

Compliance Investigation Report

Regarding a Complaint about IFC's Investment in Bridge International Academies (Bridge-01)

Bridge International Academies/IFC Projects #32171, #38733, #39170, and #39224
December 15, 2023

Contents

Contents	2
Acronyms	4
Executive Summary	5
Overview	5
IFC Investment	5
The Complaint	6
CAO Findings	7
Harm	10
Underlying Causes of Non-Compliance	10
Recommendations to IFC	11
Project-Specific Recommendations	11
Institutional-Level Recommendations	12
Next Steps	12
1. Background	13
1.1. IFC Investment	13
1.1.1. IFC decision to cease investment in fee-paying K–12 private schools	14
1.2. The Complaint	14
1.3. CAO Compliance Appraisal (Bridge-01)	16
1.4. Separate Investigation into Bridge Academies (Bridge-04)	16
1.5. Timeline of Key Events	17
2. Investigation Scope and Methodology	19
2.1. Terms of Reference	19
2.2. Access to Information and Disclosure	20
3. Analysis and Findings: Evaluating IFC Oversight of Client Implementation of IFC Standards	22
3.1. IFC's Pre-Investment E&S Due Diligence	22
3.1.1. The Complaint	22
3.1.2. IFC Requirements	22
3.1.3. Overview of IFC's Environmental and Social Due Diligence	24
3.1.4. CAO Observations and Findings	25
3.2. Kenyan Legal and Regulatory Compliance	28
3.2.1. The Complaint	28
3.2.2. Relevant Requirements	29
3.2.4. CAO Observations and Findings: Due Diligence	32
3.2.5. Supervision	33
The following events are relevant to CAO's analysis of IFC's supervision of its investment in Bridge Academies during 2014-2021:	33

3.3 Labor and Working Conditions	35
3.3.1. The Complaint	35
3.3.2. Relevant Requirements	36
3.3.3. E&S Due Diligence	36
3.3.4. CAO Observations and Findings: ESDD	37
3.3.5. Supervision.....	38
3.3.6. CAO Observations and Findings: Supervision	39
3.4. School Environment	40
3.4.1. The Complaint	40
3.4.2. Relevant Requirements	41
3.4.3. Building Design Safety.....	42
3.4.4. CAO Observations and Findings: Building Design Safety	44
3.4.5. Water, Sanitation, and Food Hygiene Standards	48
3.4.6. CAO Observations and Findings: Water, Sanitation, and Food Hygiene Standards.....	50
3.4.7. School Ground Safety and Maintenance.....	51
3.4.8. CAO Observations and Findings: School Ground Safety and Maintenance	55
3.5. Investment Exit	59
4. Harm	60
4.1. Harm to Bridge Workers.....	60
4.2. Harm to Bridge Students	60
5. Underlying Causes of Non-Compliance	61
6. Recommendations to IFC	62
Project-Specific Recommendations.....	62
Institutional-Level Recommendations.....	63
Next Steps	63

Acronyms

APBET	Alternative Provision of Basic Education and Training
AMR	Annual Environmental and Social Monitoring Report
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and social
EHS	Environmental health and safety
EIA	Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessment
ESAP	Environmental and Social Action Plan
ESDD	Environmental and Social Due Diligence
ESMS	Environmental and Social Management System
ESMP	Environmental and Social Management Plan
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
GIIP	Good international industry practice
HR	Human resources
IEG	Independent Evaluation Group
IFC	International Finance Corporation
IT	information technology
MAP	Management Action Plan
MIGA	Multilateral Investment Guarantee Agency
MoE	Ministry of Education
NGO	Nongovernmental organization
NGS	NewGlobe Schools
OHS	Occupational health and safety
PS	Performance Standards (IFC)
PS1	Performance Standard 1: Assessment and Management of E&S Risks and Impacts
PS2	Performance Standard 2: Labor and Working Conditions
PS3	Performance Standard 3: Resource Efficiency and Pollution Prevention
PS4	Performance Standard 4: Community Health, Safety, and Security
QA	Quality assurance
SII	Summary of Investment Information
WASH	Water, sanitation, and hygiene
WHO	World Health Organization

Executive Summary

Overview

This report presents findings and recommendations from a Compliance Advisor Ombudsman (CAO) compliance investigation into the International Finance Corporation's (IFC) investment in Bridge International Academies ("Bridge," the "client," or the "company"), which operates the largest chain of low-cost private schools in Africa. In April 2018, CAO received a complaint from the East Africa Centre for Human Rights (EACHRights) regarding IFC's investment in Bridge's Kenya operations.¹ In March 2019, during CAO's assessment,² the complainants referred the case to CAO's compliance function which launched a compliance appraisal shortly thereafter.³ Although IFC exited its direct investment in Bridge in March 2022, IFC's indirect exposure to Bridge through Learn Capital, a financial intermediary, remained active at the time of writing this report.⁴

CAO's compliance investigation finds that IFC failed to satisfy its environmental and social (E&S) requirements under the Sustainability Policy during both pre-investment environmental and social due diligence (ESDD) and project supervision. While IFC's supervision of water, sanitation, and food hygiene (WASH) standards and labor and working conditions risks and impacts improved over the years, its supervision efforts fell short of bringing its client into compliance with the IFC Performance Standards (PS). When exiting its investment, IFC failed to work with the client to bring the project into compliance with PS1, PS2, and PS4 as they relate to risks and impacts in the areas of labor and working conditions; building design safety, water, sanitation, and hygiene (WASH); and school-ground safety and maintenance.

Based on these findings, CAO provides recommendations for IFC to address the related harm to students and workers identified in this report. CAO also makes institutional-level recommendations to help IFC prevent and appropriately manage E&S risks in future operations.

IFC Investment

The purpose of IFC's investment was to support the expansion of Bridge's network of kindergarten through grade 12 schools⁵ serving low-income communities in Kenya and its entrance into three new countries (the "project").⁶ At the time of IFC's investment, Bridge operated 211 elementary and secondary schools in Kenya, serving approximately 57,000 students.⁷ IFC conducted pre-investment ESDD in 2013, and the project received IFC Board approval in December 2013.⁸ IFC classified the investment as Category B, indicating that its potential adverse E&S risks were "limited, largely reversible, and may be readily mitigated."⁹ In January 2014, IFC made a preferred equity investment of US\$10 million in NewGlobe Schools (NGS), Bridge's U.S.-based parent

¹ EACHRights, April 16, 2018, Submission of Complaint. Available here: <https://www.cao-ombudsman.org/sites/default/files/downloads/CAOComplaintEACHRights-16April18.pdf>.

² CAO, March 2019, Assessment Report. Available here: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAssessmentReport_Bridge-01_Kenya_March2019.pdf

³ In its October 2019 compliance appraisal report, CAO raised concerns regarding allegations of adverse impacts to teachers, parents, and students, the E&S risk profile of the schools, the registration status of the schools, and adherence to relevant health and safety requirements. CAO, October 21, 2019, Compliance Appraisal, Bridge International Academies. Available here: https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAppraisalReport_BridgeInternationalAcademies_English.pdf.

⁴ The focus of this investigation report is on IFC's direct investment in Bridge from 2014 – 2022. However, the report also briefly considers IFC's exposure to Bridge through Learn Capital, another IFC investment, particularly as it relates to the period following IFC's sale of its direct equity in 2022.

⁵ World Bank Group Independent Evaluation Group (IEG), June 2022, An Evaluation of International Finance Corporation Investments in K–12 Private Schools. Available here: https://ieg.worldbankgroup.org/sites/default/files/Data/Evaluation/files/IFCSupport_K12PrivateEducation_GS_and_MC.pdf.

⁶ IFC, October 30, 2013, Summary of Investment Information (SII). Available here: <https://disclosures.ifc.org/project-detail/SII/32171/bridge-international-academies>. IFC's support of Bridge was executed through Bridge's Delaware parent company NewGlobe Schools, Inc. ("NGS"), which established Bridge in 2009 as its wholly owned Kenyan subsidiary.

⁷ IFC, October 2013, SII Project Description. Available here: <https://disclosures.ifc.org/project-detail/SII/32171/bridge-international-academies>.

⁸ Ibid.

⁹ IFC, October 30, 2013, Environmental and Social Review Summary (ESRS). Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

company (project #32171). Additional investments followed in July and November 2016 (projects #38733, #39170, and #39224). IFC's total equity investment in Bridge/NGS was US\$13.5 million.¹⁰

In March 2020, against a backdrop of emerging concerns about low-cost private schools, the President of the World Bank Group (WBG) froze IFC direct investments in K–12 private schools.¹¹ IFC exited its direct investment in NGS in March 2022¹² and subsequently announced that it would maintain the freeze on direct investments in K–12 private schools.¹³ At the time of this report, IFC had an indirect exposure to Bridge schools through a financial intermediary, Learn Capital Venture Partners Fund III (project #32429).¹⁴

The Complaint

In April 2018, CAO received a complaint from the East Africa Centre for Human Rights (EACHRights), a Kenyan nongovernmental organization (NGO), on behalf of a group of current and former parents and teachers (the “complainants”) regarding IFC's investment in Bridge in Kenya.¹⁵ The complaint raised concerns about Bridge's compliance with international and Kenyan law and IFC's Performance Standards (PS), including the following:

- Bridge schools were not registered as required by the Basic Education Act 2013 and failed to meet Kenyan guidelines for Alternative Provision of Basic Education (APBET).
- Labor practices were inconsistent with Kenyan legal requirements for working hours, minimum wage, termination procedures, restraint-of-trade clauses against former employees, and enrollment targets for teachers.
- Concerns about the health and safety of students attending Bridge's schools, including the construction of buildings, site selection, and sanitary conditions.
- Bridge's refusal to accept students with disabilities.

In March 2019, the complainants decided to refer the case to CAO's compliance function. The subsequent compliance appraisal report was finalized in October 2019 and concluded that substantial concerns remained regarding the E&S outcomes of IFC's investment in Bridge in the following areas: (a) allegations of adverse impacts to teachers, parents, and students; (b) the E&S risk profile of the schools given their number, locations, and concerns regarding their construction methods; and (c) the registration status of the schools and Bridge's adherence to relevant health and safety requirements.

Consequently, in October 2019, CAO launched the Bridge-01 compliance investigation to assess the adequacy of IFC's E&S due diligence and supervision of the project and its compliance with Kenyan national law and IFC's Environmental Health and Safety Guidelines (EHS Guidelines) and Performance Standards 1, 2, and 4.

¹⁰ IEG, June 2022, An Evaluation of International Finance Corporation Investments in K–12 Private Schools. Available here:

https://ieg.worldbankgroup.org/sites/default/files/Data/Evaluation/files/IFCSupport_K12PrivateEducation_GS_and_MC.pdf;

¹¹ WBG, March 20, 2020, Letter from WBG President to US Treasury Secretary. Redacted version available here: https://democrats-financialservices.house.gov/uploadedfiles/malpass_ltr_mnuchin_3202020.pdf.

¹² IFC, October 2013, SII Project Description. Available here: <https://disclosures.ifc.org/project-detail/SII/32171/bridge-international-academies>.

¹³ IFC, 2022, Management Response to IEG Report. Available here: <https://ieg.worldbankgroup.org/evaluations/evaluation-international-finance-corporation-investments-K-12-private-schools-7>.

¹⁴ Project #32429. IFC's investment in Learn Capital Venture Partners Fund III (“Learn Capital”) was committed on July 2, 2014, and first disbursement took place on June 30, 2015. This investment generates an exposure to Bridge schools because Learn Capital holds equity in NewGlobe Schools. Information available here: <https://disclosures.ifc.org/project-detail/SII/32429/education-innovation-fund>.

¹⁵ EACHRights, April 16, 2018, Submission of Complaint. Available here: <https://www.cao-ombudsman.org/sites/default/files/downloads/CAOComplaintEACHRights-16April18.pdf>.

CAO Findings

In reviewing IFC's actions against the above requirements, CAO presents the following findings:

1. **IFC did not meet the Sustainability Policy requirement to conduct a E&S due diligence review that was “appropriate to the nature and scale of the activity” and “commensurate to the level of environmental and social risks and/or impacts.”**¹⁶

IFC fell short of its obligations to carry out ESDD as set forth in the Policy on Environmental and Social Sustainability (“the Sustainability Policy”, paras. 3, 7, 12, 22, 26, 27, and 28). E&S risk factors associated with the project included: (a) the poor and vulnerable households and communities that were the target market for Bridge schools; (b) the schools' low operating margins, which imposed constraints on Bridge's wage, capital, and maintenance budgets; (c) Bridge's plans for rapid growth in school, staff, and student numbers; and (d) unresolved regulatory compliance issues relevant to PS1 and PS4. IFC underestimated the E&S risks and impacts related to children's health and safety as well as compliance with E&S requirements under Kenyan law. IFC did not fully assess these risks and potential impacts nor the client's ability to manage them.

Specific IFC non-compliance during ESDD included lack of a comprehensive review of the environmental and social (E&S) risks and impacts associated with the client's activities and failure to require Bridge to prepare an E&S assessment for the full scope of its current operations and future growth (Sustainability Policy, paras. 3, 7, 12, and 26). This contributed to a lack of understanding of the full range of E&S impacts and risks posed by the project, and limited IFC's ability to assess its client's capacity to manage them.

CAO notes that, considering the nature and scale of project risks and impacts IFC should have more fully verified the adequacy of its client's plans and procedures, including conducting a field visit to Bridge schools during the ESDD process.¹⁷

2. **IFC did not meet the Sustainability Policy requirement that its E&S due diligence provide reasonable assurance that the project could “meet the requirements of the Performance Standards within a reasonable period of time.”**¹⁸

The Sustainability Policy directs IFC to analyze “the business activity's E&S performance” in relation to IFC's E&S requirements and identify “any gaps therewith.”¹⁹ In addition, under its Environmental and Social Review Procedures (ESRPs), IFC must identify “any performance gaps associated with each of the applicable PS” as well as actions necessary to mitigate those gaps.²⁰

CAO finds that IFC's ESDD did not sufficiently review its client's capacity to manage the current and future risks and impacts of its operations in accordance with the Performance Standards. IFC reviewed Bridge plans and documents during due diligence but did not undertake a systematic gap analysis of the client's performance against PS requirements, Kenyan law, and relevant Good International Industry Practice (Sustainability Policy, para. 28 (iv)).

¹⁶ Sustainability Policy, para. 26.

¹⁷ The ESRP Manual versions 2013 and 2016 mention: “while there are cases when a site visit is not required for appraisal, for example for repeat investments in the same, well-known asset/project or projects with a very limited footprint, in most cases new projects require an appraisal mission.” ESRP Manual Version 7, 2013, 3 Direct Investment: Appraisal, para. 2.2.1. Available here: <https://www.ifc.org/content/dam/ifc/doc/2010/2013-esrp-manual.pdf>.

¹⁸ Sustainability Policy, para. 22.

¹⁹ Sustainability Policy, para. 28.

²⁰ ESRP Manual Version 7, 2013, 3 Direct Investment: Appraisal, para. 2.3.

This inadequate assessment led to IFC investing in Bridge without a basis for assurance that Bridge could meet relevant IFC requirements over a reasonable period of time, as required by the Sustainability Policy (para. 22).

3. IFC failed to carry out its E&S due diligence and supervision responsibilities regarding Kenyan legal and regulatory compliance on school registration (PS1, paras. 6 and 15).

The challenges Bridge faced in achieving registration of its schools under Kenyan law were relevant to achieving compliance with IFC Performance Standards. However, IFC did not consider non-compliance with Kenyan education law an E&S issue even though PS1 (paras. 6 and 15) requires client compliance with E&S-relevant provisions of national law. Under the Kenya Basic Education Act (2013), criteria for schools achieving registration include requirements that address E&S issues relevant to PS1 and PS4. IFC due diligence documentation indicated that Bridge was not in compliance with Kenyan law by having non-registered schools and unregistered teachers. IFC presented Bridge as a company using commercially reasonable efforts to comply with national regulations. However, IFC did not identify or address the E&S requirements in the Basic Education Act of 2013 that were obligatory at the time for all private schools to achieve registration. Instead, IFC focused on its client's progress in obtaining local municipal business permits/licenses—a distinct and separate process from school registration. Additionally, CAO finds little evidence that IFC followed up with Bridge during supervision to ensure the client was making sufficient progress in registering schools either under the rules set by the Basic Education Act or the Registration Guidelines for Alternative Provision of Basic Education (APBET) introduced in 2016. In 2014, the client's Environmental and Social Action Plan (ESAP) included a commitment to put in place procedures to ensure compliance with regulatory requirements. By 2019, only 53 Bridge schools were reported registered—equivalent to 18 percent of Bridge schools in Kenya at the time. In 2021, the final year of IFC's investment, only 23 of 111 remaining Bridge schools in Kenya were reported registered. CAO finds that IFC did not make sufficient efforts to ensure the business activities it financed were implemented in accordance with PS1 requirements as required by the Sustainability Policy (paras. 7 and 45).

4. IFC's E&S due diligence and supervision fell short of its responsibilities under the Sustainability Policy (paras. 7 and 45) regarding labor and working conditions (PS2, paras. 8 and 9).

IFC did not conduct or require a thorough review of Bridge's employment policies to verify that the client followed PS2²¹ prior to investment. Considering the size of Bridge's workforce and its plans for expansion, CAO finds that IFC's limited review of Bridge's employment policies and practices did not meet the Sustainability Policy requirement of being "appropriate to the nature and scale of the activity" and "commensurate to the level of environmental and social risks and/or impacts" (para. 26). Between 2014 and 2017, IFC also failed to effectively supervise Bridge's compliance with the requirements of PS2. After receipt of the CAO complaint in 2018, IFC took enhanced steps to review and address Bridge's PS2 compliance. Nevertheless, taking into account IFC's own supervision findings, CAO notes that IFC's monitoring and supervision efforts did not seek to ensure that Bridge implemented activities in accordance with PS2 requirements, including those related to:

- Deductions for loss of or damage to information technology (IT) equipment in cases of employee negligence or theft that would not been allowed under Kenyan law; and

²¹ PS2 requires that IFC clients "...adopt and implement human resources policies and procedures appropriate to its size and workforce that set out its approach to managing workers consistent with the requirements of this Performance Standard and national law." (para 8) and "...provide workers with documented information that is clear and understandable, regarding their rights under national labor and employment law and any applicable collective agreements, including their rights related to hours of work, wages, overtime, compensation, and benefits upon beginning the working relationship and when any material changes occur." (para 9).

- Lack of verification that normal working hours at Bridge schools complied with Kenyan law.

5. IFC's E&S due diligence and supervision efforts regarding the school environment fell short of its obligations under the Sustainability Policy (paras. 7, 12, and 22).

IFC's review and supervision of its investments in Bridge were insufficient to establish its client's conformance with, or its capacity to conform with, IFC PS related to: (a) building design safety; (b) water, sanitation, and hygiene standards; and (c) school-ground safety and maintenance. Relevant standards include PS1 and PS4 as well as requirements for IFC clients to comply with the IFC's EHS Guidelines, national law, and good international industry practice (GIIP).²²

IFC invested in Bridge without requiring sufficiently clear or specific commitments to provide reasonable assurance that Bridge could meet relevant IFC requirements over a reasonable period of time. IFC's E&S supervision was generally insufficient to assess Bridge's compliance with IFC requirements regarding the oversight of school safety. While IFC did take steps during project supervision to address school health and safety issues with the client, these were not commensurate with the nature and recurrence of such issues.

Specific IFC non-compliance with its pre-investment due diligence and supervision obligations include the following shortcomings:

- **Life fire and safety:** Insufficient analysis of risks during ESDD and lack of verification during supervision of its client's performance in relation to all applicable elements of the IFC EHS Guidelines on Life Fire and Safety.
- **School construction:** Lack of verification during ESDD and supervision as to whether Bridge school construction complied with Kenyan regulatory requirements or relevant GIIP (PS1, para. 12 and PS4, para. 6). CAO could not confirm that IFC reviewed school building plans certified by local planning officers or that the client did not rely exclusively on Bridge's representations that its building plans were certified.
- **Access to students with disabilities:** Not requiring Bridge to meet IFC's Performance Standards or Kenyan accessibility requirements for disabled students (PS 4, para. 6). In 2020, CAO's field team observed that the eight Bridge schools visited were not designed to ensure accessibility for children with physical disabilities. Instead, school facilities visited included steps, toilet designs, and other features that would make them inaccessible to some people with disabilities.
- **Water, sanitation, and food hygiene:** Lack of verification of risks and impacts associated with water, sanitation, and food hygiene issues during ESDD, when IFC did not review an environmental assessment and relied instead on information provided by Bridge. During supervision, IFC recognized the need for more in-depth analysis on water and sanitation concerns and undertook an evaluation of the risks and impacts. However, IFC documentation contains no discussion of Bridge schools' conformance with WHO WASH standards for toilet provision, which IFC had determined were applicable to the project.

²² IFC Performance Standard 4 requires that its client "...establish preventive and control measures consistent with good international industry practice (GIIP), 1 such as in the World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines) or other internationally recognized sources." (para 5).

- **Safe school environments:** Lack of verification that Bridge schools were being maintained to meet relevant IFC safety standards (PS4, para. 6). IFC's review and supervision of the project was insufficient to fully identify risks to student safety present at Bridge schools due to design and maintenance issues. This remained the case until the last year of IFC's investment, at which time IFC E&S staff acknowledged that the company's model of constructing and operating community schools in low-resource settings cannot fully meet IFC standards related to child safety and infrastructure maintenance.

Harm ²³

The project exposed two main groups to adverse impacts in ways that are related to IFC non-compliance—current and former Bridge employees, and current and former Bridge students.

1. **Harm to Bridge workers:** CAO has identified excess working hours, underpayment of wages, and unpaid overtime as harms that had adverse impacts on current and former Bridge employees. Other related harm includes workers who were vulnerable to excess wage deductions, particularly for lost or damaged information technology (IT) equipment and late arrival at work. The number of potentially affected workers is unknown but given that relevant HR policies applied to all workers, the number could be in the thousands.²⁴ Bridge employed 3,500 teachers in 2014 and around 5,000 junior workers in 2016 (including teachers, HQ analysts, clerks, and associates).
2. **Harm to Bridge students:** CAO has identified noncompliance in building design safety—including life, fire, and safety standards—and in school safety and maintenance, as linked to harms that may have had impacts on current and former students. Students at the client's schools were often exposed to dangerous conditions and to risks of physical injury during the course of IFC's investment. More than 100 Bridge students²⁵ suffered potentially preventable injuries while at school during the eight years of IFC's investment and supervision.²⁶ At least two preventable student fatalities also occurred during this period.²⁷

Underlying Causes of Non-Compliance

CAO finds that the following underlying causes precipitated the acts or omissions by IFC that resulted in the non-compliance identified above:

- There was no overall assessment of the project's E&S impacts and risks. IFC failed to require its client to prepare an E&S assessment for the full scope of its current operations and future growth, and reviewed only one environmental impact assessment (EIA), which was undertaken for an individual school and focused primarily on construction risks. While an E&S assessment can be informed by evaluating the E&S risks of a sample of schools, the single EIA reviewed by IFC did not constitute a representational sample and was insufficient both to inform IFC's analysis-of the project's overall E&S risks and impacts and to adequately determine the client's capacity to manage and mitigate these risks and impacts. Conversely, an assessment of the E&S risks and impacts of the overall project would have identified and evaluated a wide range of key risks and impacts and provided the basis for an informed integrated review

²³ CAO Policy (2021) defines "Harm" as "Any material adverse environmental and social effect on people or the environment resulting directly or indirectly from a Project or Sub-Project. Harm may be actual or reasonably likely to occur in the future."

²⁴ CAO considers "potentially affected workers" to be the number of teachers that were working at Bridge schools to whom Bridge HR policies applied. CAO counts this broad group of workers as potentially affected, considering these policies were applied to all Bridge workers without distinction.

²⁵ This number is based on information available to CAO's investigation which may or may not be complete; hence the actual number of potentially preventable injuries could be greater.

²⁶ CAO considers "potentially preventable injuries" to be events that happened during or immediately after school hours where there had been a reported injury, illness, or accident involving a pupil that may have occurred due to school negligence. CAO found evidence of more than 100 cases of potentially preventable injuries during the length of the investment. The data available to CAO did not allow it to fully consider the extent of the seriousness of all physical injuries to students.

²⁷ CAO considers as "preventable" any event that occurred where known and readily available management measures which would likely have prevented the event were not taken.

of gaps in Bridge's E&S performance against the requirements of the IFC Performance Standards and of good international industry practice, such as IFC's EHS Guidelines.

- IFC's ESDD process overlooked the E&S risks and impacts associated with the lack of conformance with Kenya's regulatory requirements for school registration as they relate to E&S issues. IFC's expectations were that compliance with domestic regulatory requirements would eventually be achieved with a future change of government policy, in this case updated APBET guidelines. Understanding the challenges and associated E&S risks of relying on future regulatory developments to achieve compliance with national laws by innovative business models such as Bridge should have been a part of the due diligence process. Had this occurred, the ESDD process would have provided a better basis for IFC to determine whether its client could be expected to comply with relevant PS over a reasonable period of time.
- For the first years of the investment (2014–2017), IFC did not receive the required annual monitoring reports from its client yearly as required by IFC procedures, which limited its ability to effectively supervise Bridge's E&S performance. IFC did not pursue avenues to redress this situation, such as considering its rights of recourse under the Sustainability Policy and its transaction documents with Bridge.

Recommendations to IFC

Under the CAO Policy, IFC Management will develop a Management Action Plan (MAP) to respond to the findings of non-compliance and related harm in this report. In doing so, CAO recommends that IFC consider the following project-specific and institutional-level actions.

Project-Specific Recommendations

CAO recommends that IFC contribute to the following remedial actions at the project-level. These recommendations are intended to remedy actual harms to current and former Bridge students and employees in Kenya.

1. IFC should work with Bridge to support the establishment of processes whereby:
 - Current and former workers with grievances related to inappropriate wage deductions and underpayment of wages can have their claims assessed with compensation paid following Kenyan law in a manner that is fair, efficient and without cost to the worker; and
 - Parents of current and former Bridge students who were killed or injured while at school can have their claims assessed with compensation paid following Kenyan law, fairly, efficiently and without cost to the parents.

These processes should be based on the following principles:

- Access for both current and former Bridge employees and parents;
 - Independence and accountability in the administration of the claims processes;
 - Timely processing of claims for compensation for harm;
 - Support to current and former affected workers and students to access legal advice; and
 - Sufficient resources for the process to achieve its objectives.
2. IFC should work with Bridge to address the ongoing E&S risks and impacts of its academies as identified in this report, including measures such as requiring:

- An independent audit of Bridge's compliance with regulatory requirements under the Kenya Basic Education Act (2013), leading to an action plan that ensures all Bridge schools in Kenya meet school requirements or close by the end of the current school year;
- An independent audit of all Bridge schools in Kenya, leading to a fully resourced action plan designed to ensure that all Bridge school buildings and school grounds meet Kenyan legal requirements and GIIP for school safety, including fire and life safety, or close by the end of the current school year; and
- An action plan building on previous assessments pertaining to Bridge's labor policies and practices against the requirements of PS2 and Kenyan law, designed to ensure that Bridge's HR policies and practices are consistent with these requirements.

Institutional-Level Recommendations

3. IFC should revise the ESRP to ensure that when IFC finances or invests in what is, or is equivalent to, a series of activities (such as the construction and/or operation of multiple facilities, such as schools in this case) that the overall E&S impacts and risks are identified and assessed, and that the appropriate degree of site-specific E&S due diligence and supervision are undertaken.²⁸ Specifically the ESRP should provide that:
 - Prior to Board approval, the environmental and social risks and impacts of the full scope of an investment's activities are assessed by IFC prior to determining if the investment's activities will be able to meet relevant Performance Standards within a reasonable period of time; and
 - During supervision, IFC implements measures to ensure that individual activities (such as individual schools, in this case) are meeting the relevant performance standards. Among other measures, this could be achieved through a combination of portfolio reviews, spot checks, and other measures deemed appropriate.
4. IFC should develop guidance on how to assess and approach the challenges of reconciling "innovative business models" with existing national laws and regulations, including those relevant to E&S risks and impacts. This would avoid situations where a client's compliance with national law is dependent on a future regulatory change to accommodate the proposed "innovative business model" in an investment. The guidance should state that deviations from the Sustainability Policy or PS requirements, including non-compliance with relevant national law, must be explicitly flagged for a decision by the Board.²⁹

Next Steps

Following CAO Policy, IFC Management will have 50 business days to prepare a Management Report that will include, for Board approval, a Management Action Plan (MAP) in response to CAO findings of non-compliance and related harm. The MAP will be comprised of time-bound remedial actions proposed by Management and the Policy requires IFC to consult the complainants and the client during its preparation. The compliance investigation report, the Management Report, and the MAP will be made public, and CAO will monitor the effective implementation of the actions set out in the MAP.

²⁸ The 2016 ESRP Manual lacks specificity on whether Environmental Assessment should be required prior to approval for Category A or B projects, and if these should be reviewed by IFC during ESDD and disclosed to the public. See, 2016 ESRP Manual, sections 3, 4 and 6. Available here: <https://www.ifc.org/content/dam/ifc/doc/2010/2016-esrp-manual.pdf>.

²⁹ The ESRP Manual (2013) mentions that significant risks and impacts and anticipated key development outcomes should be described in the E&S section of the Board Paper. See, 4 Direct Investment: Disclosure and Commitment, 2.15. Available here: <https://www.ifc.org/content/dam/ifc/doc/2010/2013-esrp-manual.pdf>. Same provision in ESRP Manual (2016).

1. Background

1.1. IFC Investment

During the period of the investment, Bridge International Academies owned and operated the largest chain of low-cost private schools in Africa. The client is a wholly owned Kenyan subsidiary of NewGlobe Schools, Inc (NGS), founded in 2009 and based in Delaware, United States.³⁰ In 2021, Bridge's activities included operating approximately 161 private elementary and secondary "community schools" across Kenya, Nigeria, and Uganda, as well as a smaller number of NGO partnership schools in India and Kenya. NGS also provides educational services to government-run partnership schools in China, Liberia, Nigeria, and Rwanda.³¹

In 2013, when IFC's approach was to invest in for-profit schools serving low-income communities, it identified Bridge as a potential client. At the time, Bridge operated 211 schools serving 57,000 students in Kenya, with the aim of providing education to children from families earning less than US\$2 per person per day.³²

IFC's pre-investment due diligence described Bridge's model as building private schools in high-density, low-income communities and employing "centralized curriculum development, teacher training, and a comprehensive technology platform to provide quality education at an affordable cost."³³ IFC expected the project to promote access to basic education, promote affordability, improve quality and accountability, create jobs, and improve student nutrition.³⁴ If successful, IFC anticipated that the project would provide a "demonstration effect," attracting other companies in the sector to employ similar strategies.³⁵

In December 2013, the IFC Board of Directors approved a preferred equity investment of US\$10 million to grow Bridge's network of schools in Kenya and support the company's expansion into three new countries.³⁶ This initial investment in NGS was made in January 2014 (project #32171), followed by investments totaling an additional \$3.5 million in July and November 2016 (projects #38733, #39170, and #39224). Other investors included the Commonwealth Development Corporation, Gates Frontier LLC, the National Education Association, Omidyar Network, and the Chan Zuckerberg Initiative.³⁷

IFC classified the investment as Environmental and Social Risk Category B, indicating that its potential adverse E&S risks were "limited, largely reversible, and may be readily mitigated."³⁸ Following IFC's exit in March 2022, IFC maintained an indirect exposure to Bridge schools through a financial intermediary, Learn Capital Venture Partners Fund III (Project #32429),³⁹ in which IFC has a capital commitment of US\$21.94 million. IFC's indirect exposure to Bridge through Learn Capital remained active at the time of writing.

At the outset of IFC's investment, Bridge's primary focus was on scaling up the "community schools," known as "academies," that it owned and operated. At the time, IFC projected that, through subsequent capital raising and

³⁰ IFC, October 30, 2013, Summary of Investment Information (SII). Available here: <https://disclosures.ifc.org/project-detail/SII/32171/bridge-international-academies>; and IFC, October 30, 2013, Environmental and Social Review Summary (ESRS). Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

³¹ NGS, The History of NewGlobe. Available here: <https://newglobe.education/history/>.

³² IFC, October 30, 2013, Summary of Investment Information (SII). Available here: <https://disclosures.ifc.org/project-detail/SII/32171/bridge-international-academies>.

³³ IFC, October 30, 2013, Environmental and Social Review Summary (ESRS). Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

³⁴ IFC, 2013, SII. Available here: <https://disclosures.ifc.org/project-detail/SII/32171/bridge-international-academies>.

³⁵ Ibid.

³⁶ Ibid.

³⁷ IEG, 2022, An Evaluation of International Finance Corporation Investments in K–12 Private Schools. Available here: https://ieg.worldbankgroup.org/sites/default/files/Data/Evaluation/files/IFCSupport_K12PrivateEducation_GS_and_MC.pdf.

³⁸ IFC, 2013, ESRS. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

³⁹ IFC, April 2014, Summary of Investment Information (SII) for Project #32429. Available here: <https://disclosures.ifc.org/project-detail/SII/32429/education-innovation-fund>.

growth, Bridge would establish around 2,100 schools serving approximately 1 million children by the 2020 fiscal year—a 1,500 percent increase in students.

From 2014 to 2016, Bridge experienced rapid school growth, from 211 community schools serving 57,000 3–14-year-olds to 520 community schools serving approximately 87,600 students. Bridge also expanded to operate community and NGO partnership schools in India, Nigeria, and Uganda, as well as NGO partnerships schools in Kenya.⁴⁰

1.1.1. IFC decision to cease investment in fee-paying K–12 private schools

On March 22, 2020, the President of the World Bank Group (WBG) wrote to the U.S. Treasury Secretary stating that IFC would freeze direct investments in K–12 private schools. He also committed to initiate a consultation process and Independent Evaluation Group assessment of IFC’s investments in this subsector to determine whether there might be any exceptional circumstances under which such investments could occur in the future.⁴¹ Two years later, in March 2022, IFC exited from its investment in the Bridge parent company, NewGlobe Schools.⁴²

In June 2022, the Independent Evaluation Group (IEG) published its evaluation of IFC investments in K–12 private schools, advising against their resumption. The evaluation deemed several elements of IFC’s existing business model unsuitable for investment in private K–12 education (including for low-income students). It concluded that “IFC would have to change its business model if it were to pursue equitable access [to education], aim to reach lower-income and impoverished students, improve the quality of education, and make a sufficient return on investment.”⁴³ The evaluation recommended several changes to IFC’s business model in order to resume such investments.⁴⁴ IFC’s Management Response to the evaluation agreed with the IEG conclusions and recommendations, stating that IFC did not envision resuming such investments “in the near future.”⁴⁵

1.2. 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.⁴⁶ The complainants requested that their identities be kept confidential.

The complaint raised concerns about Bridge’s compliance with international and Kenyan law and IFC’s Performance Standards (PS), specifically PS1 (Assessment and Management of Environmental and Social Risks and Impacts), PS2 (Labor and Working Conditions), and PS4 (Community Health, Safety, and Security).⁴⁷

⁴⁰ Bridge Webpage, Programmes. Available here: <https://www.bridgeinternationalacademies.com/>.

⁴¹ WBG, March 20, 2020, Letter from WBG President to US Treasury Secretary. Redacted version available at: https://democrats-financialservices.house.gov/uploadedfiles/malpass_ltr_mnuchin_3202020.pdf.

⁴² IFC, April 2014, Summary of Investment Information (SII) for Project #32429. Available here: <https://disclosures.ifc.org/project-detail/SII/32429/education-innovation-fund>.

⁴³ IEG, June 2022, An Evaluation of International Finance Corporation Investments in K–12 Private Schools. Available here: https://ieg.worldbankgroup.org/sites/default/files/Data/Evaluation/files/IFCSupport_K12PrivateEducation_GS_and_MC.pdf.

⁴⁴ Ibid. Recommendations included:

- Engaging a wider spectrum of stakeholders likely to be affected by the IFC investment in the education system
- Explicitly addressing equitable education access and inclusion and the quality of education
- Improving project monitoring and supervision to assess factors beyond business indicators, including those related to education access, quality, and positive and negative spillover effects on other schools and local education systems
- Considering possible trade-offs between achievement of educational outcomes (including access, equity, and quality) and the financial sustainability of IFC investments in K-12 private education.

⁴⁵ Ibid.; and IFC, Management Response to IEG Report. Available here: <https://ieg.worldbankgroup.org/evaluations/evaluation-international-finance-corporation-investments-K-12-private-schools-7>.

⁴⁶ EACHRights, April 16, 2018, Submission of Complaint. Available here: <https://www.cao-ombudsman.org/sites/default/files/downloads/CAOComplaintEACHRights-16April18.pdf>.

⁴⁷ In addition to the complaint, a detailed account of the complainants’ concerns is set out in the CAO assessment report. CAO, March 2019, Assessment Report, Regarding Concerns in Relation to IFC’s Investment in Bridge International Academies (#32171) in Kenya. Available here: https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAssessmentReport_Bridge-01_Kenya_March2019.pdf.

The parents' and teachers' concerns relate to three main thematic areas: regulatory issues, teachers' employment conditions and labor issues, and the school environment. These concerns are summarized below, based on the complaint and CAO's assessment report. Further details are set out in later sections of this report presenting CAO's findings.

Kenyan legal and regulatory compliance: The complainants allege that the majority of Bridge schools were not registered under Kenyan law, as required by the Basic Education Act (2013), and failed to meet Kenyan guidelines for Alternative Provision of Basic Education (APBET). Published in 2016, these guidelines set out requirements for the registration of nonformal schools known as "APBET" schools. The complainants also express concern about the alleged use of nonqualified teachers at Bridge academies and about the curriculum, which they claim does not meet Kenyan legal requirements.

Labor and working conditions: The complainants assert that the IFC client's labor practices are inconsistent with Kenyan legal requirements for working hours and minimum wage. According to the complaint, Bridge requires teachers to follow the lesson script on tablet computers provided by the company and are disciplined if they do not complete the lessons. It further states that teachers are required to supervise students during their break times, without pay, and that Bridge does not provide separate teachers' staff rooms. The complainants also allege that Bridge does not follow appropriate termination procedures for workers, express concern about the company's enforcement of restraint-of-trade clauses against former employees, and claim that Bridge put pressure on teachers to recruit new students. According to the complainants, efforts by teaching staff to raise these varied grievances with Bridge had not been successful.

Student safety and school environment: The complainants express a range of concerns about the health and safety of students attending Bridge schools in Kenya. These concerns include the construction of buildings, site selection, and sanitary conditions. The complainants allege that school buildings are unsafe and unsuitable for children due to lack of temperature regulation, lack of electricity, type of building materials, and temporary manner of construction. They state that toilets are unsanitary and that some schools have no separate facilities for boys and girls. The complaint identifies specific schools located in sites prone to flooding, close to garbage dumping sites or sewage, or near a slaughterhouse or liquor store. It states that fencing in some schools is in poor repair, which means that they are not secure. In a further safety concern, the complainants state that children who are excluded from class due to unpaid fees may be left unsupervised or sent home without notice given to parents.

In addition, the complainants state that Bridge's refusal to accept students with disabilities in its Kenyan schools is discriminatory.

The complainants further argue that Bridge created a climate of fear that affected parents, teachers, staff, and citizens. They cite three lawsuits that Bridge filed against different stakeholders who raised concerns about the company as evidence of the IFC client's defensive approach to critics. The complainants also question Bridge's disclosure practices and lack of engagement with parents who raise concerns about the company's schools. Parents allege that Bridge shared false or misleading information with them in marketing and outreach activities, including about the availability of scholarships, and the complaint states that Bridge increased its school fees without prior notice. Consistent with the Appraisal Report and ToR for the investigation, this CAO investigation report does not address the specific allegations in this paragraph. However, relevant stakeholder engagement concerns regarding IFC's approach to the client's disclosure and engagement practices are addressed throughout the report.⁴⁸

⁴⁸ CAO, October 21, 2019, Bridge-01 Compliance Appraisal. Available here: https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAppraisalReport_BridgeInternationalAcademies_English.pdf

1.3. CAO Compliance Appraisal (Bridge-01)

Following CAO's assessment of the complaint, the complainants chose to refer the case to the CAO compliance function in March 2019.

CAO's compliance appraisal report, published in October 2019, acknowledged IFC's efforts during supervision to assess and address concerns about sanitation and labor and working conditions at Bridge schools. However, CAO concluded that substantial concerns remained regarding the investment's E&S outcomes. These concerns related to: (a) the specific allegations of adverse impacts to teachers, parents, and students; (b) the E&S risk profile of the schools, given their number, locations, and the concerns regarding their construction methods; and (c) the schools' registration status and Bridge's adherence to relevant health and safety requirements.

CAO's appraisal report raised questions about the adequacy of IFC's E&S due diligence and supervision of the project and its compliance with Kenyan national law and IFC's Environmental Health and Safety Guidelines (EHS Guidelines) and Performance Standards. Relevant Performance Standards to this case include Performance Standard 1: Assessment and Management of Environmental and Social Risks (PS1); Performance Standard 2: Labor and Working Conditions (PS2); and Performance Standard 4: Community Health, Safety, and Security (PS4).⁴⁹ Consequently, CAO launched the Bridge-01 compliance investigation in October 2019.

CAO completed its compliance appraisal following its 2013 Operational Guidelines.⁵⁰ In July 2021, the IFC Board adopted a new CAO Policy,⁵¹ the terms of which apply to this compliance investigation.⁵² Among other new elements, the CAO Policy reinforced CAO's independence from IFC and MIGA Management by strengthening the role of the IFC and MIGA Boards in the CAO process. It also improved accountability at IFC and MIGA with a focus on facilitating access to remedy for project-affected people.

1.4. Separate Investigation into Bridge Academies (Bridge-04)

In February 2020, as part of this Bridge-01 investigation, CAO staff traveled to Kenya. The investigation team spoke to complainants, community members, client representatives, and local authorities. In these discussions, community members informed CAO of allegations involving multiple instances of child sexual abuse at Bridge schools by two Bridge teachers involving at least 15 survivors.

In response to the serious nature of these incidents, the CAO vice president (CAO VP) in September 2020 initiated a compliance appraisal of IFC's investments in Bridge International Academies in relation to issues of child safeguarding and protection, including child sexual abuse (the Bridge-04 case). This appraisal "conclude[d] that there are substantial concerns regarding the E&S outcomes of IFC's investment in Bridge considering: (a) specific allegations of child sexual abuse raised in the course of the Bridge-01 investigation; and (b) the E&S risk profile of the schools given their number and the vulnerable status of learners."⁵³

As a result, the CAO VP initiated a compliance investigation into these CSA allegations. The report and recommendations of this separate CAO investigation will be published concurrently with the Bridge-01 compliance investigation report.

⁴⁹ Ibid.

⁵⁰ CAO, 2013, Operational Guidelines. Available here: https://www.cao-ombudsman.org/sites/default/files/downloads/CAOOperationalGuidelines2013_ENGLISH_0.pdf.

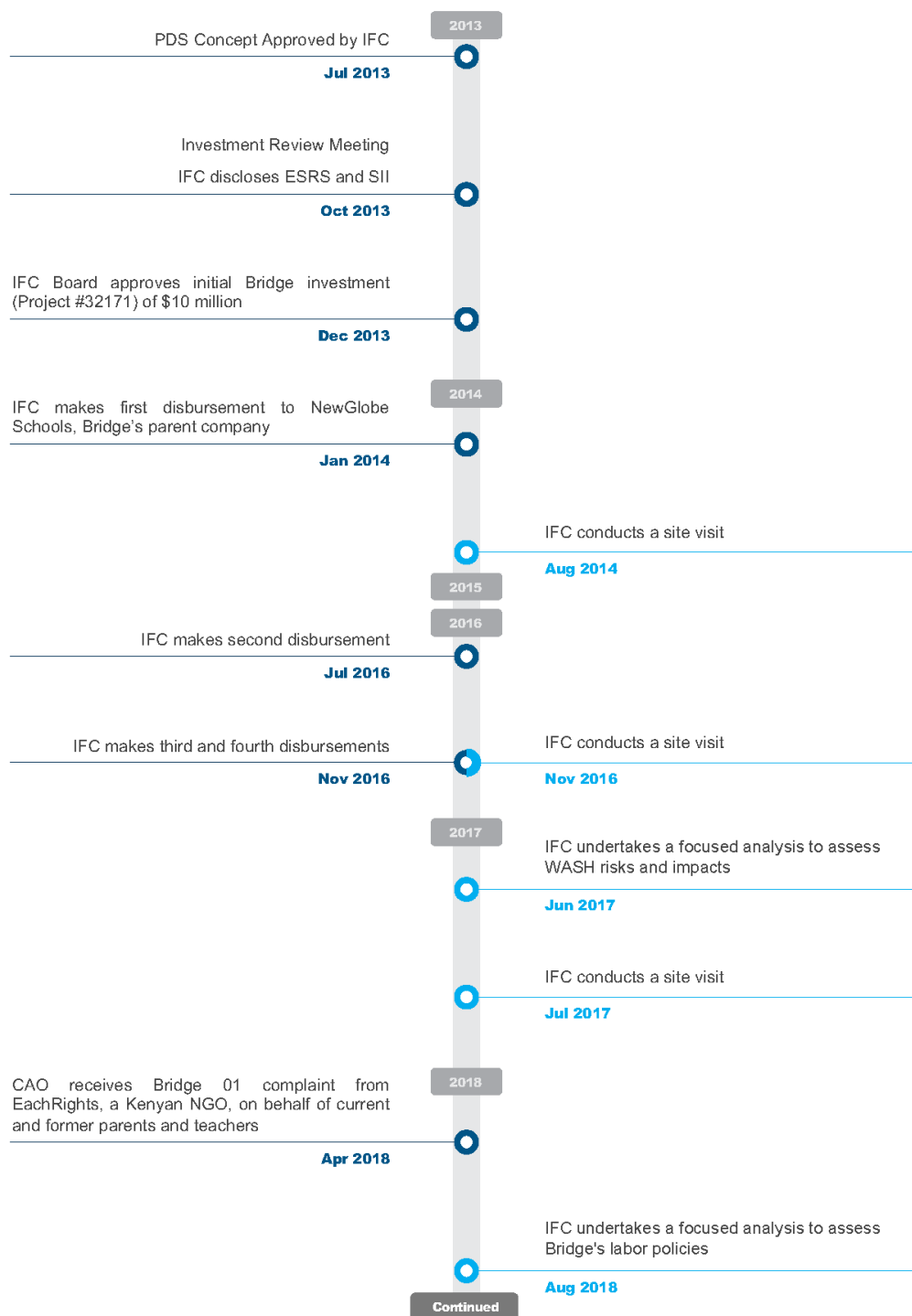
⁵¹ CAO, June 28, 2021, IFC/MIGA Independent Accountability Mechanism (CAO) Policy. Available here: <https://documents1.worldbank.org/curated/en/889191625065397617/pdf/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf>.

⁵² CAO, IFC/MIGA Independent Accountability Mechanism (CAO) Policy Transitional Arrangements. Available here: <https://www.cao-ombudsman.org/sites/default/files/downloads/CAOPolicy-TransitionalArrangements.pdf>.

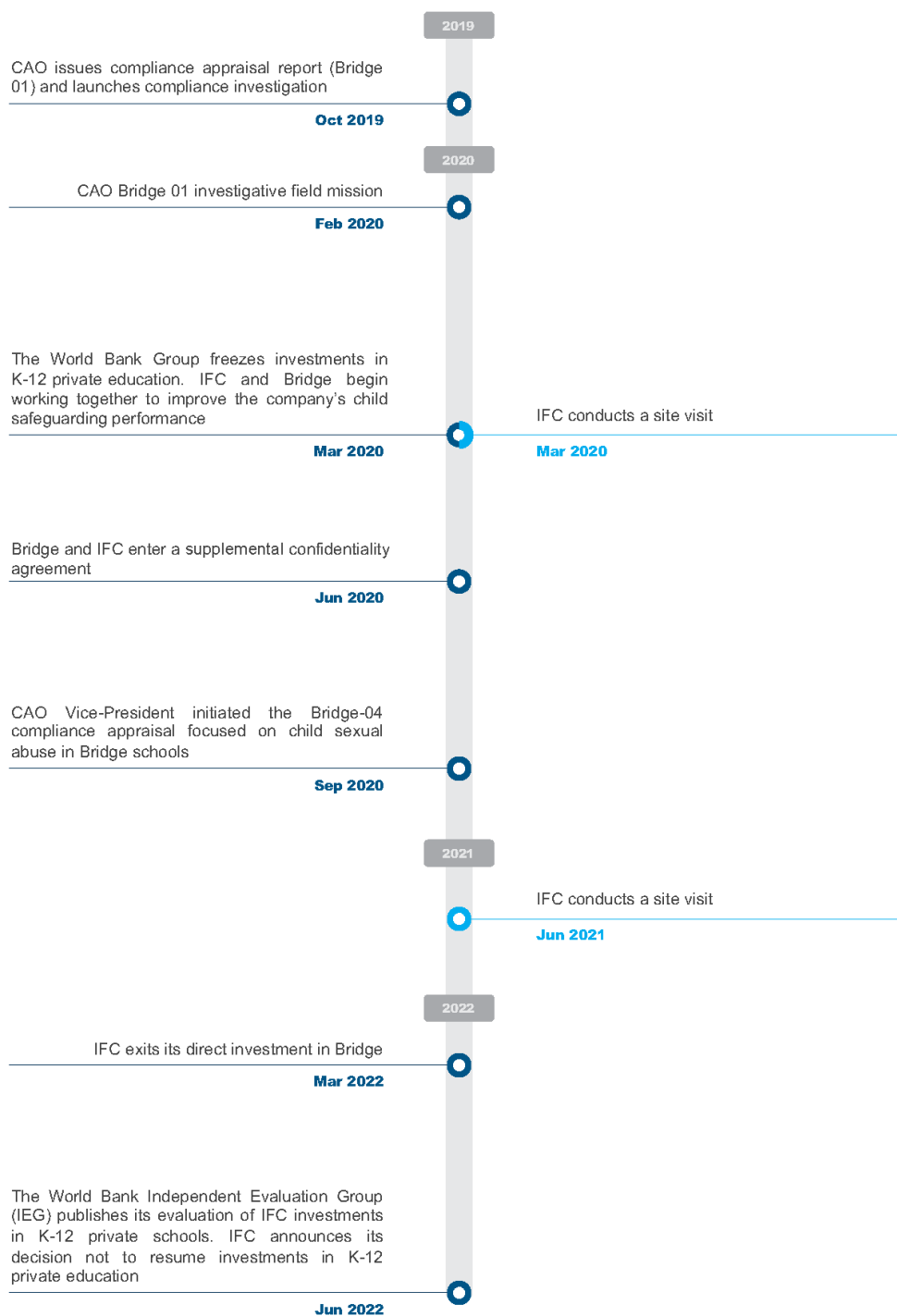
⁵³ CAO, December 23, 2020, Bridge-04 Compliance Appraisal: Summary of Results, p. 16. Available here: <https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAppraisalReport-BIA-04-Dec23.pdf>

1.5. Timeline of Key Events

Bridge 01 Investigation



Bridge 01 Investigation (cont.)



2. Investigation Scope and Methodology

The purpose of the CAO compliance function is to respond to project-related complaints by reviewing IFC's compliance with its E&S policies, assessing any related harm⁵⁴ and recommending remedial actions where appropriate. In accordance with the CAO Policy (effective July 1, 2021), this report presents investigation findings with respect to IFC compliance, non-compliance, and related harm, and includes context, evidence, and reasoning to support CAO's findings and conclusions regarding the underlying causes of the non-compliance identified. The report ends with recommendations for IFC to consider in the development of a Management Action Plan (MAP) relating to the remediation of project-level non-compliance and related harm, and steps to prevent future non-compliance.⁵⁵

Following the CAO Policy, this investigation makes determinations of compliance or non-compliance based on the sources of information available at the time the decisions were made and does not make findings and conclusions with the benefit of hindsight.⁵⁶ While the purpose of this investigation is to evaluate IFC's environmental and social compliance, CAO may also consider Bridge's E&S performance in order to evaluate IFC's project review and supervision, and to make findings regarding harm and whether any harm is related to any IFC non-compliance with its E&S policies.⁵⁷

The scope of this compliance investigation is defined in terms of reference issued by CAO in October 2019 (Bridge 01) and summarized below.⁵⁸

2.1. Terms of Reference

For this investigation, CAO considered specific questions regarding the application of IFC's Sustainability Framework to the investment, including whether IFC discharged its pre-investment due diligence and supervision duties in relation to the client's:

- Compliance with national laws, with particular focus on the client's intention to seek registration for its schools under the APBET guidelines as well as other regulatory requirements relevant to the operation of its schools in Kenya;
- Capacity and commitment to implement PS1, with a focus on establishing an E&S management system, information disclosure, and community engagement and grievance mechanisms;
- Labor practices in relation to the requirements of PS2 and Kenyan law; and
- Environmental, health, and safety practices in its Kenya schools, including construction, sanitation, school location, and security in relation to the requirements of PS4, IFC's EHS Guidelines, and Kenyan law.

In relation to all non-compliance identified, this investigation report assesses related harm and recommends remedial actions where appropriate.

⁵⁴ Harm is defined in the CAO Policy as "[a]ny material adverse environmental and social effect on people or the environment resulting directly or indirectly from a Project or Sub-Project. Harm may be actual or reasonably likely to occur in the future" (p. iv).

⁵⁵ CAO Policy, para. 120c.

⁵⁶ CAO Policy, para. 116.

⁵⁷ CAO Policy, para 114.

⁵⁸ CAO, October 21, 2019, Terms of Reference for Compliance Investigation of IFC, Bridge International Academies, Annex. Available here: https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAppraisalReport_BridgeInternationalAcademies_English.pdf.

CAO's investigation did not consider aspects of the complaint that fell outside the scope of CAO's E&S mandate, including the quality of teaching or the curriculum provided at Bridge academies.

As in all CAO compliance investigations, the scope of the investigation included developing an understanding of the immediate and underlying causes of any non-compliance identified.

The CAO investigation team reviewed relevant IFC documentation of the investment and interviewed IFC staff with direct knowledge of and responsibilities for the project. In addition, the team conducted interviews with complainants, Bridge management and staff, and relevant Kenyan government representatives. In February 2020, CAO staff conducted a field visit to Kenya, which included visits to eight Bridge schools. CAO also met with former Bridge teachers and current and former parents of Bridge students as well as current and former Bridge pupils. To inform its investigation, CAO engaged external consultants with expertise in international labor and working conditions as well as in the structure, design, and construction of low-cost schools in informal settlements and rural areas.

2.2. Access to Information and Disclosure

According to CAO Policy, and consistent with the IFC and WBG institutional mandates, in carrying out its work, CAO will apply a presumption in favor of disclosure of environmental and social information, and at the same time, maintain, as appropriate, the confidentiality of sensitive commercial information (para 27).

CAO is required to comply with the Access to Information Policies (AIPs) of IFC and MIGA. Accordingly, CAO may disclose information gathered during its activities, subject to the AIPs and other applicable requirements. Where IFC/MIGA have raised confidentiality concerns that remain unresolved after CAO has reviewed and addressed IFC/MIGA comments resulting from the factual review and comment process, these may be subject to an escalation procedure under para 28 of the CAO Policy. This stipulates that any issue of information access or disclosure should be discussed between the CAO Director General (DG) and Management with a view to resolution.

If the issue is not resolved, including whether any information is confidential and whether and how it can be disclosed or protected, the CAO Policy stipulates that "it will be referred for discussion among the IFC/MIGA General Counsel (in his/her institutional capacity), CODE Chair and Vice-Chair, CAO DG, and Management" (para 29).

In relation to this case, confidentiality requirements between IFC and Bridge were set forth in an Investor Rights Agreement (IRA) in 2013. In 2020, IFC and Bridge entered into a supplemental confidentiality agreement. This 2020 Letter Agreement refers to the AIP and prior agreements between the parties. However, it goes beyond the IRA by identifying four specific categories of documents and information that are to be treated as confidential and subject to the IRA's confidentiality obligations. Although negotiated and signed without CAO's engagement or consent, and before the current DG was appointed, the Letter Agreement explicitly states that each of these provisions applies to CAO.

The timing of the 2020 Letter Agreement created an appearance of seeking to chill CAO's investigation and raised questions as to how CAO could execute its mandate in light of the confidentiality agreement's provisions with respect to the disclosure of the Bridge-01 and Bridge-04 compliance investigations. CAO engaged an independent legal counsel to provide advice in understanding: i) the implications of the confidentiality agreements, together with the AIP, on CAO disclosure of the reports; and ii) options for disclosure to fulfill CAO's mandate for transparency and disclosure while respecting legitimate confidentiality interests. The legal counsel reported directly to CAO's Director General and also assisted CAO in developing a proposed methodology and supporting materials for the discussions undertaken under para. 28 & 29 of the CAO Policy. Although the 2020 Letter Agreement ultimately did not restrict CAO's ability to access information nor to conduct its investigation as intended, it did result in time delays and additional financial costs for CAO. From CAO's perspective, this

experience with the 2020 Letter Agreement raises key issues that need to be considered should any similar agreement ever be negotiated in the future. They include how to take into account the mandates and standards set in the CAO Policy, particularly as they relate to CAO independence, its transparency and disclosure mandates and standards, and the importance of consulting with CAO in advance.

3. Analysis and Findings: Evaluating IFC Oversight of Client Implementation of IFC Standards

This section sets out CAO's analysis and findings in relation to the issues raised in the Bridge-01 complaint and included in the terms of reference for the investigation. CAO's analysis focused on how IFC assured itself that the client's business activities were implemented in accordance with IFC's E&S standards and associated Kenyan laws and regulations, as follows:

- 3.1. IFC's Pre-Investment E&S Due Diligence
- 3.2. Kenyan Legal and Regulatory Compliance
- 3.3. Labor and Working Conditions
- 3.4. Student Safety and the School Environment

Each section summarizes the issues raised in the complaint, presents the relevant E&S requirements, analyzes IFC's actions, and sets out CAO's findings with respect to IFC compliance with relevant requirements.

3.1. IFC's Pre-Investment E&S Due Diligence

This section provides an overview of IFC's pre-investment environmental and social due diligence (ESDD) as relevant to the issues raised in the complaint. It includes information and analysis that is developed further in sections 3.2–3.4, which address IFC oversight during both ESDD and project supervision.

3.1.1. The Complaint

The concerns raised by the complainants relate to IFC's general responsibility to review the E&S risks and impacts of the businesses it supports and to consider a client's commitment and capacity to meet the Performance Standards requirements prior to investment. The complainants assert that Bridge is committing a range of "grave violations of the IFC's Performance Standards" that are "inherent to [Bridge's] operational model."⁵⁹ Their concerns center on Bridge's approach to identifying and managing E&S risk through its Environmental and Social Management System (ESMS).

3.1.2. IFC Requirements

Environmental and Social Due Diligence, Categorization, and Supervision

IFC's E&S Policy requirements are set out in its Sustainability Framework, which includes the Sustainability Policy, the IFC Performance Standards, and the Access to Information Policy. IFC also has Environmental and Social Review Procedures (ESRPs), which establish requirements for the effective implementation of its E&S policies.⁶⁰

The 2014 Bridge investment was made under IFC's 2012 Sustainability Framework, approved under the ESRP Manual version 7 (2013)⁶¹ and supervised under subsequent versions of the ESRP. CAO has analyzed IFC's performance against the requirements of the above framework.

Following the Sustainability Framework, IFC seeks to ensure through its due diligence, monitoring, and supervision efforts that the business activities it finances are implemented in accordance with the PS.⁶² The

⁵⁹ EACHRights, April 16, 2018, Submission of Complaint, p.1. Available here: <https://www.cao-ombudsman.org/sites/default/files/downloads/CAOComplaintEACHRights-16April18.pdf>.

⁶⁰ See, Sustainability Policy, paras. 45 and 47.

⁶¹ IFC, ESRP Manual Version 7, 2013. Available here: <https://www.ifc.org/content/dam/ifc/doc/2010/2016-esrp-manual.pdf>.

⁶² Sustainability Policy, para. 7.

Sustainability Policy requires that IFC undertake a process of E&S due diligence (ESDD) before deciding to finance a project,⁶³ which typically includes:

(i) reviewing all available information, records, and documentation related to the environmental and social risks and impacts of the business activity; (ii) conducting site inspections and interviews of client personnel and relevant stakeholders, where appropriate; (iii) analyzing the business activity's environmental and social performance in relation to the requirements of the Performance Standards and provisions of the World Bank Group Environmental, Health and Safety Guidelines or other internationally recognized sources, as appropriate; and (iv) identifying any gaps therewith, and corresponding additional measures and actions beyond those identified by the client's in-place management practices.⁶⁴

This E&S due diligence must be “appropriate to the nature and scale of the activity” and “commensurate to the level of environmental and social risks and/or impacts.”⁶⁵ As specified in the ESRP in effect at the time of project approval, IFC's E&S review also involves investigating the capacity, maturity, and reliability of the client's E&S corporate management system to effectively manage E&S performance, including current and future project compliance with the PS.⁶⁶ In addition, a central principle of the Sustainability Policy is that “IFC will only finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time.”⁶⁷

Once IFC makes an investment, the project moves into supervision. The objective of this phase, which lasts for the lifetime of the investment, is to “obtain information to assess the status of project's compliance with the PS and other specific E&S requirements agreed at commitment.”⁶⁸ During supervision, IFC is required to: (a) implement a regular program of supervision for business activities with E&S risks and/or impacts; (b) review implementation performance, as reported in the client's Annual Monitoring Report and updates on the Environmental and Social Action Plan; (c) work with the client to address changes in business activity circumstances that may result in altered or adverse environmental or social impacts; and (d) work with the client to bring it back into compliance to the extent feasible if the client fails to comply with its E&S commitments. If the client fails to reestablish compliance, IFC is required to “exercise remedies as appropriate.”⁶⁹

Risk Assessment and Management

The Sustainability Policy requires IFC to review the client's existing Environmental and Social Management System (ESMS) and risk management practices, as well as the project-related E&S assessment and community engagement undertaken by the client and/or any third party before IFC's consideration of the investment.⁷⁰ Performance Standard 1 requires the IFC client to conduct an E&S assessment and maintain an ESMS appropriate to the nature and scale of the project and commensurate with the level of E&S. PS1 states that the client's ESMS should incorporate: (a) a policy; (b) the identification of risks and impacts following good international industry practice;⁷¹ (c) management programs for risks and impacts; (d) organizational capacity and competency to manage risks and impacts; (e) emergency preparedness and response; (f) stakeholder engagement; and (g) monitoring and review.⁷²

⁶³ Sustainability Policy, para. 20.

⁶⁴ Sustainability Policy, para 28.

⁶⁵ Sustainability Policy, para. 26.

⁶⁶ IFC, ESRP Version 7, 2013, ESRP 3, Direct Investments: Appraisal, 2.1.

⁶⁷ Sustainability Policy, para. 22.

⁶⁸ IFC, ESRP Manual Version 7, 2013 and IFC, ESRP Manual 2016, para. 6.1. Available here: <https://www.ifc.org/content/dam/ifc/doc/2010/2016-esrp-manual.pdf>.

⁶⁹ Sustainability Policy, para. 45.

⁷⁰ Sustainability Policy para. 27

⁷¹ “Defined as the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally.” (PS1, Fn.10).

⁷² PS1, paras. 1, 5, and 7.

3.1.3. Overview of IFC's Environmental and Social Due Diligence

A review of project documents and information gathered through interviews with IFC staff indicates that, during its pre-investment E&S due diligence, IFC considered that Bridge's business did not involve significant levels of E&S risk. As reported by IFC, the absence of risks and impacts pertaining to land acquisition and involuntary resettlement (relevant to PS5), and to biodiversity (relevant to PS6), were the main reasons why the transaction was categorized B and deemed to be a project with limited, reversible, and readily mitigated E&S risks and impacts.⁷³

IFC did consider four Performance Standards applicable to the potential investment: PS1 on Assessment and Management of Environmental and Social Risks and Impacts; PS2 on Labor and Working Conditions; PS3 on Resource Efficiency and Pollution Prevention; and PS4 on Community Health, Safety and Security.⁷⁴

The main E&S issues identified by IFC under PS1 were limited to occupational health and safety during construction, life and fire safety, and several broad operational matters, such as human resources and design of schools.⁷⁵ Specifically, IFC's ESRS stated that Bridge had:

"implemented a number of environmental and social policies, procedures and plans to ensure compliance with national legislative requirements and IFC's Performance Standards in relation to specific environmental and social issues (e.g., Life and Fire Safety management, occupational health and safety during construction, human resources management, recruitment, designing for health and welfare of teachers and learners etc.)"⁷⁶

The ESRS further stated that Bridge had conducted an EIA for every school built and that the company's auditing and monitoring function ensured appropriate implementation of its E&S procedures and plans. In addition, IFC noted that Bridge was in the process of developing a group-wide ESMS.

Under PS2, IFC identified gaps in Bridge's provision of a grievance mechanism for staff and the need to develop an occupational health and safety (OHS) plan tailored to national requirements. Other than these issues, IFC concluded that Bridge's operations were compliant with PS2.

In its due diligence review of risks and impacts under PS3, IFC stated that the "provision of water, solid and liquid waste management, and stormwater management [were] issues requiring attention."⁷⁷ IFC also noted the need to "ensure [that] potable water provided at the schools [was] of an adequate quality" and require that Bridge develop a water quality monitoring program for all schools, in line with the World Health Organization's Water, Sanitation, and Hygiene Standards for Schools in Low-cost Settings.⁷⁸ This requirement was included in the E&S Action Plan (ESAP) agreed between IFC and Bridge, with an expected completion date of June 31, 2014.⁷⁹

For PS4, the key issues IFC identified were ensuring the structural integrity of schools and ensuring food hygiene was appropriate for all children attending Bridge academies. In the ESRS, IFC notes that "[a]ccording to [Bridge] management, all buildings [were] designed by a team of architects and submitted for approval to the relevant authorities", and therefore complied with Kenyan Building Codes and Regulations, which ensured their safety.⁸⁰ The ESRS also stated that "[a]ccording to [Bridge] management, no issues with food provision ha[d] arisen to

⁷³ IFC, October 30, 2013, ESRS, Environmental and Social Categorization and Rationale. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

⁷⁴ IFC, October 30, 2013, ESRS, Identified Applicable Performance Standards. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ IFC, October 30, 2013, ESRS, Environmental and Social Mitigation Measures, PS3. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

⁷⁸ Idem.

⁷⁹ IFC, October 30, 2013, ESRS, Environmental and Social Action Plan. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

⁸⁰ IFC, October 30, 2013, ESRS, Environmental and Social Mitigation Measures, PS4. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

date.”⁸¹ The project ESAP included IFC requirements that Bridge develop and implement an audit function to undertake ongoing reviews of the structural integrity of schools and a system to spot-check food hygiene through random sampling, with an expected completion date of June 31, 2014.⁸²

In relation to the client’s stakeholder engagement, IFC concluded that Bridge had strong mechanisms and procedures for community engagement built into their business model and operational strategy. For example, IFC highlighted a community engagement process that entailed extensive household surveys in and around potential neighborhoods to determine the suitability of the neighborhood and interest of the local population.

3.1.4. CAO Observations and Findings

IFC viewed the investment in Bridge as an opportunity to enhance access to quality education in low-income areas of developing countries, improve the quality of primary education in Kenya and other countries, support innovations in the education sector, and create jobs, among other benefits.⁸³ According to IFC, Bridge offered an innovative and scalable business model that aligned well with IFC’s investment strategy in the education sector.

IFC expected Bridge to scale up exponentially during its investment (see Background section), and the anticipation of rapid growth was central to IFC’s business and development impact case for investing in Bridge.

Undertaken within this context, IFC’s approach to E&S due diligence was limited and, CAO finds, fell short of meeting its requirements under the Sustainability Policy in two important ways.

(a) IFC did not meet the Sustainability Policy requirement to conduct an E&S due diligence review that was “appropriate to the nature and scale of the activity” and “commensurate to the level of environmental and social risks and/or impacts.”⁸⁴

The Bridge business model involved significant E&S risks arising from several factors. These included: its target market of poor and often vulnerable families and their children; its growth ambitions, which required rapid scaling up of school construction and staffing in multiple locations across several countries; country-level challenges with provision of sanitation, potable water, solid waste management; complex regulatory E&S compliance challenges associated with low-fee private schools; and inherent child protection and student health and safety risks associated with school operations.⁸⁵

Despite this constellation of risk factors at the time of IFC’s project due diligence, CAO notes that IFC’s client had not conducted a systematic assessment of the E&S risks and impacts of its business, except for EIAs required under Kenyan law for individual construction of schools. Despite this absence of information, IFC did not require its client to prepare a comprehensive E&S assessment⁸⁶ of the overall risks and impacts of its business activities in accordance with PS1. This omission was especially significant given the scale of the activities financed by the investment and the expected exponential growth in the number of schools. Without

⁸¹ Idem.

⁸² IFC, October 30, 2013, ESRS, Environmental and Social Action Plan. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

⁸³ IFC, October 30, 2013, SII, Anticipated Impact Measurement and AIMM Assessment. Available here: <https://disclosures.ifc.org/project-detail/SII/32171/bridge-international-academies>.

⁸⁴ Sustainability Policy, para. 26.

⁸⁵ See, for example, IFC, October 30, 2013, ESRS, Environmental and Social Mitigation Measures. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

⁸⁶ A more comprehensive assessment for an investment that includes the construction and operation of numerous schools, would typically include an overview of key impacts and risks and relevant mitigation measures as well as a framework for identifying, assessing, and addressing E&S issues specific to individual sites. Key impacts and risks for programs aimed at building and operating schools to be examined are wide ranging and include for example, disaster resilience, climate adaptation, water and sanitation, school safety, debris and solid waste management, wastewater discharge facilities, occupational health and safety, proper lighting and ventilation, fireproofing, grievance mechanisms, and labor. A comprehensive assessment would also examine and identify a proposed overarching set of E&S performance objectives/policy mitigation measures, environmental monitoring and reporting requirements, institutional or organizational arrangements, implementation schedule, indicative budget, capacity development and training measures, and performance indicators to guide school level construction and operation.

reviewing an assessment of the E&S risks and impacts of the business activities it was to finance, IFC could not adequately meet requirements under the Sustainability Policy.⁸⁷

At the time, Bridge operated 211 schools in Kenya and was planning to increase the number of schools significantly, yet IFC reported reviewing just one sample of an EIA. This contrasts with IFC's in-depth market analysis of the potential investment, which discusses at length key market risks and mitigation measures, including cross-border expansion, regulatory issues, inability to get sufficient students, and management bandwidth.

IFC focused its due diligence analysis on documentation from Bridge related to plans and procedures to address various E&S risks and impacts during the construction and operation of schools. This information included: life, fire, and safety plans; an occupational, safety and health plan; a summary of Bridge's community relations systems; a facilities and maintenance guide; latrine design and construction documentation; lunch provider management procedures; a market research and site selection overview presentation; a real estate acquisition process presentation; various construction plans; photographs of typical Bridge Academies; and an EIA related to the construction of one proposed school in Kenya.⁸⁸ IFC also analyzed two employee handbooks to assess labor- and employment-related risks and impacts under PS2.⁸⁹

Under IFC E&S policy requirements, this information was not a substitute for a comprehensive analysis of the project's key E&S impacts and risks and the client's plans and processes to manage them.⁹⁰ In addition, due diligence documentation shows that IFC did not review the adequacy of some of the plans listed above for achieving the outcomes required in relevant Performance Standards. For example, employee handbooks were not assessed against Kenyan law requirements on working conditions; the Bridge life, fire, and safety plan was only partially evaluated against IFC's EHS Guidelines, and Bridge siting, design criteria, and construction standards were not checked against Kenya's construction code and relevant GIIP.

IFC due diligence documentation mentions that Bridge did not have an ESMS at the time.⁹¹ Under PS1, an ESMS is considered a crucial element of client capacity to manage E&S risks and impacts, defined as a "dynamic and continuous process initiated and supported by management, and involves engagement between the client, its workers, local communities directly affected by the project...and, where appropriate, other stakeholders."⁹² A good ESMS is "appropriate to the nature and scale of the project, promotes sound and sustainable environmental and social performance, and can lead to improved financial, social, and environmental outcome."⁹³

In the absence of an ESMS, IFC noted that Bridge maintained an audit/quality control function that made regular school visits to ensure implementation of company plans and procedures. However, IFC did not review any of these audit/quality control protocols or any results of the audit function in identifying and addressing E&S risks and impacts. The client's commitment to develop an ESMS by June 31, 2014, was included in the project E&S

⁸⁷ Sustainability Policy, para 7 states that "While managing environmental and social risks and impacts in a manner consistent with the Performance Standards is the responsibility of the client, 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. As a result, the outcome of IFC's environmental and social due diligence of a proposed business activity is an important factor in its approval process, and will determine the scope of the environmental and social conditions of IFC financing."

⁸⁸ IFC, October 30, 2013, ESRS, Overview of IFC's Scope of Review. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

⁸⁹ Ibid, PS 2: Labor and Working Conditions.

⁹⁰ Para 27 of the Sustainability Policy requires that IFC "... review the ESMS and risk management practices already in place, as well as the environmental and social assessment and community engagement undertaken by the client and/or any third party before IFC's consideration of the investment." IFC's ESRP Manual Version 7, establishes that the project is not ready for disclosure until there is enough information to understand the key risks and impacts and enough information for IFC decision makers to feel comfortable that these key risks and impacts are manageable/or acceptable. (para 2.3). Para 2.4 requires that for category A and B projects that the draft ESRS summarize the review and assessment of the E&S impacts associated with the project and how they are or will be mitigated by the project.

⁹¹ The ESRS mentions that "Bridge is in the process of developing a group wide Environmental and Social Management System (ESMS)." See, IFC, October 30, 2013, ESRS, PS1. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>

⁹² PS1, para. 1.

⁹³ Ibid.

Action Plan at the time of the investment's approval by the IFC Board.⁹⁴ Completion of the ESMS was subsequently delayed and IFC updated ESAP action timelines in November 2016, setting a March 2017 deadline for finalizing the ESMS.

Similarly, IFC's ESDD documentation lacks a systematic analysis of Bridge's capacity to manage E&S issues, or what capacity would be needed as Bridge moved to scale up rapidly in Kenya and elsewhere.⁹⁵ There is no evidence that IFC assessed the adequacy of the existing allocation of roles and responsibilities in managing E&S issues related to school construction and operation. Nor is there any indication that IFC assessed client performance in executing these roles and responsibilities.

Additionally, ESDD documentation lacks details on Bridge processes for continuous engagement between the client and stakeholders as required by the Performance Standards. IFC's due diligence analysis of its client's stakeholder engagement processes refers almost exclusively to the process undertaken by the Bridge market team prior to establishing a new academy. This process entails extensive household surveys but these are not conducted to identify the "adverse environmental and social impacts to Affected Communities" nor are they "tailored to the characteristics and interests of the Affected Communities."⁹⁶ These surveys also do not incorporate any measures to ensure the "effective participation of those identified as disadvantaged or vulnerable," as required by PS1.⁹⁷ Moreover, there is no analysis in the ESRS or in any other related document of how the client's measures will be implemented to meet relevant PS1 requirements regarding stakeholder engagement.

Overall, IFC's ESRS for the project, which was submitted to the IFC Board to support project approval, was lacking in two key areas. First, it lacked sufficient information to assess the "capacity, maturity and reliability of the client's E&S corporate management system". Second, it failed to assess "the E&S performance of a representative set of past and prospective identified projects as to measure of management effectiveness."⁹⁸

In summary, IFC's limited document review provided an insufficient basis to establish the project's key impacts and risks. These shortcomings were compounded by IFC's failure to conduct site visits and led to significant gaps in its understanding of the E&S risks and impacts associated with Bridge's business model and the client's capacity to manage them.

The Sustainability Policy states that IFC ESDD should typically involve conducting site inspections.⁹⁹ IFC's ESRPs reinforce this expectation, stating that "in most cases new projects require an appraisal mission" with exceptions for "repeat investments" and those involving "well-known asset/project or projects with a very limited footprint."¹⁰⁰ Yet, IFC E&S staff made no site visits to Bridge schools during the due diligence phase. Bridge had been in business for four years at the time and operated 211 schools in Kenya. Considering the client's plans for expansion and the E&S risks and impacts associated with the business model, ESDD should have involved site visits to verify the adequacy and effective implementation of the plans and procedures that IFC reviewed. This could have been accomplished through visits to a sample of schools. Without such visits, IFC had limited insight into the conditions at Bridge facilities, the communities in which they were operating, and associated E&S risks.

⁹⁴ IFC, October 30, 2013, ESRS, Environmental & Social Action Plan. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>

⁹⁵ Typically, an ESMS for an educational program that involved the construction and operation of schools would include elements such as framework for undertaking E&S screening and assessment, proposed E&S performance objectives, mitigation measures, environmental monitoring and reporting requirements, institutional or organizational arrangements, implementation schedule, indicative budget, capacity development and training measures, and performance indicators.

⁹⁶ PS1, paras. 26 and 27.

⁹⁷ Ibid, para. 27.

⁹⁸ ESRP Manual Version 7, 2013, 3 Direct Investment: Appraisal, para. 2.1. The Sustainability Policy requires IFC to review "all available information, records, and documentation related to the environmental and social risks and impacts of the business activity" Sustainability Policy, para. 28.

⁹⁹ Sustainability Policy, para. 28.

¹⁰⁰ ESRP Manual Version 7, 2013, 3 Direct Investment: Appraisal, para. 2.2.1.

(b) IFC did not meet the Sustainability Policy requirement that its E&S due diligence provide reasonable assurance that the project could “meet the requirements of the Performance Standards within a reasonable period of time.”¹⁰¹

The Sustainability Policy directs IFC to analyze the business activity’s E&S performance against IFC’s E&S requirements and identify “any gaps therewith.”¹⁰² In addition, the ESRPs state that IFC will identify “any performance gaps associated with each of the applicable PS” and identify actions necessary to mitigate those gaps.¹⁰³

For the Bridge project, IFC’s due diligence resulted in an ESAP with the client that addressed some identified gaps in Bridge’s E&S performance. However, the due diligence process did not include a structured gap analysis of Bridge’s E&S performance against the requirements of the Performance Standards, Kenyan law, and relevant good international industry practice (Sustainability Policy, para. 28 (iv)). The lack of a complete and systematic assessment of its client’s plans, procedures, and implementation capacity related to E&S risk and impact assessment and managements—including those related to student health and safety, solid waste management, water and sanitation, labor, and regulatory compliance— resulted in an ESAP that did not address all relevant risks and gaps. For example, the ESAP did not address inconsistencies between IFC’s EHS Guidelines and the client’s life, fire, and safety plan and employment conditions at its schools. These gaps, and the consequences, are discussed in the sections that follow.

In the absence of the required E&S due diligence, CAO finds that IFC was not in a position to conclude that Bridge could “meet the requirements of the Performance Standards within a reasonable period of time,”¹⁰⁴ which is the threshold requirement for an IFC investment. IFC’s due diligence process was therefore non-compliant with the Sustainability Policy (para. 22).

3.2. Kenyan Legal and Regulatory Compliance

This section responds to the concerns expressed by current and former teachers and parents regarding Bridge’s compliance with national law in Kenya as relevant to the E&S risks and impacts of its business. Below, CAO considers IFC’s ESDD and supervision of the project’s compliance with Kenyan regulatory requirements for teacher registration and other legal requirements for school registration in Kenya as they relate to applicable PS requirements.

3.2.1. The Complaint

In relation to school registration, the complainants state that the majority of Bridge schools are not registered in accordance with the Basic Education Act (2013) and argue that unregistered schools are not permitted to operate under Kenyan law. According to the complaint, Bridge unsuccessfully tried to register its schools under the APBET Guidelines introduced in September 2015, and subsequently failed to comply with government directions to instead register its academies as private schools.

The complainants also argue that the client’s business model, which involves using non-qualified teachers, is inconsistent with Kenyan law. They claim that the client has not met APBET requirements for progressive certification and registration of teachers with Kenya’s Teachers Service Commission.

In addition to regulatory compliance issues, the complainants raise concern about the quality of education provided in Bridge schools. However, as set out in CAO’s compliance appraisal, issues related to the quality of Bridge’s curriculum and instruction are beyond the scope of CAO’s mandate, which is limited to E&S issues. As a result, this investigation expresses no view on those topics.

¹⁰¹ Sustainability Policy, para. 22.

¹⁰² Sustainability Policy, para. 28.

¹⁰³ ESRP Manual Version 7, 2013, 3 Direct Investment: Appraisal, para. 2.3.

¹⁰⁴ Sustainability Policy, para. 22.

3.2.2. Relevant Requirements

IFC's Performance Standards specify that clients "must comply with applicable national law."¹⁰⁵ The Guidance Note to PS1 elaborates on these requirements, stating that the client's management programs should include E&S Action Plans that focus on measures and actions necessary for the client to comply with applicable national laws and regulations as well as the PS requirements.¹⁰⁶ The client is also required to "establish procedures to monitor and measure the effectiveness of [its E&S] management program, as well as compliance with any related legal and/or contractual obligations and regulatory requirements."¹⁰⁷

The key legal requirements addressed in this section are found in Kenya's Basic Education Act (2013)¹⁰⁸ and associated regulations,¹⁰⁹ which include provisions on E&S issues such as child safeguarding, health and safety standards, and anti-discrimination. The Act requires that a person or organization intending to establish a school in Kenya "shall make an application in the prescribed manner to the relevant County Education Board," and "shall not offer basic education in Kenya unless the person is accredited and registered as provided for under this Act."¹¹⁰ It includes the following provisions relevant to IFC Performance Standards:

- Registration requirements for institutions of basic education and training, including that premises and accommodations are "suitable regarding the number, age, gender, and security of the learners" and "conform to the prescribed requirements of the occupational health and safety regulations" and that the "institution has sufficient number of registered teachers and non-teaching staff."¹¹¹ Under these requirements, schools must comply with sectoral regulations in areas such as building design safety, occupational health and safety, and accessibility requirements for disabled students (relevant to PS1, paras. 7 and 12, and PS4, paras. 5 and 6). Additionally, the requirement to have registered teachers in sufficient numbers contributes to the minimization of health, safety, and security risks to children. Registered teachers in Kenya not only receive professional training on how to safely work with children but also must provide a certificate of good conduct and a medical form, with convicted sex offenders barred from registration (relevant to PS4, para. 1).¹¹²
- Authorizations for the cabinet secretary to issue regulations that "prescribe minimum standards for the health and safety of pupils."¹¹³ Kenya's Ministry of Education (MoE) has the legal authority to regulate pupil health and safety, topics which are relevant to PS1 and PS4. As described in the school environment section of this report, the MoE's 2008 "Safety Standards Manual for Schools in Kenya" sets several specific standards on safety applicable to all schools in Kenya, according to the 2013 Basic Education Act.¹¹⁴
- Requirements to establish parent associations to "discuss and recommend measures for the welfare of staff and pupils," which is aligned with PS1 provisions on stakeholder engagement (para. 25).¹¹⁵

In addition to these legal requirements, the registration process ensures that schools undergo relevant inspections before their operation is authorized by the MoE. Prior to registration, schools must be inspected by

¹⁰⁵ IFC Performance Standards 2012, Overview, para. 5. See also PS1, paras. 6 and 15.

¹⁰⁶ Guidance Note 1, 2012, GN69.

¹⁰⁷ PS1, para. 22.

¹⁰⁸ 2013 Basic Education Act. Available here: <http://ilo.org/dyn/natlex/docs/ELECTRONIC/94495/117651/F-1505056566/KEN94495.pdf>.

¹⁰⁹ 2015 Basic Education Regulations. Available here: http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/39-BasicEducationRegulations_2015.pdf.

¹¹⁰ See sections 76 (1) and (2) of the 2013 Basic Education Act.

¹¹¹ See, sections 82 (2) (a), (c) and (d) of the 2013 Basic Education Act, and the 2015 Basic Education Regulations, paras. 3 and 4.

¹¹² Teachers Registration and Recruitment Requirements. Available here: <https://www.tsc.go.ke/index.php/services/teacher-registration/registration>. See, also, 2015 Teachers Service Commission Code of Regulations, section 20. Available here: http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/196-Teachers_Service_Commission_Regulations_2015.pdf, and TSC Circular, 3/2010. Available here: <https://www.tsc.go.ke/index.php/downloads-b/file/22-circular-on-protection-of-pupils-students-from-sexual-abuse-2010>.

¹¹³ 2013 Basic Education Act, section 95 (3) (c). Specific health and safety provisions are provided in the 2015 Basic Education Regulations, para. 50.

¹¹⁴ Ministry of Education, 2008, Safety Standards Manual for School in Kenya. Available here: http://cwsglobal.org/wp-content/uploads/2017/01/CWS-SSZ-Schools-Manual_Kenya.pdf.

¹¹⁵ 2013 Basic Education Act, Third Schedule, section 2 (6) (h).

quality assurance and standard officers (who supervise curriculum and learning standards) and by public health officers (overseeing health and safety standards), and must comply with basic physical facility requirements.¹¹⁶

At the time of project approval, the Basic Education Act requirements were applicable to all private schools operating in Kenya. A policy was in place for the Alternative Provision of Basic Education and Training institutions, which applied to informal schools, but registration guidelines for these institutions were still not approved. Only in March 2016 were the APBET registration guidelines formally launched and an alternative framework for school registration made available. As explained in the following sections, these guidelines similar to the Basic Education Act, included E&S requirements relevant to PS1 and PS4.

3.2.3. E&S Due Diligence

IFC was aware of regulatory issues affecting the registration of Bridge schools in Kenya from the outset of its ESDD process. From April 2013, IFC began to clarify with Bridge and relevant government bodies whether the schools held relevant licenses. Due diligence documentation from July 2013 noted that the client was registered as a business and test center, and legally allowed to operate academies in Kenya if it met local business and safety requirements, which Bridge asserted that it did. The same documentation explicitly mentioned that that Bridge academies were not registered as schools but were legally allowed to operate. IFC also noted that Bridge had received encouraging signals from the government, which was considering tailoring laws to accommodate small, informal schools. The same month, IFC moved forward with due diligence while noting that significant regulatory risks remained and needed more detailed evaluation.

Over the following months, IFC recorded additional details about the client's regulatory and licensing status in Kenya. IFC due diligence from July 2013 recorded only that Bridge was registered as a test center and was thus allowed to administer government examinations, though this assertion was contradicted by later project documents. In the same document, IFC noted that Bridge academies were not registered as schools but concluded that Bridge was legally allowed to operate in Kenya if the company's operations met local business and safety requirements. Documentation from October 2013 highlights regulatory risks regarding Bridge's use of non-certified and unregistered teachers, and acknowledged that the prospective client did not meet existing requirements for operating schools under Kenyan law. IFC noted that Bridge was building partnerships at the time with other development financiers such as the Overseas Private Investment Corporation, the UK Department of International Development, and the World Bank Group, which might address regulatory risks. The documentation also highlighted Kenyan government support for Bridge's model while at the same time acknowledging residual regulatory risk given frequent shifts in government priorities. IFC noted that Bridge aimed to engage IFC and other development financiers to help accelerate the development of regulations that would allow for the registration of its schools. Recognizing that the use of non-certified and unregistered teachers and other school registration requirements could result in schools being closed, IFC began at this time to develop an action plan for regulatory issues Bridge might face in these areas.

During the investment review process, IFC was aware that the Ministry of Education had been developing policies for informal schools since 2005 and was also aware of current governing policies, including the Kenya Education Sector Support Plan (2005–2010), the MoE Policy for Alternative Provision of Basic Education and Training (2009, 2011), and the "New Education Act" (most likely a reference to the Basic Education Act 2013). IFC provided assurances that the client was in discussion with regulators for its model to be taken into consideration when the government passed regulations for the registration of informal private schools. During the due diligence phase, IFC met with a Kenyan government entity responsible for business registration and with the Kenya National Examinations Council, which registers examination centers. IFC noted during ESDD that these officials provided an account of the regulatory framework consistent with information shared by the client.

¹¹⁶ See, current guidelines on school registration in Kenya. Ministry of Education, December 20, 2022, Basic Standards Requirements for Registration. Available here: <https://www.education.go.ke/node/295>.

At this time, Kenya's Basic Education Act 2013 required registration for all private schools,¹¹⁷ building on the 1968 Education Act, which also had requirements for the registration of private schools.¹¹⁸ IFC did not assess its client's ability to comply with existing legal requirements linked to E&S issues or the implications for management of E&S issues of its client's current noncompliance with legal requirements. Instead, IFC anticipated that Bridge's role as a significant player in Kenya's education sector would lead the Kenyan government to design a school registration framework that would accommodate the Bridge business model.

By the time of IFC's public project disclosures in late October 2013, IFC's role in supporting the development of a new regulatory framework was presented as part of the project's positive development impact, and there was no discussion of key E&S compliance problems Bridge faced under the existing regulatory framework. IFC disclosures at the time flagged "regulatory assistance" as part of its "role and additionality," noting that "IFC together with World Bank can assist [Bridge] in understanding and navigating regulations and government policies in new markets."¹¹⁹

Compliance with the 2013 Basic Education Act's school registration requirements was not discussed in either the project ESRS or the Summary of Investment (SII). CAO has found no evidence that IFC's due diligence considered the E&S implications of regulatory issues in Kenya relating to registration of schools or teacher registration requirements. This would have been pertinent under the IFC's Sustainability Policy as Kenya's Basic Education Act (2013) addresses E&S issues relevant to PS1 and PS4, such as building design safety, occupational health and safety, and accessibility requirements for disabled students.

IFC's due diligence noted that its client had secured local municipal business permits or licenses for 116 of its 134 operational schools (a discrepancy from the 211 schools that previous documentation stated Bridge operated in 2013), with applications for the remaining 18 schools in process. However, CAO found no records to indicate that IFC made further enquiries at this time regarding the status of the client's school registration or teacher registration requirements under the Basic Education Act.

As a result, the bar that IFC set for Bridge regarding expectations to comply with regulations linked to E&S standards was lower than the Performance Standards requirement that clients "must comply with applicable national law."¹²⁰ IFC was of the view that commercially reasonable efforts by its client to comply with relevant regulations would be sufficient.

In its December 2013 description of the project to the Board, IFC put greater emphasis on the investment's contribution to helping the client navigate regulatory requirements in new markets and helping countries improve the regulatory environment for private informal schools than on the project's gaps with relevant legal requirements, in particular with the Basic Education Act 2013. Later in the same month, IFC was made aware that it is an offense under Kenyan Law to operate a school that has not undergone quality review and been approved in accordance with the Basic Education Act,¹²¹ IFC was also made aware that it is an offense for a person to teach at a K–12 school unless licensed the Teachers Service Commission.¹²² Although IFC was made aware that its client had not provided any documentation confirming registration of Bridge academies or licensing of its teachers, yet IFC did not follow up with Bridge about this missing documentation required for regulatory compliance with E&S requirements. The final ESAP for the project agreed by IFC and Bridge during due diligence contains only a general commitment that Bridge would, by June 2014, put in place "procedures to ensure ... compliance with regulatory requirements" in any country where it was developing schools. Other than supporting Bridge in seeking changes to the legal framework for the registration of nonformal private schools, IFC did not

¹¹⁷ 2013 Basic Education Act.

¹¹⁸ 1968 Education Act. Available here: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/28468/117650/F170493>.

¹¹⁹ IFC, SII, IFC's Role and Additionality. Available here: <https://disclosures.ifc.org/project-detail/SII/32171/bridge-international-academies>.

¹²⁰ IFC Performance Standards 2012, Overview, para. 5.

¹²¹ 2013 Basic Education Act, sections 78(2) and (3) provide for up to three years imprisonment for breaches of these requirements. See also section 50(1).

¹²² 2013 Basic Education Act, sections 78(1) and (3) provide for up to three years imprisonment for breaches of these requirements.

propose any measures to address Bridge's non-compliance with Kenyan education law related to E&S issues.¹²³ IFC proceeded with its first disbursement to Bridge in January 2014.

3.2.4. CAO Observations and Findings: Due Diligence

In summary, IFC was aware at the time of its investment that Bridge was not in compliance with requirements under Kenyan law regarding the registration of schools and teachers. The registration of schools and use of certified teachers were relevant to addressing E&S risks and impacts under PS1 and PS4.

IFC presented Bridge as a company using commercially reasonable efforts to comply with national regulations. However, IFC's due diligence did not explicitly address the client's noncompliance with the Basic Education Act (2013) requirements that applied to all private schools at the time, including E&S requirements. While the regulations applicable to schools was evolving, there were basic E&S registration requirements that were not met. IFC emphasized its client's progress on school registration only by accounting for Bridge's securing of local municipal business permits/licenses—a distinct and separate process from school registration.

This situation resulted in non-compliance by IFC with its Sustainability Policy requirements that had significant implications for the project.

Failure to consider compliance with relevant national law and its E&S implications: IFC did not consider compliance with Kenyan education law as an E&S issue even though the Basic Education Act contains relevant provisions on mitigation of E&S risks and IFC due diligence documentation flagged this as a probable gap in client's operations.¹²⁴ As a result, IFC's due diligence overlooked project compliance with PS1 and the potential E&S risks associated with Bridge's non-compliance with school registration requirements. The project E&S Action Plan did not include actions to address non-compliance with school registration.

As a result of these omissions, CAO finds that IFC's E&S due diligence was insufficient to generate an expectation that Bridge could meet the requirements of PS1 and PS4 within a reasonable period of time, which is the threshold requirement for an IFC investment. IFC was therefore non-compliant with the Sustainability Policy (para. 22).

¹²³ 2013 Basic Education Act, section 52 (1) (c) provides that private schools (such as Bridge) must follow the government approved curriculum. See also 2015 Basic Education Regulations, section 54 (1).

¹²⁴ The Basic Education Act requires that premises and accommodation are "suitable with regard to the number, age, gender, and security of the learners" and "conform to the prescribed requirements of the occupational health and safety regulations"; provide for the issuance of "minimum standards for the health and safety of pupils," and for the establishment of parents' associations to "discuss and recommend measures for the welfare of staff and pupils." (82 (c) and (d), 95(3)(c) and Third Schedule 2(6)(h)).

3.2.5. Supervision

The following events are relevant to CAO's analysis of IFC's supervision of its investment in Bridge Academies during 2014-2021:

- February 2014: IFC became aware that some Bridge academies were at risk of closing due to not being officially registered as schools.
- September 2014: IFC became aware that the Kenyan National Examinations Council would only certify schools as testing centers if they were registered with the national MoE under the Basic Education Act (2013). In parallel, IFC was made aware that its client was pursuing additional avenues to achieve registration.
- March 2016: Kenya's government launched the APBET school registration guidelines accommodating informal private schools in informal settlements. The guidelines included E&S requirements for a school's operation, covering similar areas of regulation to those in the Basic Education Act (2013).¹²⁵
- November 2016: IFC prepared to make an additional investment in Bridge while aware of Bridge's court case challenging the Busia County Board of Education's decision to close 12 of its schools (see box above).¹²⁶
- January 2017: IFC followed up with Bridge on E&S issues, including the ESAP commitment to put in place procedures to ensure compliance with regulatory requirements in its countries of operation by March 2017, an action originally due in June 2014.
- May 2018: IFC was made aware that its client had completed applications for registration under the APBET guidelines for all its Kenya schools during 2017.
- 2018: IFC's supervision noted that its client had developed procedures to meet host country legal requirements and thus had completed the relevant requirement in the 2014 ESAP. Supervision records noted that five public health inspections in Kenya had resulted in notices of Bridge school closures, but these had since been rescinded. There was no mention of the February 2017 court order to close ten Bridge schools in Busia.¹²⁷

Bridge school closures in Busia County

In 2014, the Busia County Education Board informed Bridge that its 12 academies in the county were "unlawfully operating," giving Bridge until the end of December to meet the requirements for registration, failing which the schools would need to close. In March 2016, the County Board ordered the closure of all Bridge academies in Busia due to non-compliance with registration requirements of the Basic Education Act. In April 2016, the Busia County Director of Education advised Bridge that its schools could register under APBET, noting that "[o]nce approved, the Academies are registered and can legally operate." Bridge filed for judicial review of the Busia County Education Board decision in July 2016 seeking to prevent the school closures. The High Court of Kenya at Busia issued its judgment in February 2017. The court found that two Bridge schools in Busia County could remain open as they were registered or had been recommended for registration. The court upheld the decision to close the remaining ten Bridge schools in the County, effective at the end of the school year. Public information confirms the schools were not closed by the authorities.

See [*Republic v The County Education Board & another Ex-parte Bridge International Academies Ltd.*](#)

¹²⁵ For example, these include: at least 30% of teachers should obtain relevant teacher training certificate, schools should provide adequate sanitation resources and facilities in line with the provision of Public Health, and schools should comply with guidelines on health and safety as per the School Safety Manual published by the MoE. Kenya Ministry of Education, September 2015, Registration Guidelines for Alternative Provision of Basic Education and Training (APBET), pp. 11 and 13. Available here:

https://mtaaninsight.files.wordpress.com/2017/06/alternative_provision_of_basic_education_and_training_apbet_option_2_cover.pdf.

¹²⁶ At the same time, Bridge reported regulatory action by the government of Uganda to close its 63 schools in that country. According to Bridge these closures were ordered because of an allegation that a maggot was found in a latrine at one Bridge school, however, according to the Government of Uganda the issue was Bridge's operation of unregistered schools. See, High Court of Uganda (Civil Division), March 18, 2018, Bridge v. Attorney General of Uganda. Available here:

<https://static1.squarespace.com/static/5a6e0958f6576ebde0e78c18/t/623da2681762a746d262e7ff/1648206447851/BIA+RULING+16.03.2018.pdf>. BIA's "conduct of coming to Uganda at pleasure, start[ing] schools all over the country without any registration with any conformity to relevant government department speaks to a high level of reckless disregard of national institutions set up to ensure qualitative education in the country." (para. 11) See also: Republic of Uganda, April 2020, Status of Bridge Academies in Uganda. Available here: https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Report_on_the_Status_of_Bridge_Schools_in_Uganda_2020_En.pdf. "A large majority of Bridge school continues to operate in disregard, not only to the law and policies guiding regulation of education provision in Uganda, but also to Ministry of Education express written notices to close those that are not licensed." (p.17).

¹²⁷ See above, "Bridge school closures in Busia County" section in textbox.

- 2018: CAO was informed that the MoE planned to review Bridge schools in order to register as private informal institutions those schools that met the Ministry's informal school registration criteria.
- September 2019: a wooden structure at an informal school in Nairobi not operated by Bridge collapsed, killing seven children and injuring 64 people.¹²⁸ Three days later, the MoE's principal secretary issued a circular stating:

"[i]t has been observed that some basic education institutions have been established without following due process. A number of institutions exist without registration certificates while others have failed to reapply for re-registration when their circumstances change. These institutions are therefore existing illegally. Most of those institutions do not meet the minimum standards required of them to be registered and some of them have infrastructure that are below standard and which pose danger to the learners."¹²⁹

The circular directed the closure of all schools that were not registered with the MoE, whose infrastructure standards had deteriorated and/or been altered since registration, and/or which employed teachers who had not been registered by the Teachers Service Commission.¹³⁰

- 2020: IFC noted that Bridge was generally in compliance with E&S host country requirements, except for challenges in the licensing of schools in Uganda and some areas in Kenya.
- May 2020: IFC was made aware that 44 of Bridge's 297 schools in Kenya received closure notifications during 2019, which were enforced at 26 schools. IFC also learned that 53 Bridge schools were registered (equivalent to 18 percent of its schools in Kenya at the time), while more than 70 schools still awaited registration. IFC's supervision noted concerns about the risks of continued non-registration of Bridge schools. IFC was aware Bridge still operated over 70 unregistered schools in Kenya and the potential risk that they may not continue to operate.
- August 2020: IFC supervision noted that 84 of 413 Bridge schools were formally registered at the end of 2019.
- 2021: IFC was made aware that schools continued to operate during the registration process in order to undergo public health and quality assurance inspections. IFC's supervision highlighted that three additional closure notifications were issued for Bridge schools, citing non-registration, but only one notice was enforced. Two other notices did not lead to school closures.
- 2021: The number of schools owned and operated by Bridge in Kenya dropped significantly from 413 in 2019 to 111 in 2021, serving close to 30,000 pupils. Of these 111 schools, 23 were reported registered at the beginning of the year, and nine remained registered at the end of the year. The others were reported to have temporary registrations that expired on December 31, 2021, and efforts were ongoing to renew and complete registrations for all schools.

CAO was informed during the course of this investigation that IFC did not view school registration as an E&S issue, and that Bridge's registration challenges were noted on the record for follow-up by the investment team. Although APBET guidelines and the Basic Education Act (2013) both included requirements related to E&S issues, CAO found no evidence that IFC followed up with its client to establish how the ongoing regulatory compliance issues would affect its client's E&S performance under PS1 and PS4.

3.2.6. CAO Observations and Findings: Supervision

As the timeline above demonstrates, compliance with Kenya's school registration requirements under both the Education Act and APBET guidelines remained a challenge throughout IFC's investment in Bridge. IFC placed

¹²⁸ BBC, September 23, 2019, "Kenya school collapse: Seven dead and dozens injured in Nairobi." Available here: <https://www.bbc.com/news/world-africa-49794067>.

¹²⁹ The text of the circular is provided in Kenya Alliance of Non-Formal Schools Welfare Association (Kanswa) v Principal Secretary, State Department of Early Learning and Basic Education, Judicial Review Miscellaneous application number 298 of 2019. Available here: <http://kenyalaw.org/caselaw/cases/view/190786> (para. 15).

¹³⁰ Ibid.

great weight on the registration guidelines for APBET as a route to regulatory compliance for its client. Yet, even after these guidelines were approved in 2016, most of Bridge's Kenyan schools remained unregistered.

Achieving registration was relevant to Bridge's compliance with PS1 and PS4, because the Kenyan legislation includes specific E&S-relevant requirements. CAO finds little evidence that IFC, during client supervision, followed up with Bridge to ensure the company was making sufficient progress in registering schools. For the first years of the investment, IFC did not receive required annual monitoring reports on time from its client, limiting its ability to effectively supervise Bridge's E&S performance. In 2019, five years after the client's ESAP commitment to put in place procedures to ensure compliance with regulatory requirements, only 53 Bridge schools were registered—equivalent to 18 percent of its schools in Kenya at the time. In 2021, the final year of IFC's investment, only 23 of the remaining 111 Bridge schools in Kenya were registered.

IFC was aware of this issue from the outset of its investment but made insufficient efforts to “work with the client to bring it back into compliance” as required by the Sustainability Policy (para. 45). As a result, IFC was non-compliant with its E&S requirements.

3.3 Labor and Working Conditions

This section considers whether IFC discharged its E&S due diligence and supervision duties in relation to Bridge's labor practices following the requirements of PS2 and Kenyan law as relevant to the E&S issues raised in the complaint.

3.3.1. The Complaint

The complainants, who include former Bridge teachers, raised concerns about working conditions, unpaid overtime, discipline, and dismissals at Bridge schools in Kenya operated by the IFC client. They also claim that teachers at Bridge schools fear losing their jobs or having salary payments reduced for issues such as failing to reach marketing targets or allowing children with outstanding fees to attend classes. The details of the complaint, brought to CAO in 2018, are summarized below.

Working conditions: The complainants allege that Bridge teachers are required to work longer hours than permitted under Kenyan law—56 hours a week, from Monday to Saturday, and up to 10 or 11 hours some days—and do not receive adequate breaks. Complainants shared start and finish times with CAO and times allowed for lunch and tea breaks. Teacher complainants said that during students' breaks they would grade written work, prepare for the next lesson, or supervise children. They also alleged that teachers do not have access to facilities such as staff rooms to take their breaks and meals.

Pay levels and deductions: The complainants raise concerns about low teacher salaries, saying they earn less than the minimum wage required by Kenyan law. They claim that Bridge teachers are not paid overtime and are teachers were allegedly docked salary for reasons such as allowing pupils who were behind on their fees to attend class, not meeting enrollment quotas, or technology glitches.

Discipline and dismissals: The complaint alleges that Bridge requires teachers to follow the lesson script on the teacher tablet, and teachers who do not complete the day's lessons face discipline. They also allege inappropriate dismissal procedures, including failing to provide reasons for dismissal, or opportunities to respond to allegations of misconduct, and failing to pay teachers a final salary.

Grievance mechanism: The complainants reported that efforts to raise employment-related grievances with Bridge were unsuccessful, and the company rejected attempts to raise collective worker concerns.

Outreach responsibilities: The complainants state that Bridge requires teachers to recruit new students and pressures or disciplines them if they do not meet enrollment targets. Teachers are allegedly encouraged by Bridge to inform prospective parents about scholarships that, according to the complaint, were not always available or sometimes withdrawn during the school year. In addition, some complainants told CAO that Bridge

included outreach responsibilities in teacher contracts and expected them to conduct outreach activities during their time off. Each teacher was allegedly given a personal recruitment target and could face disciplinary action and pay deductions for failing to meet targets, although they were not made aware of these responsibilities before beginning employment. One complainant described “threats” that a school would be closed, or teachers terminated, should the number of pupils not increase.¹³¹

Restraint of trade: The complainants expressed concerns about Bridge’s attempt to enforce restraint-of-trade or non-compete clauses, which prevent a former employee from engaging in similar commercial activity to Bridge’s operations. Bridge took this approach against a former employee in a legal action that was ultimately dismissed.

3.3.2. Relevant Requirements

Performance Standard 2 (Labor and Working Conditions) includes an overarching requirement for IFC clients to comply with applicable national labor law,¹³² which in Kenya is primarily the Employment Act (2007).¹³³

PS2 aims to promote fair treatment, non-discrimination, and equal opportunity for workers¹³⁴ and requires IFC clients to provide reasonable working conditions and terms of employment.¹³⁵ IFC may assess a client’s performance 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 the same trade, or in accordance with national law.¹³⁶

An IFC client is also required to provide a grievance response mechanism (GRM) that enables employees to raise workplace concerns. The company must inform workers of the grievance mechanism at the time of recruitment and make it easily accessible to them. In addition, clients must use an understandable and transparent process, allow for anonymous complaints,¹³⁷ and include protections against reprisals.¹³⁸

3.3.3. E&S Due Diligence

IFC identified labor and working conditions for staff as a key issue to be assessed in its pre-investment due diligence¹³⁹. However, as the review progressed, IFC presented Bridge’s employment potential as a positive development impact. In October 2013, IFC underscored the potential for Bridge’s business model to make transformative changes in the labor market through employment and training of previously unemployed young people. IFC’s publicly available Summary of Investment Information stated that the company aimed to create 57,000 teaching jobs by 2020.¹⁴⁰ At the time of IFC’s investment in 2014, Bridge had nearly 2,000 employees, including 1,500 teachers.

IFC’s E&S Review Summary (ESRS) for the project provides an overview of Bridge policies and procedures related to HR management and recruitment in Kenya as set out in “two employee handbooks, one for staff at Bridge headquarters, the other for staff working at the schools.”¹⁴¹ IFC noted that these handbooks had been “compiled to meet Kenyan legislative requirements and HR best practices.”¹⁴² The ESRS noted that the

¹³¹ EACRights, April 16, 2018, Submission of Complaint. Available here:

<https://www.caombudsman.org/sites/default/files/downloads/CAOComplaintEACRights-16April18.pdf> (see, Compliant 2 statement in p. 14).

¹³² Performance Standards Overview, para. 5, and PS2, para. 8.

¹³³ 2007 Employment Act, (Kenya). Available here: <https://www.ilo.org/dyn/travail/docs/506/Employment%20Act%202007.pdf>.

¹³⁴ PS2, Objectives.

¹³⁵ PS2, para. 10.

¹³⁶ PS2, para. 10, fn. 6.

¹³⁷ PS2, para. 20.

¹³⁸ PS2 Guidance Note 2, Annex D.

¹³⁹ IFC, October 30, 2013, ESRS, Environmental and Social Mitigation Measures. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

¹⁴⁰ IFC, October 30, 2013, SII, Anticipated Impact Measurement & AIMM Assessment. Available here: <https://disclosures.ifc.org/project-detail/SII/32171/bridge-international-academies>.

¹⁴¹ IFC, October 30, 2013, ESRS, Environmental and Social Mitigation Measures. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

¹⁴² The ESRS notes that the employee handbook describes various offenses and associated disciplinary procedures. Ibid.

employee handbook describes various offenses and associated disciplinary procedures. IFC also identified two PS2-related compliance gaps that were subsequently reflected in the E&S Action Plan agreed with Bridge. These were: (a) the need to develop a specific grievance mechanism for staff, and (b) the need to develop an occupational health and safety (OHS) plan tailored to national requirements. Other than these gaps, IFC concluded that Bridge's operations were compliant with PS2.¹⁴³

In investigating the labor concerns raised in the complaint, CAO identified the following areas of Bridge's performance related to PS2 compliance that IFC should have considered during ESDD:

- **Working hours:** Kenyan law provides for a maximum normal working week of 52 hours, spanning six days, with overtime payable for additional hours.¹⁴⁴ Bridge's policies provide for a six-day work week with up to 60 normal working hours, although this is not well defined as breaks and starting/finishing times are not clearly established. The policies make no reference to overtime.
- **Wage deductions:** Kenyan law prescribes situations in which an employer may lawfully make deductions from a worker's wages.¹⁴⁵ Bridge's policies appear to allow unlawful deductions, for example when a device is stolen from an employee. Kenyan law allows for such deductions only when such loss or damage occurs due to "willful default of the employee."¹⁴⁶

CAO's investigation also confirmed the complainants' assertion that Bridge's employment contracts, which IFC reviewed during its due diligence, included broad non-compete and non-solicitation clauses. Such clauses can be included in employment contracts, particularly for employees who have access to sensitive information, trade secrets, or have close relationships with clients. However, including broad non-compete clauses as standard for all employment contracts raises questions regarding the PS2 requirement that clients provide "reasonable working conditions" that consider the practices of other employers in the same industry as well as national legal requirements.¹⁴⁷

Given these issues, the basis on which IFC concluded that Bridge's terms of employment were consistent with PS2 requirements is not clear.¹⁴⁸ IFC's due diligence documentation does not consider Bridge's compliance with national law as it relates to employment matters other than to note five outstanding cases of actual or threatened litigation from former employees involving allegations of unfair dismissal.

3.3.4. CAO Observations and Findings: ESDD

CAO concludes that IFC did not fully consider gaps with PS2 requirements. Considering the size of Bridge's workforce and its plans for expansion, CAO finds that IFC's limited review of Bridge's employment policies and practices did not meet the Sustainability Policy requirement of being "appropriate to the nature and scale of the activity" and "commensurate to the level of environmental and social risks and/or impacts."¹⁴⁹ As a result, IFC did not identify, or require Bridge to correct, apparent shortcomings in its human resources policies as a condition of investment. CAO therefore finds IFC non-compliant under the Sustainability Policy (para. 26).

¹⁴³ IFC, October 30, 2013, ESRS, Environmental and Social Action Plan. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

¹⁴⁴ Labour Institutions Act No. 12 of 2007, Regulation of Wages (General) Order, section 5(1). Available here: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/LabourInstitutionsAct_No.%2012of2007.pdf

¹⁴⁵ 2007 Employment Act, section 19.

¹⁴⁶ Ibid, section 19 (1) (b).

¹⁴⁷ PS2, para. 10. See also Kenya's Contracts in Restraint of Trade Act which provides for the courts to void a restraint of trade clause in an employment contract if it is deemed unreasonable or injurious to the public interest (section 2). Available here:

<http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2024>. At the same time CAO notes that Bridge's non-compete clauses have been upheld by the Kenyan courts in at least two cases. See, cases Civil Case 13 of 2015. High Court at Kisii. Bridge International Academies v Bonface Nyanumba Ombati [2015] eKLR. Available here: <http://kenyalaw.org/caselaw/cases/view/140159/>, and Civil Case 4 of 2016. High Court at Siaya. Bridge International Academies v Nelly Atieno Omondi & 5 others [2018] eKLR,. Available here: <http://kenyalaw.org/caselaw/cases/view/151237/>, indicating that Bridge's non-compete clauses were considered lawful in those specific situations.

¹⁴⁸ The employee handbooks while mentioned in the ESRS are not listed among the documents IFC reviewed as part of its E&S due diligence. See, IFC, October 30, 2013, ESRS, Overview of IFC's Scope of Review. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

¹⁴⁹ Sustainability Policy, para. 26.

3.3.5. Supervision

IFC supervision records contain no indication that IFC had concerns about the client's compliance with PS2 prior to 2018, when CAO received the complaint from current and former teachers and pupils. In March 2014, IFC learned that its client had drafted a formal grievance mechanism for staff as required by the project E&S Action Plan. However, CAO found no indication that IFC reviewed Bridge's grievance procedures or discussed them with its client at this stage. IFC made no further mention of this ESAP item until November 2016, when it was reported as complete.

Following receipt of the CAO complaint in 2018, IFC commissioned a focused analysis of Bridge's labor policies against the requirements of PS2. The review found that Bridge's policies were broadly in line with PS2 requirements while also identifying several material gaps and potential areas for follow up with the client, as follows:

- **Working hours and payment of overtime:** Bridge's policies and its compensatory time-off scheme were potentially out of compliance with national law on maximum normal working hours and the payment of overtime premiums for additional hours worked.
- **Pay deductions:** compliance of Bridge's policies on wage deductions with national law was unclear, especially when dealing with damaged or lost company assets. IFC's review also raised questions about the legality of using salary deductions for disciplinary purposes, as alleged by the complainants.
- **Grievance mechanisms:** Bridge's GRM did not provide for anonymous complaints—as required by PS2¹⁵⁰—and it was unclear if school employees had access to the mechanism.

IFC was made aware in March 2019 that its client had updated its Human Resources (HR) handbooks. CAO finds that they continued to include provisions on pay deductions for a variety of offenses, including tardiness and loss or damage to IT equipment, that appeared to breach of Kenyan law, as flagged in IFC's the PS2 gap analysis. It further found that they also set start and finish times for teachers but no breaks, and included provisions on teachers conducting outreach activities during school holidays, although these duties did not include recruitment of new students or enrollment targets. At this time, IFC was also made aware of Bridge's resolution of two grievances brought by school employees in Kenya, one about salary calculation and the second about a teacher's transfer to another school.

In September 2019, IFC proposed an assessment of how Bridge was implementing its updated HR policies in practice. IFC drafted terms of reference for an in-country analysis in Uganda and Kenya covering all PS2 requirements and identifying risks and issues as well as good labor practices. In addition to site visits, the proposed methodology included desk review, an employee survey and discussions with management, a representative sample of workers, and other relevant stakeholders including union representatives. In March 2020, IFC noted that they had reached an impasse with Bridge in relation to the employee survey's design. However, discussions resumed in July 2020, with the intention to hold the survey after schools reopened following the COVID pandemic. IFC emphasized that the survey and subsequent visits should be designed to enable teachers to raise issues in a secure and confidential setting.

In May 2020, IFC's supervision noted that its client grievance system included avenues for employees to raise concerns or complaints. These included anonymous reporting to an email address, and a link to a web form for making a confidential complaint. Employees were also accorded the right to be accompanied at a hearing when termination or summary dismissal is under consideration. Other improvements to the client's grievance policy noted by IFC included non-retaliation provisions, references to protected disclosures, such as crime, illegal action by the company, and danger to health and safety, and a commitment that employees making a protected disclosure in good faith would not be retaliated against for having made such a disclosure.

¹⁵⁰ PS2, para. 13 and Guidance Note G37.

However, CAO's own review indicates that language on deductions for loss or damage to IT assets and deductions from pay for a variety of offenses that may contradict Kenyan law continued to be present in Bridge policies. In terms of working hours, CAO identified that the 2019 update provides a daily total for break times for the first time.

The employee survey was finally carried out in November 2021 and included 1,380 responses from all relevant categories of Bridge staff (teachers, academy managers, and support staff) in Kenya, India, Liberia, Nigeria, the United Kingdom, and the United States. CAO's investigation found that it revealed three key employee concerns relevant to the issues raised by complainants: (a) a lack of awareness among Bridge staff of the process for dealing with worker grievances; (b) wages subject to unexpected deductions; and (c) requirements to work beyond scheduled hours. The issues raised correlate with Bridge's reporting of employee grievances and concerns to IFC through its supervision documentation.¹⁵¹

IFC records do not contain any other significant updates in relation to PS2 issues between November 2021 and IFC's exit in 2022.

3.3.6. CAO Observations and Findings: Supervision

IFC's project supervision between 2014 and 2017 did not consider Bridge's labor practices apart from the ESAP requirement to formalize an employee grievance mechanism. As already mentioned, IFC did not receive AMRs on time for the first years of the investment, which made E&S supervision difficult. From 2018, after current and former employees lodged the CAO complaint, IFC took steps to identify and address Bridge's compliance with PS2 requirements, as detailed above. While Bridge's HR policies and practices subsequently evolved, CAO finds that IFC's supervision of Bridge's PS2 compliance fell short in addressing the concerns outlined below.

Pay deductions. IFC took no action to address pay deductions in circumstances that still appear to contradict Kenyan law, including deductions for loss of or damage to Bridge IT equipment related to employee negligence or theft that may not be the employee's fault. CAO understands that such deductions would only be allowed under Kenyan employment law if such loss or damage occurs due to the "willful default" of an employee.¹⁵² Legality concerns also arise in relation to docking staff pay for lateness, allowed under Kenyan law only if an employee is absent without leave for a whole day.¹⁵³ In addition, making salary deductions associated with arrears of student fees, as described by the complainants and confirmed by CAO's investigation, may have been in breach of Kenyan employment law.¹⁵⁴ Despite IFC's knowledge of these matters, IFC did not require Bridge to adjust its employment rules to ensure they aligned with Kenyan law on pay deductions.

Working hours: Before 2018, IFC did not identify the potential noncompliance of Bridge's policies with national law on maximum normal working hours. Later during supervision, IFC did not verify that its client was putting into practice the normal working hours required under Kenyan law. In interviews with CAO, former Bridge teachers and academy managers stated that they were required to work during breaks, for example, by supervising

¹⁵¹ In addition to concerns/grievances related to salary payments, wage deductions and working hours, information made available to IFC includes a number of unfair termination complaints, which would not be expected in a survey of current workers.

¹⁵² 2007 Employment Act, section 19 (1) (b). Note: The concept of "willful default" generally implies intent or conscious disregard for one's obligations. This involves a higher level of culpability compared to negligence which involves a failure to take reasonable care. See *Jamlick Gichuhi Mwangi v Kenya Commercial Bank Ltd & another* [2016] eKLR in which the court describes willful violation as one that involves "knowingly and intentionally [committing] an act in conscious disregard for the rights of others." See also *Nelson Okumu Oduor v Mwaki Sacco* [2019] eKLR, in which the court found that it was an unfair labor practice to deduct the cost of lost employer property from the complainant's wages in "circumstances that were not clear" and in relation to which there had been no police investigation.

¹⁵³ 2007 Employment Act, section 19 (1) (c).

¹⁵⁴ Following the 2007 Employment Act, section 19 (1) (d) deductions for shortages of money are only allowed if this arises due to "negligence or dishonesty of the employee whose contract of service provides specifically for his being entrusted with the receipt, custody and payment of money." As CAO understands it, Bridge staff are not charged with receipt or custody of money as parents make payments exclusively through electronic transfers.

children or grading.¹⁵⁵ If, as it appears, Bridge required teachers to work during these "breaks," then this time would properly be considered working hours and teachers should have been remunerated in overtime pay.

Based on available information, CAO finds that IFC's supervision was insufficient to verify Bridge's compliance with PS2 in relation to these issues and therefore finds IFC non-compliant with PS2 (paras. 8 and 9).

Assessment of the other labor issues raised by the complainants would require field verification, analysis of payment records, review of dismissal cases and employee grievances, and consultation with a larger sample of Bridge employees. CAO concludes that IFC's active supervision of PS2 issues started too late in the project cycle, in 2018, and that the focused analysis was insufficient to verify client compliance with all the issues raised in the complaint. However, CAO is not able to reach substantive conclusions about the complainants' allegations regarding the lack of effectiveness of Bridge's grievance mechanism, its requirements for teachers to conduct outreach activities, or its disciplinary practices.

3.4. School Environment

This section assesses whether IFC discharged its pre-investment review and supervision duties in relation to issues of student safety and the physical learning environment at Bridge schools in Kenya. Reflecting the concerns raised in the complaint, this section considers student safety and the learning environment at Bridge schools arranged around the following specific issues:

- Building design safety;
- Water, sanitation, and food hygiene standards; and
- School ground safety and maintenance.

As evidenced below, CAO finds that IFC's ESDD of the health and safety of Bridge schools did not meet the requirement of being "commensurate with the level of environmental and social risks and/or impacts" (Sustainability Policy, para. 26). While IFC did take steps during project supervision to address school safety issues with Bridge, these were not commensurate to their nature and recurrence. IFC shortcomings contributed to a situation whereby Bridge students were exposed to dangerous and unhealthy learning environments, with over a hundred suffering potentially preventable injuries, including two fatalities that CAO considers preventable.¹⁵⁶

3.4.1. The Complaint

The complainants' wide-ranging concerns about student safety and the physical learning environment in Bridge schools focused on the construction and maintenance of school buildings, schoolyard safety, food hygiene, and sanitation.

The complaint states that some Bridge schools are situated in unsafe locations such as close to landfills, on land designated for dumping sites, or next to streams polluted with sewage that floods the schoolyards during rainy seasons. School grounds were also described as unsafe. Due to lack of secure fencing at some locations, the complainants cite examples of children wandering off from school and adult outsiders entering school grounds without permission. In other cases, the complainants claim Bridge school grounds were dangerous or unhygienic due to the presence of rubbish or other hazards.

¹⁵⁵ Bridge also acknowledges that teachers are asked to "monitor and supervise pupils on the playground" during break times. See, CAO Assessment Report, March 2019, p.13. Available here: https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAssessmentReport_Bridge-01_Kenya_March2019.pdf.

¹⁵⁶ One involved a student who was electrocuted after touching a live wire at school reportedly hanging from a neighboring building, and the other involved a student who left school during the day and then drowned—an incident Bridge attributed to teacher negligence. See, section 3.4.7 of this report.

The complainants also raise significant concerns about the design and construction of Bridge schools. Their allegations include “rickety” buildings that leaked and were easily damaged during storms, buildings that were poorly maintained, and insufficient, unsanitary toilet facilities. The complainants assert that, as a result, Bridge school facilities did not comply with the Kenyan Safety Standards Manual for Schools, including provisions for children with disabilities. They also allege that the poor design of Bridge schools resulted in environments that were too hot, cold, or dark for students to learn effectively, depending on weather conditions. In addition, they cited instances where they believed that children were getting sick from the food and water provided by Bridge schools.

3.4.2. Relevant Requirements

IFC was required to review and supervise Bridge’s approach to school safety to ensure client compliance with the Performance Standards (PS). Relevant standards include PS1 and PS4, as well as requirements for IFC clients to comply with the IFC’s EHS Guidelines, national law, and GIIP, each of which has aspects relevant to school safety, as described below.¹⁵⁷ Details of the relevant requirements are also discussed in the topic-specific subsections that follow.

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

PS1 requirements relevant to student safety and the physical learning environment include:

- The client will identify project risks and impacts consistent with GIIP, including application of environmental siting criteria, design criteria, and construction standards as relevant (para. 7).¹⁵⁸
- Where individuals or groups are identified as disadvantaged or vulnerable, the client will propose and implement differentiated measures so that adverse impacts do not affect these groups disproportionately and they are not disadvantaged in sharing development benefits and opportunities. This includes individuals who are physically or mentally disabled (para. 12).¹⁵⁹
- The extent of IFC monitoring should be commensurate with the project’s environmental and social risks and impacts and with compliance requirements (para. 22).

Performance Standard 4: Community Health, Safety, and Security

PS4 requirements relevant to student safety and the physical learning environment include:

- The client will evaluate project-related E&S risks and impacts during the investment lifecycle and will establish preventive and control measures consistent with GIIP (para. 5).
- The client will design, construct, operate, and decommission the structural elements or components of the project in accordance with GIIP, taking into consideration safety risks to third parties or affected communities (para. 6).
- Structural elements will be designed and constructed by competent professionals and certified or approved by competent authorities and professionals (para. 6).

¹⁵⁷ IFC requires projects to comply with national law and or IFC’s EHS Guidelines, whichever is more stringent (see, PS, Overview, paras. 5 and 7).

¹⁵⁸ When the project involves existing assets (such as Bridge’s existing schools), PS1 provides that environmental and/or social audits or risk/hazard assessments can be appropriate and sufficient to identify risks and impacts (para. 7).

¹⁵⁹ See, Fn. 18 in PS1 para 12, where examples of disadvantaged or vulnerable status categories and factors are listed, including “physical or mental disability.”

- In cases where members of the public will access new buildings and structures, the client will apply designs consistent with the principles of universal access (para. 6).¹⁶⁰
- Clients should 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 (para. 9).

EHS Guidelines

IFC's Environmental, Health, and Safety Guidelines are technical reference documents with general and industry-specific examples of good international industry practice.¹⁶¹ As such, they provide default minimum standards for IFC projects. If IFC determines that specific project circumstances justify less stringent measures, a full and detailed justification for any proposed alternatives is required as part of the site-specific environmental assessment. This justification should demonstrate that the choice to promote any alternative performance level protects human health and the environment.¹⁶²

National Law and Policy

Kenyan law and policy provide a range of requirements relevant to school safety, including the Basic Education Act (2013) and various policy and guidance documents, discussed in the relevant sections below.

Good International Industry Practice

As noted above, PS4 requires a client to meet GIIP in assessing and mitigating community health and safety risks. IFC defines GIIP as “the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally.”¹⁶³ In applying GIIP in relation to safety issues at Bridge schools, CAO considered the project context and location of many Bridge academies in informal settlements and poor peri-urban and rural areas.

3.4.3. Building Design Safety

E&S Due Diligence

IFC considered “the building standards applied to [Bridge] schools including those related to life and fire safety” as a “key issue” during ESDD.¹⁶⁴ In the absence of site visits to schools during due diligence, IFC reviewed these issues based on documentation and photographs provided by Bridge.

IFC's E&S Review Summary (ESRS) for the project stated that Bridge constructed schools in a standardized manner, “designed and built to meet the Kenyan Building Codes and Regulations.” It described the school buildings as “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.” Building designs were submitted for approval

¹⁶⁰ The reference to universal access here relates to access for people with disabilities. “Universal Design is the design and composition of an environment so that it can be accessed, understood and used to the greatest extent possible by all people regardless of their age, size, ability or disability.” U.S. General Services Administration, “Universal Design: What is it?.” Available here: <https://www.section508.gov/blog/Universal-Design-What-is-it/>.

¹⁶¹ IFC, April 30, 2007, Environmental, Health and Safety General Guidelines. Available here: <https://www.ifc.org/content/dam/ifc/doc/2023/ifc-general-ehs-guidelines.pdf>.

¹⁶² IFC, Performance Standards, Overview, para. 7.

¹⁶³ PS4, fn. 1.

¹⁶⁴ IFC, October 30, 2013, ESRS, Overview of IFC's Scope of Review. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

to the relevant local authorities, and Bridge employed onsite supervisors and managers to ensure that all standards were met.¹⁶⁵

The ESRS also highlighted Bridge's life, fire, and safety master plan, noting that "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 ...)."¹⁶⁶ Such basic measures, the ESRS stated, were "... considered appropriate for facilities of this kind" and had "been approved by a Kenyan government-approved safety and health advisor."¹⁶⁷

Nevertheless, IFC included monitoring and reporting mechanisms to address building safety in the project E&S Action Plan agreed with the client. Due for completion by June 2014, these mechanisms included "a procedure defining the assessment of schools prior to opening to ensure their structural integrity is aligned with international best practice" and "procedures to ensure compliance with regulatory requirements in any country in which a school may be developed ..."¹⁶⁸

During ESDD, IFC also requested a fire safety consultant to review Bridge's life and fire safety master plan. According to IFC staff, this fire safety specialist provided feedback that Bridge classrooms needed a second point of exit (e.g., a door and an egress window) and a mechanism for an individual to raise a fire alarm (e.g., a bell). There is no written record of the fire safety specialist's review in IFC's documentation, but information made available to CAO confirms that IFC senior management received a waiver request from compliance with IFC's EHS Guidelines in Life and Fire Safety Requirements, which include the requirement of two means of egress.¹⁶⁹ CAO does not have confirmation that this waiver was accepted and there is no mention of the first safety specialist's analysis in the ESRS or the project information IFC shared with the Board.

In October 2013, IFC asked Bridge to list all relevant government permits, consents, and regulatory approvals. CAO did not see enough evidence to confirm that IFC reviewed a relevant number of building or construction permit samples signed by regulatory authorities during due diligence. Additionally, IFC was made aware in December 2013, of risks related to the failure to obtain building approvals, including a 2012 criminal case charging in which a former Bridge regional support director with commencing school construction before obtaining building approvals. While IFC was made aware of the requirement for occupiers of commercial premises in Kenya to obtain a fire clearance certificate issued by the local authority's fire inspector it did not include a review of such certificates for its client's operations, nor did confirm its client's compliance with regulatory fire safety requirements.

In addition, despite the relevance to PS4 requirements, IFC's ESDD documentation does not mention the issue of Bridge schools' lack of accessibility for disabled students.

Supervision

IFC's supervision record shows limited attention to the issues of building design safety beyond the review of information provided by the client.

IFC was aware from the first year of the investment that Bridge conducted quality assurance audits at the handover of each new academy to ensure the schools met the company's own requirements for structural integrity and complied with international best practice. In 2014, IFC also learned about a notice issued in Makindu County to Bridge by the district education officer that included a lack of clearance for occupation from the district

¹⁶⁵ IFC, October 30, 2013, ESRS, Project Description and Environmental and Social Mitigation Measures, PS4. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ IFC, October 30, 2013, ESRS, Environmental & Social Action Plan. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

¹⁶⁹ IFC's PSs Overview (para 7) requires that in cases when host country regulations differ from the levels and measures presented in the EHS Guidelines, projects "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 as part of the site-specific environmental assessment. This justification should demonstrate that the choice for any alternative performance level is protective of human health and the environment."

public health department. IFC was also made aware that this matter was under discussion and that most of the county's claims were not provided for in any public health act, indicating that if the action proceeded, Bridge's response would be to quash it for lack of grounds.

During 2016–2017, IFC was made aware that structural engineering and quality assurance was completed and found to be satisfactory for all Bridge's buildings. In November 2016, IFC confirmed that Bridge had included procedures for structural integrity in its E&S Management System (ESMS) and, in July 2018, IFC confirmed that Bridge had met all ESAP commitments, including on building design safety (see above).

In March 2019, IFC reviewed an updated ESMS from Bridge that year. CAO reviewed the 2019 ESMS and notes that it mentions that an occupation certificate or permit to be issued by the competent authority before a new school building opened. However, IFC supervision records show that this procedure was not always followed. In 2019, IFC was made aware that it was not always possible to obtain occupancy certificates for buildings in informal settlements. In 2020, IFC followed up with its client, asking whether government inspection was always conducted in relation to occupancy certificates for Bridge schools and whether this had always been the case for schools in Kenya. IFC also requested eight sample certificates and asked Bridge to share any available data showing which schools had valid certificates. CAO learned during the investigation that Bridge provided sample certificates but not the total number of schools with valid occupation certificates.

On the issue of Bridge schools' accessibility to children with disabilities, IFC's supervision records only contain one mention. This referred to a checklist included in Bridge's documentation from 2019 onward that cited a WHO standard for making water sources and toilets accessible in low-costs schools to people with disabilities.¹⁷⁰

3.4.4. CAO Observations and Findings: Building Design Safety

IFC did not require Bridge schools to meet life and fire safety requirements under the IFC Performance Standards or good international industry practice.

IFC's EHS Guidelines require all new buildings accessible to the public to be "designed, constructed, and operated in full compliance with local building codes, local fire department regulations, local legal/insurance requirements, and in accordance with internationally accepted life and fire safety (L&FS) standards,"¹⁷¹ such as the Life Safety Code.¹⁷²

However, CAO's investigation found that IFC limited its ESDD of fire safety issues to reviewing a general fire and life safety master plan for Bridge schools. IFC also prepared a waiver to exempt the client from compliance with IFC EHS Guidelines on the safety requirement of two means of egress from a building. CAO found no references to the waiver in due diligence documentation, nor any indication that the Board was informed of the exemption request. Other issues related to fire and safety, such as the use of sand buckets by Bridge schools, were not assessed against the EHS Guidelines and GIIP.

CAO's onsite observations at eight schools in Nairobi and Machakos County revealed that fire risk mitigation on the ground at Bridge academies in Kenya fell well short of GIIP as identified by CAO's consultant engineer¹⁷³ The photographs and descriptions below provide examples of the findings from CAO's field visit.

¹⁷⁰ Bridge's ESMS incorporates a Water, Sanitation and Hygiene Standards for Schools in Low-cost Settings Checklist developed by the WHO which includes questions on whether school water sources and toilets are accessible for the disabled. WHO, 2009, Water, Sanitation and Hygiene Standards for Schools in Low-cost Settings. Available here: https://apps.who.int/iris/bitstream/handle/10665/44159/9789241547796_eng.pdf?sequence=1&isAllowed=y.

¹⁷¹ IFC, April 30, 2007, Environmental Health and Safety General Guidelines, section 3.3. Available here: <https://www.ifc.org/content/dam/ifc/doc/2023/ifc-general-ehs-guidelines.pdf>.

¹⁷² See, as reference, National Fire Protection Association, Codes and Standards. Available here: <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=101>.

¹⁷³ CAO acknowledges that these findings are based on a limited sample of schools, which is not necessarily representative of all Bridge schools in Kenya at the time of the site visits. However, findings in the schools visited provide relevant evidence of unsafe conditions in Bridge schools.

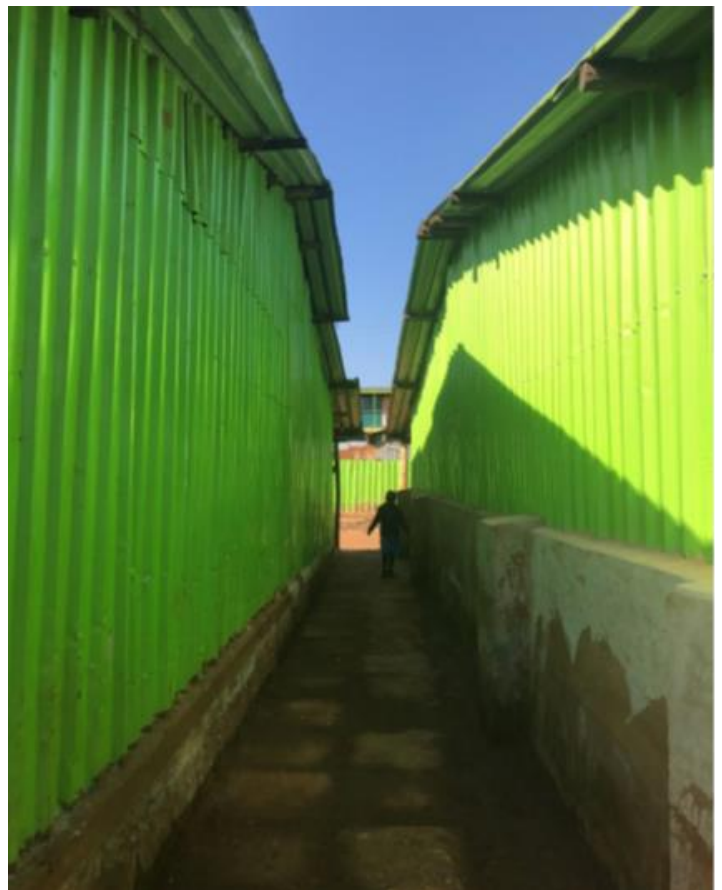
- Figure 1¹⁷⁴ shows a sample classroom structure at a Bridge school made up of an exposed wooden frame unprotected by any fire-resistant material. Because wood is combustible, the wooden structure would contribute to the fuel load of a fire, and the structure could collapse very quickly in such an event. This design therefore poses a significant life safety risk to occupants.
- Figure 2 shows the space between two classroom buildings viewed by the CAO site inspection team and a consultant structural engineer. The distance from wall to wall is less than two meters, and the distance between the overhangs is approximately one meter. As a result and given that the school's external walls are not fire-resistant, there is a significant risk of fire spreading between these buildings. Bridge designates classroom windows as additional exit points on the basis that they do not contain any glass. However, site photographs (Figure 3) show that this classroom's windows are covered with fixed wire mesh, which could prevent them being used as exits during a fire emergency, particularly by young children.

Figure 1. Classroom construction observed during CAO site visit, February 2020.



Note: Exposed wood beams and wire mesh windows.

Figure 2. Classroom siting, indicating close positioning of school buildings, presenting a fire risk. CAO site visit, February 2020.



¹⁷⁴ Photographs used in this report were taken pursuant to contractual rights, World Bank policies, and individual consent where required.

Figure 3. Classroom window fixed with wire mesh. CAO site visit, February 2020.



Figure 4. Informal buildings located immediately next to a Bridge school site boundary present a fire hazard. CAO site visit, February 2020.



- Figure 4 shows the close proximity of neighboring dwellings to a Bridge school boundary fence. Bridge's life, fire, and safety documentation notes that most academies are located within local communities and any hazards are quickly alerted and dissipated, and that academies are built in a community where any hazards are learned of quickly and spread of fire contained. CAO found no evidence that IFC verified these statements, even though IFC was aware that frequent and large fires in informal settlements in Kenya are well documented. It is incorrect to assume that a fire spreading from the local community would be quickly controlled and the proximity of other buildings indicates a higher risk of fire spread (Figure 4).
- Local and international guidelines require fire extinguishers at each school building.¹⁷⁵ However, Figure 5 shows a bucket of sand outside a Bridge classroom with a handmade sign labelled "fire extinguisher." The project E&S Review Summary suggests that IFC accepted buckets of sand as an appropriate

¹⁷⁵ See, e.g., the Ministry of Education, 2008, Safety Standards Manual for School in Kenya, that mentions "Fire extinguishers should be located in strategic places in the school." (p. 59). Available here: http://cwsglobal.org/wp-content/uploads/2017/01/CWS-SSZ-Schools-Manual_Kenya.pdf.

alternative to fire extinguishers in the project circumstances and was accepted as alternative by Kenyan authorities.¹⁷⁶ There is no explanation of the basis for this decision, which is not consistent with GIIP.¹⁷⁷

CAO finds that IFC did not review its clients' life and safety policies for consistency with IFC's EHS Guidelines (section 3.3). During due diligence, IFC relied on, but did not verify, information on building safety issues provided by its client. During supervision, IFC did not monitor the client's actual plans and practices on the ground. While

Figure 5. Site photograph of a sand bucket labelled "fire extinguisher," CAO site visit, February 2020.



noting that many Bridge schools are located in informal settings, CAO's site visit in 2020 found that the IFC client operated buildings that do not meet IFC's standards for life and fire safety. For the schools to meet IFC requirements, GIIP as established by the EHS Guidelines must either be met or specifically waived "in view of specific project circumstances [and] a full and detailed justification for any proposed alternatives."¹⁷⁸ No such justification was provided in this case for the use of buckets of sand at Bridge schools.

CAO does not have enough evidence confirming that IFC verified Bridge met Kenyan construction code requirements or relevant GIIP.

CAO's investigation did not find enough evidence to confirm that IFC considered with the level of care required how Bridge's school design aligned with Kenyan building requirements or relevant GIIP. The project ESRS suggests that IFC relied on Bridge's representations that all its building plans were certified by local planning offices. However, information gathered by IFC during due diligence and confirmed by CAO, indicates that building plans could only be certified when full legal title could be demonstrated, which appears not to be the case for many Bridge schools in informal settlements. According to IFC's ESRS, Bridge school buildings typically consist of low-level masonry walls that support a simple timber frame superstructure and roof trusses clad with corrugated metal sheets.¹⁷⁹ Based on advice from CAO's consultant engineer, no Kenyan building

code includes standards for temporary/semi-permanent structures of this kind in informal settlements.

In the absence of a clear local regulatory framework for permitting these types of construction, CAO considers that a review of Bridge's school designs against GIIP would have been particularly important before proceeding

¹⁷⁶ The ESRS mentions: "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." IFC, October 30, 2013, ESRS, Environmental and Social Mitigation Measures, PS4. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

¹⁷⁷ The IFC EHS Guidelines refers to Life and Fire Safety standards applicability, mentioning that "all new buildings accessible to the public should be designed, constructed, and operated in full compliance with local building codes, local fire department regulations, local legal/insurance requirements, and in accordance with an internationally accepted life and fire safety (L&FS) standard." Additionally, the guidelines refer to the US NFPA Life Safety Code as one example of international accepted standard. (p. 79). In the US NFPA Code standards are high for features of fire protection. For example, besides having an entire guideline on portable fire extinguishers, it requires Educational Occupancies to have "automatic sprinkler systems." See NFPA 10, Standard for Portable Fire Extinguishers and US NFPA Life Safety Code, section 14.3.5. In this case, IFC should have reviewed local regulations, including the Safety Standards Manual for School in Kenya, cited in previous footnotes. This manual mentions that fire extinguishers should be located in strategic places in schools.

¹⁷⁸ IFC, April 30, 2007, Environmental Health and Safety General Guidelines, p.1. Available here: <https://www.ifc.org/content/dam/ifc/doc/2023/ifc-general-ehs-guidelines.pdf>, PS3, para. 5 and PS4 para. 5.

¹⁷⁹ IFC, October 30, 2013, ESRS, Project Description and Environmental and Social Mitigation Measures, PS4. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

with the investment. However, IFC did not require this. Instead, IFC relied on information from Bridge, including its assertion that its schools were constructed in a standardized manner “designed and built to meet the Kenyan Building Codes and Regulations.”¹⁸⁰ CAO does not have enough information to confirm that IFC sought to verify this information either directly or with external sources. In summary, CAO has not found evidence that IFC’s due diligence review or supervision of the project provided sufficient basis to conclude that Bridge school buildings were constructed in compliance with Kenyan law or consistent with GIIP for construction of temporary/semi-permanent school buildings.

IFC did not require Bridge to meet IFC or Kenyan accessibility requirements for disabled students

CAO’s field team observed that the eight Bridge schools visited in 2020 (five announced and three unannounced visits) are not designed to ensure accessibility for children with physical disabilities. School facilities include steps, toilet designs, and other features that would make them inaccessible to some people with disabilities. Basic accessibility design features such as secure handrails on stairs or in bathrooms were not present (see Figure 11). These observed construction designs do not reflect IFC’s commitment to universal access¹⁸¹ or Kenyan school safety guidelines, which state that “all [school] buildings and facilities should be accessible by special needs learners.”¹⁸² CAO found no evidence that IFC considered either its own or national design standards that relate to access during its review or supervision of the project, even after these issues were flagged as a concern by the complainants.

3.4.5. Water, Sanitation, and Food Hygiene Standards

E&S Due Diligence

During ESDD, IFC evaluated the provision of potable water of an adequate quality at Bridge schools, which was considered a key issue, as well as food safety and the provision of toilets for staff and students.¹⁸³

IFC reviewed Bridge’s drawings and details of construction methods for water supply and latrines at its schools, as well as background documentation on its approach to latrine design, ratios, and siting. The project ESRS provides a brief overview of Bridge’s approach to these issues, and suggests that in evaluating water, sanitation, and food hygiene issues, IFC relied solely on information provided by Bridge. This client information was not independently verified by IFC or by external sources, nor was IFC’s due diligence in this area informed by an environmental assessment. As stated earlier, IFC conducted no E&S site visits to schools during ESDD.

Regarding potable water, the ESRS noted the following:

Bridge ensures that potable water is treated with standard water treatment chemicals, while 500 litre tanks with a tap are also provided for hand washing and cleaning.

The treatment of potable water is the responsibility of the Academy Managers and is regularly audited by the Bridge quality assurance team who use a smartphone audit tool, with immediate transmission of results to HQ.

To ensure potable water provided at the schools is of an adequate quality, a water quality monitoring programme will be developed and implemented for all schools aligned with the requirements of the World Health Organization (WHO) ... “Water, Sanitation and Hygiene Standards for Schools in Low-cost Settings” (2009).¹⁸⁴

¹⁸⁰ Ibid.

¹⁸¹ PS4, para. 6.

¹⁸² Ministry of Education, 2008, Safety Standards Manual for School in Kenya, p.21. Available here: http://cwsglobal.org/wp-content/uploads/2017/01/CWS-SSZ-Schools-Manual_Kenya.pdf.

¹⁸³ IFC, October 30, 2013, ESRS, Environmental and Social Mitigation Measures, PS3 and PS4. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

¹⁸⁴ Ibid, Environmental and Social Mitigation Measures, PS4.

Regarding adequate toilet facilities, the ESRS stated:

All schools are fully equipped with toilets within the school grounds and accessible to all pupils and employees.

A ratio of 50 pupils per latrine is used to determine how many are provided at each school.¹⁸⁵

... Bridge will ensure that they have the appropriate number, design, and siting of latrines as per the WHO document "Water, Sanitation and Hygiene Standards for Schools in Low-cost Settings" (2009).¹⁸⁶

Regarding food provision for students, the ESRS noted that Academy Managers were required to choose a lunch provider that met the expectations of Bridge's Lunch Provider Management guidance document, requiring affordably priced, nutritious meals of healthy proportions. The ESRS added that Bridge's quality assurance team and academy managers monitored food hygiene and stated that no issues with food provision had arisen to date. To assure food safety, Bridge committed to "define an approach to undertaking spot checks of food hygiene through random sampling and testing and monitor results."¹⁸⁷

The project ESAP agreed by IFC and Bridge contained the following related provisions, due for completion in June 2014:¹⁸⁸

Procedures to ensure ... that all schools comply with the World Health Organization document "Water, Sanitation and Hygiene Standards for Schools in Low-cost Settings" (2009).

A monitoring plan for potable water compliant with the World Bank Group (WBG) Environmental, Health and Safety (EHS) Guidelines and specifically the WHO document Water, Sanitation and Hygiene Standards for Schools in Low-cost Settings" (2009).

Supervision

In 2014, IFC was made aware of reported progress on ESAP items related to water sanitation and food hygiene. At the same time, IFC learned that Bridge had received a letter in January 2014 from the Sub County Public Health Officer for Nyeri South alleging that a Bridge school was operating under unsanitary conditions injurious to public health, contrary to sections 117 and 118 (b) of Kenya's Public Health Act.

In 2016, hygiene and sanitation at Bridge schools became a matter of concern for IFC as a result of media and government attention on school conditions in Uganda.¹⁸⁹ As public records show, in July 2016, Uganda's Education Minister announced that the government would close the 63 Bridge schools operating in the country on the grounds that the life and safety of children were endangered, a decision which later that year was upheld by the Uganda High Court.¹⁹⁰ In response, IFC recommended a focused analysis of hygiene and sanitation standards at Bridge schools in both Kenya and Uganda covering issues including the number of latrines, training on proper hygiene activities, and the provision of potable water. The review sought to assess whether Bridge met local regulatory and internationally acceptable water, sanitation, and hygiene standards at its schools. IFC

¹⁸⁵ As explained by the client, academy break times are staggered among different class levels to ensure that the number of children trying to access the latrines is a small portion of the school population. The client noted that this significantly reduces the load on its latrines.

¹⁸⁶ IFC, October 30, 2013, ESRS, Environmental and Social Mitigation Measures, PS3. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

¹⁸⁷ Ibid, Environmental and Social Mitigation Measures, PS4.

¹⁸⁸ IFC, October 30, 2013, ESRS, Environmental and Social Action Plan. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

¹⁸⁹ See, for example, Washington Post, August 17, 2016, "Saying kids were endangered, Uganda is closing schools backed by U.S., World Bank, Bill Gates and Mark Zuckerberg."

¹⁹⁰ See, High Court of Uganda, Misc. Cause No. 160 of 2016, November 4, 2016, Bridge International Academies vs. Attorney General; The Guardian, November 4, 2016, "Judge orders closure of low-cost Bridge International schools in Uganda," <https://www.theguardian.com/global-development/2016/nov/04/judge-orders-closure-low-cost-bridge-international-academies-uganda>.

also noted that the review would inform which, if any, mitigation measures required follow up supervision and monitoring.

IFC's focused analysis included site visits to 18 Bridge schools, nine of them in Kenya. This represented approximately 2 percent of Bridge's Kenyan schools at the time. Conditions at each academy were examined for compliance against the IFC Performance Standards, EHS Guidelines, project ESAP, WHO WASH standards, Kenya EHS Policy, Kenya Ministry of Education School Standards, and UNICEF Water, Sanitation, and Hygiene in Schools.

Regarding the issues raised by the CAO complainants, IFC's analysis established that the number of toilets and amount of potable water provided in Bridge schools met international standards, but that Bridge's monitoring of water quality was insufficient. The focused analysis also included water samples for 40 schools in Kenya. Four of the 40 schools surveyed had coliform bacteria in their water supplies,¹⁹¹ and while alternative solutions were implemented in these cases, the root causes of the contamination were not addressed. Focus group interviews highlighted concerns about the privacy and cleanliness of toilets.

IFC's supervision identified several areas where gaps with IFC's Performance Standards needed to be closed, including water monitoring, food hygiene and storage, waste management, and training initiatives.

IFC's supervision in 2017 also identified the need for its client to provide safe drinking water and access to safe and age-appropriate sanitation facilities as a matter of urgency. At the same time, IFC noted the need to find realistic low-cost approaches to the provision of safe drinking water and latrines.

IFC supervision in 2018 focused on client progress on latrine repairs, actions to ensure that school vendors had appropriate health certification, and water testing follow up in cases where coliform bacteria had been identified.

In March 2019, IFC became aware of Bridge's updated plans to cover water tank inspection, cleaning, and treatment as well as water quality remediation measures and academy manager training on water quality monitoring.

In January 2020, based on Bridge's E&S annual reporting from previous years, IFC affirmed that the client had successfully completed all the agreed corrective actions following the assessment.

3.4.6. CAO Observations and Findings: Water, Sanitation, and Food Hygiene Standards

IFC's ESDD and supervision of Bridge supported improvements in the company's approach to identifying and managing WASH risks at its schools over the life of the project. IFC's due diligence led to agreed ESAP action items on WASH issues, particularly the number of toilets and other sanitation measures at Bridge schools. IFC's supervision record also demonstrates ongoing attention to managing WASH risks and working with Bridge to address its findings. As a result, there were observable improvements in Bridge's implementation of WASH measures, particularly the provision of safe food and drinking water in its schools.

Despite the attention IFC gave to WASH issues, CAO finds one area in that IFC did not sufficiently assess Bridge's E&S performance against IFC E&S standards, including relevant GIIP, namely the provision of sufficient toilets. IFC supervision documentation shows that the number of toilets provided was calculated based on the number of students on break at any given time. Following the WHO "Water, Sanitation and Hygiene Standards for Schools in Low-cost Settings" (2009), referenced as the relevant standard in the project ESRS, the guideline

¹⁹¹ Coliform bacteria are organisms that are present in the feces of warm-blooded animals and humans. Their presence in drinking water indicates that disease-causing organisms (pathogens) could be in the water system. *Escherichia coli* (*E. coli*) is the major species in the fecal coliform group.

is for one toilet per 25 girls and one toilet plus one urinal (or 50 cm of urinal wall) per 50 boys, as well as at least one toilet each for male and female staff.¹⁹²

CAO finds IFC's review and supervision of Bridge related to WASH standards generally in compliance with its E&S Policy requirements with the one exception regarding the provision of a sufficient number of toilets. IFC did not ensure correct application of the relevant GIIP standards on this issue, resulting in Bridge schools likely having fewer toilets than if the client had followed the WHO standards that IFC determined applicable to the project. As discussed in the next section, Bridge schools also faced persistent issues related to toilet maintenance and cleanliness as well as exhaustion of pit latrines, that were not resolved during IFC's investment.

3.4.7. School Ground Safety and Maintenance

E&S Due Diligence

In the project E&S Review Summary, IFC identified "key issues" associated with the project, including "security measures ... to ensure the safety of learners."¹⁹³ However, despite flagging security issues, IFC conducted a limited appraisal of Bridge's policies and procedures in this area. Regarding Bridge school grounds, IFC reports reviewing a facilities and maintenance guide, a site selection overview presentation, and five photographs of Bridge schools. Based on the ESRS, IFC appears to have relied solely on information shared by Bridge that was not corroborated by IFC or by external sources. As previously stated, IFC made no site visits to Bridge schools during ESDD. The ESRS also included the following references to school grounds safety:

The site selection process [for new schools] takes into account issues such as stormwater management and elevation in relation to flood risks.

According to management, although Bridge tries to address any specific issues associated with flooding, the Company has experienced flooding at some of the schools, which they have actively tried to minimize. However, this is due to the location of schools in informal settlements where the flooding of the broader areas is experienced and is not unique to the school itself.

According to management, traffic safety in relation to learners is not considered an issue. The reasons for this are twofold: i) schools are generally located within neighborhoods where there is very low or no vehicular traffic; and ii) consultations held during project siting ... ensures that hazards of this type are identified and avoided.¹⁹⁴

IFC did not include any actions related to school grounds safety or maintenance at existing schools in the ESAP for the project. This reflected IFC's conclusion that Bridge's policies and procedures met the requirements of IFC Performance Standard 4 on Community, Health, Safety and Security.

Supervision

During the eight-year investment in Bridge, IFC became aware of student safety issues related to the location, grounds safety, and maintenance of its client's schools in Kenya. IFC responses to these issues are documented in the supervision record and summarized in chronological order below.

¹⁹² World Health Organization, 2009, "Water, Sanitation and Hygiene standards for Schools in Low-Cost Settings," p.22. Available here: <https://apps.who.int/iris/handle/10665/44159>. Kenyan standards require four toilets for the first 30 learners plus one extra toilet for every additional 30 learners and for every additional learner over 270 learners, one toilet for every 50 learners. See, as set out in the Ministry of Education, 2008, Safety Standards Manual for School in Kenya, p.23. Available at: http://cwsglobal.org/wp-content/uploads/2017/01/CWS-SSZ-Schools-Manual_Kenya.pdf. See for e.g., Global Impact Investing Network, IRIS, 2019, Student to Toilet Ratio (PI4243). v5.0. Available here: <https://iris.thegiin.org/metric/5.0/pi4243/>.

¹⁹³ IFC, October 30, 2013, ESRS, Environmental and Social Categorization and Rationale. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

¹⁹⁴ IFC, October 30, 2013, ESRS, Environmental and Social Mitigation Measures, PS4. Available here: <https://disclosures.ifc.org/project-detail/ESRS/32171/bridge-international-academies>.

2014–2016

March 2014. IFC became aware of minor pupil injuries in Bridge schools, such as pupils falling in the schoolyard, though no details were provided. IFC also learned at that time, that Bridge only paid medical fees for associated hospital treatment in rare cases, where the client believed it could have done more to prevent an injury. One such case involved a child injured while playing at a school compound where large stones were kept for repairs. The family received assistance with the student's medical bills.

August 2014. IFC became aware of specific health and safety issues at two schools in Nairobi. This followed a supervisory site visit to the schools, located close to a landfill site, that highlighted environmental and health risks due to the presence of hazardous waste and toxic runoff near school buildings.¹⁹⁵ IFC agreed corrective actions with its client including addressing the specific hazards at the two schools as well as a commitment to develop systematic guidelines for the siting of Bridge schools. However, these actions were not included in the binding ESAP for the project and were not disclosed publicly by IFC.

During supervision, IFC also recognized the need to undertake a broader review of Bridge schools located in risky environments. However, based on CAO's review of project documentation, IFC did not follow through on this.

April 2016. IFC was made aware of several incidents related to safety at Bridge schools:

- Flooding during the rainy season, issues with school fences not being well maintained and therefore not providing a secure perimeter, and complaints that pit latrines in schools overflowed and seeped contaminated water onto school grounds.
- An incident in Nairobi where a thief fled into a schoolyard and was stoned to death by an angry mob. The body lay in the schoolyard until collected by police at noon the following day. A gap in the school's fencing was fixed after the incident.
- The collapse of a brick wall on a pupil at school, causing the child's hospitalization which was paid for by Bridge.

IFC was also made aware in April 2016 of 114 pupil incidents, including 10 student fatalities, between September 2014 and August 2016. Four of these fatalities were not school-related, four occurred on the way to the school or right after dismissal, and two occurred on the school premises. CAO finds the information provided to IFC to be insufficient to fully understand the circumstances of each death. One of the deaths involved a student who left school during the day and then drowned in an incident that was attributed to teacher negligence.

IFC was made aware that in 40 of the previously mentioned incidents, Bridge students required treatment at hospital following an injury at school. Eight of these instances resulted in some corrective action. In the remaining 32 instances, there is no record of any root cause analysis or corrective action. These cases included cuts, poisoning, snake bites, falls, traffic-related injuries, and choking—issues that are potentially related to dangerous school locations, school-ground safety, and maintenance issues.

November 2016. IFC's supervision concluded that Bridge's existing system and institutional structure for managing E&S issues, impacts, and risks was no longer adequate given the rapid expansion of Bridge schools outside Kenya. In relation to client schools within Kenya, however, IFC did not register any concerns regarding school-ground safety or maintenance. The basis for this conclusion is unclear as IFC visited only two of Bridge's 405 schools in Kenya, and there is no indication that IFC reviewed monitoring data that would allow them to draw general conclusions on the safety or environmental standards of the client's Kenyan schools. At the same time,

¹⁹⁵ Note: The 2008 Kenyan School Safety Standards Manual provides that "schools should be located away from disruptive land use activities such as industrial facilities, bars, heavy traffic routes, sewage or dumpsites etc." (p. 18). Ministry of Education, 2008, Safety Standards Manual for School in Kenya. Available here: http://cwsglobal.org/wp-content/uploads/2017/01/CWS-SSZ-Schools-Manual_Kenya.pdf.

IFC noted that security and poor fencing were a common complaint and that there was problematic flooding at some schools.

IFC's 2016 supervision records did note the need to improve general school-ground safety and maintenance at Bridge schools. Proposed improvements included reidentifying and addressing fencing and flooding issues in schools by March and June 2017, respectively.¹⁹⁶ However, these actions were not included in the contractually binding ESAP for the project and were not disclosed publicly by IFC.

2017–2019

May 2017. IFC was made aware of that corrective actions to address latrine overflow, school drainage, and fencing at Bridge schools had all been completed. Bridge converted all pit latrines to prevent overflow, leveled relevant sites to prevent drainage, and repaired fencing.

May 2018. IFC was made aware of 10 major health or safety incidents at Bridge schools over the previous two years, marking a significant decrease from the previous 114 pupil incidents. The incidents reported for 2016–2017 included two students who needed hospital treatment after being injured by iron sheeting on school grounds and four students who needed hospital treatment after falling at school. IFC was made aware of remedial school-based actions by Bridge in only one of these cases.

At the same time, IFC was made aware of ongoing regulatory concerns related to safety and maintenance at Bridge schools, including:

- Closure notices for three schools from government public health authorities due to safety and maintenance issues, including leaking roofs and broken structural poles in classrooms, which had been addressed and resolved.
- Charges filed against managers working at six Bridge schools in Nyeri County for failing to prevent nuisance in relation to health and safety issues, including rickety rafters, lack of secure perimeter fences, and lack of fire extinguishers at schools.

IFC's supervision records for this year concluded that Bridge had in place a robust quality assurance program that complied with IFC's E&S requirements. IFC did not make any client recommendations on school-ground safety or maintenance or any reference to the student safety issues raised in the complaint to CAO filed by Bridge teachers and parents in 2018.

March 2019. In a positive development, IFC received details of quality assurance (QA) school inspections conducted by Bridge for the first time. Specifically, IFC was made aware of 224 health and safety inspection reports made in 2018 with associated repair orders for schools in Kenya submitted by Bridge QA staff. These actions included addressing the school safety and maintenance issues raised by IFC in 2017. IFC was informed of 24 instances of schools with fencing issues, 21 instances related to latrine hygiene and safety, and two instances of flooded school grounds. Repair orders for these issues were closed out in an average of 115 days.

In some instances, clearly dangerous or highly unhygienic situations took months to address. For example, IFC was made aware that a school had full latrines with rain causing maggots to rise to the surface and Bridge reported these latrines being emptied more than three months later. At another school, latrine doors were damaged beyond repair and a urinal wall was described as dangerous with a risk of injuring children, yet repairs also took more than three months. At a third school needing urgent repairs to roofing, classrooms, fencing, verandas, and latrines, the case took six months to close out.

Also in March 2019, IFC became aware of nine pupil incidents, seven of which were injuries or accidents that occurred within schoolgrounds, including cuts and swallowing of dangerous objects. IFC also became aware at this time, over five years after the investment had been approved, that Bridge had an E&S Management

¹⁹⁶ Note however, the agreed action related to improving fencing applied only to schools in Uganda.

System in place since 2014, however CAO only found evidence that IFC reviewed its client's ESMS in March 2019. In terms of school grounds safety and maintenance issues raised in the complaint to CAO, the 2019 ESMS, available in IFC files, highlights Bridge's QA audits without providing any details on the process or protocols. The client's ESMS also references specific measures taken to meet IFC's PS1, PS2, and PS3, but not PS4 (Community Health, Safety, and Security).

IFC's supervision records from 2019 describe Bridge's QA process in similar terms to those reported by the client, concluding that it is robust. IFC's review does not document any consideration of Bridge's QA protocols, reports, or resolution timeframes, and summarizes the pupil incident reports without further comment. In addition, IFC did not comment on the lack of reference to PS4 in Bridge's ESMS or on Bridge's lack of detail on the QA process.

2020–2022

February 2020. CAO's compliance investigation site visits raised concerns regarding student safety at Bridge schools, which CAO reported to IFC the same month.

May 2020. IFC learned about continued improvements in Bridge's QA assurance process, including development of a checklist that covers aspects of school safety and maintenance, including electrical safety, injury risks to students (e.g., from sharp objects and trip hazards), sewage overflow, and hazardous waste disposal.

IFC was also made aware of eight incidents affecting Bridge students in Kenya during 2019, including two fatalities. One of these deaths involved a child electrocuted at school in Nairobi when he touched a live wire reportedly hanging from a neighboring building.¹⁹⁷ Reported incidents related to school-ground safety and maintenance included a student taken to hospital after being hit by a wooden pole that fell from a school roof, and another student hospitalized after being hit by an iron sheet from a school roof during a storm. For both these incidents, Bridge reported carrying out inspections and repairs.

IFC also was informed of Bridge's QA audits during 2019, generally one carried out per school. More than one-third of the 294 audit reports for Kenya schools noted a need for fencing repairs, including 50 that required urgent action to repair gaps in school perimeter fences. Around 90 percent of QA audits also noted problems with student toilets, including missing and nonfunctional toilet doors, sinkage around latrine pits, and overfull latrines. In 20 cases, the QA audits noted flooding of classrooms or school grounds. Bridge's 2019 QA log generally did not include closure dates or describe actions taken on safety and maintenance issues.

IFC completed a supervision review in May 2020 following a site visit in March 2020. This review was significantly more detailed than in previous years, and for the first time requested samples of Bridge QA reports related to school ground safety and maintenance. IFC also noted for the first time that the client's ESMS lacked detailed information on monitoring school safety and recommended that the ESMS monitoring and reporting section be updated to include the QA checklist for "safe and welcoming schools." In addition, IFC recommended that Bridge take steps to ensure no delays occurred in executing remedial maintenance so that schools were always in a safe condition for students. However, CAO could not confirm that IFC and its client agreed on a corrective action plan to address these concerns.

March 2021. Bridge schools in Kenya were largely closed in 2020, due to COVID-19. Nevertheless, IFC was made aware, in March 2021 and 2022 respectively, of 78 school inspections conducted by Bridge in Kenya during 2020 and 84 inspections in 2021. Of the 2020 cases, 69 cases documented the need for major or urgent repairs in 2020, and of the 2021 cases 16 cases documented the need for major or urgent repairs. The safety and maintenance issues raised were similar to previous years, including gaps in schoolyard fencing, structural safety of school buildings, unsafe schoolyard conditions, overfull latrines, and flooding of school compounds.

¹⁹⁷ Note the mother of this child filed a complaint with CAO in February 2020. IFC client and the complainant reached an agreement through a CAO dispute resolution process. CAO, Kenya: Bridge International Academies-02/Kenya, Available here: <https://www.cao-ombudsman.org/cases/kenya-bridge-international-academies-02kenya>.

IFC was informed that Bridge had closed these cases but was not provided details of the actions or time taken to address the issues. Following the fatal electrocution incident in 2019, IFC was informed that electrical issues had been included in Bridge's QA inspection process.

In 2021, IFC was also made aware of 14 cases of pupil incidents requiring medical attention in Kenya, of which five are relevant to schoolyard safety and maintenance. These cases involved children who sustained cuts from sharp objects, such as loose metal sheeting and nails protruding from school buildings, as well as one student whose leg was impaled on a mud scraper. This injury would have occurred when the student fell due to a maintenance issue with the school stairs.

IFC noted that risks associated with child safety and the structural integrity of infrastructure at Bridge schools remained high, without clear mitigation measures proposed. The following year, IFC recommended against future investments in Bridge on QA grounds, noting that the company's community schools in low-resource settings could not fully meet IFC standards related to child safety and infrastructure maintenance.

3.4.8. CAO Observations and Findings: School Ground Safety and Maintenance

During its February 2020 site visit, CAO noted a significant variation in the conditions and level of maintenance at the eight Bridge schools visited. The five schools included in CAO's pre-announced site visits were generally tidy and had grounds suitable for children to play (see Figure 6). However, the three academies viewed during CAO's unannounced external site observations had significant grounds safety and maintenance issues, including flooding, trip hazards, broken fencing, building debris, trash, overflowing latrines, and other maintenance needs, resulting in conditions that were unsafe for children (see Figures 7, 8, and 9).

Figure 6. Announced CAO visit, February 2020.



Note: General arrangement of buildings. Example of good housekeeping.

Figure 7. Unannounced CAO site observation, February 2020.



Note: Dry season flooding, stagnant water, trip hazards, debris in playground, broken fencing.

Figure 8. Unannounced CAO site observation, February 2020.



Note: Playground observed from outside. Poor housekeeping, trip hazards, sharp edges on fencing, and a wet area with trash in the playground, suggestive of standing water after rain. Community members reported flooding from abutting open sewer during rainy season.

Figure 9. Unannounced CAO site observation, February 2020.



Note: Open sewer abutting classroom wall and playground fence. Community members noted issues of smell and that the sewer flooded the school grounds during rain.

Design and construction at some schools that CAO visited included flood mitigation activities, such as drainage channels, raising school buildings on concrete above the playground, and reinforcement along waterways (see Figure 10). Dry conditions meant that during its site visit to schools, CAO could not assess the adequacy of risk mitigation works during rainy periods. Community members who spoke with CAO stated that Bridge's flood mitigation measures were not adequate in all cases.

During site visits, CAO also noted that some schools had issues with proximity to sewage drains. Where this was observed, Bridge staff stated that they managed any blockages to ensure that sewage did not flood into the school site (see Figure 9). During unannounced site observations, community members reported that adjacent open sewers flooded school facilities during heavy rain.

Figure 10. Announced CAO visit, February 2020.



Note: Gabion baskets used to stabilize adjacent riverbank and mitigate flooding.

CAO observed boundary fencing in place at most of the schools visited. However, fencing in some schools contained gaps, required repairs, and contained protruding nails and sharp metal edges that could cause injury. At one school, the fence appeared too low to ensure pupils' safety. At another school observed during an unannounced site visit, the fencing was in a significant state of disrepair with multiple gaps, including a large gap adjacent to the girls' toilet block (see Figures 7 and 11).¹⁹⁸

A comparison of CAO site observations with IFC supervision documentation cast significant doubt on the adequacy of its client's QA processes to address dangerous school-ground conditions. Analysis of QA documentation received by IFC that include hundreds of audits, combined with CAO's site observations, suggest that IFC did not have enough information to confirm that school safety and maintenance issues were consistently addressed by its client in a manner that ensured its schools were safe for children.

At one Bridge school in Nairobi, for example, it appears that serious safety issues were overlooked. IFC received information four times regarding this school between 2018 and 2021. In March 2018, latrines were found to be overfull and unusable, and IFC was informed that this item was closed out the following month. However, in August 2019 urgent items were identified at the school for repair, including—again—latrines that were overfull, leaking, lacked functional doors, or contained structural cracks. These items were reported closed, although without providing a closure date or details of the resolution. Five months later, in January 2020, many of the same safety problems at the school were identified, including the need for fencing repairs, overfull latrines, and latrines without functional doors. In addition, on February 2020, excess water was reported in the schoolyard. All these items were again reported as completed though without a closure date or details of the resolution. Finally, in August 2021, IFC was made aware that a large hole in the girls' latrine block was posing a safety risk to students and that the item had been closed.

¹⁹⁸ Note: The 2008 Kenyan School Safety Standards Manual requires schools to have "Properly reinforced fence with appropriate mechanisms for repair and maintenance." (p. 18). Ministry of Education, 2008, Safety Standards Manual for School in Kenya. Available here: http://cwsglobal.org/wp-content/uploads/2017/01/CWS-SSZ-Schools-Manual_Kenya.pdf.

Figure 11. Unannounced CAO site observation, February 2020.



Note: Shows a gap in the fencing adjacent to the girls' toilets and toilets with doors not closing/locking.

Figure 12. Unannounced CAO site observation February 2020. Public elementary school grounds near a Bridge school.



On February 2020, CAO staff conducted an unannounced external observation of this school and found serious safety issues such as trash, stones, and other building debris in the schoolyard, overflowing latrines, latrines without functioning doors, cut hazards, trip hazards, and large gaps in the perimeter fence similar to the issues flagged (and reported as resolved) in previous IFC supervision documentation. CAO staff also observed a fetid pool of water that dominated the schoolyard. This presented a risk for waterborne disease, mosquitoes, and drowning, particularly since the schoolyard was not properly fenced and thus accessible to children both during and outside school hours. CAO staff observed young children playing near this pool of water unsupervised (see Figure 7).

In relation to another school in Nairobi, IFC received information four times between 2018 and 2021. In September 2019, IFC was made aware of fencing issues and noted the need for urgent repairs to latrines and structural elements of classroom buildings. In 2020, IFC was informed of similar issues as well as excess water on the school grounds. In March 2021, IFC was made aware of overfull latrines. In May 2021, IFC learned that a student cut his hand on the school fence, requiring treatment at a local clinic. Combined with CAO's February 2020 site observations, this information suggests persistent issues related to fencing, cut hazards, latrine safety, and sewage flooding of playgrounds at this specific school.

CAO observations at the two schools described above are inconsistent on several grounds with IFC supervision findings that its client implemented a robust program of QA monitoring. For example, frequency of reported QA audits to IFC at these schools was closer to annual than the monthly audit cycle, and ground safety issues were not consistently recorded in audit reports. Also, serious safety concerns flagged as needing urgent attention persisted, suggesting that remediation is not adequate.

In summary, IFC's review and supervision of the project was insufficient to ensure that that the project achieved compliance with PS 1 and 4 in relation to the identification and management of risks to student safety. CAO's investigation confirmed that these risks continued to be present at Bridge schools due to design and maintenance issues, as flagged by the CAO complainants. This remained the case until the last year of IFC's investment, at which time IFC acknowledged that the company's model of constructing and operating community schools in low-resource settings cannot fully meet IFC standards related to child safety and infrastructure maintenance.

As a result, CAO finds that IFC was non-compliant with its requirements to review the safety of Bridge schools in a manner that was commensurate to risk (PS1, para. 22) or to supervise the investment in a manner that provided assurance of compliance with IFC's health and safety standards, in particular PS4 (para. 6).

3.5. Investment Exit

Before exiting its investment in March 2022, IFC engaged actively with the client on issues pertaining to health and safety, school registration, and labor and working conditions, with the objective of addressing shortcomings found during supervision. However, CAO did not find sufficient information demonstrating that IFC received and subsequently reviewed all documentation key to executing its supervisory obligations before exiting the investment.

4. Harm

A CAO compliance investigation's findings determine whether IFC has complied with its E&S Policies and, if not, whether there is harm related to any IFC non-compliance (CAO Policy, para. 112). This section analyzes and finds non-compliance related harm, as well as circumstances that make harm reasonably likely to occur in the future, related to IFC non-compliance during its due diligence and supervision of Bridge, as identified above. The CAO Policy defines "harm" as "any material adverse environmental and social effect on people or the environment resulting directly or indirectly from a Project or Sub-Project. Harm may be actual or reasonably likely to occur in the future" (CAO Policy, glossary).

Following the CAO Policy, "sufficient, relevant evidence is required to afford a reasonable basis for CAO's compliance findings and conclusions" (CAO Policy, para. 117). In relation to this case, IFC was aware of non-compliance that affected negatively two main groups: (a) current and former employees of Bridge; and (b) current and former Bridge students.

4.1. Harm to Bridge Workers

Based on the evidence and analysis set out in this report, CAO has identified the following harms with adverse impacts on current and former Bridge employees.

- **Excess working hours and underpayment of wages:** As outlined in section 3.3. above, it is likely that employees worked excess hours, and that there was underpayment of workers and unpaid overtime, particularly in circumstances where Bridge required teachers to undertake work duties (e.g., supervision of students) during designated break times.
- **Excess wage deductions:** As outlined in section 3.3. above, it is likely that workers were vulnerable to excess wage deductions, particularly for lost or damaged IT equipment and late arrival at work.

The number of potentially affected workers is unknown but given that relevant HR policies applied to all workers, the number could be in the thousands.¹⁹⁹ Bridge employed 3,500 teachers in 2014 and around 5,000 junior workers in 2016, the year when it had more community schools operating in Kenya, with staff including teachers, HQ analysts, clerks, and associates.

As described in section 3.3 above, the above harms are related to non-compliance with IFC's E&S policies. Specifically, IFC:

- Failed to conduct a due diligence review of Bridge's HR policies and procedures against the requirements of PS2 (including Kenyan law) that was commensurate to risk.
- Failed to effectively supervise project compliance with PS2 requirements between 2014 and 2017.
- After identifying gaps in the client's HR policies and practices in 2018, did not conduct further analysis or put in place an action plan or other agreement with Bridge to resolve these issues in a manner consistent with PS2 and Kenyan law.

4.2. Harm to Bridge Students

Based on the evidence and analysis set out in this report, CAO has identified the following harms with adverse impacts on Bridge students:

- **Unsafe school conditions leading to student injuries:** Conditions in Bridge schools were often dangerous to students. This resulted in Bridge students being exposed to risks of physical injury. During

¹⁹⁹ CAO considers "potentially affected workers" to be the number of teachers that were working at Bridge schools to whom Bridge HR policies applied. CAO counts this broad group of workers as potentially affected, considering these policies were applied to all Bridge workers without distinction.

its supervision, IFC was made aware of more than 100 Bridge²⁰⁰ students who suffered potentially preventable injuries while at school during the eight years of the IFC' investment.²⁰¹ This included at least two preventable student fatalities during IFC's supervision period, one involving a student who was electrocuted after touching a live wire reportedly hanging from a neighboring building²⁰² and another involving a student who left school during the day and then drowned in an incident that was attributed to teacher negligence.

CAO has identified noncompliance in building design safety—including life, fire, and safety standards—and in school safety and maintenance, as linked to harms that may have had impacts on current and former students.

It is possible that hygiene and sanitation issues at Bridge schools may have contributed to student illnesses, but CAO has insufficient evidence to reach a finding of harm in this respect.

5. Underlying Causes of Non-Compliance

CAO finds that the following underlying causes precipitated the acts or omissions by IFC that resulted in the non-compliance identified above:

- There was no overall assessment of the project's E&S impacts and risks. IFC failed to require its client to prepare an E&S assessment for the full scope of its current operations and future growth, and reviewed only one environmental impact assessment (EIA), which was undertaken for an individual school and focused primarily on construction risks. While an E&S assessment can be informed by evaluating the E&S risks of a sample of schools, the single EIA reviewed by IFC did not constitute a representational sample and was insufficient both to inform IFC's analysis-of the project's overall E&S risks and impacts and to adequately determine the client's capacity to manage and mitigate these risks and impacts. Conversely, an assessment of the E&S risks and impacts of the overall project would have identified and evaluated a wide range of key risks and impacts and provided the basis for an informed integrated review of gaps in Bridge's E&S performance against the requirements of the IFC Performance Standards and of good international industry practice, such as IFC's EHS Guidelines.
- IFC's ESDD process overlooked the E&S risks and impacts associated with the lack of conformance with Kenya's regulatory requirements for school registration as they relate to E&S issues. IFC's expectations were that compliance with domestic regulatory requirements would eventually be achieved with a future change of government policy, in this case updated APBET guidelines. Understanding the challenges and associated E&S risks of relying on future regulatory developments to achieve compliance with national laws by innovative business models such as Bridge should have been a part of the due diligence process. Had this occurred, the ESDD process would have provided a better basis for IFC to determine whether its client could be expected to comply with relevant PS over a reasonable period of time.
- For the first years of the investment (2014–2017), IFC did not receive the required annual monitoring reports from its client yearly as required by IFC procedures, which limited its ability to effectively supervise Bridge's E&S performance. IFC did not pursue avenues to redress this situation, such as considering its rights of recourse under the Sustainability Policy and its transaction documents with Bridge.

²⁰⁰ This number is based on information available to CAO's investigation which may or may not be complete; hence the actual number of potentially preventable injuries could be greater.

²⁰¹ CAO considers "potentially preventable injuries" to be events that happened during or immediately after school hours where there had been a reported injury, illness, or accident involving a pupil that may have occurred due to school negligence. CAO found evidence for more than 100 cases of potentially preventable injuries during the length of the investment. The data available to CAO did not allow it to fully consider the extent of severity of all physical injuries to students

²⁰² Note the mother of this child filed a complaint with CAO in February 2020. IFC client and the complainant reached an agreement through a CAO dispute resolution process. CAO, Kenya: Bridge International Academies-02/Kenya, Available here: <https://www.cao-ombudsman.org/cases/kenya-bridge-international-academies-02kenya>.

6. Recommendations to IFC

Under the CAO Policy, IFC Management will develop a Management Action Plan (MAP) to respond to the findings of non-compliance and related harm in this report. In doing so, CAO recommends that IFC consider the following project-specific and institutional-level actions.

Project-Specific Recommendations

CAO recommends that IFC contribute to the following remedial actions at the project-level. These recommendations are intended to remedy actual harms to current and former Bridge students and employees in Kenya.

4. IFC should work with Bridge to support the establishment of processes whereby:

- Current and former workers with grievances related to inappropriate wage deductions and underpayment of wages can have their claims assessed with compensation paid following Kenyan law in a manner that is fair, efficient and without cost to the worker; and
- Parents of current and former Bridge students who were killed or injured while at school can have their claims assessed with compensation paid following Kenyan law, fairly, efficiently and without cost to the parents.

These processes should be based on the following principles:

- Access for both current and former Bridge employees and parents;
- Independence and accountability in the administration of the claims processes;
- Timely processing of claims for compensation for harm;
- Support to current and former affected workers and students to access legal advice; and
- Sufficient resources for the process to achieve its objectives.

5. IFC should work with Bridge to address the ongoing E&S risks and impacts of its academies as identified in this report, including measures such as requiring:

- An independent audit of Bridge's compliance with regulatory requirements under the Kenya Basic Education Act (2013), leading to an action plan that ensures all Bridge schools in Kenya meet school requirements or close by the end of the current school year;
- An independent audit of all Bridge schools in Kenya, leading to a fully resourced action plan designed to ensure that all Bridge school buildings and school grounds meet Kenyan legal requirements and GIIP for school safety, including fire and life safety, or close by the end of the current school year; and
- An action plan building on previous assessments pertaining to Bridge's labor policies and practices against the requirements of PS2 and Kenyan law, designed to ensure that Bridge's HR policies and practices are consistent with these requirements.

Institutional-Level Recommendations

6. IFC should revise the ESRP to ensure that when IFC finances or invests in what is, or is equivalent to, a series of activities (such as the construction and/or operation of multiple facilities, such as schools in this case) that the overall E&S impacts and risks are identified and assessed, and that the appropriate degree of site-specific E&S due diligence and supervision are undertaken.²⁰³ Specifically the ESRP should provide that:
 - Prior to Board approval, the environmental and social risks and impacts of the full scope of an investment's activities are assessed by IFC prior to determining if the investment's activities will be able to meet relevant Performance Standards within a reasonable period of time; and
 - During supervision, IFC implements measures to ensure that individual activities (such as individual schools, in this case) are meeting the relevant performance standards. Among other measures, this could be achieved through a combination of portfolio reviews, spot checks, and other measures deemed appropriate.
4. IFC should develop guidance on how to assess and approach the challenges of reconciling “innovative business models” with existing national laws and regulations, including those relevant to E&S risks and impacts. This would avoid situations where a client's compliance with national law is dependent on a future regulatory change to accommodate the proposed “innovative business model” in an investment. The guidance should state that deviations from the Sustainability Policy or PS requirements, including non-compliance with relevant national law, must be explicitly flagged for a decision by the Board.²⁰⁴

Next Steps

Following CAO Policy, IFC Management will have 50 business days to prepare a Management Report that will include, for Board approval, a Management Action Plan (MAP) in response to CAO findings of non-compliance and related harm. The MAP will be comprised of time-bound remedial actions proposed by Management and the Policy requires IFC to consult the complainants and the client during its preparation. The compliance investigation report, the Management Report, and the MAP will be made public, and CAO will monitor the effective implementation of the actions set out in the MAP.

²⁰³ The 2016 ESRP Manual lacks specificity on whether Environmental Assessment should be required prior to approval for Category A or B projects, and if these should be reviewed by IFC during ESDD and disclosed to the public. See, 2016 ESRP Manual, sections 3, 4 and 6. Available here: <https://www.ifc.org/content/dam/ifc/doc/2010/2016-esrp-manual.pdf>.

²⁰⁴ The ESRP Manual (2013) mentions that significant risks and impacts and anticipated key development outcomes should be described in the E&S section of the Board Paper. See, 4 Direct Investment: Disclosure and Commitment, 2.15. Available here: <https://www.ifc.org/content/dam/ifc/doc/2010/2013-esrp-manual.pdf>. Same provision in ESRP Manual (2016).