

Kenya: Bridge International Academies

Terms of Reference for Management-Requested Compliance Review

Released on March 27, 2024

Background

On March 19, 2024, the Chief Executive Officer (CAO), Mr. Scott Nathan, of the U.S. International Development Finance Corporation (DFC) requested¹ that DFC's Office of Accountability (OOA) conducts a compliance review (Review) of the U.S. Overseas Private Investment Corporation (OPIC)/DFC's due diligence and monitoring in connection with OPIC's 2013 loan to Bridge International Academies project in Kenya (the Bridge Case). CEO Nathan also requested that the Review includes whether OPIC or DFC was made aware of, or, in its role as lender exercising reasonable care, should have been aware of, alleged child sexual abuse at Bridge schools in Kenya, and review whether OPIC and DFC failed to take action with respect to such allegation.

About OOA

The Office of Accountability² is an independent office and reports to the DFC Board of Directors. OOA addresses concerns, complaints, or conflicts about environmental or social issues that may arise around DFC-supported projects. OOA's mandate includes conducting compliance investigations about how DFC applied its relevant policies to a project. This service is available to project-affected parties, as well as DFC's Board and Management. OOA derives its mandate from the DFC Board of Directors (Board) approved implementation document: [Independent Accountability Mechanism \(IAM\) for the U.S. International Development Finance Corporation](#) (2020), and follows the 2014 Operational Guidelines Handbook for Problem-Solving and Compliance Review Services³.

¹ <https://www.dfc.gov/sites/default/files/media/documents/CEO%20Memo%20to%20OOA%20Bridge%20Project%2003.19.24.pdf>

² <https://www.dfc.gov/our-impact/transparency/office-of-accountability>

³ <https://www.dfc.gov/our-impact/transparency/office-of-accountability>

OPIC Investment

According to its disclosed 2013 Project Information summary⁴, OPIC provided a \$10 million loan with a 10-year tenor to the Bridge International Academies Limited (Bridge Academies). The proceeds were earmarked for the expansion of pre-primary and primary education for rural and poor urban children in Kenya (the Project). OPIC's screened the Project as Category B. This indicates that the environmental and social risks were deemed by OPIC to be limited, largely reversible, and could be readily mitigated. OPIC required that the borrower complies with national laws, and manages impacts consistent with the IFC Performance Standards 1 through 8. OPIC also issued a human rights clearance for the Project on September 21, 2012. The loan was fully repaid in 2022.

Eligibility

OOA deems the DFC's management-requested compliance review an eligible request for OOA's services.

TOR for Compliance Review

Scope of review

As requested by DFC's management, and in line with its Handbook, OOA will conduct a compliance review of OPIC/DFC's implementation of its contemporaneous policies and procedures governing environmental and social impacts, human rights, and worker rights in relation to the Bridge Case. The review will focus on OPIC/DFC's actions (or inactions) rather than the client's performance with respect to relevant OPIC/DFC's policies, contract provisions or other client actions.

Benefitting from the results of independent compliance investigations by the Compliance Advisor/Ombudsman (CAO) of the International Finance Corporation (IFC) about its investment in the Bridge International Academies⁵, OOA's investigation will be guided by the following questions:

1. How did OPIC/DFC identify, scope, and pursue child protection, safety, and/or gender-based violence (GBV) as material social or human rights risks of the Project, and how did such risks drive the design, implementation and adjustment of environmental and social due diligence, documentation (internal approval records, legal agreements, etc.), and supervision (local regulatory compliance, grievance management, incident reporting, etc.)?
2. How did OPIC/DFC assure itself of the Borrower's capacity to manage child protection and safety risks, and the adequacy and accuracy of related risk management and reporting, including incident reporting?

⁴ <https://www.dfc.gov/sites/default/files/2019-08/bridge-international-information-summary-2013.pdf>

⁵ <https://www.cao-ombudsman.org/cases/kenya-bridge-international-academies-04kenya>

3. What actions did OPIC/DFC take from time to time to identify, validate, address and/or resolve any material shortcomings related to the Borrower's child protection and safety, and and/or alleged GBV and child sexual abuse risk management and reporting?
4. At what times did OPIC/DFC request, receive, or had otherwise reasonable access to information about alleged child sexual abuse at Bridge schools in Kenya?
5. What actions did OPIC/DFC take from time to time in response to learning about material child protection and safety risks, and/or alleged child sexual abuse at Bridge schools in Kenya?
6. How did OPIC/DFC's policies, procedures, processes and capacity evolve related to child protection and safety, and GBV over time? In response, did DFC conduct a portfolio review to identify and improve the social performance of other DFC-supported operations like the Bridge Case?
7. What is OPIC/DFC's institutional experience in collaborating or participating in, and providing or contributing to remedy related to child protection and safety, GBV, or, more broadly, environmental and social harm associated with OPIC/DFC-supported projects?

Methodology

General

The OOA will review and report on OPIC/DFC's implementation of relevant environmental and social policies, procedures and guidelines with respect to the Project. OOA will consider whether the set of policies applied was appropriate and adequate to prevent harm. OOA will also review the adequacy of actions taken by OPIC/DFC to implement relevant policies. In particular, the review examines whether appropriate implementation steps were followed and whether these steps were adequate to meet the objectives of relevant policies.

As part of the review, OOA will access and obtain assistance from a variety of sources, including the following:

- OPIC/DFC staff and records
- IFC's CAO about the Bridge Case
- Technical and legal consultants, including on GBV and remedy

Draft Compliance Report

The OOA will set forth its findings from the review in a draft report, which will:

- Summarize the information that was taken into account to produce findings and identify the sources of this information;
- Provide observations as to OPIC/DFC's compliance with relevant policies and procedures, as well as the causes of any deficiencies in compliance noted; and

- If appropriate, offer recommendations for improving OPIC/DFC’s engagement related to the subject Project and/or systemic recommendations for improving DFC’s application of its policies for future projects.

The OA will circulate the draft report to Management for factual review and comment. As this is a management-requested compliance investigation and the Borrower has fully repaid DFC, no distribution of the draft report by Management to the Borrower are anticipated. Should such a distribution be required, appropriate measures would be in place to safeguard the confidentiality of the draft report prior to disclosure.

Final compliance report

Upon receiving comments from Management, the OOA Director will finalize the report. The report is intended to provide DFC’s CEO with a basis for determining OPIC/DFC’s compliance with relevant policies and procedures, and for deciding whether any preventive or corrective actions should be taken. The Director will transmit the final report to the CEO and Board, with copies to Management. Once the findings have been discussed with Management, the Director will post the report on the OOA website.

Management response

The OOA will request that Management prepare a written response to each project-specific or systemic recommendation contained in the compliance report. Management’s response, which will be posted on the OOA website, includes any follow up actions that it considers to be appropriate.

Monitoring and reporting

The OOA will 1) monitor implementation of DFC’s action plan in response to a compliance review, 2) report to DFC’s CEO and Board on an annual basis, and 3) summarize its monitoring in the OOA’s annual report.

Timing guidelines

The OOA will seek to complete the compliance investigation as tabulated further below. The reporting steps include OOA submitting a draft report to be fact-checked by Management. Upon official submission of the final report to DFC, OOA will request that Management submits a proposed Management Action Plan (MAP) to the Board. The OOA will submit comments on the proposed MAP to the Board. Upon the Board’s approval, the MAP, OOA’s report, and Management Report and Action Plan will be published on OOA’s website.

Key Milestones	Date	Days	Publish
CEO requests compliance review	19-Mar-24	0	Yes
OOA’s generates Terms of Reference	29-Mar-24	10	Yes
OOA submits draft report to Management for factual review	15-Jul-24	108	No
DFC management response to OOA	30-Jul-24	15	No

Key Milestones	Date	Days	Publish
OOA submits final report to CEO, Board, Management	9-Aug-24	10	No
OOA notifies completion of its compliance investigation	9-Aug-24	0	Yes
Management submits its report and action plan to the Board	30-Sep-24	52	No
OOA submits comments on proposed MAP to the Board	10-Oct-24	10	No
After Board approval, OOA's final report, Management report and action plan to be published	TBC	TBC	Yes
Translation of OOA's final report, Management report and action plan – or their summaries - to be published	TBC	30	Yes

TBC – To be confirmed

Language

The official languages of Kenya are English and Swahili. The OOA will produce a translation of Board approved OOA final report, Management report and action plan, or their summaries in on OOA's website.