks prior to the date of the AMA.
6. At the time of Board approval, the Programme was assessed as falling under environmental and social risk Category B.⁷ Category A subprojects were excluded from receiving GCF funding.⁸ The

² See C0009 Egypt <https://irm.greenclimate.fund/case/c0009-egypt>

³ See FP039: GCF-EBRD Egypt Renewable Energy Financing Framework | Green Climate Fund <https://www.greenclimate.fund/project/fp039>

⁴ See Procedures and Guidelines of the IRM <https://irm.greenclimate.fund/document/2019-procedures-and-guidelines-irm>

⁵ See GCF/B.10/03: Consideration of Accreditation Proposals [gcf-b10-03.pdf \(greenclimate.fund\)](https://www.greenclimate.fund/document/gcf-b10-03.pdf)

⁶ See GCF/B.16/07/Add.02 Funding proposal package for FP039 <https://www.greenclimate.fund/document/gcf-b16-07-add02>

⁷ See Funding Proposal package for FP039. <https://www.greenclimate.fund/document/gcf-ebrd-egypt-renewable-energy-financing-framework>

⁸ See Approved Funding Proposal FP039, page 26: <https://www.greenclimate.fund/document/gcf-ebrd-egypt-renewable-energy-financing-framework>

Funded Activity Agreement (FAA) and related Environmental and Social Management Framework System (ESMFS) have since been amended for reasons unrelated to the present complaint.⁹

7. FP039 aims to accelerate the early stage of development of Egypt's renewable energy generation market by supporting development of a critical mass of private sector-driven generation projects and strengthening of the regulatory context for renewable energy in Egypt. Component 1 (up to USD 4.7 million in non-reimbursable GCF grant funding) is a technical assistance programme to create an enabling environment for private sector renewable energy investment in Egypt; and Component 2 (up to USD 150 million in reimbursable GCF loan finance) supports the development and construction of solar and wind projects in Egypt totalling USD 1 billion.
8. Implementation of Component 2 includes GCF-financed subprojects at the Benban Solar Park, which is located in Aswan Governorate, Upper Egypt. The site extends to over 37 square kilometres and was anticipated to generate around 1400 GWh electricity annually, equivalent to the annual energy consumption needs of over 800,000 Egyptians.¹⁰ The site is divided into a total of 41 sub-plots, with common services and facilities provided by a Facilities Management Company. All 41 sub-plots have been allocated to developers by the New & Renewable Energy Authority (NREA), to whom the government of Egypt had allocated the overall site for use for renewable energy generation.¹¹ Multiple international financial institutions have supported project developers in different combinations; among them EBRD, the International Finance Corporation (IFC), and the African Development Bank (AfDB).
9. GCF reimbursable debt finance has been provided under FP039 to a total of eight subprojects at the Park through GCF's Accredited Entity, EBRD. Of these eight, six subprojects were subsequently refinanced by means of a green bond and GCF loans were repaid in full in 2022.¹² For the avoidance of doubt, the IRM notes that the GCF-financed subprojects have not been co-financed by either IFC or the AfDB, whose accountability mechanisms are also currently processing complaints regarding labour and workplace issues at the Benban Solar Park.¹³
10. The aggregate GCF loan amount for the eight FP039 Benban subprojects (including six that were repaid in 2022) has been USD 62.1 million.¹⁴ The Completion Date for the Programme is undergoing an extension and is expected to conclude during the last quarter of 2024.¹⁵ This is the date by which the AE is expected to have finalized the implementation of all activities outlined in Components 1 and 2 of the Programme.

⁹ See <https://www.greenclimate.fund/document/post-approval-environmental-and-social-safeguards-ess-report-fp039-gcf-ebird-egypt-renewable>. The Risk Category of the Programme was upgraded to Category A from Category B following the addition of a new wind power subproject to the Programme.

¹⁰ See Approved Funding Proposal FP039, page 10. In Component 2, the programme aims to leverage EBRD and GCF finance to attract additional investments from international and development financial institutions and commercial banks, as well as equity investments from the project sponsors. The framework overall envisages debt financing from GCF and EBRD of up to USD 500 million, with the aggregate value of USD 150 million of GCF loans representing co-financing of up to 15% of total project costs in any single project. The programme is based on EBRD providing financing representing up to 35% of the cost of each project, with the remaining debt expected to be provided by other lenders. The equity contribution would be 25% of the project costs, translating into investment from the private sector of USD 250 million.

¹¹ Strategic environmental and social assessment (SESA), page 10. See: <https://www.ebird.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

¹² See further <https://www.ebird.com/news/2022/ebird-invests-in-scatec-green-bond-.html>

¹³ See Egypt: Benban Solar 01-07, <https://www.cao-ombudsman.org/cases> and AfDB RQ 2022/04: Benban PhotoVoltaic Solar Park – Egypt: [Benban PhotoVoltaic Solar Park - Egypt | Independent Recourse Mechanism \(IRM\) \(afdb.org\)](https://www.afdb.org/en/press-room/press-releases/benban-photo-voltaic-solar-park-egypt-independent-recourse-mechanism-irm)

¹⁴ GCF Secretariat Response

¹⁵ The currently disclosed Completion Date is 8 September 2024. The IRM understands that an extension is under discussion. See [FP039: GCF-EBRD Egypt Renewable Energy Financing Framework | Green Climate Fund](https://www.greenclimate.fund/document/post-approval-environmental-and-social-safeguards-ess-report-fp039-gcf-ebird-egypt-renewable)

Background to IRM Case C-0009-EGYPT

11. On 28 September 2022, the IRM received and acknowledged a complaint submitted by a former employee of the FMC at the Benban Solar Park in Aswan Governorate, Upper Egypt. Issues raised by that complainant form the basis for the present compliance appraisal. Thereafter, on 8 November 2022, the IRM received a second complaint submitted by a former employee of the FMC. That complaint was acknowledged on 11 November 2022.
12. The two complaints raised issues that were broadly grouped into concerns relating to (i) community development, and (ii) labour and working conditions, for the purposes of the complaints handling process. Only the labour and working conditions issues raised by the second complainant (in November 2022) are addressed in this compliance appraisal report.
13. The complainants did not request that their identities be kept confidential but following a retaliation risk assessment conducted by the IRM, and to protect personal information, the IRM decided not to disclose their names in its communications regarding the case.
14. In December 2022, the IRM determined that the two complaints were eligible under its updated Terms of Reference (TOR) and the IRM's Procedures and Guidelines (PGs).¹⁶ Consequently, the IRM began to engage with both complainants in accordance with its Initial Steps Phase.¹⁷ Each complainant opted to engage in problem solving to resolve their complaint.
15. At the conclusion of the Problem-Solving Phase, one complainant was unable to reach a resolution of her complaint related to labour and working conditions and as of 27 April 2024 that complaint was transferred to the IRM's Compliance Review function for compliance appraisal under para. 48 of the PGs. On 12 July 2024 the IRM concluded that in respect of those issues there is *prima facie* evidence of adverse impacts and non-compliance with GCF operational policies and procedures. Accordingly, the IRM commenced a compliance investigation in respect of Complainant #2's case.
16. Issues regarding labour and working conditions raised by the second complainant (Complainant #1) were the subject of a problem-solving agreement. However, in July 2024, during the monitoring phase, Complainant #1 communicated to the GCF IRM that he wished to refer the labour and employment-related issues in his complaint¹⁸ to Compliance Review. Accordingly, the IRM closed the Problem-Solving Phase and referred those issues to Compliance Review under para. 48 of the PGs as of 14 July 2024.
17. On 26 July 2024, in accordance with para. 51 of the PGs, the IRM requested that the GCF Secretariat provide a response to the complaint by 16 August 2024. On 8 August 2024 the Secretariat requested a time extension to 31 August, and this was granted by the Head of the IRM on the same day pursuant to para. 95 of the PGs. The Secretariat's Response was submitted on 30 August 2024. Under para. 53 of the PGs the IRM was expected to conclude the compliance appraisal by 20 September 2024 and did so on 13 September 2024.
18. Whilst the complaints are different, the subject matter of the compliance issues raised by the two complainants is similar. Therefore, this report includes relevant information and analysis from the IRM's earlier compliance appraisal report of 12 July 2024, whilst taking account of new information and arguments submitted during the present compliance appraisal. Consistent with this, analysis in this report draws on the IRM's documents and a discussion with the AE during the earlier compliance appraisal in Complainant #2's case. It also takes account of the specific

¹⁶ See IRM Case C-0009-Egypt: <https://irm.greenclimate.fund/case/c0009-egypt>

¹⁷ Per the PGs, under the Initial Steps Phase the IRM engages with the complainant to: (a) understand the issues in the complaint; (b) provide further information regarding problem solving and compliance review; (c) ascertain whether the complainant would like to pursue problem solving and/or compliance review; and (d) ensure that the complainant is able to make an informed decision. See [procedures-and-guidelines-irm-final-july-2021_0.pdf \(greenclimate.fund\)](#)

¹⁸ These issues are referred to as 'labour and working conditions' issues in the present compliance appraisal.

assertions in Complainant #1's complaint as the IRM understands it and of new arguments put forward by the GCF Secretariat in its Response to the IRM's Request for Response dated 30 August 2024.

IV. COMPLIANCE REVIEW HISTORY

Summary of Issues Transferred to Compliance Review

19. Complainant #1's concerns regarding labour and working conditions arise out of a period when he was employed by Health and Safety Home for Investment Company (HSH). HSH was at relevant times a contractor to the Benban Solar Developers Association (BSDA) at the Benban Solar Park and was the facilities management company for the site.
20. Complainant #1 ('the complainant') started working at Benban Solar Park in 2019 and was employed under a series of fixed-term contracts with the FMC. Initially his employer was Hassan Allam Asset Property Management, but in 2020 that company was succeeded as FMC at the Benban Solar Park by HSH. The complainant states that within the first three months of his employment with Health and Safety Home his roles and responsibilities changed significantly but his salary did not increase, and his job title was not changed.
21. At the start of his employment with HSH the complainant worked as a driver with the firefighting team. He was then assigned to more senior roles, including as manager of vehicle movements and drivers, and as vehicle maintenance manager. His new responsibilities included management of a team of drivers, maintenance of vehicles, and some procurement-related tasks. The complainant was also expected to be on standby to intervene within 24 hours if there was an emergency. The complainant says that these responsibilities were not formalized in writing, and that whilst he asked for an increase in his salary, it remained unchanged.
22. In 2021, a group of security guards who had previously been engaged to work at the Benban Solar Park via a subcontractor were transferred to the FMC's payroll. Some were drivers, and so the complainant was assigned to supervise them. The complainant realised that some of the workers he was supervising were on higher salaries than his own. When he raised this with HSH management and asked for a pay rise, he was given to understand that the situation was a result of the new workers' earlier contract, and it wasn't possible to increase the complainant's own pay. As other workers were also later appointed on salaries higher than the complainant's, he began to feel increasingly distressed.
23. In late 2021, discussion began on a successor fixed-term contract. The complainant again requested a higher salary and was told verbally that he would receive an additional 400 Egyptian pounds a month. The complainant says that out of respect, and to show his good intentions, he accepted this even though he did not believe that the increase was adequate. The increased amount was not formalised in writing in the new contract, and the complainant says that he never received it. The IRM has been provided with a copy of a one year fixed-term contract between the complainant and HSH, which is dated 24 November 2021 (ending on 23 November 2022). This states that the complainant is employed as a driver.
24. After his requests for a pay rise, the complainant says that HSH sidelined him, reassigning some of his responsibilities to three people whom he had previously supervised. His attendance began to suffer, and eventually, following one period of absence he was dismissed without warning via a notification received by post. The IRM has not at this stage seen this notification. The complainant reports that he filed a complaint with the Labour Office soon after, and that he was reinstated after a couple of weeks without pay.

25. Upon his reinstatement, the complainant reports that he was assigned to be manager of the firefighting squad, or operational manager. The complainant asked for this change to be reflected in his contract, but nothing was formalized.
26. In June 2022¹⁹ the complainant was assigned to accompany the truck driver responsible for wastewater disposal. The complainant believes that this was meant to humiliate and marginalize him, in punishment for his repeated requests for an increase in salary and changes to his written contract. The complainant was approached by a member of the FMC's human resources personnel to sign a decision confirming his transfer to work as a wastewater truck driver attendant. At this stage, the IRM has not seen this decision. The complainant refused to sign the document and was then told to stop working immediately. He accordingly stopped work but continued to receive his salary for the remainder of his fixed-term contract. In a notice dated 13 September 2022, HSH gave the complainant notice that his contract would end on 22 November 2022 and that the remaining period of the contract would be treated as paid holiday, allowing the complainant to look for other employment opportunities.
27. The complainant's requests regarding his contract and salary had initially been communicated verbally. But after he was instructed to stop work, the complainant decided to approach the grievance manager at HSH to formally submit a complaint in writing. The grievance manager's initial reaction was to tell him that he should wait for management to investigate before filing a complaint. He was later invited to a meeting with HSH management but was unable to attend at the proposed time as he was going to the Labour Office. The meeting took place later, but it raised additional concerns in the view of the complainant.
28. When the meeting took place, participants included an HSH occupational health and safety manager, whose behaviour the complainant had earlier complained about as he considered it insulting and slanderous. Other FMC personnel and a representative of the BSDA's FMC monitoring consultant also took part in the meeting. The complainant says that he was told that he had no right to complain; that threats were made against him; and that the BSDA consultant also referred to a Facebook post by the complainant in his capacity as a community member, following a community meeting that many others had also participated in.
29. After this meeting, the complainant filed a complaint with a representative of the BSDA's FMC monitoring consultant. The IRM understands that he did receive a response to his complaint.
30. The issues raised by the complainant in his case with the IRM also extend to other workplace benefits, namely: i) that a sum for transportation was deducted from the complainant's salary even though he used his own vehicle; ii) that the FMC had not made health insurance payments for the first nine months of his contracted period; iii) that food provided to workers was of poor quality, and that workers who sought to receive a cash allowance instead, including the complainant, were offered and (for those who accepted the offer) received, less than they were entitled to under a statement they were provided with when they were first contracted,²⁰ and that this situation continued even after they raised concerns.
31. The complainant filed complaints with lender accountability mechanisms including the IFC Compliance Advisor Ombudsman (CAO) and the African Development Bank's Independent Recourse Mechanism (AfDB IRM), though the IRM understands that at some point the latter complaint was withdrawn. At the time of writing in early September 2024, the IRM understands that the complainant's complaint to the CAO was the subject of ongoing dispute resolution process.

¹⁹ The IRM will seek to clarify the exact dates and sequence of events during the compliance investigation.

²⁰ The IRM has not, at this stage, seen this statement.

32. The complainant refers to the humiliation and adverse psychological and social impact of his treatment by HSH. He says that he was psychologically shattered following his second suspension. This prevented him from pursuing other business opportunities that he would normally have engaged in to supplement his HSH income. One result was that a property he had bought with the assistance of a loan was repossessed as he was unable to maintain loan repayments, resulting not only in the loss of the property but also of the deposit payment that he had earlier made. Following the termination of his employment, the complainant felt such humiliation and loss of community standing that he decided that he could no longer work in Egypt. He sought employment abroad, selling his car and incurring further financial loss through sponsorship fees whilst he looked for a new job.

Summary of the Secretariat Response

33. In the Secretariat's view, all appropriate actions in compliance with relevant GCF policies and procedures have been undertaken so far with respect to the concerns raised in the complaint. The Secretariat's Response summarizes the background to the FP039 Programme; outlines the environmental and social framework for the Programme as a whole and certain contractual obligations of the AE; and summarizes monitoring of issues raised in the complaint by GCF and the AE as presented in the AE's Annual Performance Reports (APRs).

34. The Secretariat's Response asserts that EBRD has reported 'consistently' to GCF on its ongoing monitoring of the labour complaints at Benban, and that the Secretariat has also followed up on these reports and monitored the complaints in coordination with EBRD. The Secretariat notes that it enquired about actions taken by the AE to improve working conditions and strengthen labour management against the background of the IRM complaint, and that EBRD responded that it had monitored the activities of HSH and that all findings are reported back by way of the BSDA for corrective action. The Secretariat records that in its most recent annual report to GCF, EBRD stated that it had monitored the subproject sponsors' reliance on the FMC via the BSDA using an outside environmental and social adviser.

35. The Secretariat takes issue with the view expressed by the IRM in its earlier 12 July 2024 compliance appraisal report (regarding Complainant #2's case) that the responsibilities placed on the GCF Secretariat by the 2018 Environmental and Social Policy (ESP) are among the applicable GCF policies and procedures for purposes of Compliance Review of FP039, in the absence of a conflict with the responsibilities of the AE. The Secretariat argues that the ESP is subordinate to the AMA, and that the terms of the AMA preclude its application to the implementation of FP039, including the Secretariat's own monitoring of FP039.

V. COMPLIANCE APPRAISAL

36. This compliance appraisal report considers whether there is *prima facie* evidence that the complainant has been affected or may be affected by adverse impacts through non-compliance of FP039 with GCF operational policies and procedures. For these purposes, the IRM has focused on adverse impacts on the complainant associated with labour and working conditions issues and lack of meaningful access to a worker grievance mechanism.

Procedural steps taken by the IRM

37. The IRM's compliance appraisal has included the following steps:

- Review of the complaint and public outputs from the IRM Case Register;
- Discussions with the complainant in two virtual meetings;
- Review of programme documentation held electronically by the GCF Secretariat and/or disclosed publicly, including the FP039 funding proposal and Board decision; a strategic environmental and social assessment (SESA) prepared for the Benban Solar Park, the

Environmental and Social Management Framework and System (ESMFS) applicable to FP039 (in original and revised versions), APRs for each year from 2017-2023, AMAs between GCF and EBRD, and the FAA for FP039;

- Consideration of the GCF Secretariat's Response dated 30 August 2024;
- Further analysis of relevant GCF operational policies and procedures;
- A virtual meeting with the complainant; a hybrid virtual and in-person meeting between the IRM and the GCF Secretariat;
- Contact with the Independent Recourse Mechanism of the African Development Bank for up-to-date information on its investigation timeline in an ongoing compliance investigation²¹ that considers, in part, certain labour and workplace issues at the FMC.
- Contact with the Compliance Advisor Ombudsman of the IFC to confirm the status of the complainant's complaint there.

38. The IRM has not met with subproject sponsors, nor with the BSDA or HSH, as part of the present compliance appraisal process. It has therefore relied principally on the Secretariat Response and internal Programme documentation, together with additional information provided during and following meetings with the Secretariat and EBRD in June 2024. Where relevant, the IRM has also considered information presented in a publicly available response of the African Development Bank (AfDB) Management to a complaint to the Independent Recourse Mechanism of the AfDB.²² In light of detailed information provided by EBRD in the course of the IRM's earlier compliance appraisal in respect of the complaint from Complainant #2, the IRM did not consider it necessary to meet with EBRD in the course of the present compliance appraisal.

Key questions for compliance appraisal

39. The IRM's compliance appraisal centres on the following question:

Is there *prima facie* evidence²³ to suggest that the adverse impacts that the complainant asserts he has experienced result from non-compliance of the GCF funded Programme FP039 *GCF-EBRD Egypt Renewable Energy Financing Framework* at Benban Solar Park in Aswan Governorate, Egypt, with GCF operational policy/ies and/or procedures?

The PGs provide that if a compliance appraisal report concludes that there is *prima facie* evidence of adverse impacts and/or non-compliance with GCF operational policies and procedures by a GCF funded project or programme, the IRM will commence a compliance investigation.²⁴

40. An important preliminary issue arises. The IRM must consider whether there is *prima facie* evidence of Programme non-compliance that has resulted in the adverse impacts described by the complainant. Since the Programme has not involved the direct provision of GCF finance to the BSDA or the FMC that was the complainant's former employer, it becomes important to consider whether, or in what circumstances, acts or omissions connected to the FMC and BSDA could be considered to constitute Programme non-compliance. The IRM addresses this question through an examination of information or evidence available regarding the following three issues:

- (i) Monitoring of the FMC;

²¹ Complaint Number RQ2022/04 (Egypt). Documents available via <https://www.afdb.org/en/irm-management-complaints-registered-requests/rq2022/04-egypt>

²² See AfDB Management Response: https://www.afdb.org/sites/default/files/documents/compliance-reviews/english_egypt_-_benban_solar_park_fit_-_management_response.pdf

²³ The term 'prima facie evidence' is not intended to be applied in the same manner as in legal proceedings. The IRM applies the ordinary meaning of the term 'prima facie'; that is, 'on its face', or 'at first impression'. The IRM does not expect that relevant facts be proved conclusively at this stage and makes its findings based on the evidence at hand, conscious that at this stage the parties may not have presented their case in full.

²⁴ See para. 55, IRM PGs

- (ii) The Programme grievance mechanism(s) at the Benban Solar Park and its/their relevance to the BSDA and FMC; and
- (iii) Assessment, management, prevention and mitigation of risks regarding labour and working conditions.

41. In considering the information and preliminary evidence available, the IRM addresses the following questions:

Question 1: Do GCF operational policies and procedures extend to the role of the FMC and BSDA in Programme implementation? Can *prima facie* evidence of non-compliance with GCF operational policies and procedures regarding the BSDA and FMC constitute Programme non-compliance?

Question 2: Is there, overall, *prima facie* evidence of non-compliance with relevant GCF operational policies and procedures in relation to the available evidence?

If yes, then:

Question 3: In sum, is there *prima facie* evidence that the complainant has been or may be affected by adverse impacts caused by non-compliance with relevant GCF policies and procedures?

Overview of Relevant Operational Policies and Procedures

42. The Initial Proposal Approval Process, including the Criteria for Programme and Project Funding adopted in 2014 by Board Decision B.07/03²⁵ sets out initial the Project and Programme Cycle and includes Secretariat roles and responsibilities regarding due diligence on funding proposals to be presented to the Board for consideration. The Initial Proposal Approval Process was applicable during the time of submission and consideration of the funding proposal for FP039 and has since been superseded by the Updated Project and Programme Cycle, adopted by Board Decision B.17/09 in 2017.
43. The GCF's Monitoring and Accountability Framework (MAF) for Accredited Entities was adopted in 2015 by Board Decision B.11/10.²⁶ It sets out the components of monitoring and accountability of accredited entities, including reporting requirements for individual GCF-funded activities. Importantly, it also establishes that a risk-based monitoring approach is to be implemented by the GCF.
44. The GCF's Risk Management Framework (RMF),²⁷ adopted in 2017, further elaborates on the Fund's approach to managing risk. The Framework encompasses policies adopted by Board Decision B.17/11 such as the Revised Risk Register and Risk Appetite Statement,²⁸ together with policies later adopted by Board Decision B.19/04, such as the Risk Dashboard, Investment Risk Policy, Non-Financial Risk Policy, and Funding Risk Policy. A Compliance Risk Policy (Board Decision B.23/14) and the Revised Initial Financial Risk Management Framework (Board Decision B.26/Inf.10/Add.01) were adopted later in 2019 and 2020 respectively and also form part of the overall Risk Management Framework. The Secretariat's Response does not argue that these are not applicable to FP039.

²⁵ See <https://www.greenclimate.fund/decision/b07-03>

²⁶ See [monitoring-accountability-framework-ae.pdf \(greenclimate.fund\)](#)

²⁷ For more information, see <https://www.greenclimate.fund/about/policies/risk-management-framework>

²⁸ For issues relevant to the timeframe spanning the submission and consideration of the funding proposal FP039, the IRM will consider the Initial Risk Management Framework (GCF/B.12/17) and Interim Risk and Investment Guidelines (GCF/B.13/27/Rev.02) as related to relevant roles and responsibilities of the GCF Secretariat in assessing the funding proposal.

45. The GCF's Interim Environmental and Social Safeguards (the Interim ESS) were approved by Board Decision B.07/02, paragraph (c) and Annex III on 21 May 2014.²⁹ Annex III adopts the 2012 Performance Standards of the International Finance Corporation (IFC) as the GCF's ESS, referring explicitly to the eight Performance Standards (PS), and additionally adopting eight IFC Guidance notes and World Bank Group Environment, Health and Safety Guidelines. The Guidance notes referred to include notes on PS1 and PS2 respectively. They do not include a separate 2012 IFC Interpretation Note on Financial Intermediaries³⁰ which, among other matters, explains how IFC's requirements apply to the activities and operations of financial intermediaries. Furthermore, IFC's Policy on Environmental and Social Sustainability,³¹ which accompanies the PS and is one of the pillars of IFC's Sustainability Framework,³² has also not been adopted by the GCF.
46. On 1 March 2018, the GCF adopted its own Environmental and Social Policy (ESP) (Decision B.19/10). Importantly, this was after the dates on which the AMA and the FAA for FP039 became effective. The ESP sets out "*how GCF integrates environmental and social considerations into its decision-making and operations to effectively manage environmental and social risks and impacts and improve outcomes.*"³³

2018 Environmental and Social Policy in Relation to FP039

47. In its earlier compliance appraisal report the IRM concluded that provisions of the ESP that refer to the monitoring responsibilities of the GCF Secretariat are applicable to implementation of FP039 at Benban "*in the absence of a conflict with the responsibilities of the AE.*"³⁴ The Secretariat asserts that this overlooks the explicit terms under which the ESP is applicable under the AMA.
48. Para. 80 of the ESP provides that once it is effective, it will apply to ongoing activities (such as FP039) "*to the extent reasonably possible.*"³⁵ A footnote adds "[s]ubject to signed Accreditation Master Agreements." The Secretariat's Response argues that the footnote means that the applicability of the ESP is "*subordinate to pre-existing AMAs.*" The IRM does not agree, and doubts whether the Board's use of a footnote is consistent with the Secretariat's contention that its language has such far-reaching policy effect for the GCF. Rather, the IRM understands the footnote as a direction to give effect to the terms of the AMA when determining how the ESP applies to

²⁹ See Guiding framework and procedures for accrediting national, regional and international implementing entities and intermediaries, including the Fund's fiduciary principles and standards and environmental and social safeguards <https://www.greenclimate.fund/decision/b07-02>

³⁰ Interpretation Note on Financial Intermediaries, IFC, 1 January 2012. Available online at <https://documents1.worldbank.org/curated/en/693651480673428389/pdf/110693-InterpretationNote-FIs-2012.pdf>. The Interpretation Note was later updated in November 2018. On 29 September 2023, IFC published a Guidance Note on Financial Intermediaries which updated and replaced the Interpretation note. See <https://www.ifc.org/en/insights-reports/2012/publications-policy-interpretationnote-fi>

³¹ See IFC Sustainability Framework <https://www.ifc.org/en/insights-reports/2012/publications-policy-sustainability-2012>

³² The Sustainability Framework additionally includes IFC's Access to Information Policy. See <https://www.ifc.org/content/dam/ifc/doc/mgrt/ifc-sustainability-framework.pdf>

³³ See para. 1, Environmental and Social Policy [environment-social-policy_0.pdf \(greenclimate.fund\)](https://www.greenclimate.fund/environment-social-policy_0.pdf)

³⁴ See para. 41, Compliance Appraisal Report (July 2024) [compliance-appraisal-report-c0009-egy-jul12.pdf \(greenclimate.fund\)](https://www.greenclimate.fund/compliance-appraisal-report-c0009-egy-jul12.pdf)

³⁵ In contrast, the 2021 Revised Environmental and Social Policy adopted by means of Decision [B.BM-2021/18](https://www.greenclimate.fund/decision-bbm-2021-18-bbm-2021-18-decision-board-revisions-gcf-esp-reaffirm-fund-s-commitment.pdf) (13 September 2021), is clearly not applicable to the implementation of FP039. This is because the Decision states explicitly that the Board adopted the "*Environmental and Social Policy as set out in annex I to this document to replace the Environmental and Social Policy adopted by the Board pursuant to decision B.19/10 with respect to projects and programmes approved at or after the thirty-second meeting of the Board*" (Emphasis added. [decision-bbm-2021-18-bbm-2021-18-decision-board-revisions-gcf-esp-reaffirm-fund-s-commitment.pdf \(greenclimate.fund\)](https://www.greenclimate.fund/decision-bbm-2021-18-bbm-2021-18-decision-board-revisions-gcf-esp-reaffirm-fund-s-commitment.pdf))

implementation of FP039. The ESP must be applied “to the extent reasonably possible” but only to the extent consistent with the AMA.

49. The AMA provides, in principle, for updates to GCF policies and procedures “*applicable to the relationship between GCF and the AE.*”³⁶ But it also makes clear via Clause 31.05 that revisions in relevant policies and procedures only apply to new funding proposals. Thus, not only would it not be reasonable to require EBRD to apply the ESP to implementation of FP039; it would also directly conflict with the footnote to Para. 80 of the ESP because the application of the ESP is subject to the AMA.
50. The Secretariat goes further, arguing that Clause 31.05 of the AMA excludes the application of the ESP, in its entirety, to implementation of FP039. In the Secretariat’s view, *any* application of the ESP to implementation of FP039 would contravene the binding contractual framework established by the AMA.
51. In light of the Secretariat’s argument, the IRM has considered more closely the language of Clause 31.05 of the AMA, which is titled “Changes to Policies and Procedures.” It sets out a procedure to be followed by the GCF and the AE if: “[d]uring the term of this Agreement the Fund intends to revise any of its rules, policies or procedures (including without limitation the Standards) and such change is material, or intends to adopt new rules, policies, or procedures by a Decision that, in the Fund’s opinion, applies to the Accredited Entity...”³⁷

Following a description of procedures to be followed in these circumstances, Clause 31.05 concludes with the words “*the relevant Revision(s) shall apply only to new Funding Proposals.*”³⁸

52. Clause 31.05 provides the AE with an opportunity to: a) shape new and revised policies and procedures before they are adopted; and b) take action to adapt and/or flag areas where revisions or new policies and procedures may create difficulties for the AE under its own policies and procedures. Its focus is on the implications of changed GCF policies and procedures *for the AE*. The Secretariat Response argues that Clause 31.05 must be understood to mean that the ESP is not applicable to FP039 at all. Thus, one effect of Clause 31.05 is that the Secretariat has no responsibility to monitor FP039 in accordance with the ESP.
53. The core elements of the GCF’s monitoring responsibilities under the ESP, which the Secretariat says do not apply to FP039, can be found in paras. 56-58. Para. 56 of the ESP provides for GCF’s monitoring to be a continuous, and risk-based, process, stating that “[t]he extent of monitoring will be based on the type and level of risks identified, including environmental and social risks.” Para. 57 adds that “GCF will monitor the compliance of accredited entities with the applicable environmental and social safeguards requirements, pursuant to the ESS standards and the monitoring and accountability framework of GCF.” Para. 58 of the ESP provides that “[i]f needed, GCF may require more frequent or ad hoc monitoring and reporting or audits on specific environmental and social issues, which may also include site visits and consultations with beneficiaries, communities, and national designated authorities.” The IRM’s view is that these provisions do apply to GCF in relation to FP039, but that they would need to be applied in a manner consistent with EBRD’s responsibilities, and GCF’s commitments to EBRD, under the AMA.
54. The Secretariat Response additionally refers to clause 13.01 of the AMA. This requires EBRD to comply with “*its own policies and procedures that enable it to comply with the Fund’s Standards, policies and procedures as has been assessed by the Fund in the Accreditation process.*” The Secretariat says that it assessed the Funding Proposal Package for FP039 against the requirements

³⁶ Accreditation Master Agreement (GCF-EBRD), 2017, Clause 1.04

³⁷ Accreditation Master Agreement (GCF-EBRD), 2017 Clause 31.05

³⁸ The word “Revision(s)” is defined in 31.05(b) and refers to rules, policies and procedures of the Fund as revised or adopted by means of a Decision of which the AE is notified as provided under 31.05(b). Relevant changes or revisions must thus be ‘material’ in the context of the relationship between GCF and EBRD under the AMA, or must apply to the Accredited Entity.

in the Gender Policy and Action Plan and GCF's Interim Environmental and Social Safeguards (i.e. the 2012 Performance Standards of the International Finance Corporation). It is not clear to the IRM, on the face of Clause 13.01, what the phrase "*as has been assessed by the Fund*" refers to, but there is no indication here that it prevents the GCF from applying the ESP to its own monitoring of FP039.

55. The Secretariat has also argued that the application of the ESP to FP039 would "*impose new legal obligations on EBRD subsequent to the execution and effectiveness of the AMA, in direct contradiction to the ESP's provision that its applicability is subordinate to pre-existing AMAs.*" The IRM does not suggest that the ESP be applied in its entirety to FP039. Implementation of the Secretariat's responsibilities to monitor FP039 under the ESP must be consistent with EBRD's existing obligations under the AMA.³⁹ However, based on preliminary analysis at this compliance appraisal stage, the IRM does not see a tension between EBRD's existing AMA responsibilities, and implementation by the GCF of its monitoring responsibilities under paras. 56-58 of the ESP.⁴⁰ The IRM does not currently find a basis in the AMA for a conclusion that applying the ESP to the *GCF Secretariat* in the way suggested, would place new legal obligations on EBRD or conflict with the AMA.
56. The IRM recognizes that this issue has wider implications beyond FP039, including for Board and stakeholder expectations of the standard of care and diligence that GCF applies to integration of environmental and social considerations in the implementation of its funded activities. The IRM has identified several other AMAs that were approved prior to the effective date of the ESP, and that include provisions identical in content to para. 31.05 of the EBRD AMA. These AMAs are in turn associated with a significant body of funded activities whose Funding Proposals pre-date the effective date of the ESP. Para. 3 of the ESP provides that in carrying out its mandate, "*GCF will effectively and equitably manage environmental and social risks and impacts, and improve the outcomes of all GCF-financed activities*" and adds that the policy "*presents the commitments of GCF and articulates the principles and standards to which GCF will hold itself accountable.*" Following the reasoning in the Secretariat Response, these commitments do not apply to this class of funded activities.
57. A conclusive determination on the application of the ESP to the GCF's monitoring of FP039 is more appropriately reached during compliance investigation than compliance appraisal. The IRM will then be in a position to obtain independent expert legal advice, and to consider in more detail the drafting history and purpose of the ESP, the language of para. 80 of the ESP, the intention of the Board, and GCF and the AE's understanding of their respective responsibilities and the terms of the AMA. Relevant provisions of the GCF's monitoring responsibilities under the Monitoring and Accountability Framework and the Risk Management Framework would be applicable to implementation of FP039 even if the ESP is not. The risk-based approach integrated within paras. 56-58 of the ESP is consistent with the risk-based approach of the Monitoring and Accountability Framework and GCF's wider Risk Management Framework (RMF).

Contractual compliance questions and the IRM's mandate

58. Under the AMA the AE is required to follow its own rules, policies and procedures "*that enable it to comply with the Fund's Standards, policies and procedures as has been assessed by the Fund in the Accreditation process.*"⁴¹ The AMA is also to apply the provisions of the Monitoring and Accountability Framework "*subject to and in accordance with its own policies and procedures.*"⁴²

³⁹ This reflects an evolution in the IRM's analysis in its earlier compliance appraisal of 12 July 2024, which applied the formulation "in the absence of a conflict with" the responsibilities of the AE.

⁴⁰ Clauses 5.02, 16.04 and 16.05 already provide for ad hoc checks; for cooperation with GCF in the conduct of annual reviews of funded activities; for sharing of such documents as GCF may reasonably request; and for EBRD to invite the GCF to participate in supervision or similar missions.

⁴¹ Accreditation Master Agreement (GCF-EBRD), 2017, Clause 8

⁴² Accreditation Master Agreement (GCF-EBRD), 2017, Clause 5.02(d)

Similarly, as Executing Entity (EE) under the AMA EBRD is responsible for overall management, implementation and supervision of the funded activity, in line with its own policies and procedures.⁴³ For the avoidance of doubt, the IRM emphasizes that consistent with its mandate, it assesses Programme compliance with applicable GCF Policies and Procedures, not compliance with the AE's policies and procedures, nor the AE's contractual compliance with the AMA.

Performance Standard 1 in relation to FP039

59. Performance Standard (PS) 1 of the GCF's Interim ESS establishes an overall framework for assessment and management of environmental and social risks and impacts, including the prevention and mitigation of adverse impacts.⁴⁴
60. The 2012 IFC Performance Standards do not use the terms 'accredited entity' or 'executing entity'. They are addressed to 'clients'. The question that therefore arises is which entity or entities should be considered the 'client' for purposes of applying the provisions of PS 1.
61. EBRD, in its roles as both Accredited Entity and Executing Entity, is a financial intermediary. It is GCF's 'client' for purposes of applying PS 1. The GCF's interim ESS does not include specific policy requirements for clients that are financial intermediaries one step removed from site-level implementation of GCF-funded activities. However, the GCF's commitment to ensuring that environmental and social risks of funded activities are identified, measured and mitigated based on IFC standards is only meaningfully realised if both EBRD and subproject sponsors' actions are considered within the scope of 'client' responsibilities set out in PS 1 (to the extent meaningful given their respective roles in delivery of GCF-funded activities). This is the case notwithstanding the absence of a direct contractual relationship between GCF and subproject sponsors. Both EBRD as the formal 'executing entity', and those subproject sponsors that execute GCF-funded activities at Benban, can appropriately be considered when considering the responsibilities of 'clients' under PS 1.
62. The IRM has also considered whether the scope of PS 1 extends to workers of the FMC. PS 1 requires 'clients' to *"establish management programs that, in sum, will describe mitigation and performance improvement measures and actions that address the identified environmental and social risks and impacts of the project."*⁴⁵ Depending on the nature and scope of the project, such 'programs' may apply broadly across the client's organization *"including contractors... over which the organization has control or influence."*⁴⁶
63. The FMC is a contractor over which both EBRD and subproject sponsors individually have a degree of influence. The Secretariat Response asserts that management of the FMC is *"the legal obligation of the Sub-Project sponsors via the BSDA."*⁴⁷ As such, the FMC is a contractor over which the subproject sponsors collectively (through the BSDA), but not individually, have control. In the particular context of the Benban Solar Park, PS 1 supports the expectation that Programme environmental and social management systems ('programs') will extend to the BSDA and FMC.
64. As discussed further below, the FMC plays an important role in mitigation of social risk for the Benban Solar Park. EBRD has on occasion relayed findings from monitoring of the FMC to the BSDA for corrective action. However, EBRD underlined in conversation with the IRM that its ability to influence the BSDA and FMC was not based on the existence of contracts with either entity.
65. There is sufficient nexus between the FMC and GCF-financed subproject sponsors (via BSDA) and EBRD to support application of the provisions of PS 1 to the issues raised in the complaint

⁴³ Accreditation Master Agreement (GCF-EBRD), 2017, Clause 8

⁴⁴ See IFC Performance Standards [2012-ifc-performance-standard-1-en.pdf](#)

⁴⁵ Performance Standard 1, para. 13 [2012-ifc-performance-standard-1-en.pdf](#)

⁴⁶ Performance Standard 1, para. 14 [2012-ifc-performance-standard-1-en.pdf](#)

⁴⁷ GCF Secretariat Response

regarding the Programme grievance redress mechanism (GRM) and the identification, management and mitigation of labour and workplace risks at the Benban Solar Park. The IRM therefore concludes that GCF policies and procedures potentially extend to the FMC and BSDA in respect of identification, prevention and mitigation of environmental and social risk; labour and workplace conditions; and the Programme's GRM at Benban Solar Park.

Performance Standard 2 in relation to FP039

66. IFC's 2012 Performance Standard 2 elaborates on how 'clients' should address Labour and Working Conditions.⁴⁸ The scope of PS 2 depends on the type of employment relationship between 'the client' and the worker.⁴⁹ In FP039 if 'the client' is to be understood to be limited to the AE and/or the EE as defined in the FAA, it will be EBRD. Understanding 'client' in this way would be to deprive PS 2 of any real force across much of GCF's project/programme portfolio.
67. There is no indication that GCF intended that the labour and working conditions requirements of its Interim ESS should apply only to the workers, contracted workers and supply chain workers of accredited entities. There is equally no indication that GCF has decided that when the accredited entity is another international financial institution and is also an executing entity for purposes of delivery of finance, PS 2 should not apply to activities financed with GCF funds.
68. Understanding the GCF-financed subproject sponsors as 'clients' when applying PS 2 in FP039 is more consistent with the GCF's expressed commitment to the Interim ESS. There is then an arguable case that some or all of the FMC's workers fall within the scope of the PS 2 definition of 'contracted workers'; with the BSDA, in contracting with the FMC, effectively acting as agent for all of its members, including GCF-financed subproject sponsors. As to whether the FMC is instead, or additionally, a 'primary supplier' for purposes of PS 2; the IRM notes that clients' substantive PS 2 obligations in respect of primary suppliers address child labour, forced labour, and safety issues,⁵⁰ but do not include specific requirements with regard to other labour and working conditions or the establishment of a GRM. It is not therefore necessary to determine whether the FMC is a 'primary supplier'.
69. The IRM concludes that it is arguable that PS 2 applies to workers of the FMC as a matter of GCF policy. However, a conclusive determination on this issue is more appropriately reached during compliance investigation rather than compliance appraisal.

Governance of Environmental and Social Risks and Impacts

70. The creation of an association of Benban developers (which later became known as the BSDA), and its appointment of an FMC, flow directly from a strategic environmental and social assessment (SESA) prepared for the development of the energy infrastructure at the Benban site.⁵¹
71. The SESA was reportedly publicly disclosed in May 2016.⁵² It includes a framework Environmental and Social Action Plan (ESAP) to be implemented site-wide "to provide an 'umbrella' of agreed

⁴⁸ See Performance Standard 2: <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-2-en.pdf>

⁴⁹ Performance Standard 2, Scope of Application, paragraph 4: "The Standard applies to workers directly engaged by 'the client' ('direct workers'); workers engaged through third parties to perform work related to core business processes of the project for a substantial duration ('contracted workers'); as well as workers engaged by the client's primary suppliers ('supply chain workers')."

⁵⁰ IFC Performance Standard 2, paragraphs 27-29 <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-2-en.pdf>

⁵¹ The SESA was developed with EBRD technical cooperation funding support to the overall Benban Solar Park sponsor, the Egyptian New Renewable Energy Agency (NREA). See: <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

⁵² See Project Summary Document, EBRD. <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

measures to be followed and implemented by all Benban Projects/developers.”⁵³ Importantly, whilst individually each of the 41 Benban subprojects is a medium-sized construction project; the SESA notes that taken “as a whole, the Benban PV site is collectively a mega construction project which will turn a large tract of desert area into a high-tech facility.”⁵⁴ Against this backdrop, the SESA also proposes an overall structure for management of environmental and social issues during operation as well as construction. It further explains that Benban project developers seeking finance from international financial institutions will be required to meet EBRD and IFC performance requirements/standards at all stages of the project cycle.⁵⁵

72. EBRD’s publicly available Project Summary Document⁵⁶ records that conditions included in the environmental permit issued to the NREA by the Egyptian Environmental Affairs Agency (EEAA)⁵⁷ reflected certain requirements of the ESAP. According to EBRD, responsibilities for the implementation of the overall ESAP were then transferred by NREA and EEAA to the individual project developers, and as a result the developers formed an Association “to manage and address the issues that are not incumbent upon any one developer but are cumulative in nature.”⁵⁸ In turn the developers association (i.e. the BSDA as it is now known) appointed the FMC for the site. HSH has served as the FMC during the operation and maintenance phase of the Benban Solar Park. Thus, the BSDA and FMC play key roles in the implementation and delivery of the overall ESAP.
73. Alongside site-wide environmental and social management documents, the SESA envisages that each subproject under the framework will have its own environmental and social action plan (an ESAP)⁵⁹ and an Environmental and Social Management System (an ESMS) “to ensure compliance with EBRD’s 2014 Environmental and Social Policy, the IFCs Performance Standards and therefore GCF’s requirements.”⁶⁰ EBRD’s funding proposal to GCF adds that “Where collective issues need to be developed at a strategic and collective level the ESAP / ESMP will require that an appropriate E&S governance structure is developed so that common standards are developed and adhered to.”⁶¹ These subproject-specific ESMSs and ESAPs translate the requirements of the SESA ESAP into subproject-specific commitments, including in relation to labour and working conditions and the GRM. Certain environmental services that are addressed under these subproject ESAPs, such as waste management and security, are in turn provided by the FMC. The sponsors contribute financially to the BSDA, and the BSDA then manages the FMC.⁶²
74. Aside from these arrangements, the SESA envisages preparation of Environmental and Social Impact Assessment for each subproject,⁶³ and additionally, FP039 is associated with an Environmental and Social Management Framework and System (ESMFS). This is a publicly

⁵³ SESA, Section 7.1, page 152 <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

⁵⁴ SESA, Section 6.4, page 145 <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

⁵⁵ SESA section 2.4.2 <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

⁵⁶ See Project Summary Document, EBRD. <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

⁵⁷ See [وزارة البيئة | الرئيسية \(eeaa.gov.eg\)](http://eeaa.gov.eg)

⁵⁸ See Project Summary Document, EBRD. <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

⁵⁹ ESAPs and ESMPs are presented as interchangeable in the funding proposal. See page 26 of the Funding Proposal for FP039 which notes “...E&S Action Plan (or ESMP in line with GCF terminology)”

⁶⁰ Funding Proposal, Section G.2, page 30 <https://www.greenclimate.fund/document/gcf-b16-07-add02>

⁶¹ *Ibid.*

⁶² GCF Secretariat Response

⁶³ SESA, page 16 <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

available document⁶⁴ that is based on EBRD's policies and procedures. It sets out the key steps to be taken for project appraisal and during environmental and social monitoring.

75. Management of environmental and social risks at the overall site level and at the level of individual subproject sponsors involves contractual and reporting relationships between the lenders, subproject sponsors, BSDA and the FMC. The IRM does not at this stage have detailed information about these arrangements. However, additional helpful insights on overall environmental and social governance systems at the Park can be found in the African Development Bank Management Response (AfDB Management Response) to an ongoing AfDB Independent Recourse Mechanism compliance case concerning the Benban Solar Park.⁶⁵ That case also addresses issues raised with the AfDB Independent Recourse Mechanism by the present complainant.
76. The AfDB Management Response explains that the BSDA was registered in 2019, and that thirty-two developers had (at that time) agreed to jointly finance the FMC for the operation and maintenance phase, together with a technical consultant to monitor the FMC. Each developer pays a pro rata share of costs in respect of the FMC and technical consultant budgets. The FMC undertakes the management of the operations and maintenance phase of the Benban Solar Park on behalf of and for the benefit of all the projects at the Park; whereas the technical consultant is hired by BSDA to monitor and audit the FMC; and to prepare monthly and quarterly reports on the FMC's performance. Discussion with EBRD, as well as documents thereafter shared by EBRD, confirmed that BSDA had a technical consultant to monitor the FMC.
77. In conversation with the IRM, EBRD clarified that the FMC was expected to have its own Environmental and Social Management Plan (ESMP); and that the BSDA's contract with the FMC was to reflect this. EBRD confirmed that the FMC itself had a role in developing environmental and social policies and procedures for all project sponsors. This was particularly the case during the early stages of Programme implementation before the end of construction, but continued into the operations and maintenance phase of the Programme, so far as policies and procedures might need updating or adjusting.
78. The IRM understands that the FMC hosted the Benban Solar Park's community grievance mechanism during both construction and operation and maintenance. As to worker grievance mechanisms; the IRM understands from EBRD that each subproject sponsor had its own worker grievance mechanism. The FMC also maintained a worker grievance mechanism, which was available to workers of its contractors and (to a degree not yet fully clear to the IRM) other workers at the site. Minimum expectations for the grievance mechanisms were set in the SESA ESAP; presumably referenced in both site-wide and subproject-specific ESMPs/ESAPs; further specified in a grievance management system document; and formalised through loan agreements which also played a role in informing the BSDA's relationship with the FMC. Loan agreements for the GCF-financed Benban subprojects have not been shared with the IRM.
79. The contract between BSDA and the FMC, which the IRM has not seen, is a key governance link for transmitting lenders' environmental and social expectations to the FMC; notwithstanding the absence of a direct contractual relationship between the lenders and the BSDA, and lenders and the FMC. EBRD's monitoring also benefitted from reporting and regular reporting by an independent environmental and social consultant (IESC), whose work included monitoring and reporting on the FMC's environmental and social performance.
80. At the conclusion of this compliance appraisal, the IRM has outstanding questions about whether the overall governance arrangements for assessment and management of environmental and social risk relating to BSDA and the FMC were adequate to support effective compliance with PS 1 and PS 2 during Programme implementation at Benban Solar Park.

⁶⁴ See ESMFS: <https://www.ebrd.com/documents/climate-finance/get-kazref-larf-english.pdf>

⁶⁵ AfDB Management Response: https://www.afdb.org/sites/default/files/documents/compliance-reviews/english_egypt_-_benban_solar_park_fit_-_management_response.pdf

Assessment and management of risk and monitoring during Programme implementation

81. EBRD reported to GCF on its monitoring of GCF-funded activities via Annual Performance Reports (APRs). GCF reviewed these, and internal records show that it on occasion sought clarification or additional information on issues that are relevant to the present complaint. It is clear from the IRM's review of the APRs that EBRD monitored the FMC from the beginning of Programme implementation. It does not appear that GCF had access to the FMC's ESMP. However, EBRD had reportedly reviewed it. The IRM has also reviewed internal correspondence between GCF and EBRD regarding APRs. This included a request from GCF for EBRD to clarify the role of the FMC in the programme.
82. The construction phase at Benban Solar Park concluded in 2019. In November 2020, the IRM understands that HSH was appointed as FMC following a tender process coordinated by the BSDA to appoint an FMC for the site's operations and maintenance phase. The IRM understands that many workers at the former FMC transferred to HSH after it was appointed FMC; and that HSH also hired additional workers. Subsequent reporting to GCF by EBRD notes that the capacity of the new FMC would need to be assessed. Additionally, EBRD noted that there was a transition period during which the FMC required close supervision to ensure GCF requirements were being met in full and added that EBRD would continue to monitor closely.
83. The IRM has been able to review various internal documents concerning labour and working conditions and the worker grievance mechanism at HSH, including reports on FMC monitoring by EBRD's independent environmental and social consultant. These documents do not however provide confirmation of what policies and systems were in place over the entire period of the complainant's employment with HSH.
84. EBRD's monitoring of the FMC takes place in the context of wider coordination efforts among lenders to the Benban subproject sponsors and joint site visits. The AfDB Management Response states that joint visits take place where a complaint is filed and that feedback and mission findings are shared amongst lenders and sponsors,⁶⁶ and that if action plans are required, these are also monitored as part of lenders' routine environmental and social monitoring.
85. The AfDB Management Response states that on 18 September 2022 (not long before the present complaint was filed with the IRM), the FMC and BSDA notified it that four lenders had conducted a joint fact-finding mission to the project site from 8-12 September 2022, "to check the status of ... grievances against FMC...and meeting complainants..."⁶⁷ After the mission, some lenders reportedly met with BSDA and the FMC to share their findings. The IRM has not seen internal reporting on this lenders' visit, which came shortly after a site visit and an FMC monitoring report by EBRD's independent environmental and social consultant. However, it appears from other internal documents made available to the IRM that an action plan was agreed following the September lenders' visit.
86. The IRM has not at this stage reviewed all records of lender monitoring activities or built a complete view of GCF and EBRD's involvement in review of key documents, capacity building, and corrective actions, nor the role played by subproject sponsors in FMC performance improvements. Nonetheless, internal documents record progress against various corrective actions. Overall FMC performance on relevant issues appears to have improved significantly as of March 2024.
87. At the time of writing, it appears *prima facie* that the FMC had made progress to address actions regarding overall environmental and social management capacity; worker grievance mechanisms,

⁶⁶ AfDB Management Response, para. 104 https://www.afdb.org/sites/default/files/documents/compliance-reviews/english_egypt_-_benban_solar_park_fit_-_management_response.pdf

⁶⁷ AfDB Management Response, para. 84 https://www.afdb.org/sites/default/files/documents/compliance-reviews/english_egypt_-_benban_solar_park_fit_-_management_response.pdf

and labour and working conditions. It appears further that there had been close lender monitoring of the FMC over a period beginning in May 2022.

88. Documents currently available to the IRM do not provide a complete picture of monitoring in the period between HSH's appointment as FMC and May 2022. They do however provide a preliminary indication that the complainant's employment came to an end in a period when there were shortcomings in FMC management and performance on labour, working conditions, and the worker grievance mechanism.
89. Subsequent recorded performance improvements have not remedied the adverse impacts that the complainant says he has experienced. Furthermore, some of the issues raised in his complaint are reflected in issues raised by other FMC workers or subcontractors as captured in internal documents.
90. Internal Programme documentation available at the GCF Secretariat suggests that prior to the IRM's earlier compliance appraisal in Case C-0009-Egypt, the GCF had little information about the roles played by EBRD, the BSDA and the GCF-funded subproject sponsors in monitoring and oversight of the FMC. The Secretariat Response says that at this stage it considers continued monitoring in coordination with EBRD to be the appropriate course of action. This does not provide reassurance that the Secretariat considered what level of enhanced monitoring would be appropriate in keeping with the Risk Management Framework given its knowledge of the existence of reported complaints about the FMC by workers since 2022; information that became available to it as a result of the IRM's earlier compliance appraisal; as well as concurrent cases in other international financial institutions' accountability mechanisms.

Initial Findings

91. The IRM has outstanding questions about the roles of EBRD and the GCF in monitoring of the design and implementation of a) the grievance mechanisms to be made available to workers at the Benban Solar Park, including the FMC's workers; and b) minimum labour and workplace requirements for the Benban Solar Park's developers and its FMC. There are also outstanding unanswered questions about the role of EBRD and, through the BSDA, subproject sponsors, in monitoring of the FMC and its performance in the period between the run-up to HSH's appointment in 2020, and a site visit by EBRD's independent environmental and social consultant in May 2022. These questions are connected to the issue of Programme compliance with PS 1 of the Interim ESS. The IRM concludes that at this compliance appraisal stage the complainant's assertions viewed alongside currently available internal documents provide *prima facie* evidence of Programme non-compliance with PS 1 of the Interim ESS regarding management of environmental and social risk during Programme implementation at the Benban Solar Park. The IRM considers that the implications of the overall environmental and social governance structure at the Benban Solar Park for Programme compliance with PS 1 also merit deeper consideration in the light of this finding.
92. Furthermore, the IRM is not satisfied at this compliance appraisal stage that the Secretariat has taken sufficient steps to ensure that questions that it raised in response to EBRD's reporting on workplace grievances and labour and working conditions were addressed in a timely way to its satisfaction. Equally, the Secretariat's Programme monitoring of Programme performance at the Park does not appear to have been adequately informed by the risk represented by the existence of multiple complaints regarding FMC-related labour issues before the accountability mechanisms of international financial institutions. There is little evidence at this compliance appraisal stage that the existence of the complaints has had a meaningful impact on the quality of the Secretariat's monitoring or its engagement with EBRD.
93. The IRM concludes that there is *prima facie* evidence of Programme non-compliance with relevant policies under the Risk Management Framework by reason of the Secretariat's monitoring of Programme implementation and performance at Benban. Subject further analysis of its

applicability to the GCF Secretariat's monitoring of FP039, there is also *prima facie* evidence of Programme non-compliance with the Interim ESS by reason of the Secretariat's monitoring under the 2018 Environmental and Social Policy.

Programme grievance mechanism(s)

94. The complainant has suggested that in the course of a meeting with HSH managers and a representative of the BSDA's FMC monitor, which had been convened after he had attempted to file a complaint, threats were made towards him and it was suggested that he had no right to complain. He also asserts that he received no response after he sought to make a formal complaint. These issues are *prima facie* indicative of shortcomings in the Programme GRM at the Benban Solar Park.
95. As explained above, the ESAP established under the SESA provides a framework for the establishment of a site wide GRM, extending to worker as well as to other stakeholder complaints. The Secretariat Response does not provide information about the structure or implementation of the Programme-level GRM at Benban beyond asserting that the Stakeholder Engagement Plan and Grievance Redress Mechanism were part of the SESA.
96. Only the framework elements of the GRM were established in the SESA and GCF does not appear to have received Stakeholder Engagement Plan and Grievance Redress Mechanism documents from EBRD following a request in 2019. A website that EBRD referred the Secretariat to (<https://thebenbanforum.com>) is no longer working, and the Secretariat has not been able to locate the documents. EBRD helpfully shared later versions of relevant documents with the IRM, but these iterations had been finalised after the events complained of by the complainant.
97. The FMC's responsibilities in handling community grievances and at least some worker grievances under the GRM are closely linked to implementation of the GCF-financed subprojects. So too are the FMC's roles in developing and updating site-wide Environmental and Social policies and plans, including for the GCF-financed subprojects.⁶⁸
98. The key elements of the grievance mechanism to be established at the Park are set out in the SESA. The SESA's ESAP provides for the establishment of 'master stakeholder engagement activities' and a community liaison office (which was, in practice, located within the FMC), adding: "*This SESA has provided a proposed format for a common SEP [stakeholder engagement plan] which will be used by the Developers Association, amended where necessary, as the basis for implementing a Benban wide SEP. This will include the establishment of a community liaison office, a mechanism for information dissemination, and a grievance redress mechanism.*"⁶⁹ The ESAP itself does not distinguish clearly between worker and community/external stakeholder dimensions of the GRM.
99. The Secretariat Response does not provide information about how the grievance mechanism at the Park was structured or implemented. However, helpfully, the AfDB Management Response includes further information. It states, in part, that FMC community liaison desk agents are responsible for implementation of the grievance mechanism. The Community Liaison Desk was reportedly composed of two Community Liaison Officers and one Labour Compliance and Grievance Team Leader. It thus appears that the FMC also played a role in worker grievance mechanisms; at least for some project sponsors at Benban. Indeed, the AfDB Management Response adds that at two of the AfDB-financed projects (which were not co-financed by GCF) "*the FMC Community Liaison Desk is responsible for the implementation of the workers and Community Grievance Mechanisms...*"⁷⁰

⁶⁸ GCF Secretariat Response

⁶⁹ SESA, Table 42: Environmental and Social Action Plan, page 157 <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

⁷⁰ *Ibid*

100. It furthermore appears from the AfDB Management Response that the BSDA E&S committee had a role at the relevant time in receiving information about “*exceptional and recurring complainants*.”⁷¹ The IRM has not at this stage been able to confirm this. Neither has it been possible to confirm whether the BSDA-appointed FMC monitor, to whom the complainant also made a complaint after he was instructed to stop work in 2022 for a second time, had a formal role in any worker grievance mechanism.
101. Performance Standard 2 includes requirements for the establishment of workplace grievance mechanisms. These apply to workers of the subproject sponsors. Para. 26 of PS 2 further requires clients to ensure that contracted workers have access to a grievance mechanism, and in cases where third parties employing such contracted workers are not able to provide a grievance mechanism, requires the client to extend its own grievance mechanism to serve the workers engaged by the third party.⁷² In practice the basic characteristics of both kinds of grievance mechanism, in the specific circumstances of the Benban Solar Park, may be expected to be the same.
102. The complainant has suggested that threats were made against him in a meeting attended by HSH managers and a representative of a BDSA consultant who was assigned to monitor HSH, after he had sought to make a complaint. The IRM notes that HSH plays a central role in the design and administration of the GRM at Benban for the benefit of all Benban Solar Park developers (including those of GCF-financed subprojects) and stakeholders as well as its own workers. Regardless of whether workers of the FMC are addressed by PS 2; this raises clear questions about Programme compliance with PS 1, including its provisions on grievance mechanisms (see para. 35); and potentially (subject to further consideration as indicated above) with GCF’s responsibilities under the ESP regarding identification and mitigation of risk; the design and effectiveness of the grievance mechanism; and associated monitoring responsibilities.
103. When the complainant was given notice that his employment would not be extended in September 2022, after he had earlier been told to stop working, his contract included a list of reasons entitling HSH to “annul” the contract without compensation. This is accompanied in the contract by a provision that the employee confirms that “*he is not entitled to file any complaint or legal action against the company.*” This does not appear consistent with the existence of a worker grievance mechanism aligned with the PS and therefore raises questions about Programme compliance with the grievance mechanism requirements of PS 2.
104. Turning to reporting on programme implementation; APRs submitted by EBRD in respect of FP039 for each of the years from 2017 to 2023 do not provide information about grievances or complaints filed under the Benban GRM during the most intense GCF subproject construction period, but they do refer to certain issues arising out of demobilisation of contracted workers which GCF sought clarification on. There is no record of a response on the specifics.
105. From the Calendar Year 2020 APR onwards, the GCF’s APR report template provided for reporting on the GRM. EBRD’s reporting on this was not detailed, but following the appointment of HSH it became apparent that there were grievances associated with working conditions and contract extensions at the FMC level. Data on the number of grievances received by the GRM was not reported to GCF, aside from a reference to two that had been referred to the IFC CAO and the GCF IRM. EBRD has more recently reported to GCF that it continues to monitor the BSDA and FMC closely.

Initial Findings

⁷¹ AfDB Management Response, Section 2.3 https://www.afdb.org/sites/default/files/documents/compliance-reviews/english_egypt_-_benban_solar_park_fit_-_management_response.pdf

⁷² IFC Performance Standard 2, para. 26 <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-2-en.pdf>

106. The facts presented by the complainant, together with internal documents reviewed by the IRM, provide preliminary indications that the implementation of the Benban Solar Park worker grievance mechanism at the FMC did not satisfy the requirements of PS 1 and/or PS 2 of GCF's Interim ESS over at least the period between the time when the complainant first signed a contract excluding the possibility of complaint in certain circumstances, until his employment with HSH came to an end.
107. Internal documents indicate that it is possible that Programme non-compliance with GRM requirements for workers over this period had been addressed by the time of writing so as to bring the Programme back into compliance. However, the IRM does not have evidence that such action remedied any adverse impacts⁷³ of earlier non-compliance on the complainant. The IRM concludes that there is *prima facie* evidence of Programme non-compliance with PS 1 and PS 2 regarding the worker grievance mechanism available to HSH workers at the time of the complainant's employment with HSH.

Assessment and management of risks regarding labour and working conditions

108. The need for common labour and working conditions across the Benban site is clearly expressed in the SESA. This highlights the role of the proposed developer's association (now the BSDA) in addressing labour and working conditions; stating that it would need to agree on *"minimum standards for labor working practices and a common set of labour and working conditions that meet Egyptian Law, international standards such as ILO conventions and EBRD and IFC Performance Requirements / Standards."*⁷⁴ Furthermore, *"[w]here labour agencies are to be used to source workers the Developers will need to fully ensure that the common labour and working conditions established are fully implemented along the supply chain."*⁷⁵ The SESA's ESAP sets out key elements of a site-wide Labour and Working Conditions strategy and employment plan, stating that: *"To avoid the potential negative impacts association [sic] with substandard labour practices a detailed strategy is to be developed setting common standards for labour and working conditions, and code of conduct...."*⁷⁶
109. Both the site's construction and its operations and management phases demanded development and/or updating of site-wide management plans and procedures. It appears that this was envisaged to be part of the FMC's responsibility not only during construction, but also in the period after HSH was appointed.
110. The operations and management phase at the Benban Solar Park brought sensitivities since following a period of high demand for workers during construction, there was a risk that as the overall number of workers declined at the start of the operations and maintenance period around 2019, community relations could deteriorate. This risk is plainly stated in the SESA,⁷⁷ which proposes monitoring measures such as *"detailed monitoring ...developed concurrently with the recruitment plan and include independent verification that the minimum standards are being adhered to."*⁷⁸ The 'contractor' (it is not clear who this refers to) should *"report on all aspects of workforce arrangements to the developers association advisor."*⁷⁹ Whilst the SESA concludes that

⁷³ The adverse impacts asserted by the complainant will be confirmed during compliance investigation

⁷⁴ SESA, page 131 <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

⁷⁵ *Ibid.*

⁷⁶ SESA, page 155 <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

⁷⁷ SESA, page 137 <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

⁷⁸ SESA, page 132 <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

⁷⁹ *Ibid.*

operational phase workforce impacts are relatively positive overall, it adds an important caveat: “as long as good working practices and site management practices are in place.”⁸⁰

111. The IRM notes that against the backdrop of the IRM receiving and declaring eligible complaints in relation to FP039, the Secretariat enquired about steps taken to improve working conditions and strengthen labour management. In October 2023, EBRD assured the Secretariat that monitoring of the GCF-financed subprojects had confirmed full compliance with relevant labour and working condition safeguards.⁸¹ As to the FMC, EBRD responded that along with other Benban lenders, it had monitored the activities of HSH, and all findings were reported back to the FMC via the BSDA for corrective action.
112. During its earlier compliance appraisal in respect of Complainant #2, the IRM was able to review an internal report of a 2022 monitoring visit by EBRD’s independent environmental and social consultant which documents several relevant issues regarding the FMC to be prioritised for remediation. Subsequent internal documents shared with the IRM in the course of that compliance appraisal suggest that EBRD and other lenders subsequently took action on these issues. However, as discussed above, the IRM does not have a clear picture of EBRD monitoring of labour and working conditions at the FMC in the period leading to and following HSH’s appointment, including 2022 when the independent environmental and social consultant highlighted concerns and it appears that an action plan was developed.
113. PS 1 and PS 2 responsibilities on the ‘client’ determine the relevance of the FMC’s ESMS, and its performance on issues of labour and working conditions, to Programme compliance. To understand ‘client’ responsibilities, it is also relevant to consider whether the facts asserted by the complainant are themselves consistent with the existence of an FMC ESMS, and FMC performance, aligned with relevant PS 2 requirements on labour and working conditions. This is because para. 24 of PS 2 provides that with respect to contracted workers (which as discussed above may arguably include the workers of the FMC) ‘the client’ is to take commercially reasonable efforts to ascertain that the third parties who engage these workers are “reputable and legitimate enterprises and have an appropriate ESMS”⁸² that will allow them to operate in a manner consistent with key provisions of PS 2, including those considered below.⁸³ Para. 25 furthermore provides that ‘the client’ is to establish policies and procedures for managing and monitoring the performance of such third-party employers in relation to the requirements of relevant provisions of PS 2, and is to use “commercially reasonable efforts” to incorporate these requirements in contractual agreements with employers of such workers.
114. The complaint refers to what it calls ‘accusations’ and ‘insults and slander’ by people working for HSH management, the goal of which the complainant considers was to reduce the size of the workforce. Such incidents, which remain subject to further fact-finding, would *prima facie* be inconsistent with the existence of ‘reasonable working conditions’ required by para. 10 of PS 2. They are additionally potentially indicative of harassment and/or intimidation, and of absence of fair treatment, contrary to the requirements of para. 15 of PS 2. The IRM does not expect the complainant to be in a position at this stage, prior to any IRM site visit, to provide further evidence in support of these assertions.
115. Para. 10 of PS 2 requires clients to provide ‘reasonable working conditions and terms of employment’. Working conditions and terms of employment that do not comply with relevant laws

⁸⁰ SESA, page 132 <https://www.ebrd.com/work-with-us/projects/psd/egypt-renewable-feedintariff-framework.html>

⁸¹ GCF Secretariat Response

⁸² IFC Performance Standard 2, para. 24 <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-2-en.pdf>

⁸³ IFC Performance Standard 2, paragraphs 20, 24 and 26 <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-2-en.pdf>

cannot, in the IRM's view, be considered to be reasonable.⁸⁴ The complainant's contract at the time that his employment came to an end provides explicitly for Egyptian Labour Law No 12 of 2003⁸⁵ (the Labour Law) to apply to the contract "for its interpretation and to supplement it...where no provision appears in [the] contract."

116. The IRM notes that Article 69 of the Labour Law states that a worker shall not be discharged unless he commits a serious error and lists matters that shall be considered a serious error for this purpose. The terms of the November 2021 contract between the complainant and HSH appear *prima facie* at best to be poorly aligned with this provision. The contract includes the following: i) an extensive list of reasons entitling HSH to "annul" the contract without compensation including violation by the employee of any of "the items" contained in the contract or the employee's technical unsuitability; ii) a requirement on the employee to adhere to all orders and directives issued to him by company management and officials; iii) a requirement on the employee to do the work demanded of him at any of the various company sites, in accordance with the instructions of company management; and iv) acknowledgment by the employee that should he violate any of the obligations and undertakings in the contract, the employer shall have the right to terminate his services immediately without compensation.
117. The IRM understands that the complainant was initially dismissed (and subsequently complained to the Labour Office) following periods of absence which he connects to his working conditions. The Labour Law includes certain absences without justification among the list of serious errors.⁸⁶ However the IRM also notes that the complainant was reinstated following a complaint to the Labour Office.⁸⁷
118. PS 2 provides that in the absence of a collective agreement, clients are to provide workers with documented information that is clear and understandable regarding their rights under national labour and employment law, including their rights related to hours of work, wages, overtime, compensation, and benefits upon beginning the working relationship and when any material changes occur.⁸⁸ The complainant asserts that on a number of occasions there were material changes in his role, including a verbal agreement to pay an additional monthly sum. He says that no changes were made to his written contract to reflect these changes. The IRM notes that in principle PS 2 would require a material change in the compensation of a worker who fell within its scope to be included in documented information and its absence would not be consistent with this requirement.
119. The complainant asserts that he was paid less when working as a manager or team leader⁸⁹ than drivers in the same team who reported to him. However, as noted earlier, a reason was reportedly given by HSH for the discrepancy.⁹⁰ The IRM will consider questions raised by this wage differential in the context of the PS 2 requirement for fair treatment.
120. Regarding the complaints that a sum for transportation was deducted from the complainant's salary even though he used his own vehicle; and that contrary to a statement of entitlement that HSH did not pay cash allowances for food to workers including the complainant in place of food; the IRM does not have sufficient information at this compliance appraisal stage to fully understand the basis for the deduction, and entitlement, in question. The complainant's contract at the time his

⁸⁴ A FN to para. 10 provides explicitly that reasonable working conditions and terms of employment could be assessed by reference to conditions established by national law.

⁸⁵ See <https://www.manpower.gov.eg/PDF/WorkLow/law2003.pdf>

⁸⁶ Labour Law, Article 69 (4)

⁸⁷ The IRM has not at this stage sought the views of HSH on the circumstances of the first dismissal, but will do so during compliance investigation.

⁸⁸ See IFC Performance Standard 2, para.10 <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-2-en.pdf>

⁸⁹ Both terms have been used (the original language being Arabic)

⁹⁰ Per the complainant, this was a result of their earlier contract when working through a subcontractor.

employment came to an end does not include a direct reference to either a transportation deduction or a food allowance.⁹¹ The IRM does not consider that it is necessary to make a separate finding on these specific issues, which also concern issues of labour and working conditions; and is content to seek further clarification in the course of the compliance investigation.

121. The complainant believes that he was demoted as punishment because he had repeatedly requested a salary increase and a change in his written contract, and notes that he was told to stop work after he refused to sign a draft contract that reflected the demotion. The IRM has not seen a copy of that draft contract. The documents currently available to it suggest that HSH gave two months' written notice to the complainant that it did not intend to renew his contract. The use of demotion as punishment or on a retaliatory basis, if factually confirmed, would be inconsistent with both reasonable working conditions and fair treatment, and thus inconsistent with the maintenance of an ESMS aligned with the requirements of PS 2.
122. The complainant asserts that HSH did not make health insurance payments as required. The IRM notes that the complainant's contract at the time that his employment was terminated does not include an explicit reference to payments in respect of health or social insurance, but states that the provisions of the Social Insurance Law shall apply to the contract, along with the internal regulations of the company. The IRM understands that this aspect of the complaint as a claim that HSH did not meet its legal obligations in respect of health insurance payments. The IRM notes that Complainant #2 in this case, whose complaint was the subject of the IRM's earlier compliance appraisal, has also asserted that HSH did not make health insurance payments as required. Complainant #1 has not at this stage provided documentary evidence in support of his assertion, and the IRM proposes to consider it further during compliance review as part of its consideration of FP039 compliance with PS 1 and PS 2.⁹²
123. In conclusion, the IRM notes that it appears *prima facie* whilst that the ESS governance arrangements at Benban were intended to ensure that the FMC's ESMS would allow it to operate, and its performance to be monitored, in a manner consistent with PS requirements on labour and working conditions, they fell short. The applicability of provisions of PS 2 regarding contracted workers will be the subject of further consideration during the IRM's compliance investigation. The IRM will then also consider the relevance of the complainant's concerns regarding labour and working conditions to Programme implementation of PS 1's requirements in relation to the assessment, management and mitigation of workplace risk, including the relevance of PS 1 to "*contractors... over which the [client's] organization has control or influence.*"⁹³

Initial Findings

124. On the basis of its initial findings on the role of the FMC and BSDA in the monitoring, oversight and/or implementation of key components of environmental and social management systems, the IRM concludes that GCF operational policies and procedures extend to the role of the FMC and BSDA in Programme implementation. The IRM also concludes that *prima facie evidence* of non-compliance with GCF operational policies and procedures regarding the BSDA and FMC may constitute *prima facie evidence* of Programme non-compliance.
125. The complainant's assertions raise questions about the adequacy of management systems at the FMC and the BSDA to ensure compliance with applicable provisions of PS 2 and Egyptian Labour Law, and therefore the effectiveness of workplace risk mitigation under PS 1 at the Benban

⁹¹ The contract provides that the employer shall provide suitable transport to the employee during his period of work but does not refer to payment of an allowance in the event that the employee uses his own transport

⁹² The IRM's preliminary understanding is that the issue will need to be considered in relation to the Social Insurance Law No. 79 of 1975. The IRM believes, but will verify during compliance investigation, that the later Universal Health Insurance Law of 2018 did not take effect in Aswan governorate until after the complainant's employment with HSH had come to an end.

⁹³ Performance Standard 1, para. 14

site more widely; as well as implementation of the GCF's monitoring requirements under the 2015 Monitoring and Accountability Framework and Risk Management Framework and potentially (subject to further consideration) the ESP.

126. The IRM notes that the requirement on the complainant under his contract not to complain or file a complaint or take legal action if the employer terminates his contract for any one of an extensive list of reasons (which do not correspond to those provided under the Labour Law), is not *prima facie* consistent with requirements of the Interim ESS regarding labour and workplace conditions and the establishment and implementation of grievance mechanisms for workers, including contracted workers.
127. At this stage the IRM concludes that, whilst acknowledging steps later taken by EBRD (in cooperation with other lenders) to address HSH management capacity and performance on labour and workplace issues (including the grievance mechanism), there is *prima facie* evidence of Programme non-compliance with PS 1 and PS 2 regarding labour and workplace conditions at HSH.

Conclusions

128. The IRM concludes that there is *prima facie* evidence of Programme non-compliance with provisions of PS 1 regarding the assessment and management of risk relating to labour and working conditions and grievance mechanisms. There is also *prima facie* evidence of Programme non-compliance with provisions of PS 2 regarding contracted workers in relation to the grievance mechanism available to workers at the FMC, and provisions of PS 2 relating to the labour and working conditions of contracted workers. The applicability of provisions of PS 2 regarding contracted workers will be the subject of further consideration during the IRM's compliance investigation.
129. Finally, the IRM concludes that there is *prima facie* evidence of Programme non-compliance by reason of insufficiently risk-based monitoring of Programme implementation and performance at Benban by the Secretariat, contrary to the requirements of the Risk Management Framework; the 2015 Monitoring and Accountability Framework; and (subject to further consideration as discussed above) the ESP.
130. Complainant #1 told the IRM that he had experienced a variety of adverse impacts as a result of the issues raised in his complaint, including financial loss, loss of social standing in his community, non-payment of sums to which he was entitled, and adverse psychological impacts. The IRM has not met the complainant in person at this stage to discuss in detail and clarify the adverse impacts that the complainant has referred to. However, the IRM is satisfied that they are plausible and merit further clarification.
131. The IRM has identified a number of areas where there is *prima facie* evidence of non-compliance with GCF operational policies and procedures. There is a plausible *prima facie* link between these areas of possible non-compliance and the adverse impacts that the complainant has described.
132. The IRM finds that there is *prima facie* evidence that adverse impacts to the complainant resulted from the non-compliance of FP039 with GCF operational policies and procedures reflected in the Risk Management Framework, part II of the 2015 Monitoring and Accountability Framework, GCF's responsibilities under the 2018 Environmental and Social Policy (the applicability of which will be determined during compliance investigation), Performance Standard 1 of the Interim ESS and (to the extent confirmed to be applicable, upon further consideration during compliance investigation, to labour and working conditions and the worker grievance mechanism at the FMC), Performance Standard 2 of the Interim ESS.

133. Considering its findings and conclusions, the IRM will now commence a compliance investigation, the scope of which is set out below, to investigate the matter further and reach final findings on the issues.

VI. Scope of Compliance Investigation

134. In the interest of efficiency, the IRM will consolidate the Scope of Compliance Investigation set out in its compliance appraisal report of 12 July 2024 in Case C-009-Egypt (Scope of Compliance Investigation regarding Complainant #2) with this Scope of Compliance Investigation. To that end, the IRM will update its July 2024 Scope of Compliance Investigation to the extent necessary to ensure a common Scope of Investigation in respect of both complainants and will proceed on the basis of a single compliance investigation.

135. The investigation will address the facts asserted by Complainant #1 and Complainant #2 separately.

136. The questions that will be investigated through the compliance investigation are as follows:

- (1) Were adverse impacts experienced by the complainants caused by the non-compliance of Programme FP039 with applicable provisions of the 2018 Environmental and Social Policy, and/or para. 5, PS1 and/or PS2 of the GCF's Interim Environmental and Social Safeguards and related guidance notes?
- (2) Did the GCF Secretariat's second-level due diligence on overall ESS governance arrangements in relation to FP039 meet the requirements of the Initial Proposal Approval Process and/or GCF's Interim Environmental and Social Safeguards, so far as relevant to the issues raised by the complainants in respect of labour and working conditions and the grievance mechanism?
- (3) In light of the provisions of the 2017 AMA, is the 2018 Environmental and Social Policy applicable to the Secretariat's monitoring of AE reporting and FP039 Programme performance regarding the GRM and labour and working conditions at the Benban Solar Park? If so, how?
- (4) Did the GCF Secretariat undertake adequate monitoring of AE reporting and of Programme performance regarding the GRM and labour and working conditions at the Benban Solar Park as required under the Risk Management Framework,⁹⁴ Monitoring and Accountability Framework and, to the extent applicable, the 2018 Environmental and Social Policy?
- (5) Were site-level and FMC-level GRM and labour and workplace conditions aligned at relevant times with applicable GCF policies and procedures, in particular under PS1 and, as relevant, PS 2 of the GCF Interim Environmental and Social Safeguards and related guidance notes?

137. As part of its compliance investigation, the IRM will gather information, as appropriate, from all stakeholders and witnesses concerned, including the complainant, the GCF Secretariat, the NDA, AE, Executing Entity, and other independent panels of the GCF. The compliance investigation may include document review, meetings, discussions, site visits, evidence gathering, and obtaining expert opinions; including where needed independent expert legal opinion.

138. At the conclusion of its investigation the IRM shall prepare a compliance investigation report for submission to the Board of the GCF. The report shall include such recommendations on remedial actions as are appropriate in the light of the findings of the IRM.

⁹⁴ The Risk Management Framework policies that are relevant primarily include the Risk Appetite Statement, Risk Register, Risk Dashboard and Non-Financial Risk Policy.

139. The compliance investigation should be completed by 12 July 2025, subject to the IRM's Procedures and Guidelines.

VII. OBSERVATIONS

140. The IRM draws the following observations to the attention of the Board and the GCF Secretariat.

Disclosure of environmental and social performance

141. Whilst EBRD has submitted ESS performance information to the GCF on an annual basis beginning in 2017, the IRM has not been able to identify any proactive public disclosure on the ESS performance of FP039 in 2017, 2018, and 2019; a period which includes part of the construction period at the Benban Solar Park.

142. In 2021 the GCF IDP team received a request for disclosure of four of the FP039 APRs.⁹⁵ The Secretariat declined to provide the requester with access to the 2017, 2018 and 2019 APRs on the basis that these had been provided to the GCF in confidence. It referred for this purpose to paragraph 11(e) of the Information Disclosure Policy (*information provided in confidence*). Access to the publicly disclosed Calendar Year 2020 APR was granted.⁹⁶ The IRM emphasizes that para. 11(e) states: "[t]his exception should not be applied broadly to an entire document if the document contains specific, segregable portions that can be disclosed without prejudice or harm." The IRM encourages the IDP team to carefully scrutinize AE requests for confidentiality in respect of APR reporting on environmental, social and gender performance.

The nature of the IRM process

143. In the present case (Complainant #1), as well as in the IRM's earlier compliance appraisal regarding FP039 (Complainant #2), the Secretariat Response requests further information from the IRM on what it describes as 'procedural aspects of the complaint'. The IRM provided verbal responses to these requests in a meeting with the Secretariat and does not consider that an additional written response is necessary.

144. The IRM notes that the Secretariat refers to documents provided to the IRM by the AE in the earlier compliance appraisal process in June 2024 and shared by the IRM with the Secretariat "only on 16 July." The compliance function is not an intermediary in the relationship between the GCF Secretariat and its AEs or EEs. The IRM encourages the Secretariat to establish an appropriate working approach to cooperation with EBRD in the course of the forthcoming compliance investigation.

145. The Secretariat Response refers to overarching legal principles of, *inter alia*, due process, transparency, 'equality of arms (parity of evidence)' and 'access to information', in its request for further information. The IRM emphasizes that its processes are not adversarial. The IRM does not rely only on information provided to it by the parties in formal documentation, but also seeks to fill gaps and elicit missing documents and evidence and to seek clarity where there is uncertainty. It does so sensitive to the need, reflected in its PGs, to be accessible to complainants, who are often technically non-specialist and may never have had previous contact with an international institution or made formal complaints. Moreover, complainants in cases before the IRM often do not have access to independent legal and/or advocacy support, including technical specialist support. The IRM is bound by its PGs to respect complainant requests for confidentiality and also to abide by the IDP. And just as the IRM does not share confidential internal documents of the GCF

⁹⁵ See Decisions made for information disclosure request IDP302

<https://www.greenclimate.fund/document/decisions-made-information-disclosure-request-idp302>

⁹⁶ Available online via <https://www.ebrd.com/documents/donor-co-financing/egypt-renewables-public-apr-2020.pdf>

or the AE or confidential information shared by GCF or the AE, it does not share information provided to it in confidence by complainants.

146. The Secretariat's questions will help to inform the IRM's ongoing programme of inreach within the Secretariat. In the interest of transparency, the IRM will append the Secretariat Response to the Compliance Review report.

Prepared by:

Halina Ward
Case Lead/Senior Compliance Case Consultant
Independent Redress Mechanism
Green Climate Fund

With support from:

Preksha Krishna Kumar
Registrar and Case Officer
Independent Redress Mechanism
Green Climate Fund

Approved by:

Sonja Derkum
Head of Unit
Independent Redress Mechanism
Green Climate Fund