



October 21, 2019
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

*Bridge International Academies (IFC Project #32171, #38733, #39170 and #39224)
Kenya*

Bridge International Academies (“Bridge” or the “company”) is a wholly owned Kenyan subsidiary of New Globe Schools, Inc. It operates Africa’s largest chain of low-cost private schools. The company has been an IFC client since 2014, when IFC made its first preferred equity investment of US\$10 million. IFC’s current investment in the company totals US\$13.5 million. IFC’s investment was intended to support the expansion of Bridge’s network of schools in Kenya and entrance into three new markets (the “project”). At the time of IFC’s investment, Bridge owned 211 schools in Kenya serving over 57,000 students. According to IFC, by December 2018 the Company operated 297 schools in Kenya.

IFC anticipated that the project would promote access to basic education, promote affordability, improve quality and accountability, create jobs and improve student nutrition. Further, IFC anticipated that the project would act as a consolidator in the sector and provide a “demonstration effect” that would, if successful, attract other companies to employ similar strategies.

In April 2018, CAO received a complaint from the East Africa Centre for Human Rights (EACHRights), a Kenyan NGO, on behalf of current and former parents and teachers (the “complainants”) regarding IFC’s investment in Bridge in Kenya. The complaint raises concerns about the company’s compliance with international and Kenyan law, as well as IFC’s Performance Standards. The complainants cite regulatory issues, including allegations that the majority of Bridge schools are not registered and do not meet guidelines for low-cost private schools. The complainants raise concerns regarding labor and working conditions for teachers, including hours of work, pay deductions, and pressure on teachers to market the schools. Concerns regarding the school environment include the location, condition and construction of schools, which the complainants allege are unsafe, as well as accessibility and support for children with disabilities and special needs. The complainants allege that the company provides false or misleading information about the costs of attending Bridge schools, does not adequately share information or engage parents, and that the company has intimidated stakeholders.

In response to these concerns, the company states that it has worked with the Ministry of Education to address regulatory issues. The company states that it adheres to national labor law in relation to minimum wage and overtime conditions. The company states that their schools are constructed on the basis of government-approved building plans are subject to oversight by local

authorities. The company states that any increases in school fees are announced in advance, and that their schools have integrated children living with disabilities.

In the course of the appraisal, CAO spoke with the complainants and their representatives as well as IFC staff responsible for the investment. CAO carried out a desk review of project documentation and supporting documentation shared by the complainants.

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to IFC investments that raise substantial concerns regarding environmental and social (E&S) outcomes and/or issues of systemic importance to IFC. In determining whether to initiate an investigation, CAO weighs a number of factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, the existence of questions concerning the adequacy of IFC's requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

It is beyond the scope of a CAO compliance appraisal to reach a conclusion on whether the company's business activities have in fact had significant adverse E&S impacts. The question at this point is whether, on a preliminary review of available information, the complaint raises substantial concerns regarding the E&S outcomes of IFC's investment. CAO notes IFC efforts during supervision to assess and address concerns about sanitation at Bridge schools and, more recently, to review labor and working conditions. However, CAO concludes that there are substantial concerns regarding the E&S outcomes of IFC's investment in Bridge considering: (a) the specific allegations of adverse impacts to teachers, parents and students raised in the complaints; (b) the E&S risk profile of the schools in light of their number, locations and concerns regarding their construction methods; and (c) the registration status of the schools and adherence to relevant health and safety requirements.

CAO's initial review of the project documentation also raises questions as to the adequacy of IFC's due diligence and supervision, in particular:

- (i) how IFC assured itself that the client was in compliance with Kenyan law requirements for operating schools, and how it assessed the client's intention to seek registration under the Alternative Provision of Basic Education and Training (APBET) guidelines;
- (ii) how IFC assessed the client's capacity and commitment to implement Performance Standard 1 (PS1) requirements to establish an environmental and social management system (ESMS), conduct information disclosure, community engagement and establish a grievance mechanism;
- (iii) how IFC assessed the client's labor practices against Performance Standard 2 (PS2) and Kenyan law requirements; and
- (iv) how IFC assured itself of the environmental, health and safety performance of the client's Kenya schools, including construction, sanitation, school location and security against Performance Standard 4 (PS4), EHS Guidelines, and Kenyan law requirements.

Overall, CAO has determined that an investigation is an appropriate response to the issues raised in the complaint. In making this decision, CAO has taken into account the scale of the client's

business in Kenya and the number of communities potentially impacted. CAO has also considered the vulnerable status of children and families that are the target market for Bridge schools.

CAO's compliance investigation will consider the adequacy of IFC's due diligence and supervision in relation to the matters outlined at (i) – (iv) above.

Further details of the investigation scope are set out in the investigation Terms of Reference annexed to this report. CAO expects to complete its investigation by September 2020.

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about CAO, please visit www.cao-ombudsman.org

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Acronyms

Acronym	Definition
AMR	Annual Monitoring Report
APBET	Alternative Provision of Basic Education and Training
Bridge	Bridge International Academies
CAO	Office of the Compliance Advisor Ombudsman
EACHRights	East Africa Center for Human Rights
E&S	Environmental and Social
EHS	Environmental, Health and Safety
EIA	Environmental Impact Assessment
ESAP	Environmental and Social Action Plan
ESDD	Environmental and Social Due Diligence
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
IFC	International Finance Corporation
KCPE	Kenya Certificate for Primary Education
KICD	Kenya Institute for Curriculum Development
MIGA	Multilateral Investment Guarantee Agency
PS	Performance Standards (IFC)
SII	Summary of Investment Information

I. Overview of the Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

II. Background

Investment

NewGlobe Schools, Inc. (NGS) is a Delaware corporation. Bridge International Academies (“Bridge” or the “company”) is the wholly owned Kenyan subsidiary of NGS. Bridge operates Africa’s largest chain of low-cost private schools. IFC made a preferred equity investment of US\$10 million in NGS in January 2014 (Project #32171). IFC made subsequent investments in NGS in July and November 2016 (Project #38733, #39170 and #39224). IFC’s total equity investment as of June 2019 was US\$13.5 million.

IFC disclosures note that Bridge aims to provide quality education to children from families earning less than US\$2 per person per day.¹ IFC reports that Bridge builds schools on greenfield sites located in high-density, low-income communities. IFC describes the company’s model as leveraging “centralized curriculum development, teacher training, and a comprehensive technology platform to provide quality education at an affordable cost.”² IFC anticipated that the project would promote access to basic education, promote affordability, improve quality and accountability, create jobs and improve student nutrition.³ Further, IFC anticipated that the project would act as a consolidator in the sector and provide a “demonstration effect” that would, if successful, attract other companies to employ similar strategies.⁴

The investment was classified as Category B, indicating that IFC assessed that its potential adverse environmental and social risks were limited, reversible and may be readily mitigated.⁵

IFC’s investment was intended to support the expansion of Bridge’s network of schools in Kenya and entrance into three new markets (the “project”).⁶ At the time of IFC’s investment, Bridge owned 211 schools in Kenya serving over 57,000 students.⁷ According to IFC, by December 2018 the Company operated 297 schools in Kenya.⁸

Complainant’s Perspective

In April 2018, CAO received a complaint from the East Africa Centre for Human Rights (EACHRights), a Kenyan NGO, on behalf of a group of current and former parents and teachers (the “complainants”) regarding IFC’s investment in Bridge in Kenya. The complainants have requested that their identities be kept confidential.

The complaint raises concerns about the company’s compliance with international and Kenyan law, as well as IFC’s Performance Standards. The complaint raises particular concerns about the

¹ IFC Project Information Portal, “Bridge International Academies,” Summary of Investment Information (SII), Expected Development Impact, October 30, 2013, available at: <https://disclosures.ifc.org/#/projectDetail/SII/32171>.

² IFC Project Information Portal, “Bridge International Academies,” Environmental and Social Review Summary (ESRS), Project Description, October 30, 2013, available at: <https://disclosures.ifc.org/#/projectDetail/ESRS/32171>.

³ IFC, 2013, SII, Expected Development Impact.

⁴ IFC, 2013, ESRS, “Expected Development Impact.”

⁵ IFC, 2013, ESRS.

⁶ IFC, 2013, SII.

⁷ IFC, 2013, ESRS.

⁸ Bridge International Academies Website,

company's compliance with PS1, PS2, and PS4 in relation to environmental and social risk, labor and working conditions, and community health, safety and security. The complaint also raises concerns about intimidation, economic discrimination, lack of parental inclusion, and lack of transparency with regard to the general operation of the schools.

In addition to the complaint,⁹ a detailed account of the complainants' concerns is set out in the CAO assessment report.¹⁰ For the purposes of this appraisal, the complainants' concerns have been summarized below into four thematic areas – regulatory issues, teachers' employment conditions, school environment, and disclosure and stakeholder engagement.

Regulatory Issues

- *School registration:* The complainants raise concerns about the registration status of Bridge schools, stating that the majority are not registered as required by the Basic Education Act of 2013. The complainants allege that the schools, therefore, are not permitted to operate. The complainants refer to a set of provisions for low-cost private schools – the Alternative Provision of Basic Education and Training (APBET) guidelines that Bridge sought to meet. The complainants state that Bridge attempted to register schools under the APBET guidelines but was declined and allege that Bridge has failed to comply with government directives to register its schools as private schools. The complainants also reference court proceedings related to school closures and allege that, through its actions, the company is undermining the rule of law in Kenya.
- *Teacher qualifications and registration:* Complainants state that the model for Bridge schools in Kenya was, at inception, to use non-qualified teachers. They argue that this is inconsistent with the Basic Education Act 2013. Further, the complainants state that Bridge has not met the applicable APBET guidelines for progressive certification and registration of teachers with the Teachers Service Commission. The complainants allege that teachers at Bridge schools do not receive adequate training and that, as a result, they are not well-equipped to handle younger children or engage with parents.
- *Curriculum and supplementary materials:* The complainants allege that the curriculum taught in Bridge schools in Kenya does not meet the requirements of the Kenyan Institute for Curriculum Development (KICD). The complainants also allege that Bridge is not using KICD-approved textbooks or supplementary materials. The complainants raise concerns that, as a result of the use of scripted lessons by teachers without formal qualifications, the quality of teaching at Bridge schools is low.

Employment Conditions

The complainants state that teachers at Bridge schools work in conditions of fear and intimidation. The complainants allege that workers fear losing their jobs or having salary payments deducted for issues such as failing to reach marketing targets, being late, or allowing children with

⁹ EACHRights, Submission of Complaint, April 16, 2018, available at: <http://bit.ly/BridgeComplaintCAO>.

¹⁰ CAO Assessment Report, Regarding Concerns in Relation to IFC's Investment in Bridge International Academies (#32171) in Kenya, March 2019.

outstanding fees to attend classes. Specific employment conditions cited by the complainants are summarized below:

- *Working conditions:* The complainants allege Bridge teachers are required to work longer hours than permitted under Kenyan law, without offering teachers overtime or adequate breaks during the school day. The complainants allege that teachers do not have access to facilities for breaks or meals such as staff rooms. In relation to salaries, the complainants believe that some teachers are earning less than the minimum wage set out in Kenyan law.
- *Discipline and dismissals:* The complainants allege that Bridge does not follow appropriate dismissal procedures, including failing to inform teachers' of the reasons for their dismissal, failing to provide an opportunity to respond to allegations of misconduct, or failing to pay a final salary. The complainants reported to CAO that efforts to raise grievances with the client were not successful, that concerns raised through calls to a central phone line were not addressed, and that efforts by workers to organize were rejected by the client. The complainants express concern at specific actions taken by Bridge to enforce a restraint of trade clause against a former employee.
- *Computer-based teaching:* The complainants identified several concerns related to the use of tablet computers for delivery of lessons at Bridge schools. In particular, they state that teachers are bound to follow the lesson script on the tablet and are disciplined if they do not complete the day's lessons, which the complainants state prevents innovation, creativity or adjustment to meet the needs of students.
- *Marketing responsibilities:* The complainants state that teachers are required to recruit new students for the school and are disciplined or pressured if they do not meet recruitment targets. The complainants allege that the high recruitment targets create problems between teachers and community members. The complainants state that teachers are encouraged by Bridge to inform prospective parents that children will be offered scholarships, but that these scholarships are not always available, are not allocated fairly, and are sometimes withdrawn part way through the school year. They state that if parents are unable to pay fees, the children are excluded from school.

School Environment

- *Fees:* The complainants allege that school fees charged by Bridge make the schools inaccessible to the poorest households, that fees increase annually without notice, and that additional costs from registration, purchasing uniforms, and exam fees mean that the overall cost is greater than what is advertised to parents. The complainants express concern that a large proportion of children are excluded from school due to unpaid fees.
- *Condition and construction of schools:* The complainants express a number of concerns related to the construction, maintenance, and location of Bridge schools, including the extent to which these comply with Kenyan regulations. They state that school buildings are constructed from stone and corrugated iron sheets, without lighting, heating or cooling, and can be overcrowded. The complainants are dissatisfied with the toilet facilities in some schools and are concerned that they are unsanitary and are not separated into boys' and girls' toilets.

- *School location and safety:* The complainants express concern that some schools are located in unsafe areas, for example, areas prone to flooding, close to garbage dumping sites or sewage, or near a slaughterhouse or liquor store. The complainants also allege that schools are not adequately fenced, and that they do not provide a secure environment for pupils.
- *Accessibility and support for children with disabilities and special needs:* The complainants allege that Bridge does not admit children with disabilities, and that Bridge schools are not equipped to support children with special needs.

Disclosure and Stakeholder Engagement

- *Lack of transparency:* The complainants allege that the company is resistant to independent assessment and has not shared information about its tax status, finances, or (more recently) about its enrolment levels, as well as about day-to-day operations of the business.
- *False or misleading information:* The complainants allege that Bridge provides false or misleading information in the course of marketing its business to parents, such as offers to provide scholarships, additional facilities or free uniforms. The complainants also express concern that the company does not disclose steps taken to help improve student test performance, such as additional test training.
- *Lack of parent engagement:* The complainants express concern that the school boards of management do not have a mandate to act on what is happening in their schools, and that concerns raised to management are not transparently addressed.
- *Intimidation of stakeholders:* The complainants allege that the company creates a “climate of fear” around its operations which affects parents, teachers, staff and citizens. The complainants refer to court actions brought by the company against a journalist and a teachers’ union representative and allege that the company has threatened to sue people who have criticized Bridge schools. Further, the complainants refer to an instance where a researcher visiting a Bridge school was arrested and questioned.

Client’s Perspective

The client’s responses to concerns raised by the complainants are set out in the CAO Assessment Report and are summarized below:¹¹

Regulatory Issues

Bridge states that the company has been in continuous engagement with the Ministry of Education regarding school registration and were involved in drafting the APBET guidelines. The company states that it has worked with the Ministry to address compliance issues with the APBET guidelines and that it is currently in the process of inspections with a view to registering Bridge schools as private informal schools. The company states that all their schools meet teacher requirements under APBET guidelines and that they have employed an increasing number of government-trained teachers. Bridge states that all schools offer the national curriculum and that they were rolling out a new national competency-based curriculum in areas where it was available.

¹¹ CAO Assessment Report: Regarding Concerns in Relation to IFC’s Investment in Bridge International Academies (#32171) in Kenya, March 2019, available at: <http://bit.ly/CAOAssessmentBIA>.

Employment Conditions

Bridge states that all employees are paid above the minimum wage, and that the company adheres to the Labor Institutions Act in relation to overtime conditions. Bridge acknowledges that some teachers may be asked to supervise students during break times and that there are no separate teachers' staff rooms. Bridge states that it carries out dismissals in accordance with the Employment Act, and that an internal grievance mechanism is available for employees to lodge complaints. Bridge acknowledges that it includes restraint-of-trade clauses in teacher contracts and that it had sued a former employee for breach of a restraint-of-trade clause, and this was later withdrawn. Bridge states that the use of teacher computers ensures teachers are better prepared to deliver lessons. In relation to marketing, Bridge states that teachers are required to carry out outreach to engage with new and current parents in accordance with applicable labor laws and that a teacher's annual leave remains unaffected. Bridge states that it uses only incentives, not penalties. Bridge states that it does not provide assurance to parents that scholarships would be granted and that any complaint about promises made by staff members would be investigated according to internal policies.

School Environment

Bridge refutes the complainants' allegation that school fees are increased annually without notice and states that when they do occur, increases are announced in advance. Bridge states that the fee structure allows the schools to be sustainable. In relation to school conditions, Bridge states that their schools are constructed on the basis of government-approved building plans and are subject to oversight by education standards and County Public Health departments. Bridge states that sanitation facilities are adequate and appropriate for their schools and that they put in place systems to address safety and sanitation concerns. Bridge states that it has put in place procedures to continuously maintain and improve toilet facilities. Bridge acknowledges that at times weather conditions can lead to damage or to waste entering school premises and states they have put in place measures to mitigate the impact of flooding on playgrounds and that necessary repairs are carried out. Bridge states that their schools have integrated children living with disabilities and acknowledges difficulties in serving children with disabilities.

CAO Assessment and Referral to Compliance

CAO found the complaint eligible in May 2018. During CAO's assessment, the company indicated their willingness to engage in a dispute resolution process, while the complainants preferred the complaint to be handled by CAO's compliance function. Absent agreement on a dispute resolution process, the complaint was referred to the CAO compliance function in March 2019 for appraisal.

In the course of this appraisal, CAO spoke with complainants and their representatives as well as IFC staff responsible for the investment. CAO carried out a desk review of project documentation and supporting documentation shared by the complainants.

III. Analysis

This compliance appraisal considers IFC's pre-investment review and supervision of its investment in the client and the identification and management of E&S risks related to the client's operations in Kenya as raised in the complaint. The section below summarizes relevant aspects

of IFC's policy framework and describes IFC's approach to appraisal and supervision of the project in relation to the complainants' concerns.

IFC Policy Framework

IFC's investment in the company was made in the context of its 2012 Policy on Environmental and Social Sustainability ("the Sustainability Policy") and Performance Standards (PS), together referred to as the Sustainability Framework. Through the Sustainability Policy, "IFC seeks to ensure, through its due diligence, monitoring, and supervision efforts, that the business activities it finances are implemented in accordance with the requirements of the Performance Standards" (para. 7). The Sustainability Policy notes that "central to IFC's development mission are its efforts to carry out investment and advisory activities with the intent to 'do no harm' to people and the environment" (para. 9). IFC will invest in a project only when the activities it finances "are expected to meet the requirements of the Performance Standards within a reasonable period of time" (para 22). During the lifetime of an investment IFC is expected to monitor project compliance with its E&S requirements (para. 26).

This section sets out key IFC requirements relevant to the issues raised in the complaint.

National Standards and EHS Guidelines

In addition to meeting the requirements under the PS, IFC requires clients to comply with applicable national law.¹²

The World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines) are technical reference documents with general and industry-specific examples of good international industry practice.¹³

When host country regulations differ from the levels and measures presented in the EHS Guidelines, projects are expected to achieve whichever is more stringent. If less stringent levels or measures are appropriate in view of specific project circumstances, a full and detailed justification for any proposed alternatives is needed.¹⁴

Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts

PS1 requires that clients identify and evaluate environmental and social (E&S) risks and impacts related to the project and adopt a "mitigation hierarchy" to anticipate and avoid, or where avoidance is not possible, minimize risks and impacts to workers, affected communities and the environment. Where residual impacts remain, clients are required to compensate or offset for risks and impacts ("Objectives"). PS1 includes specific requirements to establish an E&S policy, an E&S management system (ESMS), disclosing relevant environmental and social information, engaging with stakeholders and addressing grievances related to the project.

Environmental and Social Policy

¹² IFC Performance Standards, Overview, para. 5.

¹³ IFC Performance Standards, Overview, para. 6.

¹⁴ IFC Performance Standards, Overview, para. 7.

PS1 requires clients to establish an overarching policy defining the E&S objectives and principles that guide the project to achieve sound E&S performance. The policy specifies that the project will comply with applicable laws and regulations of the jurisdictions in which it is being undertaken, including those laws implementing host country obligations under international law. The policy will indicate who, within the client's organization, will ensure conformance with the policy and be responsible for its execution (para. 6).

Identifying E&S Risks and Impacts

PS1 requires that clients establish and maintain a process for identifying E&S risks and impacts of a project, as appropriate to the type, scale and location of the project. The scope of the risk and identification process will be consistent with good international industry practice and may comprise an E&S impact assessment or application of environmental siting, pollution standards, design criteria, or construction standards. The process will consider all relevant environmental and social risks and impacts of the project and those who are likely to be affected by such risks and impacts (para 6).

E&S Management System

PS1 requires the client to develop E&S management programs that describe mitigation and performance improvement measures and actions that address identified E&S risks and impacts of the project (para. 13). Where risks and impacts cannot be avoided, the client will identify mitigation and performance measures and establish corresponding actions to ensure the project will operate in compliance with applicable laws and regulations and meet PS requirements (para. 15). E&S Action Plans will define desired outcomes and time-bound actions with estimates of resources and responsibilities for implementation. The management program will recognize and incorporate the role of actions and events controlled by third parties, and will be responsive to changes in circumstances, unforeseen events, and the results of monitoring and review (para. 16).

Organizational Capacity and Competency

PS1 requires the client to establish, maintain and strengthen an organizational structure to implement the ESMS (para. 17). Sufficient management sponsorship and human and financial resources will be provided on an ongoing basis to achieve effective and continuous E&S performance. Personnel within the client's organization with direct responsibility for the project's E&S performance will have the knowledge, skills and experience necessary to perform their work, including current knowledge of the host country's regulatory requirements and applicable requirements of the PSs (para. 18). The process of identifying risks and impacts will consist of an adequate, accurate, and objective evaluation and presentation, prepared by competent professionals (para. 19).

Emergency Preparedness

Where the project involves specifically identified physical elements, aspects and facilities that are likely to generate impacts, PS1 states that the ESMS will establish and maintain an emergency preparedness and response system so that the client, in collaboration with appropriate and relevant third parties, will be prepared to respond to accidental and emergency situations associated with the project in a manner appropriate to prevent and mitigate any harm to people and/or the environment (para. 20).

Stakeholder Engagement and Disclosure of Information

PS1 requires clients to conduct stakeholder engagement commensurate with a project's risks and adverse impacts (para. 25). The stakeholder engagement process may include stakeholder analysis, disclosure of information, and consultation with affected communities (paras. 26-30). Clients are required to provide affected communities with access to relevant information on: (i) the purpose, nature, and scale of the project; (ii) the duration of proposed project activities; (iii) any risks to and potential impacts on such communities and relevant mitigation measures; (iv) the envisaged stakeholder engagement process; and (v) the grievance mechanism (para. 29).

External Communications and Grievance Mechanisms

Clients are required to implement an external communications procedure that includes methods to receive, screen and assess issues raised by the public, to provide, track and document responses and to adjust the ESMS where appropriate (para. 34). Clients are required to establish a grievance mechanism scaled to the risks and impacts of the project with a focus on affected communities as the primary users. It should seek to resolve concerns promptly, using an understandable and transparent consultative process that is culturally appropriate and readily accessible, and at no cost and without retribution to the party that originated the issue or concern (para. 35).

Performance Standard 2: Labor and Working Conditions

PS2 aims to promote the fair treatment, non-discrimination and equal opportunity of workers, and to promote compliance with national employment and labor laws (“Objectives”).

Working Conditions and Terms of Employment

IFC clients are required to provide reasonable working conditions and terms of employment,¹⁵ which may be assessed by reference to conditions established for similar work in the same industry and region, by reference to collective agreements between other employers and worker representatives in same trade or in accordance with national law (para. 10, note 6).

Freedom of Association

In countries where national law recognizes workers’ rights to form and join workers’ organizations of their own choosing without interference and to bargain collectively, the client is required to

¹⁵ Guidance Notes to PS2 define “working conditions” as including disciplinary practices, reasons and process for termination of workers, and define “terms of employment” as including wages and benefits, wage deductions, hours of work, breaks, rest days, overtime arrangements and overtime compensation, see IFC Guidance Note 2, GN21 and GN2, available at: <http://bit.ly/IFCGuidanceNote2>

comply with national law. Where national law substantially restricts workers' organizations, the client is required not to restrict workers from developing alternative mechanisms to express their grievances and protect their rights regarding working conditions and terms of employment. The client should not seek to influence or control these mechanisms (para. 13). The client must not discourage workers from forming or joining worker organizations of their own choosing and must not discriminate or retaliate against workers who participate, or seek to participate in such organizations. The client is required to engage with workers' representatives and workers' organizations and provide them with information needed for meaningful negotiation in a timely manner (para. 14).

Grievance Mechanism

The client will provide a grievance mechanism for workers to raise workplace concerns. The client must inform the workers of the grievance mechanism at the time of recruitment and make it easily accessible to them. The mechanism should use an understandable and transparent process and should allow for anonymous complaints (para. 20).

Performance Standard 4: Community Health, Safety, and Security

PS4 recognizes that clients have a responsibility to avoid or minimize risks or impacts to community health, safety and security that may arise from project-related activities, with particular attention to vulnerable groups (para. 1).

Infrastructure and Equipment Design and Safety

PS4 requires clients to design, construct, operate, and decommission the structural elements or components of a project in accordance with good international industry practice, taking into consideration safety risks to third parties or Affected Communities. When new buildings and structures will be accessed by members of the public, the client will consider incremental risks of the public's potential exposure to operational accidents and/or natural hazards and be consistent with the principles of universal access. Structural elements will be designed and constructed by competent professionals and certified or approved by competent authorities or professionals (para. 6).

Community Exposure to Disease

PS4 requires that clients avoid or minimize the potential for community exposure to water-borne, water-based, water-related and vector-borne diseases, and communicable diseases that could result from project activities, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups. Where specific diseases are endemic in communities in the project area of influence, the client is encouraged to explore opportunities during the project life-cycle to improve environmental conditions that could help minimize their incidence (para. 9).

IFC's Pre-Investment Review

A key question for CAO is whether IFC exercised due diligence in its pre-investment review of the E&S risks of the investment. As a general principle, IFC is committed to a pre-investment E&S review that is "commensurate with the level of environmental and social risks and/or impacts."¹⁶

¹⁶ IFC Policy on Environmental and Social Sustainability, 2012, para. 6

CAO considers: (a) IFC's review of the E&S potential risk attached to the project (Sustainability Policy, para. 27), (b) IFC's approach to the assessment of the client's capacity to manage and mitigate these risks (PS1 para. 17); and (c) the measures that IFC required the client to implement to ensure appropriate E&S risk management (Sustainability Policy, para. 28).

During the pre-investment review, IFC staff reviewed E&S risks and impacts of Bridge operations in Kenya, including an example of an Environmental Impact Assessment (EIA) for a proposed Bridge school, and interviewed Bridge staff.¹⁷ An IFC education specialist and a project investment officer conducted a site visit to Bridge headquarters Nairobi and visited schools. IFC disclosed its E&S review summary (ESRS), but no client E&S assessment documentation was disclosed on the IFC website. IFC summarized its E&S review and corrective actions in a report to the World Bank Group Board. The Board approved the project on December 5, 2013.

Specific observations on IFC's E&S review are summarized below in relation to the complaint issues.

Regulatory Issues

Following the pre-investment site visit, an IFC education specialist prepared a report on the Bridge schools' model, including information on the regulatory framework for non-formal schools in Kenya and details about the Kenyan education system. The report included information about school registration, teacher certification, and registration as an examination center as well as curriculum development, teaching methodologies, test performance, teacher training and school management.

IFC received a draft legal due diligence report in relation to the project operations in Kenya that considered regulatory compliance issues.¹⁸ In October 2013 the project team identified regulatory issues as a key project risk and noted that this was an area where IFC and the World Bank could provide assistance.

IFC noted that the client was in the process of developing a group-wide ESMS and incorporated an action in the ESAP to complete implementation of the ESMS and ensure its application to all Bridge schools with a target date of June 2014.¹⁹ Among the matters required to be included in the ESMS was "procedures for ... compliance with regulatory requirements in any country in which a school may be developed."²⁰ The ESAP did not include any client actions related to regulatory issues in Kenya where schools were already operating.

Working Conditions

The ESRS described the company's existing E&S policies, procedures and plans related to human resources (HR) management and recruitment. IFC found that the client's HR policies and

¹⁷ IFC Project Information Portal, "Bridge International Academies," Environmental and Social Review Summary (ESRS), *Overview of IFC's Scope of Review*, October 30, 2013, available at: <http://bit.ly/IFCESDisclosure32171>.

¹⁸ No final due diligence report was available on the IFC project file.

¹⁹ IFC Project Information Portal, "Bridge International Academies," Environmental and Social Review Summary (ESRS), *Environmental & Social Action Plan*, October 30, 2013, available at: <http://bit.ly/IFCESDisclosure32171>.

²⁰ *Ibid.*

procedures were generally in compliance with PS2 and had been compiled to meet Kenyan legal requirements. IFC reported that a quality assurance team within the company ensured implementation of existing policies and procedures through ongoing auditing and monitoring. IFC identified labor and working conditions for staff (including occupational health and safety during the construction phase) as a key issue associated with the project.²¹

IFC stated that Bridge did not restrict its staff from joining workers' unions but noted that none of its staff had joined a union to date. IFC identified that the client's approach to grievances needed to be clearly documented into a written procedure and that Bridge needed to include a mechanism for confidential and anonymous reporting. This requirement was included in the ESAP.

No further actions in relation to labor or working conditions were included in the ESAP.

School Environment

IFC's ESRS described the company's existing E&S policies, procedures and plans related to life and fire safety, OHS during construction, and designing for the health and welfare for teachers and learners. IFC reported that a quality assurance team within the company ensured implementation of existing policies and procedures through ongoing auditing and monitoring. IFC reported that the client had a team of EIA professionals licensed by the Kenyan National Environment Authorities, and that an EIA had been conducted for every school built.

IFC's ESRS identified several aspects of the school environment as key project risks:

- Building standards applied to schools, including those related to life and fire safety;
- Provision of potable water of an adequate quality and the approach to the disposal of sewage; and
- Security measures implemented at the schools to ensure the safety of learners.

In relation to building standards, IFC's project description noted that Bridge school buildings "are simple and semi-permanent in nature, consisting of masonry foundations and walls, cement floors and with roofs and interior walls supported by timber and constructed from galvanized corrugated iron sheets. Windows are protected by wire screens, with no glass being used."²² As part of its E&S review, IFC considered construction plans for and photographs of Bridge schools.²³ IFC noted that Bridge schools were designed and built to meet Kenyan Building Codes and Regulations and that building plans for Bridge schools were certified by local planning offices.²⁴

In relation to site selection, IFC reported that Bridge had established a consultative and rigorous process, taking into account stormwater management and elevation regarding flood risks. IFC acknowledged that the company had experienced flooding at some of the schools, despite efforts to address and minimize this, and noted that "this is due to the location of schools in informal

²¹ IFC Project Information Portal, "Bridge International Academies," Environmental and Social Review Summary (ESRS), October 30, 2013, available at: <http://bit.ly/IFCESDisclosure32171>.

²² ESRS, 2013, "Project Description."

²³ ESRS, 2013, "Overview of IFC's Scope of Review."

²⁴ ESRS, 2013, "Community Health and Safety."

settlements where the flooding of the broader areas is experienced, and is not unique to the school itself.”²⁵

In relation to sanitation, IFC reviewed the Bridge latrine design, ratios and siting background document, as well as latrine construction provisions. IFC noted that the design of these latrines would depend on siting requirements including Kenyan Environmental Management Authority guidelines.

In relation to safety and security, IFC reviewed the company’s Life Fire and Safety Master Plan (LFSMP) and described its scope as including fire prevention, control and emergency response as well as procedures for other hazards such as flooding, landslides and earthquakes, medical issues/injuries and on-site security issues. IFC commented that, “[while] some of the measures for fire and safety are very basic (e.g., there are no fire extinguishers, rather each school is provided with a bucket of sand and water, a whistle, and teachers trained in the requirements of the LFSMP), they are considered appropriate for facilities of this kind.”²⁶ IFC reported that the LFSMP was based on relevant Kenyan regulations and had been approved by a Kenyan Government-approved Safety and Health Advisor.

IFC identified corrective measures to close gaps between the project and IFC requirements within a reasonable period of time and included them in the ESAP. Through the implementation of these measures, IFC reported that the project was expected to be designed and operated in accordance with Performance Standards objectives. A key action was to develop an ESMS at Group level and ensure that it was applied at all Bridge Academy schools across all countries of operation.

Among other things, the ESMS was required to include:

- Procedures to identify and manage E&S risks and impacts for new schools where no EIA is undertaken (including an assessment of the approach to ablutions).
- Monitoring and reporting mechanisms including;
 - a monitoring plan for potable water compliant with the EHS Guidelines and specifically the World Health Organization document “Water, Sanitation and Hygiene Standards for Schools in Low-cost Settings” (2009) (the WASH Standards); and
 - a procedure defining the assessment of schools prior to opening to ensure their structural integrity is aligned with international best practice.
- Procedures to ensure:
 - contractors collecting sewerage dispose of the material at recognized and licensed disposal points;
 - ongoing monitoring of food and water quality including a system for spot checks, and reporting to headquarters; and
 - the approach to ensuring that all schools comply with the WASH Standards.

Disclosure and Stakeholder Engagement

IFC’s ESRS noted that Bridge had strong stakeholder engagement mechanisms and procedures built into the business model and strategy. The procedures described by IFC focus on establishing

²⁵ ESRS, 2013, “Community Health and Safety.”

²⁶ ESRS, 2013, “Community Health and Safety.”

new school sites, but also note that during operation, “the Company maintains a very strong relationship with the community.”²⁷ IFC noted that a parent representative committee is formed for each school and meets regularly, and that meetings for all parents are held at a minimum every four months. The community grievance mechanism consisted of a hotline number that is monitored 24/7 by a professional call center that logs, responds and escalates any matters raised. All issues are tracked by Bridge headquarters and tracked, monitored and fed back to individual schools where necessary.

No actions in relation to disclosure or stakeholder engagement were included in the ESAP.

Conclusion

IFC’s E&S due diligence of the project identified a range of potential risks and impacts and required actions of its client to monitor and mitigate certain impacts as conditions of its investment. However, considering the issues raised in the complaint, CAO’s appraisal raises questions in relation to the following aspects of IFC due diligence.

Regulatory issues

IFC became aware during its pre-investment E&S review that the client had not received registrations for existing schools under the Kenyan legal framework. Instead IFC understood that Bridge intended to seek recognition under the APBET guidelines once these were approved. It is not clear to CAO whether IFC assessed the client’s systems for ensuring compliance with applicable national law.

Working Conditions

Prior to investment, IFC documented a review of the client’s HR policies against the requirements of PS2, however, the extent to which IFC’s pre-investment E&S due diligence analyzed the client’s past performance and implementation capacity in relation to issues of labor and working conditions is unclear. Taking into account the large number of staff employed by the company across multiple workplaces and the low-cost business model, CAO has questions as to whether this approach met IFC requirements for review commensurate to risk.

School environment

At the time of IFC’s investment, IFC and the client agreed that the client would establish an E&S management system as part of its E&S Action Plan. However, it is not clear to CAO whether IFC assured itself of the client’s capacity and commitment to implement PS1 and PS4 requirements on community health and safety in light of the project context, scale, and the nature of the client’s service delivery model.

IFC’s Supervision of the Project

In relation to the supervision phase of the project cycle, CAO considers whether IFC exercised due diligence in its supervision of E&S risks. CAO considers: (a) IFC’s review of client implementation of measures agreed under the ESAP and (b) IFC’s approach to ensuring that the client ESMS is effectively avoiding and mitigating risk according to the requirements of the

²⁷ ESRS, 2013, “Stakeholder Engagement.”

Performance Standards.

IFC is required to conduct periodic review of the client's E&S performance by carrying out site supervision visits, reviewing the client's annual monitoring reports (AMRs) and advising the client on how to manage E&S project issues.²⁸ According to IFC's Environmental and Social Review Procedures Manual, "[t]he purpose of supervision is to obtain information to assess the status of the project's compliance with the PS and other specific E&S requirements agreed at commitment; to assess the current level of E&S risk; to provide advice to clients on how to address critical E&S issues, and to identify opportunities for improvement and good practices that could be applied to similar projects."²⁹ If the client fails to comply with the E&S commitments as expressed in the legal agreements, IFC will work with the client to bring it back into compliance, and if the client fails to reestablish compliance IFC will exercise remedies as appropriate.³⁰

IFC Project Supervision

Regulatory Issues

The ESAP requirement for the client to implement an ESMS, reflecting regulatory requirements for Kenya, was set for completion in June 2014.³¹ It is not clear from the IFC project file when the client's updated ESMS was implemented. In the first four years of the project, IFC's E&S supervision material did not discuss the registration status of the client's schools under Kenyan law. Following launch of the APBET Guidelines in March 2016, the client's AMR reported that it was working towards registration. In November 2016, IFC visited the project and reported that the client had shown commitment to the ESAP and had generally performed well. IFC noted, however, that the existing ESMS was no longer adequate to address the client's international business. IFC reported that the client was in the process of improving its ESMS and augmenting the team responsible for E&S issues.

In January 2017, IFC required the client to carry out certain follow-up actions. IFC also required that the client put together a timeline to complete outstanding ESAP commitments related to implementing an ESMS, although these were not disclosed as updates to the client ESAP. Among these actions, IFC emphasized that the client should formalize procedures for meeting regulatory requirements.

The complainants presented to CAO letters from the Ministry of Education to the client declining registration of schools, dated from 2016 to 2018, including on grounds that the buildings were of poor quality. During this time, IFC's supervision documentation demonstrates that the client had significant delays to complete agreed ESAP items and did not submit monitoring reports annually.

In its 2016-2017 AMR the client reported to IFC that court orders had been issued to close 10 academies in Busia county due to regulatory compliance issues. The client reported that it appealed the court decision, that no schools were closed, and that it was working with the relevant county Education Boards to pursue APBET registration. IFC supervision noted that the company

²⁸ IFC ESRP 6 (2.1) Direct Investments: Supervision V.7, April 15, 2013

²⁹ IFC ESRP 6 (2.1) Direct Investments: Supervision, 1. Purpose and Applicability

³⁰ Sustainability Policy para. 24.

³¹ IFC requested that the client develop an ESMS to include, among other things, an E&S Policy, procedures to identify and manage E&S risks, monitoring and reporting mechanisms.

was generally in compliance with E&S requirements in the host countries, but that the client was facing some licensing challenges for its schools in Uganda and Kenya. IFC project documentation reviewed by CAO as part of this appraisal did not include more specific information about the client's efforts to register its schools or the grounds for denial of registration.

In July 2018, IFC reported that all the actions in the original ESAP and corrective actions were complete. IFC further reported that revisions to the ESMS were awaiting senior management review and approval.

Working Conditions

In 2014, the client reported that it had established an anonymous grievance mechanism for workers. However, IFC project documentation reviewed by CAO as part of this appraisal did not include evidence of implementation of the grievance mechanism as specified in the ESAP.

Between 2016 and 2017, IFC was aware that Bridge workers went on "go slow" or stopped work demanding higher salaries. The client reported to IFC that management had, in some cases, engaged teachers by explaining that salary increases were based on performance and highlighted with workers the process to raise their grievances. In November 2016, after a site visit, IFC reported that a number of unfair dismissal claims had been made against the client but noted that labor disputes were expected in the normal course of business.

Following the complaint filed with CAO, IFC engaged an external labor specialist to conduct a desk-based PS2 gap analysis of the client's HR policies and practices. IFC received recommendations on the basis of this analysis in 2019.

School Environment

In relation to building standards, the client's first AMR submitted in 2014 reported that the Quality Assurance Team conducts a detailed audit process of any new academy and that any major construction issue would be addressed before opening. In the next annual monitoring report (2016-2017) the client reported that a structural integrity testing procedure had been developed and outlined in the ESMS. No copy of this document was available to CAO during this appraisal. The client reported that structural engineering audits and quality assurance handovers had been completed satisfactorily for all buildings that the client operated as schools. In 2018, the client's AMR reported that inspectors followed a schedule to visit schools and identify on structural integrity issues at existing facilities.

In relation to site selection, IFC visited the project in August 2014 with the objective of reviewing a school site location close to a landfill and to consider the susceptibility of the schools to floods. IFC identified several issues which deserved further assessment and established deadlines for corrective actions. These actions were not disclosed as updates to the client ESAP.

In relation to sanitation, the client reported in 2016 that its quality assurance team reported on facilities, hygiene and other operational issues, including food preparation, during its academy visits. IFC reported quality assurance was completed satisfactorily for all schools in 2016-2017, but supervision records did not address negative health office reports. Following allegations around sanitation in the client's Uganda operations in January 2017, the IFC E&S Specialist recommended that the client carry out an independent assessment of sanitation and hygiene at

the academies, including those in Kenya, and requested that the client develop procedures in line with the WASH standards. The client reported that an independent assessment was completed in November 2017, although no final report is available on the IFC project file. Action items recommended as a result of the assessment also were not disclosed as part of the client ESAP. Corrective actions were, however, tracked and reported to IFC by the client. In relation to safety, IFC became aware of issues at schools during a site visit to Nairobi in 2014. CAO found no indication that IFC discussed the issue of school safety or specific PS4 requirements with the client. IFC also received information about fencing at the academies in the client's 2016-2017 and 2018 AMRs. There is no evidence that IFC discussed the fencing issue with the client.

Disclosure and Stakeholder Engagement

In 2014, the client reported to IFC that community members are involved in academies from construction through to operation. The client reported that Bridge participates in town meetings as well as church and mosque events and creates its own community events and meetings, in which Bridge listens to community members' opinions in order to work together to improve basic education. Additionally, the client reported that a number of channels were created to connect parents and teachers, such as parent representative board, parent meetings and conferences.

Following a supervision visit in November 2016, IFC reported that the client's stakeholder consultation was carried out through established Parent Teacher Associations or local Boards of Management that include representation of parents or community members that conduct regular meetings. IFC reported that the client hosted school open house days for community members and residents. IFC recommended that the client develop a mechanism to capture key issues raised in the stakeholder meetings, but this action was not included in the client ESAP. The project record does not indicate whether such mechanism was established.

In relation to a community grievance mechanism, the client reported to IFC that it has run a customer care hotline since 2012 that tracks complaints from staff and from the public. The client further reported that it dedicates extensive attention to issues presented through the customer care hotline, thereby achieving parent and staff satisfaction. CAO is not clear whether IFC verified the effectiveness of these means of consultation and engagement.

Conclusion

CAO notes that IFC supervision has responded to several issues raised in the complaint, particularly in relation to concerns around health and sanitation issues at Bridge schools. However, on the basis of a review of the client's project supervision documentation CAO has a number of remaining questions around IFC's supervision of the client's efforts to implement an appropriately resourced E&S Management System, as detailed below.

Regulatory Issues

CAO has questions regarding IFC's supervision of the client's implementation of its ESAP, particularly regarding its ESMS and development of organizational capacity. It is not clear to CAO whether IFC obtained information necessary to assess the status of the project's compliance with national law, including whether IFC supervised the client's systems ensure that academies are registered and complying with Kenyan health and safety requirements for schools.

Working Conditions

CAO has questions regarding IFC's supervision of the project related to labor and working conditions. It is not clear to CAO how IFC supervised its client's systems to ensure compliance with PS2 and national law in relation to working hours, minimum wage requirements, discipline and dismissal of teachers, and workers' efforts to express their grievances and protect their rights regarding working conditions and terms of employment, including methods for raising irregular deductions from salary and allegations of worker intimidation.

School Environment

CAO has questions regarding IFC's supervision of the project related to the school environment, including building standards, site selection, sanitation, safety and security. It is not clear to CAO whether IFC obtained information necessary to assess the development and implementation of the client's ESMS in relation to building quality and site selection. CAO has questions regarding IFC's assessment of its client's building standards and site selection across the client's schools in Kenya, and how IFC followed up on recommended corrective actions.

CAO has questions regarding IFC's supervision of client performance against PS4 and the EHS Guidelines health and safety requirements considering the number and location of schools.

Disclosure and Stakeholder Engagement

It is not clear to CAO whether IFC maintained information about the client's disclosure practices, and the effectiveness of the means of consultation and engagement with stakeholders established by the client. It is not clear to CAO whether IFC assessed the client's systems against PS1 requirements for a community grievance mechanism.

IV. CAO Decision

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC's requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

It is beyond the scope of a CAO compliance appraisal to reach a conclusion on whether the company's business activities have in fact had significant adverse E&S impacts. The question at this point is whether, on a preliminary review of available information, the complaint raises substantial concerns regarding E&S outcomes of IFC's investment. CAO notes IFC efforts during supervision to assess and address concerns about sanitation at Bridge schools and, more recently, to review labor and working conditions. However, CAO concludes that there are substantial concerns regarding the E&S outcomes of IFC's investment in Bridge considering: (a) the specific allegations of adverse impacts to teachers, parents and students raised in the complaints; (b) the E&S risk profile of the schools in light of their number, locations and concerns regarding their construction methods; and (c) the registration status of the schools and adherence to relevant health and safety requirements.

CAO's initial review of the project documentation also raises questions as to the adequacy of IFC's due diligence and supervision, in particular:

- (i) how IFC assured itself that the client was in compliance with Kenyan law requirements for operating schools, and how it assessed the client's intention to seek registration under the Alternative Provision of Basic Education and Training guidelines;
- (ii) how IFC assessed the client's capacity and commitment to implement PS1 requirements to establish an ESMS, conduct information disclosure, community engagement and establish a grievance mechanism;
- (iii) how IFC assessed the client's labor practices against PS2 and Kenyan law requirements; and
- (iv) how IFC assured itself of the environmental, health and safety performance of the client's Kenya schools, including construction, sanitation, school location and security against PS4, EHS Guidelines, and Kenyan law requirements.

Overall, CAO has determined that an investigation is an appropriate response to the issues raised in the complaint. In making this decision, CAO has taken into account the scale of the client's business in Kenya and the number of communities potentially impacted. CAO has also considered the vulnerable status of children and families that are the target market for Bridge schools.

CAO will consider the adequacy of IFC's due diligence and supervision in relation to the matters outlined at (i) – (iv) above. In the course of its investigation, IFC may also consider whether IFC's policy framework provides an appropriate level of protection for workers, the environment and affected communities in a context of providing low-cost services in informal settlements.

The complaint raises certain matters that fall outside CAO's mandate. Such issues will not be included in the scope of CAO's investigation. In particular, CAO will not assess the quality of teaching in Bridge schools.

Further details of the investigation scope are set out in the Terms of Reference annexed to this report.



October 21, 2019
Office of the Compliance Advisor Ombudsman (CAO)

ANNEX: TERMS OF REFERENCE

*Bridge International Academies (IFC Project #32171, #38733, #39170 and #39224)
Kenya*

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA. CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance function of CAO, to appraise whether the concerns raised in the complaint merit a compliance investigation of IFC/MIGA.

The focus of CAO Compliance is on IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets, and advisory services. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

CAO discloses the findings of its compliance investigation in an investigation report to inform the President and Board of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

For more information about CAO, please see www.cao-ombudsman.org.

Background to the Investment

NewGlobe Schools, Inc. (NGS) is a Delaware Corporation founded and managed by a team of entrepreneurs, development specialists and investors. NGS has been an IFC client since 2014. Bridge International Academies ("Bridge" or the "Company") is the wholly owned Kenyan subsidiary of NGS. Bridge operates Africa's largest chain of low-cost private schools. The project was approved by the IFC Board of Directors on December 5, 2013.

As of June 2019, IFC's investment in NGS totals US\$13.5 million in equity.

IFC disclosures note that Bridge aims to provide quality education to children from families earning less than US\$2 per person per day. IFC reported that the schools are built by Bridge on greenfield sites located in high-density, low-income communities, and that the company's model "leverages centralized curriculum development, teacher training, and a comprehensive technology platform to provide quality education at an affordable cost."³² IFC anticipated that the project would promote access to basic education, promote affordability, improve quality and accountability, create jobs and improve student nutrition.³³ Further, IFC anticipated that the project would act as a consolidator in the sector and provide a "demonstration effect" that would, if successful, attract other companies to employ similar strategies.³⁴

The Complaint

In April 2018, CAO received a complaint from the East Africa Centre for Human Rights (EACHRights), a Kenyan NGO, on behalf of a group of current and former parents and teachers (the "Complainants") regarding IFC's investment in Bridge in Kenya. The Complainants have requested that their identities be kept confidential.

The complaint raises concerns about the Company's compliance with international and national Kenyan law, as well as IFC's Performance Standards. The complaint raises particular concerns about the Company's compliance with PS1, PS2, and PS4 in relation to environmental and social risk, labor and working conditions, and community health, safety and security. The complaint also raises concerns about economic discrimination, lack of parental inclusion, and lack of transparency with regard to the general operation of the schools.

Scope of the Compliance Investigation

The focus of this CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its investment at appraisal and during supervision. The approach to the compliance investigation is described in the CAO Operational Guidelines (March 2013), and states that the working definition of compliance investigations adopted by CAO is as follows:

An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria.

As set out in CAO's appraisal report, CAO will conduct a compliance investigation of IFC's investment in the client in relation to the issues raised in the complaint. The compliance investigation will consider whether IFC's investment in the client was appraised, structured and supervised in accordance with applicable IFC policies, procedures and standards. It will also consider whether IFC's Policy and Performance Standards on Environmental and Social

³² IFC Project Information Portal, "Bridge International Academies," Environmental and Social Review Summary (ESRS), Project Description, October 30, 2013, available at: <https://disclosures.ifc.org/#/projectDetail/ESRS/32171>.

³³ IFC Project Information Portal, "Bridge International Academies," Summary of Investment Information (SII), Expected Development Impact, October 30, 2013, available at: <https://disclosures.ifc.org/#/projectDetail/SII/32171>.

³⁴ IFC, 2013, ESRS, "Expected Development Impact."

Sustainability (PS) and Policy on Disclosure of Information as applied to this project provide an adequate level of protection. The CAO appraisal report identified specific questions regarding the application of IFC's Sustainability Framework to the investment, including whether IFC discharged its review and supervision duties in relation to:

- (i) the client's compliance with national laws, with particular focus on the client's intention to seek registration under the APBET guidelines as well as other relevant regulatory requirements related to operation of its Kenya schools;
- (ii) the client's capacity and commitment to implement PS1, with a focus on establishing and environmental and social management system, information disclosure, community engagement and grievance mechanisms;
- (iii) the client's labor practices in relation to the requirements of PS2 and Kenyan law; and
- (iv) the environmental, health and safety aspects of the client's Kenya schools, including construction, sanitation, school location and security in relation to the requirements of PS4, the EHS Guidelines, and Kenyan law.

In the course of its investigation, IFC may also consider whether IFC's policy framework provides an appropriate level of protection for workers, the environment and affected communities in a context of providing low-cost services in informal settlements. As set out in CAO's appraisal report, CAO's investigation will not consider aspects of the complaint that fall outside the scope of CAO's mandate. In particular, CAO will not assess the quality of teaching provided at Bridge academies.

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a draft compliance Investigation Report ready by September 2020.

A draft Investigation Report will be circulated to IFC senior management and all relevant IFC departments for factual review and comment. IFC comments should be submitted in writing to CAO within 20 working days of receipt by IFC.

Upon receiving comments from IFC on the consultation draft, CAO Compliance will finalize the report. The final report will be submitted to IFC senior management for official response. A notification will be posted on CAO's website. IFC has 20 working days to submit a written response to CAO. CAO will forward the Investigation Report and the IFC response to the President of the World Bank Group. The President has no editorial input as to the content of the compliance Investigation Report but may take the opportunity to discuss the investigation findings with CAO.

Once the President is satisfied with the response by IFC senior management, the President will provide clearance for the Investigation Report and the response. The President retains discretion over clearance. After clearance, CAO will disclose the Investigation Report and the IFC response to the Board. CAO will also alert relevant stakeholders of the disclosure of both documents on CAO's website and share the documents with the complainants.

External Panelists

As per its established practice, CAO will engage one or more external experts to work with it on this task. For this compliance investigation, CAO considers the following as necessary for the compliance investigation panel:

- Significant expertise in Kenyan legislation and policies in relation to school licensing and registration, labor, construction standards, and operational health and safety;
- Knowledge of IFC's E&S policies, standards and procedures, particularly Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts, Performance Standard 2: Labor and Working Conditions, and Performance Standard 4: Community Health, Safety, and Security;
- Experience and knowledge relevant to the conduct of compliance investigations;
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.