



CAO ASSESSMENT REPORT

**Regarding Concerns in Relation to
IFC's Investment in Bridge International Academies (#32171) in Kenya**

March 2019

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

About CAO

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

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

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LIST OF ACRONYMS

APBET	Alternative Provision of Basic Education and Training
CAO	Office of the Compliance Advisor Ombudsman
IFC	International Finance Corporation
Bridge	Bridge International Academies
CDE	County Director of Education
EACHRights	East Africa Centre for Human Rights
KCPE	Kenya Certificate for Primary Education
KICD	Kenya Institute for Curriculum Development
MoEST	Ministry of Education Science and Technology
TSC	Teachers Service Commission

1. OVERVIEW

In April 2018, CAO received a complaint from the East Africa Centre for Human Rights (EACHRights), a Kenyan NGO, on behalf of 10 current and former parents and teachers (the “Complainants”) regarding IFC’s investment in Bridge International Academies (“Bridge” or the “Company”) in Kenya. The complaint raises concerns about the Company’s compliance with international and national Kenyan law, as well as the IFC’s Performance Standards. 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. Since no consensus was reached on a dispute resolution process, which is voluntary, the complaint will be referred to CAO Compliance for appraisal of IFC’s performance in accordance with CAO’s Operational Guidelines.

2. BACKGROUND

2.1 The Project

According to IFC, Bridge is Africa’s largest chain of low-cost schools and, as of December 2018, the Company operated 297 parent-paid schools in Kenya. According to the IFC, since 2009, Bridge has trained 25,474 teachers/school leaders, employed 16,416 teachers/school leaders and educated 419,276 students in its Kenya schools. The existing network of schools is located across Kenya in urban, peri-urban, and rural settings, and aims to provide quality education to children from families earning less than US\$2 per person per day. According to IFC disclosures, the schools are built by Bridge on greenfield sites located in high-density, low-income communities where children must walk a maximum of 500 meters to get to school. Furthermore, the schools have clear access paths for foot traffic and can be reached by public/private transportation¹. As of February 2019, IFC’s investment in Bridge totals \$13.5 million in equity (including rights issues), and together with funds from other investors, has supported an increase in the number of Bridge schools in Kenya and expansion to three countries.

2.2 The Complaint

In April 2018, CAO received a complaint regarding Bridge from EACHRights filed on behalf of 10 individuals who identified themselves as current and former parents, and current and former teachers of Bridge (the “Complainants”). In the complaint, they express concerns about the Company’s compliance with international and national Kenyan law, as well as the IFC’s Performance Standards 1, 2, and 4 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. The Complainants have requested that their identities be kept confidential.

3. ASSESSMENT SUMMARY

3.1 Methodology

The aim of the CAO assessment is to clarify the issues and concerns raised by the Complainants, gather information on the views of different stakeholders, and determine

¹ Source: <https://disclosures.ifc.org/#/projectDetail/SII/32171>

whether the Complainants and the IFC Project Sponsor would like to pursue a dispute resolution process facilitated by CAO, or whether the complaint should be referred to CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process). CAO does not make any judgement regarding the merits of the complaint at this stage.

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

- a desk review of project documentation;
- telephone conversations, document review, and in-person meetings with the Complainants and the NGO supporting them;
- telephone conversations, document review, and an in-person meeting with Bridge;
- telephone conversations and in person meeting with IFC's project team;
- in-person meetings with other stakeholders suggested by the Complainants and Bridge; and
- field visits to six Bridge schools located in Nairobi, Homa Bay, Kisumu, and Mombasa.

This document summarizes the views heard by the CAO team from the parties and describes the next steps based on the decisions taken by the Complainants and Bridge.

3.2 Summary of Views

3.2.1 Complainants' Perspective

During the assessment phase, the CAO gathered information about the complaint, which can be grouped into three thematic areas:

- i. Regulatory issues
- ii. Issues related to teachers' employment conditions
- iii. Issues related to the school environment

i. Regulatory issues

Lack of registration of schools

The Complainants explained that Bridge opened their first school in Mukuru Kwa Njenga, an informal settlement in Nairobi, Kenya, in 2009. The number of schools operated by Bridge has subsequently grown to hundreds of schools across the country. The Complainants stated that, to date, the majority of Bridge schools are not registered as required by the Basic Education Act of 2013 and, therefore, they do not have a permit to operate. The Complainants stated that the Ministry of Education Science and Technology ((MoEST) hereafter referred to as "Ministry of Education"), became aware that Bridge schools were not registered in October 2014 when Bridge sought to register pupils for the 2015 end-of-primary national examination (Kenya Certificate of Primary Education or KCPE). They went on to state that the Ministry of Education then wrote to all County Directors of Education (CDEs), who represent the Ministry at the county level, stating that the schools should be individually registered, and that, at that time, Bridge had already established approximately 250 schools. The CDEs were then advised by the Ministry to check, among other things, that each school:

- was registered individually as a private school in accordance with the provisions of the Basic Education Act Regulations of 2015, rather than under a single license;
- followed the National Kenyan 8-4-4 curriculum (eight years of primary education, four years of secondary education and four years of university education) and adhered to the requirements on timetabling; and

- had trained teachers that were registered with the Teacher Service Commission.

The Complainants further stated that Bridge schools came into being because the Kenyan government was not well-organized in providing education in the informal settlements. As a result, communities began organizing themselves and creating non-formal schools that were not regulated. According to the Complainants, in 2012, the government started developing the Alternative Provision of Basic Education and Training (APBET) guidelines for registration of schools intended to serve communities in urban informal settlements in the cities of Nairobi, Mombasa, and Kisumu, as well as in arid and semi-arid areas. These APBET guidelines were launched in March 2016. The Complainants explained that Bridge, which at this point had been instructed to register their schools as private schools, attempted to switch their application status in the hope that their schools would be considered as APBET institutions. This was because APBET schools were to be subject to more lenient criteria to facilitate the formalization of the long-standing informal school network. The Complainants said that, in March 2016, the Ministry of Education assessed 61 Bridge schools and concluded that they were not eligible for registration as APBET institutions, and that Bridge schools should instead apply for registration as private institutions. The Ministry then gave Bridge 90 days to comply with the set guidelines, failing which, the schools would be closed by November 2016. The Complainants explained that in June 2017, the Ministry again raised concerns about Bridge's lack of registration and further reiterated that the Bridge schools do not fall under the APBET description.

The Complainants added that, in 2014, the Busia County Education Board (CEB) decided to close 10 of 12 Bridge schools for non-compliance with Kenyan law and that Bridge contested this decision in court. According to the Complainants, the court upheld the CEB's decision and ordered the Busia county to find alternative schools for the children before closing the schools. The schools remain open and unregistered because Bridge filed, and was granted, an injunction against the court ruling to close the schools. However, according to the Complainants, a fresh audit was ordered by the Ministry of Education in August 2018 to see if the schools have complied to standards. The audit is slated to take place in early 2019.

Use of unqualified teachers

The Complainants said that the Bridge model at inception was to use non-qualified teachers who hold a high school diploma, because the teachers were provided with a teacher's computer that has a script for each lesson. They maintain that this is contrary to the requirement of the Basic Education Act 2013, which requires all teachers to be qualified and registered with the Teachers Service Commission.

The Complainants recounted that, in April 2017, Bridge stated that the APBET guidelines required that a school have only 30 percent trained teachers registered with the Teachers Service Commission, within three years of employment with the institution. However, in June 2017, the Ministry of Education indicated to Bridge that, in fact, according to the APBET guidelines:

- at registration of the institution, a minimum of 30 percent of the teachers at an institution should have obtained a relevant teacher training certificate from a recognized teacher training institution and be registered with the Teachers Service Commission (TSC), before employment;
- the remaining 70 percent must be undertaking recognized in-service training; and
- management of the institution shall progressively ensure that all their teachers are registered with the TSC by the third year of registration of the institution, which effectively means that by the third year of operation, 100 percent of the teachers must be trained and registered with the TSC.

The Complainants argued that, as of the date they filed the complaint, Bridge was still using unqualified and unregistered teachers even after more than three years of being in existence and that efforts made by Bridge to increase the contingent of qualified teachers only came following civil society advocacy initiatives.

Use of non-Kenyan curriculum

The Complainants explained that schools in Kenya can offer either an international or a national curriculum. Regardless of the type of curriculum offered, each school needs to submit its curriculum to the Kenyan Institute for Curriculum Development (KICD) for assessment and approval.

The Complainants expressed that Bridge was not following the national curriculum, contrary to what Bridge claims, and has not complied with the requirements of KICD. The Complainants explained that Bridge held meetings with the Ministry of Education in 2014 requesting an evaluation of the material used in their schools to teach classes 1 to 8. The Ministry referred them to KICD. Thereafter, when Bridge submitted the material for evaluation, KICD did not approve it. The Complainants believe that Bridge is not using any one of the six approved textbooks (per subject) and argue that their supplementary materials are not in line with the Kenyan syllabus because they have not been approved by KICD.

The Complainants said that Bridge requested training from KICD to help interpret the Kenyan syllabus and develop supplementary material in line with the curriculum. Training was provided by KICD. However, according to the Complainants, after the training in 2015, Bridge resubmitted their material for evaluation. The material was evaluated by a panel of six experts and was not approved and a report to that effect was submitted by KICD to the Ministry of Education. According to the Complainants, Bridge has not re-submitted their material since 2015.

ii. Issues related to teachers' employment conditions

Long hours and low salaries

The Complainants said that Bridge teachers work long hours and argue that this is in contravention of the Kenyan Constitution of 2010, and the Basic Education Act Regulations of 2015. They state that teachers are expected to work 10-hour days from Monday to Friday and 6-hour days on Saturdays, and that this is longer than is required by national law. The Complainants stated that Bridge does not offer compensation for overtime and that teachers do not receive any breaks. The Complainant further stated that during the 15-minute tea break and 40-minute lunch break that teachers are entitled to, they are expected to watch the children on the playground. Furthermore, there are no facilities such as staff rooms for teachers to use for breaks or meals in all the Bridge schools in Kenya.

The Complainants believe that teachers' salaries are below the minimum wage specified in the national guidelines. They stated that, as of 2017, teachers reported to be earning between \$88 and \$150 per month, which in many instances is below the minimum wage as stipulated by the Wage Regulation Order. The Complainants explained that, although teachers are paid on time, unlike at other similar schools, teachers are always looking for opportunities to move to better paying jobs because the pay at Bridge is so much lower than other schools.

Discipline

The Complainants cited unfair labor practice and a lack of proper implementation of dismissal procedures. They argued that Bridge summarily dismissed teachers without informing them of their transgressions or affording them an opportunity to respond to the alleged misconduct. They stated that employees have also been dismissed for challenging the poor implementation

of Company policies. In an instance where an employee was dismissed, the Complainants said that Bridge sued the employee in court to enforce a restraint of trade clause, prohibiting the employee from operating or being employed in a school or other business that competes directly or indirectly with Bridge for a period of two years. This lawsuit was dismissed in court. The Complainants also cited lack of payment of employee's final salary, due after summary dismissal.

Use of teachers' computers

The Complainants explained that Bridge requires the use of teacher's computers to teach students and that every morning, teachers receive the day's lesson plan on the teacher's computer and are required to follow the script, without any deviation. The Complainants informed CAO that, although some teachers appreciate not having to create lesson plans, the inability to deviate from the script stifles innovation and creativity among teachers. It also does not allow teachers to allocate more time to students who are falling behind. The Complainants explained that the teacher's computer has a timer that prompts teachers to move to the next section. Should a teacher not complete the lesson for the day, this is reflected as poor performance and can lead to dismissal. Furthermore, they argue that teachers are unable to refer back to a previous lesson because the lessons are automatically deleted from the teacher's computer after use.

Marketing

The Complainants expressed that teachers are required to conduct marketing during school holidays in April, August, and December. They said that each teacher is given a personal target of the number of new students they should register at the school. According to the Complainants, these targets are often unrealistic and where a teacher is unable to meet the targets, they face disciplinary action, such as an amount being deducted from their salary. The Complainants went on to explain that the high targets given to each teacher created problems between the teachers and the community members. This is because the teachers live in the same community where they conduct the marketing. After several visits to the community, they are seen as a nuisance.

The Complainants said that Bridge encouraged them to inform prospective parents that their children would be offered scholarships if they joined Bridge. They explained that in many instances, this was a false promise made to lure parents to the school. Although some children received scholarships on merit, the Complainants explained that many children who are promised scholarships do not receive them; creating problems for parents who enroll their children at the Bridge schools and end up not getting a scholarship. They expressed that parents then have to pay Bridge school fees, which they find expensive. They also stated that sometimes, even when a child has received a scholarship, the scholarship is withdrawn, leaving the parents in a situation where they need to find money to pay the fees. They further stated that where parents are unable to pay the fees, the child is excluded from the school. The Complainants said that sometimes this happens toward the end of the school year and that parents then find it difficult to find alternative schools for their children, alleging that this results in children not completing the school year and having to repeat the year. The Complainants also expressed that the allocation of scholarships was discriminatory in that sometimes, certain groups seem to be preferred over others.

Other working conditions

The Complainants indicated that teachers worked in conditions of fear and intimidation and are always afraid of losing their jobs or having salary deducted for issues including failing to reach the required marketing targets, being late, or allowing children with outstanding fees to attend class.

iii. Issues related to the school environment

Fees

According to the Complainants, the school fees amounting to \$6.40 - \$10.57 a month for tuition, made the schools inaccessible to the population that Bridge claims to target, i.e. low-income communities who live on less than \$2 per day. Furthermore, they state that compared to similar schools in the area, Bridge schools do not have meal programs and parents have to pay more to ensure that their children have food during the day. The Complainants also explained that the school fees, the cost of registration (700 shillings), the cost of purchasing uniforms, and exam fees add up to far more than what is advertised, and this increases annually without the teachers and parents being given prior notice. The Complainants also referred to a study conducted by Education International and Kenya National Union of Teachers in 2016, which found that 58 percent of Bridge students interviewed had missed school due to non-payment of fees and that between 69 and 83 percent of parents interviewed indicated having difficulty paying fees and other expenses including health care, food, and rent. The Complainants indicated that, in some instances, children have been excluded from the school when they owe as little as 50 shillings, even when they are due to sit national exams. They said that the policy of excluding children from class for non-payment of fees is strictly enforced by teachers, who are expected to enforce the policy by not allowing children who owe fees to attend class. The Complainants also stated that teachers are penalized when they allow a student who has not paid fees into class. This is done by deducting money from their salary.

Condition and locations of schools

The Complainants said that many Bridge schools were in poor condition and did not have facilities to accommodate children with disabilities. They argue that some schools do not have enough space for playgrounds and that where playgrounds do exist, they often flood during the rainy season, making the grounds unbearably muddy.

The Complainants expressed dissatisfaction with the unsanitary state of the toilets in some schools. They said that in Nyeri County, several lawsuits were filed against Bridge attempting to force closure of the schools because, among other things, the toilets were found to be in unsatisfactory condition, and that the ratio of one toilet per 25 pupils required by law is not adhered to.

According to the Complainants, some schools were located near a slaughterhouse or a liquor store, and other schools did not have secure perimeter fences creating a safety problem for the schools and their pupils. They stated that the kitchen facilities were found to be in bad condition, and some schools are located very close to deep trenches of garbage and sewage. The Complainants also highlighted that, prior to CAO's assessment visit, Bridge had sanitized the schools so that they looked better.

The Complainants explained that the Bridge schools did not have mattresses for the early childhood classes to use when children take naps and that the children sleep on their desks. They said that the schools have no provision to control the temperature in the classrooms because the schools are made largely out of corrugated iron sheets. When it is cold, the classrooms are cold and when it is hot, the classrooms are hot. The Complainants believe that this environment is not conducive to learning. Furthermore, the Complainants indicated that although Bridge says it provides quality education by having small classes, some classrooms have as many as 63 children. This poses a challenge, especially in the heat. Complainants also expressed that classrooms have no electricity, making it difficult for children to read when its dark outside or on rainy days.

3.2.2 Company's Perspective

i. Regulatory issues

Lack of registration of schools

Bridge explained that in 2009, when they opened their first school, they received a letter from the Permanent Secretary in the Ministry of Education informing them that there was no policy in place to register non-formal schools. The Ministry informed Bridge that their schools would be registered once the Non-Formal Education Policy had been finalized. However, in the letter, the Ministry recognized that, on the face of it, Bridge met all the criteria set out for non-formal schools. Bridge also stated that they had been in continuous engagement with the Ministry of Education since 2009 and had been included in all national stakeholder meetings on the discussions about non-formal schools. They have also been involved in drafting the Alternative Provision of Basic Education and Training (APBET) guidelines for registration of alternative or informal schools. These guidelines were expected to be released each year since 2009, but they were not released until March 2016. Bridge explained that, between 2013 and 2016, there were changes in the national government and in the education sector. These included regulatory changes resulting in the enactment of the Basic Education Act of 2013 and six other acts related to education. Both public and private schools in Kenya were affected by the changes made in the Act and needed to comply with the new regulations.

Bridge refuted the Complainants' statement that they had disregarded the rule of law and that the Ministry of Education was unaware of their existence prior to October 2014. Bridge further stated that, in 2013, the Kenya National Examination Centre (KNEC), relying on the Education Action Act that was in force at the time, granted preliminary approval for all Bridge schools (then 134 academies) to be registered as examination testing centers, subject to approval by the Ministry. However, due to the Kenya Certificate of Primary Education (KCPE) examination regulations released in 2012, the Ministry withdrew the preliminary approval granted by KNEC, stating that under the 2012 regulations, all informal schools must be registered prior to being used as testing centers. Despite this, Bridge indicated that they managed to get 63 of their schools provisionally registered as private schools by the Ministry of Education. The 63 schools were subsequently registered and allowed to present candidates for KCPE in 2015.

Bridge also explained that they continued to engage with the Ministry of Education throughout the relevant period. When the Ministry raised issues of concern on compliance with the APBET guidelines released in 2016, a Ministerial committee, led by the Director of Education Standards and Quality Assurance Council, was setup to work with Bridge on a compliance road map. Bridge explained that they submitted monthly reports to this committee on their compliance status with the APBET guidelines. At the end of this reporting process, in August 2018, the Ministry of Education acknowledged that Bridge had submitted regular compliance reports. The Ministry directed the Quality Assurance team to re-assess the level of compliance of all Bridge schools with a view to registering them as private informal schools, and not as private schools, should they meet the minimum standards. Bridge informed CAO that the process of inspection had commenced and, as of October 2018, 189 schools had received a positive Public Health Inspection report and 50 had received a positive Quality Assurance report. Bridge is waiting for the remaining reports and is moving into the next stage of the process to register the schools that have been assessed.

On the issue of the court cases in Busia county, Bridge recounted that when the APBET guidelines were published in 2016, there was a disconnect between the Ministry of Education and the County Education Boards (CEB) on the implementation of the guidelines, particularly on the requirements for registration. As a result, 10 of 12 Bridge schools in Busia County were subject to a court dispute because the CEB declined the application for registration of the schools under APBET and ordered them to be closed. They explained that they approached

the court to seek an injunction against the order for closure. The court upheld the CEB's order for closure. They then filed an application with the CEB registering their schools as private schools. However, the CEB did not consider the application and after several attempts and exhausting all administrative avenues, including approaching the Commission on Fair Administration of Justice to seek judicial review, when they did not receive a response they had no option but to return to court.

Bridge explained that, this time around, the court issued an order allowing them to continue operating, pending the outcome of the Judicial Review and allowing Bridge to file an application compelling the CEB to consider its application as a private school. The application has been filed and is pending. However, all Bridge schools continue to operate. Bridge also informed CAO that the Governor and the Deputy Governor in Busia county are very supportive of Bridge schools in the county, and that they continue to work with the CEB to secure registration of Bridge schools.

Use of unqualified teachers

Bridge indicated that all their schools meet the teacher requirements under APBET guidelines. The guidelines require informal schools to have at least 30 percent of teachers certified at the point of registration, with the rest undergoing in-service training. Bridge stated that the Kenyan Teachers Service Commission has indicated that there is a substantial shortage of teachers in both primary and secondary education. Bridge also explained that in arid, semi-arid, and other hardship areas, they experience the same challenges faced by other private and public schools in recruiting and retaining certified teachers. This is because of security concerns which render it unattractive for teachers to work in these areas. While this continues to be a challenge for the entire education sector, Bridge explained that it provides support to all its teachers in hardship areas to ensure they deliver on national curriculum requirements leading to desired outcomes. Bridge stated that, as things stand, they employ more than 30 percent certified teachers and ensure that those who are not certified are involved in in-service training. Bridge went on to explain that, since March 2016, when they started submitting reports to the Ministry of Education as part of the compliance road map, there has been growth in the number of government-trained teachers at its institutions. Since 2009, Bridge stated that they have trained 25,474 teachers/school leaders and employed 16,416 teachers/school leaders. According to Bridge, they have taken a policy decision to only recruit P1-certified teachers and are currently supporting all teachers who do not have this qualification to enroll in in-service training.

Bridge also highlighted that, in the past, the government employed unqualified teachers. This is because of the serious shortage of teachers in Kenya. Bridge explained that, regardless of the teacher's experience, when they are employed by Bridge, they undergo intensive induction before entering the classroom. In addition, teachers receive continuous training and development on the job.

Use of non-Kenyan curriculum

Bridge expressed that, contrary to the Complainant's assertions, all their schools offered the national 8-4-4 curriculum or the new national Competency Based Curriculum (2-6-3-3) in the grades where it has been rolled out. Bridge explained that they were rolling out the new curriculum and were taking part in county-government-led teacher training and contributed positively to the process of curriculum reform in Kenya, and that they were chosen as a pilot partner by the Government.

Bridge also explained that they engaged and submitted their learner and teacher instructional materials to the Kenya Institute for Curriculum Development (KICD) to be evaluated and vetted for compliance with the 8-4-4 curriculum. They added that not only do they adhere to the nationally approved 8-4-4 curriculum, but that the class 8 pupils presented as candidates for

the Kenya Certificate for Primary Education (KCPE) in 2015 obtained an average score that was substantially higher than the national average, with more than 50 pupils admitted to national schools. Bridge informed the CAO that, in 2016, their schools were ranked first in many districts, including Nyakach, Ugunja, Bondo, and Machakos. In 2017, over 1,000 pupils scored above average in KCPE, and more than 100 pupils were admitted to the most prestigious national high schools in Kenya. Another 3,400 pupils are due to sit the KCPE in November 2018. Bridge cited that, over the past three years, almost 10,000 children had taken the KCPE and graduated from their schools. This would not be possible if they were not following the local curriculum.

ii. Issues related to teachers' employment conditions

Long hours and low salaries

Bridge highlighted that they have been recognized as a top 10 employer in Africa in 2018. They said that they paid all their teachers above the minimum wage and that the majority of their teachers were paid 20 percent more than the mandated minimum, with a significant number of teachers earning 55 percent or more above the minimum. According to Bridge, routine salary surveys are conducted to compare their teachers' salaries to those of other private schools in their communities and they are consistently ranked as the highest paying affordable school.

With regard to teachers' hours, Bridge stated that they adhered to the Labour Institutions Act, which enables employees to work overtime (over 52 hours a week), as long as they are compensated at a rate of 1.5 for the overtime, and that they did not work more than 116 hours in any period of two weeks. Bridge asserted that during break time, as is the case with many schools, they may ask some teachers to monitor and supervise pupils on the playground.

Bridge also indicated that, as per their approved school designs, they did not provide a separate teachers' staff room. This is because teachers' computers and schemes of work are provided, which limits the amount of time teachers require for class preparation and allows for an increase in pupil-teacher interaction, as opposed to an approach where the teacher would need to spend a lot of time in the staff room preparing lessons.

Discipline

Bridge explained that all dismissals were done in accordance with the Employment Act. Should an employee be aggrieved by the reasons, manner, and/or procedure of termination, Bridge offers internal grievance mechanisms for the employee to lodge a complaint. Further, the Employment Act provides a mechanism for seeking redress, which includes filing a report with the Labour Office, and filing an action for unlawful and unfair termination with the Employment and Labour Relations Court. Bridge explained that teachers only lose jobs for cause, for example, performance and misconduct. In all other situations, they strive to retain and nurture their staff.

Regarding non-compete clauses, Bridge told CAO that their employment contracts included non-competition and non-solicitation provisions. According to Bridge, the inclusion of these provisions in employment contracts does not occasion an "extraordinary" amount of pressure on employees. They went on to explain that a potential employee always has the right to decline employment if the employment contract stipulates terms the employee does not agree with. Furthermore, they explained that restraint-of-trade clauses constituted a common practice in the private sector to safeguard legitimate interests and did not constitute unfair labor practices.

Bridge said that the incident referred to by the Complainants, where Bridge had sued a former employee for breach of a restraint-of-trade clause, was true. This came about because the

former employee had set up and was running a school in competition with Bridge, which was a breach of the restraint-of-trade provisions. The suit filed by Bridge was later withdrawn.

Use of the teachers' computers

Bridge explained that they focused on using proven and effective methods of teaching to deliver quality education. They said that the use of teachers' computers is important in delivering quality education because teachers are better prepared to deliver lessons. Teachers' computers enable them to use carefully designed lessons based on world class, up-to-the-minute pedagogical research. Bridge referenced World Bank research and explained that in low-and middle-income countries, where teachers often struggle with subject-matter knowledge, teachers are provided with guides to support them. The time teachers save in using prepared material enables them to focus on teaching rather than planning and administration of the lesson. Bridge indicated that the teachers' computers create dynamic classroom environments that allow for more interaction between the teacher, the students, and the subject content. They are more feedback-driven, pupil-centered, and effective in helping children learn. Bridge articulated that by freeing teachers from planning lessons, they can use that time to assist struggling students and interact with parents.

Bridge went on to explain that teachers' computers are used across the globe by many multilateral agencies. The Kenyan government, with the help of USAID, uses teachers' computers to improve learning in their TUSOME Early Grade Reading literacy project and Primary Education Development Project (PRIEDE) numeracy project, funded by the World Bank. Bridge informed CAO that the scripted method used by Bridge is proven to be successful in the United States in reducing the black-white student achievement gap by half.

Bridge also referred to research reports conducted by the World Bank and UWEZO, among others, and explained that using teachers' computers helped them to quickly collect data that indicates which lessons work well and which ones require revision. It also helps them to identify which teachers require more support and to track and curb teacher absenteeism, which is rampant in Kenyan schools.

In addition, Bridge stated that guided instruction did not sound or feel robotic, as asserted by the Complainants, but rather that teachers' individual personalities and styles are still evident when using a structured teachers' computer. Bridge believes that the teachers' computers are a way to enhance teachers' ability to be their best, authentic selves and dedicate themselves to the children. They added that the teachers' computers were designed to leverage the expertise and role of both the lesson designer and the teacher. Instructional designers carefully craft math problem sets and sequences of reading comprehension questions, taking into consideration the latest research about effective pedagogical approaches, and teachers take the lead on checking and responding to how each student is performing.

Marketing

Bridge said that teachers were best placed to engage new parents and pupils about Bridge's technology-enabled classrooms and its focus on pupil outcomes. They went on to explain that while teachers in public schools may not be required to work during holidays, teachers in private institutions do not have a legitimate expectation to similar treatment. Bridge added that, in accordance with applicable labor laws, they set aside dedicated time during school holidays for teachers to carry out outreach and other related activities to engage with new and current parents. Bridge plans the calendar such that a teacher's annual leave remains unaffected. Bridge highlighted that, unlike many schools in the communities in which they work, they supported school staff with pay during all months of the year, not just for days the school is in session.

In addition, Bridge pointed out that while each academy had a target of new pupils each year, these targets were not tied to a given teacher. Teachers are required to work with the manager to better position the academy in their community. Sometimes a promotion is in place whereby teachers are eligible to earn a bonus for a newly admitted pupil that joins Bridge and pays their fees. According to Bridge, they only use incentives, not penalties.

On the issue of scholarships, Bridge explained that they constantly look for partners or donors that wish to offer scholarship programs to their pupils. However, they indicated that they do not provide assurance to parents that scholarships would be granted. Were Bridge to receive a complaint that staff members are promising scholarships, they would investigate according to internal policies and take the appropriate action. Bridge informed CAO of a hotline and an email address in place for parents to lodge complaints.

Bridge also submitted as supporting documents more than 1,500 testimonies from teachers and parents who expressed satisfaction with Bridge.

iii. Issues related to the school environment

Fees

Bridge stated that most of their schools are located in pockets of poverty, where families live on less than \$2 a day. Their schools offer quality education to children in poor communities where they otherwise would not have access to quality education. The schools complement the government schools in poor communities and offer families an option of private education at affordable rates. The fees, as explained by Bridge, are published at every school and cost on average approximately \$7 per month and approximately \$90.25 per year. This is 40-per cent less than the average cost of other non-formal schools in poor communities. Bridge refuted the suggestion made by the Complainants that fees are increased annually, without the teachers and parents being given prior notice. Bridge argued that, while it is market practice to raise fees in line with inflation and other cost increases, Bridge does not raise fees each year. In some years, there is no increase despite inflation of plus or minus 8 percent in recent years. They further explained that there were no fee increases in 2017 and that, in 2019, some schools saw a reduction in fees. According to Bridge, when fees are raised, the school, parents, and Board of Management take that decision jointly and announce the increase at least a month prior to the new school year, and almost always before the end of the previous year.

Bridge also expressed that, contrary to perceptions, government schools are not free. They often charge admission fees, Parent Teacher Association fees, and other miscellaneous fees. Parents in these communities who send their children to Bridge choose the schools knowing the fee structure and use their wisdom to make choices that are beneficial to their families. Bridge further stated that there will always be families who cannot afford the fees. However, that does not mean Bridge discriminates against them. They said that they designed their billing policy after extensive research and they have trained their academy managers to provide flexibility to parents when it comes to paying fees. Rather than requiring the term fees up front, Bridge allows parents to pay the fees substantially into the term after discussing with the academy manager, including paying in monthly installments. According to Bridge, surveys conducted among 380 parents in 2017 indicate that 92 percent of parents surveyed were satisfied with Bridge; 93 percent are proud to be associated with Bridge; and 83 percent would recommend the schools to a friend.

Bridge explained that without private non-formal schools in poor communities, more than two million children in Kenya would struggle to obtain education. They also stated that, if charging fees for private education was a problem, IFC would not have invested in fee-paying private education institutions. On the contrary, IFC feels that private education is critical in supporting the public education system in pre-primary, primary, and secondary education to improve

learning outcomes. IFC has invested in several other private fee-paying institutions in Kenya. Bridge said that they are constantly looking for individuals and organizations that can help them support children who cannot afford the fees. Because they are one of the few schools that can provide attendance data for learners and teachers, they are the preferred partner for donors. However, Bridge said that EACHRights has harassed their sponsors and called for the sponsors to withdraw their support and said that this calls into question EACHRights' claim that they want to see more children in school.

Bridge also explained that the fee structure allows them to be sustainable, pay teachers, pay for municipal services, buy books, and maintain the school infrastructure. Sustainability ensures that children from poor backgrounds can continue to access quality education.

Condition and locations of schools

Bridge explained that they provided a safe and secure learning environment to their pupils. They stated that their schools are constructed on the basis of government-approved building plans and are subject to regulatory oversight by education standards, Quality Assurance departments, and County Public Health departments. The schools are customized to address the weather conditions, taking air circulation and cross ventilation into consideration. Bridge expressed that they always implement any necessary recommendations made by regulatory institutions.

Regarding the allegations related to sanitation problems in Nyeri County, Bridge said that their sanitation facilities were adequate and appropriate for their schools. Bridge recounted that one of the cases filed in Nyeri County for closure of the school related to the school's proximity to a slaughterhouse. The owner of the slaughterhouse failed to clean and sanitize the slaughterhouse before the business was closed. As a result, the Public Health Department issued a closure directive to the Bridge school on the grounds that the waste in the slaughterhouse was a nuisance and unsanitary for the school environment. Bridge filed for an injunction against the order for closure. The application was dismissed. However, the parties found an amicable solution outside of court.

Bridge also explained that, because they always seek to create a safe space for their pupils, they put in place systems that can address safety and sanitation concerns: the Customer Care CRM system. Safety and sanitation concerns can be reported to the Academy Manager, the Quality Assurance team, the Development team, and the teachers and staff of Bridge. When a concern is raised, a ticket is opened so that repairs can be carried out. Once repairs are conducted, the Quality Assurance team conducts an audit of the work done to ensure that the standards for safety and/or sanitation are met before closing the ticket.

Addressing the complaint related to the state of school grounds, Bridge explained that they encourage the Academy Managers to work with the parents and community leaders to maintain the school grounds. Efforts are made to keep the school grounds clean. However, at times strong wind and rain lead to flooding and bring waste from the surrounding community into the school. Bridge explained that it is unfortunate that waste enters the school premises at times and that they have put in place measures ranging from structural design to raising the ground level to creating waterways that can mitigate the impact of flooding on playgrounds. However, they informed CAO that this is the environment in which they operate, and if schools were not allowed to operate in these environments, the children would be out of school.

According to Bridge, this sentiment was also expressed by a member of parliament who thanked Bridge for the work that they are doing in the communities and stated that he never imagined it would be possible to run such good schools in these communities. Bridge further indicated that they had memorandums of understanding for use of open fields and sharing of playing fields with other institutions, as per government APBET guidelines.

Bridge also explained that sometimes damage to the infrastructure is caused by bad weather conditions. In Nyeri County, some schools suffered damage due to heavy winds and rain. This resulted in the Public Health Department pressing charges against Bridge employees. However, Bridge stated that they made the necessary repairs, and a joint inspection of the premises was carried out by the Public Health Department and Bridge. The inspection confirmed that Bridge is compliant.

In addressing the issue of access for children with disabilities, Bridge expressed that their schools have integrated children living with disabilities and that their advocacy work on this issue has been featured in several regional and national media outlets. Bridge highlighted that, like many other schools, it faces many challenges in serving children with disabilities. However, they said the successes achieved by children with disabilities at Bridge is a demonstration of Bridge's efforts to ensure that children living with disabilities in poor communities have access to quality education. Bridge also explained that their schools are not designated as special-needs schools according to section 43 of the Kenyan Basic Education Act. However, the steps taken to integrate children living with disabilities into the schools is an indication of their dedication to ensuring all children in poor communities have access to quality education.

With regard to providing electricity, Bridge indicated that there was no legal requirement to provide electricity for day schools. The only requirement is that classrooms and occupied buildings be well-lit. Bridge stated that they ensured that all classrooms were well-lit with natural light by having translucent roofing sheets in every classroom, which allows extra light from the roof, in addition to the open window design of the classrooms.

On the issue of fencing, Bridge indicated that they used a variety of materials, including wire, stone wall, brick wall, iron sheets, or chain link, and maintained the fences periodically. According to Bridge, in cases where a liquor stores has been established next to the academies, they have raised the issue with planning enforcement authorities, with varying degrees of successful outcomes.

Regarding toilet facilities, Bridge said that they put in place procedures for continuous maintenance and improvement, including having groundskeepers on site, as well as a Quality Assurance team that conduct assessments on a regular basis. Bridge further stated that the number of latrines per boys and girls at their schools complies with the World Health Organization standards. The ratios are calculated using the average number of girls or boys during designated outdoor break times, rather than the total overall enrollment. Bridge explained that they design their schedule to ensure that break times are sequenced so that no more than the approved pupils-to-latrines ratio are scheduled to use the latrines at any one time.

With regard to kitchen facilities, Bridge explained that the Board of Management, which is elected by parents, ensures that children have an option to purchase affordable, high-quality, safe, and nutritious lunches from a private, independent vendor who has a valid public health certificate.

Finally, in response to the allegation of large class sizes, Bridge indicated there was no legal requirement regarding teacher-to-pupil ratios in classrooms.

4. NEXT STEPS

During CAO's assessment, Bridge indicated their willingness to engage in a dispute resolution process with the Complainants facilitated by CAO. However, the Complainants expressed their preference for the complaint to be handled by CAO's Compliance function. Since no consensus was reached on a dispute resolution process, which is voluntary and requires participation of

both the Company and the Complainants at a minimum, the complaint will be referred to CAO Compliance for appraisal of IFC's environmental and social performance in accordance with CAO's Operational Guidelines.

ANNEX A. CAO COMPLAINT HANDLING PROCESS

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

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

- Step 1: **Acknowledgement** of receipt of the complaint.
- Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).
- Step 3: **CAO assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's Dispute Resolution function is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute-resolution process, in a way that is acceptable to the parties affected.³

OR

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

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

Step 6: **Conclusion/Case Closure**

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

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