

The non-compliance by France with its extra-territorial obligations regarding the right to education through its investment in Bridge International Academies

Submission to the Committee on Economic, Social and Cultural Rights

March 2020

France's investment in the education multinational Bridge International Academies (BIA) has raised serious concerns regarding the extraterritorial obligations (ETOs) of France, in relation to the rights set out in the Convention on Economic, Social and Cultural Rights, particularly, the right to education.

1. Background: investment of France in commercial schools

In 2015, the private arm of the French Development Agency (AFD), Proparco, invested in the education multinational Bridge International Academies (BIA). Proparco is a financial institution working to support development in Southern countries through private sector financing. Its majority shareholder is the AFD with 74,2% shares, which is itself the main operator of the French Ministry of Foreign Affairs for its overseas development aid.

The investment in BIA was done through the intermediary fund Novastar East Africa Fund (Novastar) via its Investment and Support Fund for Businesses in Africa (FISEA). Novastar is an impact fund which claims to support projects aimed at making essential goods and services accessible, notably education, in East Africa. Proparco brought USD 5,5 million to the Novastar Ventures East Africa Fund, bringing its total closing to USD 80 million. BIA is integrated into the Novastar fund portfolio, and documents that GI-ESCR was able to consult as well as exchanges with PROPARGO staff show that **PROPARGO clearly knew about and intended to support Bridge International Academies when it chose to invest in Novastar**.¹

What is Bridge International Academies?

BIA is a US-based corporation of for-profit private pre-primary and primary schools claiming to deliver quality, affordable education to underserved families and children. By 2018, it operated over 500 schools in India, Kenya, Liberia, Nigeria, and Uganda, with ambitions to reach 10 million pupils by 2025.² It has received funding from major international investors including the World Bank, Pearson, and Bill Gates, for a total amount estimated to be over 100 million US dollars.³ BIA uses what it calls an “academy in a box” model,⁴ employing a highly standardised approach to education. At BIA, every school looks the same, the same material is used in each classroom, and most importantly, the same lessons are taught in the same way across all the academies of the same country. BIA uses a system of scripted lessons, and its teachers – who were mostly secondary school leavers without formal teaching qualifications – receive lesson plans on an e-tablet, which they must follow word by word.

2. Negative human rights impact of Bridge International Academies

A robust and growing body of evidence from various independent sources, including journalists, governments, former BIA staff, independent experts, and civil society, has documented serious

¹ Proparco has also been very supportive politically to BIA, for instance by giving its founders a large space: <https://blog.secteur-prive-developpement.fr/2016/07/07/des-ecoles-privees-a-bas-cout-une-solution-perenne-aux-defis-scolaires-de-lafrique/>.

² <https://www.bridgeinternationalacademies.com/>

³ <https://www.gi-escr.org/publications/brief-on-bridge-international-academies-investors>

⁴ <http://www.bridgeinternationalacademies.com/wp-content/uploads/2016/09/Brookings-Millions-Learning-case-study.pdf>

concerns about BIA's corporate practices and the impact of their operations on human rights, including labour rights and the rights to education and health.⁵

A complaint to the International Finance Corporation (IFC)'s Compliance Advisory Ombudsman (CAO) was filed by a group of 10 Kenyan citizens in April 2018.⁶ This Complaint provides a more detailed analysis of the impact of BIA. The preliminary report from the CAO released in October 2019 provided an initial confirmation of the concerns raised by finding 'substantial concerns' with BIA's operations, particularly pertaining to labour rights, negative impacts on parents and pupils, social and environmental risks, and compliance with national standards.⁷ Based on these concerns, the CAO has commenced a compliance investigation into the International Finance Corporation's (IFC) due diligence and supervision of BIA.⁸

Documented concerns on BIA show:

1. Independent research shows BIA's fees and practices exclude the poor and marginalised, including mass-expelling children in Liberia;^{9,10}
2. Documents from the Ministries of Education in Kenya and Uganda demonstrate that BIA has repeatedly failed to respect the rule of law, including minimum educational standards, over several years;¹¹
3. Documents from BIA show poor labour conditions, below labour standards;¹²
4. Media reports cite concerns about freedom of expression and lack of transparency;¹³
5. The United Kingdom (UK) Parliament has raised serious questions about BIA's relationships with governments, transparency, and sustainability, as well as the absence of valid evidence of BIA's positive impact;¹⁴
6. Statements by the United Nations and African Commission on Human and Peoples' Rights raise concerns about negative impacts on education quality, equity and social segregation and stratification of low cost private schools;¹⁵
7. A range of evidence, including a recent report from researchers on an official evaluation of a Government program including BIA in Liberia,¹⁶ shows that BIA has attempted to obstruct independent inquiry and evaluation; and
8. The World Bank's accountability body, the Compliance Advisor Ombudsman (CAO), raised 'substantial concerns' regarding the IFC's investment in BIA.¹⁷

⁵ List of independent research and human rights bodies' statements available at: <https://www.gi-escr.org/private-actors-social-services/education/commercial-schools/#CS1>

⁶ Complaint to the Compliance Advisor Ombudsman against the International Finance Corporation's investment in Bridge International Academies (BIA), available at: <http://eachrights.or.ke/wp-content/uploads/2018/04/CAO-Complaint-EACHRights-16-April-18-Public.pdf>

⁷ See Compliance Appraisal: Summary of Results (October 2019), available at: http://www.cao-ombudsman.org/documents/CAOAppraisalReport_BridgeInternationalAcademies_English.pdf; see also World Bank's accountability body raises 'substantial concerns' regarding IFC'S investment in Bridge International Academies, available at: <https://www.gi-escr.org/latest-news/world-banks-accountability-body-raises-substantial-concerns-regarding-ifcs-investment-in-bridge-international-academies>.

⁸ Ibid.

⁹ See e.g. *Bridge Vs Reality: a Study of Bridge International Academies' for-profit schooling in Kenya*, available at: <http://bit.ly/2h1Rml9>; *Schooling the Poor Profitably: the innovations and deprivations of Bridge International Academies in Uganda*, available at: <http://bit.ly/2cSQidq>.

¹⁰ See <https://twitter.com/JustinSandefur/status/1223619220971368448?s=20>.

¹¹ See e.g. Statement from the Ministry of Education and Sports on the closure of BIA, available at: <http://bit.ly/2eVg967>; Letter to CEO of BIA from Ministry of Education, Kenya <http://bit.ly/2rTRN69>.

¹² *Bridge Vs Reality: a Study of Bridge International Academies' for-profit schooling in Kenya*, available at: <http://bit.ly/2h1Rml9>, appendixes.

¹³ See e.g. *Can a Tech Start-Up Successfully Educate Children in the Developing World?*, available at: <http://nyti.ms/2sUjZpm>.

¹⁴ Letter, 25 April 2017, to the Secretary of State for International Development, concerning DFID's work on education: Leaving no one behind?, available at: <http://bit.ly/2ulAXpB>.

¹⁵ Concluding Observations and Recommendations on the 5th Periodic State Report of the Republic of Uganda (2010 – 2012), available at: <http://bit.ly/1Y3HGmm>.

¹⁶ See <https://twitter.com/JustinSandefur/status/1206612479993958407?s=20>.

¹⁷ <https://www.gi-escr.org/latest-news/world-banks-accountability-body-raises-substantial-concerns-regarding-ifcs-investment-in-bridge-international-academies>

Additional human rights analysis of the evidence available on BIA can be found online.¹⁸

3. France's violation of its obligations under the ICESCR through its investment in BIA

France's continuous support to Bridge International Academies

The negative impacts of BIA's operations on human rights have been brought to the French Government's attention by civil society continually since 2017 : a public appeal addressed to BIA investors, a letter addressed directly to Proparco regarding its investment in BIA and requesting a meeting, three meetings with civil society representatives, as well as a several exchanges between civil society and Proparco representatives via emails and official letters.¹⁹

Despite this, France has asserted its continued support for BIA. Following the letter²⁰ to all BIA investors setting out the evidence of BIA's irregularities,²¹ Proparco responded that they have no power over BIA's governance, and they continue to '*monitor the situation with the greatest vigilance*'.²²

In light of the concerns with the human rights impacts of BIA, France's continuous support to BIA potentially constitutes a violation of France's obligation to respect, protect and fulfil its obligations under the ICESCR. Guidance can be drawn from the *Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education* (hereafter, "The Abidjan Principles").

The Abidjan Principles on the right to education

The *Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*, were adopted the 13th of February 2019 by a group of over 55 recognised experts worldwide in the right to education. In July 2019 the United Nations Human Rights Council [adopted without a vote a resolution](#) recognising the Abidjan Principles at its 41st Session. They have been cited as a key reference tool by the African Commission of Human and People's Right during its 2019 April session and as a 'valuable specialised source of interpretation' of State obligations by the [Special Rapporteurship on Economic, Social, Cultural and Environmental Rights](#) of the Inter-American Commission on Human Rights (IACHR).

The Abidjan Principles provide States with guidance concerning the right to education and the participation of private actors to education systems under existing human rights law. They detail how, according to international law, while protecting the freedom to establish or attend private schools, the existence or growth of private actors in education should not undermine the right to free, quality, public, education for all, and the rights to equality and non-discrimination. The Abidjan Principles also unpack States' obligations to regulate private actors, to limit supplementary private provision which infringes on the right to education, and to

¹⁸ <https://www.gi-escr.org/publications/december-2016-gi-escr-eachrights-and-iser-uganda-statement-what-do-the-new-data-on-bridge-international-academies-tell-us-about-their-impact-on-human-rights-a-five-point-analysis>.

¹⁹ Call by Francophone civil society against the commercialisation of education (June 2016) <https://www.gi-escr.org/publications/appeal-de-la-socit-civile-francophone-contre-la-marchandisation-de-lducation>; Civil society call on investors to cease support to Bridge International Academies (August 2017), <https://www.gi-escr.org/publications/august-2017-civil-society-call-on-investors-to-cease-support-to-bridge-international-academies>; Public letter of concern to current or prospective investors in Bridge International Academies (March 2018), <https://www.gi-escr.org/latest-news/open-letter-88-organisations-urge-investors-to-cease-support-for-bridge-international-academies>

²⁰ Public letter of concern to current or prospective investors in Bridge International Academies (March 2018), <https://www.gi-escr.org/publications/public-letter-of-concern-to-current-or-prospective-investors-in-bridge-international-academie>

²¹ Ibid.

²² Response of Proparco to Public letter of concern to current or prospective investors in Bridge International Academies (March 2018), <https://www.gi-escr.org/publications/public-letter-of-concern-to-current-or-prospective-investors-in-bridge-international-academie> (April 2018).

guarantee that all participants involved in education are aligned towards the common aim of realising the right to education.

More information and the text of the Principles available at :

<https://www.abidjanprinciples.org/fr/home>.

1. *Obligation to prioritise free, quality public education and the disadvantaged, marginalised and vulnerable groups*

Human rights law requires donor States to prioritise ‘supporting the recipient State to meet its core obligations’, particularly, ‘free, quality, public education’, especially for vulnerable, disadvantaged and marginalised groups **[Abidjan Principles-Guiding Principle 38]**.²³ Proparco not only failed to do so, but it instead funded a school that has demonstrated to compete with and undermine public education in a number of contexts, often against the authorities’ will.²⁴

2. *Obligation to refrain from providing support in a manner inconsistent with human rights and lack of due diligence*

Donor States ‘providing international assistance and cooperation in education must refrain from supporting, directly or indirectly, private educational institutions in a manner that is inconsistent with human rights’ **[Abidjan Principles-Guiding Principle 76]**. In this case, France, through Proparco, provided funding for BIA after concerns had been raised about the dangers of privatisation in education,²⁵ and donor support to commercial schools.²⁶

In 2016, the UN Committee on Economic, Social and Cultural Rights (CESCR) raised concerns about France’s due diligence regarding development assistance that ‘*d[id] not provide full protection for the rights enshrined in the Covenant*’ and advised France to ‘*develop robust methodological tools for analysing the impact that operations funded by development agencies have on the enjoyment of Covenant rights*.’²⁷ France’s continued funding of BIA indicates inadequate due diligence and an ongoing lack of assessment. Similarly, human rights law mandates States to ensure ‘*ex-ante, on-going and ex-post human rights impact assessments*’ for any public funding for eligible private schools **[Abidjan Principles-Guiding Principle 69]**. Where an intermediary is used, States are still required to ‘*take all reasonable steps to ensure that the relevant organisations behave consistently with the international human rights obligations of that State*’ **[Abidjan Principles-Guiding Principle 22]**. The lack of assessment and review suggests that France may not have met its due diligence obligations.

States such as France are also required to support the recipient States to ‘*enforce standards and regulations*’ for private schools **[Abidjan Principles-Guiding Principle 79]**. A number of countries where BIA operates have attempted to regulate the schools, including trying to close them down for non-compliance with national standards.²⁸ France’s support to such schools, that

²³ As well as Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, Principle 32; International Covenant on Economic, Social and Cultural Rights, Article 2(1) and 13.

²⁴ Statement from the Ugandan Ministry of Education and Sports on the closure of BIA: <http://bit.ly/2eVg967>. See also Kenyan court upholds closure of Bridge International Academies in Busia county <http://bit.ly/2IT2vHG>.

²⁵ Civil Society condemns the African Development Bank and other int’l orgs’ support to privatisation in education (November 2014), <https://www.gi-escr.org/latest-news/civil-society-condemns-the-african-development-bank-and-other-international-organisations-support-to-privatisation-in-education-2>

²⁶ Statement signed by 120 organisations related to the World Bank’s support to BIA (May 2015), <https://www.gi-escr.org/publications/may-2015-statement-signed-by-120-organisations-related-to-the-world-banks-support-to-bia>

²⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations, E/C.12/FRA/C O/4, paras. 7 – 8 and 11, 24 June 2016.

²⁸ See for instance *Court upholds Uganda’s Ministry of Education’s order to close BIA schools*: <https://www.gi-escr.org/latest-news/update-friday-4th-of-november-court-upheld-ugandas-ministry-of-educations-order-to-close-bia-schools>; *Kenyan court upholds the closure of Bridge International Academies over failure to respect standards*: <https://www.gi-escr.org/latest-news/kenyan-court-upholds-the-closure-of-bridge-international-academies-over-failure-to-respect-standards>, and *Bridge International Academies must respect the right to education and comply with Ugandan Government order to close its schools*: <https://www.gi-escr.org/latest-news/bia-non-compliance>.

may violate domestic standards, thus not only fails to support the enforcement of standards and regulations, but further undermines such principles and the rule of law.

3. *Obligation to provide remedies for infringement of the right to education*

In addition, when presented with the evidence illustrating the negative human rights impacts of BIA's operations, France did not take adequate steps to remedy the situation. This is despite the clear obligation for States to ensure access to remedy for violations of human rights, including where the infringement is caused by a private actor **[Abidjan Principles-Guiding Principle 88]**. Donor States in particular are also called upon to *'take all effective steps to remedy the situation'* where the development of private schools in a recipient country has an adverse impact on the right to education **[Abidjan Principles-Guiding Principle 79]**, which was clearly the case in a number of States where BIA operates, including Kenya and Uganda where the CESCR itself raised the issue.²⁹

Suggested questions to France

1. Has France considered the impact of the impact of its investment in Bridge International Academies on the rights protected under the ICESCR, including the right to education and the Abidjan Principles? Did France conduct an *ex-ante* human rights impact assessment of its investment in BIA in line with its obligations under the ICESCR? If not, can France explain why?
2. When France was warned of the negative impacts of its investment in BIA on human rights and the right to education, including in particular the infringement of the right to public education and the risk for the rule of law, why did it not immediately cease all funding to BIA, despite the gravity and the level of documentation of the allegations?
3. What due diligence mechanisms has France put in place since the negative impacts of its investments to commercial schools were raised to prevent the recurrence of investments with similar negative impacts?

Civil society call to the French Government

France should:

1. Exit in the shortest possible time from its investment in Bridge International Academies. Proparco should fully discharge its legal due diligence obligations and responsibilities by making no further financing commitments to Bridge schools, and by using any suspension or termination rights to withhold any planned disbursements and withdraw existing investments in Bridge International Academies where contractually possible.
2. Put in place effective due diligence mechanisms for development aid to prevent the recurrence of investments with similar negative impacts, with specific safeguard mechanisms involving the participation of civil society in case of any project affecting public services.
3. Make a plan to reevaluate its development cooperation in the education sector, including the policy of Proparco, to favour support to public education and the respect of the right to education, in accordance with the Abidjan Principles.

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²⁹Human rights bodies' statements related to States' obligations with regards to Bridge International Academies, <https://www.gi-escr.org/publications/human-rights-bodies-statements-related-to-states-obligations-with-regards-to-bridge-international-academies-1>