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Christel Adick

## How Kenyan initiative helped to regain education as a public good over for-profit education in low-fee private schools

### Zusammenfassung

Während im sogenannten Globalen Norden Privatschulen meist mit gebührenpflichtigen Eliteschulen in Verbindung gebracht werden und staatliche Schulen kostenlos sind, hat sich in vielen Ländern des Globalen Südens neben den bestehenden konfessionellen oder Eliteschulen ein neuer Typus von Privatschulen entwickelt: Niedrigpreis- (oder Low-Cost-)Privatschulen, die häufig gewinnorientiert sind. Diese Schulen werden von Privatunternehmen – Einzelpersonen oder Firmen, einschließlich einiger großer transnationaler Schulketten – auf finanzieller Grundlage der Erhebung relativ niedriger Gebühren angeboten, um Schüler/-innen aus niedrigen oder unteren Einkommensschichten anzuziehen. Diese Schulen, die den lokalen Bedürfnissen entsprechen und oft vorgeben, eine Lücke zu füllen, weil es an staatlichen Angeboten mangelt, sind in den letzten zehn Jahren unter heftigen Beschuss einer Vielzahl staatlicher und vor allem nichtstaatlicher Organisationen geraten. Diese sprechen sich auf lokaler, nationaler, kontinentaler und internationaler Ebene gegen solche Schulen aus, weil sie den Grundsätzen der nationalen Bildungssysteme zuwiderlaufen. Diese Grundsätze bestehen darin, allen Menschen eine kostenlose, qualitative Grundausbildung mit gleichem Zugang für jeden zu bieten: wenn nicht durch die, so doch wenigstens unter der Schirmherrschaft der Regierung.

Aber waren dieser Protest und diese Kritik, die zu einem Schwerpunkt konzertierter Aktionen nationaler und internationaler Organisationen der Zivilgesellschaft (CSO) geworden sind, erfolgreich? Die Antwort im folgenden Artikel lautet: Ja, denn einige Entwicklungen der jüngsten Zeit deuten darauf hin, dass Bildung als öffentliches Gut wieder zu ihren logischen Prinzipien zurückgefunden hat. Diese These wird im folgenden Artikel diskutiert, indem zunächst Bildung als öffentliches Gut im Gegensatz zu Bildung als privates und als Gemeingut definiert wird. Ebenso wird die Ansiedlung von Schulen mit geringen Gebühren in den Bereichen der privaten Bildung näher betrachtet. Anschließend werden beispielhaft die Entwicklungen in Kenia dargestellt. Hier führten die Organisationen der Zivilgesellschaft (CSOs) zu einer effektiven, evidenzbasierten Kampagne gegen die kostengünstigen Schulen der Bridge International Academies (BIA) als Teil einer breit angelegten

und massiven international konzertierten Aktion zur Förderung der universellen Grundsätze einer freien und hochwertigen, staatlich-kontrollierten Bildung, wie sie zuletzt in den Nachhaltigen Entwicklungszielen (SDGs) der Agenda 2030 der Vereinten Nationen erklärt wurden.

**Schlüsselworte:** *gebührengünstige Privatschulen (LFPS), öffentliche Bildung, Privatschulen, gewinnorientierte Schulen, Organisationen der Zivilgesellschaft (CSO), Bridge International Academies (BIA), Afrika, Nachhaltige Entwicklungsziele (SDGs)*

### Abstract

While in the so-called Global North private education is mostly associated with elite-type schools requiring tuition fees, whereas government schools are free, the private schools' sector in many countries of the 'Global South' has experienced the expansion of a new type of private schools besides also existing denominational or elite schools: low-fee (or low-cost) private schools, often profit-oriented. These schools are provided by private enterprises – individuals or companies, including some large transnational school chains – on the financial basis of collecting rather low amounts of fees so as to attract pupils from low or lower middle-income backgrounds. Often claiming to fill a gap because of lacking governmental provisions as well as answering local demands, these schools have in the last decade come under heavy attack from a wide range of state and especially non-state organizations ranging from local to national, continental and international levels, who object such schools because they counter the very principles of national education systems which are to provide basic education for all for free, at a good quality and with equal access, if not by, then surely under the auspices of the government.

Have such protest and critique which have become a major focus of concerted actions of national and international CSOs (Civil Society Organizations) been successful? The answer in the following article is: Yes, since some recent developments indicate that education has re-gained its logic principles as a public good. This thesis will be discussed in the following article, first by defining education as a public good in contrast to education as a private and to education as a common good,

as well as locating low-fee schools in the sectors of private education. This will be followed by exemplifying developments in Kenya where CSO activism led to a rather effective, evidence-based campaign against the Bridge International Academies (BIA) low-fee schools as a part of a broad and massive international concerted action to foster the universal principles of free and quality state-controlled education as they have last been declared in the SDGs (Sustainability Development Goals) of the United Nations Agenda 2030.

**Keywords:** *Low-fee Private Schools (LFPS), Public Education, Private Schools, For-profit Schools, Civil Society Organizations (CSO), Bridge International Academies (BIA), Africa, Sustainability Development Goals (SDGs)*

### Education as a public good

The article wants to discuss the thesis, that recent developments indicate that education has re-gained its logic principles as a public good over private for-profit school provision. In a broad perspective, this topic touches upon challenges to national education systems during an epoch of massive (neo-)liberalization and marketization which also affected education in many countries of the world since the 1990s (Lohmann, 2001; Martens, Rusconi & Leuze, 2007). Policies to open up paths of privatization had led to an expansion of private schools as well as the appearance of new transnational education enterprises in national education systems at various levels. International research focused such developments under the label of an 'education industry' and researched them as a challenge for educational governance (Verger, Lubienski & Steiner-Khamsi, 2016; Parreira do Amaral, Steiner-Khamsi & Thompson, 2021). In this broad research field, which includes praxis fields and policy fields from pre-school to university and out-of-school education and educational services, the object of discussion in this article: low-fee private schools (LFPSs), and among them a very special category: for profit school chains, are (just) one segment of what is summed up under 'global education industry', as may be seen in the concepts applied in recent discussions (like Fontdevila & Verger, 2021).

It has been remarked that private provision of education displays expansive tendencies: "Over the past decade, enrolment in private educational institutions has increased, particularly for primary education in lower-income countries, and for post-secondary non-tertiary education in more developed economies and in Central Asia [...]. In the case of school education, this process takes a variety of forms, including faith schools, low-fee private schools, foreign aid or international schools run by non-governmental organizations (NGOs), Charter, Contract and Vouchers schools, home schooling and personal tutoring, market-oriented and for-profit schools." (UNESCO, 2015, p. 73).

While these varied privatization and commercialization tendencies have clearly posed a lot of challenges to the governance of national education systems such as administrative control, the financing of education, and relations between governmental and non-governmental actors, it is posited here, that LFPSs, and in particular for-profit schools, are the one type of schooling that is utmost opposite to what is declared in principles of free, equitable and quality public education. What is the measure for the legitimacy of such a position? Where do

these principles come from? The answer is, to view free, equitable and quality public education as an historical achievement, behind which one should not go back. The normative fallacy of each unreflected conclusion of norms (what ought to be) from empirical findings (what is) calls for attention, like in this case, when reviewing the evidence and then speaking of an historical achievement, because such an argument needs to be accompanied by also invoking reflections of its legitimacy. In this case the argument will be sustained by aligning the historical fact finding about public education to discussions of education as a human right, as will be sketched in the following.

Historically, education in the form of 'national education systems' became the globally accepted universal model of the organized transfer of knowledge, attitudes, competencies and wisdom from one generation to the other. Modern school developments ('mass education') originated in Europe, typified as the 19th century model (compared to the 15th century model) of the relation between society, education principles and the state (Boli & Ramirez, 1986). However, this model has in the meantime (been) expanded across national and cultural boundaries by different mechanism ranging on a continuum between self-determined affiliation (adopting ideas from elsewhere) and external oktroi (colonial domination), so that one can speak of the universalization of modern schooling (Adick, 1992). Global similarities e.g., of structures, administration, enrolments, contents and certificates have been sustained by numerous empirical findings of the research group around John W. Meyer, known as the 'world polity' or 'world culture' approach in comparative education (Ramirez & Boli, 1987; Meyer & Ramirez, 2000; for an overview see Adick, 2009). Against the backdrop of such theoretical discussions plus empirical findings, to talk of 'public education' essentially means the rise of compulsory national education systems in which the state has acquired sovereignty over education (Mitter, 2006). And it is just this education sovereignty which is at stake when LFPSs operate largely outside government control and follow market philosophies instead of public good ones.

Applying an even broader historical horizon, the debates of public vs. private schools include challenges of governance and financing of education which touch upon an alleged trend known as "Pädagogisierung" in German language education sciences. This classical theorem dates back to the 1970s and has been introduced into international debates as "educationalization" (Depaepe, 1998) or, less known, as "pedagogicalization" (Proske, 2002; Adick, 2018a, p. 119). Educationalization is, then, a suggested tendency of modernizing societies to (re-)define relevant parts of their societal challenges into 'educational problems' which then have to be solved by the education system: For instance, new information and communication technologies (ICT) lead to demands to incorporate ICT into compulsory education. The same holds true for problems like drug abuse, radical views, racism, or malnutrition, which are said to be handled by the school, as well as proclaiming health education, the teaching of international understanding or entrepreneurship, to be part of a timely school curriculum. In this view, the global Agenda 2030 on 'sustainable development' is just another evidence of 'educationalization': The concept of sustainability is re-scheduled as a set of pedago-

gical problems which are delegated to the national education systems around the world to be 'solved'. As a proof, the SDG 4 tackling education reads: "Ensure inclusive and equitable education and promote lifelong learning opportunities for all", which is further operationalized into main targets including one (SDG 4.7) saying "By 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development". If, then, educationalization in the sense of a universal access to school education might be welcomed as an historical achievement, the provision of private schools for the poor at dumping prices unveils the downsides of 'schooling the world' (Adick, 2018a, pp. 123f.) and will thus alert educationists, researchers, civil society and policy makers alike.

The notion of 'public education' may be sharpened further by differentiating not only between education as a public or as a private (consumer) good, but also between education as a public and as a (global) common good as suggested by the advisory 'Senior Experts Group' of UNESCO (2015) who declared: "In light of the diversification of partnerships and the blurring of boundaries between public and private, we need to rethink the principles that guide educational governance and, in particular, the normative principle of education as a public good and how this should be understood in the changing context of society, state and market" (ibid., p. 71). These experts consider the growth of non-state actors in realms of education, be they (non-profit) civil society actors or (for-profit) corporations and posit that involvements of private actors in education were not new, but (in referencing Macpherson, Robertson & Walford, 2014) "what is new about these manifestations is their scale, scope, and penetration into all aspects of the education endeavour" (ibid., p. 73). They continue to define public vs. common goods as follows: "Public goods are considered to be more directly linked to public and state policy. [...] On the other hand, common goods have been defined as those goods that, irrespective of any public or private origin, are characterized by a binding destination and necessary for the realization of the fundamental rights of all people." (ibid., p. 77). I would like to carry this distinction a little further by aligning it to sectors of 'education': Education as a public good definitely applies to the national compulsory school systems, whereas considerations of education as a (global) common good should apply to the broad array of education before, beyond and after compulsory education, including continuing education and life-long learning. This resonates with SDG 4 as quoted above, which defines education in terms of a global common good in its overall definition ('ensure inclusive and equitable education and promote lifelong learning opportunities for all'), while stipulating education as a public good namely in its first target (SDG 4.1): "By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes". But if so, it should not be concealed that this definition puts a hard burden on the national education systems of low-income countries, because the inclusion of free secondary education is far more than what had been targeted as universal (primary) education during the Education for All (EFA) epochs between 1990 and 2015 (Adick, 2018b, pp. 13ff.). Rising numbers of school-age children because of demographic trends, plus an

increase of the number of years of schooling, both add to extremely urgent demands to provide school buildings, teacher training, curriculum development, testing etc., which to some extent explains the expansion of the LFPS schools' sector in low- and middle-income countries. Another way out, would, of course, be, to somehow increase state budgets for education by which means ever (external budgetary development assistance, increase in taxes, or others).

Coming now to the normative reflections needed, precise 'norms', to be found in definitions and terminology, are needed in policy debates in order to avoid misconceptions. This resonates with human rights law expert Jacqueline Mowbray's (2021) answer to the question: "Is there a right to public education?" She argues the implications of what constitutes public education, if states are obliged to provide this, and what would be the scope of this state obligation. In her expertise she mainly considers education in the sense of state-run schooling, even though private actors might be incorporated and even be financed by the state, but, if so, they will have to operate under state regime (Mowbray, 2021, p. 54). "As a result, for a school to be classified as part of the public education system, the state (or local authorities) must have the ability to exercise substantial control over the operation of the school, such that the way in which the school operates is ultimately determined by the state, or by publicly appointed school boards, and not by private actors" (ibid., p. 55). She underscores international treaties generally suggested "that public education provided by states would be the dominant form of education, 'the norm'", whereas private education would be seen "as additional or supplementary to public education." (ibid., p. 56). And this 'norm' is what has been posited above to be 'an historical achievement'.

### Low-fee private schools (LFPSs)

In view of the vast and very diverse field of what ranges under the label 'private education' an (hitherto unknown author<sup>1</sup>) has to be praised for the following (unnamed) figure which arranges this field as the intersection of two axis, namely 'private vs public financing' and 'private vs public provision' (see fig. 1).

As has been discussed above, both questions, who provides a school? and who pays? are at the center of the universal model of public education. The systematization displayed above (fig. 1) clearly shows: Government schools are the

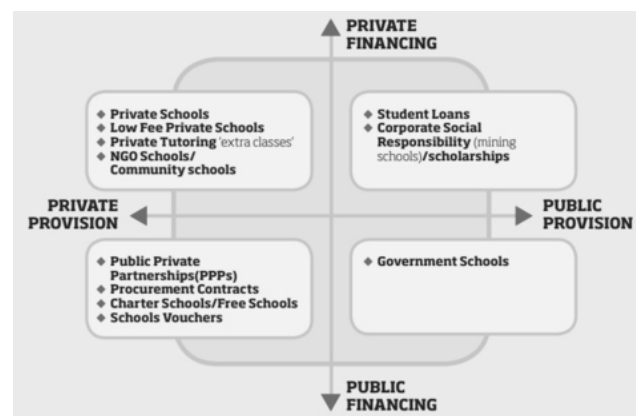


Figure 1: Public vs. private provision and financing of schools<sup>2</sup>

(Source: <https://www.gi-eser.org/private-actors-social-services/education/commercial-schools/>)



stand-alone type of education in which both principles are united in that the government provides and pays, whereas low-fee private schools are located diametrically as private actors (persons, institutions or companies) who run and finance their own schools. Do they, nevertheless, pertain to a public education system? And if so, why is that so, and under which clauses?

There is a very controversial debate on low-cost or low-fee private schools, ranging between appraisal and condemnation. According to James Tooley (2015), there are considerable controversies about LFPS schools in respect of equity, affordability and accessibility for the poorest and for girls, however, no controversy exists over two issues which he posits as facts: the 'ubiquity' and the 'superior quality' of such schools, as they abound in rural and urban areas of countries like India, Bangladesh, Nigeria, Ghana, Kenya and others, and in which learning outcomes and sometimes also teaching are, as he says, often found to be better than in free government schools. While this might be interpreted, as Tooley does, as the success story of a 'de facto privatization' of education, it may also be criticized as a deplorable surrogate of free and equitable education for all in the face of an eroding state-run education system. Verger, Fontdevila and Zancajo distinguish between various 'paths toward privatization' in their analysis of privatization trends in education, among which there exists one path called "privatization by default in low-income countries" which treats LFPSs in very critical perspectives (2016, pp. 89ff.). These authors also include a separate entry on James Tooley (*ibid.*, pp. 91 f.) reporting, among others, Tooley's own entrepreneurial interests as a co-founder of the Omega Schools chain in Ghana. Critically mentioned are also increasing numbers of school chains, among them BIAs (*ibid.*, p. 99).

But both attitudes, either welcoming or condemning all private actors whatsoever in education, would miss realities and policy options: It is posited here, that on the one hand, a differentiation according to sectors of education is needed, grossly stipulated as compulsory education vs. other sectors, and on the other hand, the application of private vs. state control (incl. control over financing) needs to be taken into consideration. In other words: If a school operates in the compulsory education sector of a given country, it should by necessity fall under what is decreed by the government, like registration, teaching appointed curricula, or respect of government approval of charging fees.

### **The case of public and private education in Kenya**

The Kenyan Basic Education Act, 2013 (Government of Kenya, 2013) is encompassing and detailed by including all aspects of schooling, governance and equity. It is therefore worthwhile to quote the most relevant clauses addressing the relation of state and private schools. The Act declares "the right of every child to free and compulsory basic education" (I, 4, a), which is sustained in Part IV as applying to all Kenyan learners and their parents or guardians. However, notwithstanding this, "other charges may be imposed at a public school with the approval of the Cabinet Secretary in consultation with the county education Board provided that no child shall be refused to attend school because of failure to pay such charges" (IV, 29,

2, b). The Act speaks of basic education as compulsory primary and secondary education. It distinguishes between "(a) public schools which are schools established, owned or operated by the Government and includes sponsored schools; (b) private schools as those established, owned or operated by private individuals, entrepreneurs and institutions" (V, 43, 1, a, b). In a special part on private education it is declared, if acting according to the law, "any person may establish and maintain a private school" (VII, 49), however: "unless it is registered under this Act" (VII, 50). Private schools have to follow administrative rules such as employ registered teachers, follow the common curriculum, keep records of their pupils, and others; and they are to be assessed by the County Education Board and the Teachers Service Commission (*ibid.*, VII, 52) and have to establish a parents' teachers association (VIII, 55, 3). In addition, the Act entails a special section on registration and accreditation which, among others, empowers the County Education Board to collect relevant data of all schools and teachers in the County (VIII, 79). The Act includes a detailed part on "licensing, registration and accreditation procedures in Basic education and training" (part X), and a part on "financial provisions" (part XI), in which the various financial sources of basic education are listed, but without any mention of fees in private schools.

All in all, the Kenyan Education Act displays the principles of what may be called a (typical) 'national education system'.<sup>23</sup> It decrees public education provided and controlled by the state as the dominant form of education, in other words: it meets the universal norm, which includes government control of private providers, if there are any. – But as always and everywhere: Declarations should not be confounded with reality. So, what is the reality of LFPSs in Kenya?

Research results are mixed. Among 93 schools in non-formal settlements in Nairobi (73 LFPS, 20 public) the ownership was found to be about half by individuals, nearly 30% by community groups, 9% by religious group, and 9% by a company (Simmons Zuilkowski et al., 2017, p. 5). Only few (19%) were registered with the Ministry of Education, however, 47% with the Ministry of Gender and Social Services, while the rest was completely unregistered. Research data from October 2013 with over 1.000 interviewees, most of them parents, focused, among others, on a comparison of costs (tuition, extra fees, meals) between both (public vs. private) and found going to a government school was less expensive, hence LFPSs would not suit the very poor (*ibid.*, p. 8). Most parents interviewed thought the quality of public education had declined after free primary education had been introduced in Kenya in 2003, which made them presume a private school would lead to better results (*ibid.*, pp. 8ff.). Parents avoided public schools because of alleged "teacher absenteeism, overcrowding, frequent teacher strikes, lack of discipline, distance from home, and poor student performance" (*ibid.*, p. 9). From their findings, the authors conclude, that most of the parents seemed primarily to be concerned with questions around school quality. Among others, they call for more investigation into the 'hidden costs' even of an allegedly 'free education' and for better teacher training in all sectors (*ibid.*, p. 13). There are no special observations made concerning the (since only few) for-profit run schools in this research.

On the basis of evidence collected from 2016 onwards, Linda Oduor-Noah<sup>4</sup> (2021) compiled an encompassing review of the following types of private education in Ethiopia, Kenya, Rwanda, Tanzania, Uganda and South Sudan:

- elite private schools (for-profit)
- commercial low fee private schools
- non-profit low fee private schools
- public-private partnership schools (modelled after the US type Charter schools)
- sponsored/government-aided schools
- vouchers
- non-profit/Philanthropic (NGOs/Faith-based Organisations)
- community schools (the majority of which are said to be of the low fee schools' type) (Oduor-Noah, 2021, p. 194, and *passim*).

In Kenya “LFPS were initially considered to be ‘non-formal schools’ which provided formal education services to out-of-school children, youth and adults”, whereas in the meantime they are “increasingly recognized as legitimate service providers of education, despite over 60 per cent of them remaining unregistered and unregulated” (*ibid.*, p. 195f.). But the government would now register such schools and had even provided them with instructional material in some years; studies in low-income settlements had revealed that more than half of the children would attend LFPS (*ibid.*, p. 196). As “driving forces behind the expansion of private schools”, Oduor-Noah suggests the following factors (*ibid.*, pp. 200ff.):

- “barriers to accessing public institutions”, like availability of government schools nearby;
- “declining quality”, i.e., alleged deficits of public education;
- “policy orientation” of governments being predisposed to welcome private incentives in education;
- “weak regulations and weak enforcement”, whereby governments do not effectively exercise their state control over education;
- “donor influence” by which external allegedly development-oriented agencies such as UKs DFID (Department for International Development) or the IFC (International Finance Corporation), part of the World Bank group, encourage private actors in education.

According to Oduor-Noah's research on East African countries, the most common non-state actors are schools of religious denominations, which exist in all countries under review, whereas commercial LFPS only exist in Kenya, Uganda and South Sudan, while they are absent, not documented or unclear if existing in Ethiopia, Rwanda, and Tanzania (2021, p. 194). Among the profit-seeking LFPS special attention should be given to corporate chains of schools, namely the Bridge International Academies (BIA) which have a rather long history in Kenya (*ibid.*, p. 196). Besides this strong base in Kenya, BIA schools also operate in other countries, such as Uganda, Liberia, Nigeria, India and Pakistan (Uganda research results cf. Riep & Machacek, 2016; for an overview see Riep, 2019).

Srivastava (2016) reports that BIA schools are perhaps the world's largest school chain as part of a broader wave to actively create a world market for for-profit schooling; as such, BIA would receive funding from the UK by its development finance institution and its Department for International Development (DFID) as well as by the International Finance Corporation (IFC) as part of the World Bank group.

### **Civil Society Organizations vs. Bridge International Academies in Kenya**

The following part tries to summarize in the format of a ‘thick description’ (Geertz, 1973, pp. 3–30) very particular events, interpreted by way of a ‘Key Incidents Analysis’. In short: The object of research to be described and analyzed turns around the privatization question in the Kenyan education system and how it radiated beyond Kenya and reached international levels of decision-making towards sustaining principles of ‘public education’. While global developments are mostly conceived of as top-down processes, e.g., a UNESCO campaign is proliferated to its national member states, from where it might be implemented via ministries of education and eventually arrive in the classroom, the following story might be one of the more rare examples of a bottom-up process, in which local civil society actors critically resumed particular educational realities, comprised their findings, discussed them with international fellow organizations, brought them before the World Bank, which led to a revision of its policies, applauded by global decision makers who reaffirmed principles of public education. This will be the ‘storyline’ that is written in the following.<sup>5</sup>

Even though the wider context suggests that the Kenyan actors were inspired by transnational advocacy contacts<sup>6</sup>, this does not diminish their prominent role to discredit public support for for-profit education. In other words: Kenyan agency is posited here as the decisive factor that induced developments which followed. And this is aligned to an identifiable ‘key incident’: Had not a handful of Kenyan citizens launched a well-sustained complaint at the World Bank (in April 2018), there would not be the pro-public education decisions of major global players in the years after till the most recent principles of the Global Education Summit (in July 2021).

Kenyan activists acting in cooperation with civil society organizations were sensitized about negative impacts of low-fee schools, especially transnational for-profit school chains, and thus began researching and scandalizing such schools. In December 2016, Education International and the Kenya National Union of Teachers (KNUT) published empirical findings on BIAs in Kenya, stemming from interviews and research conducted by the Kenyan-based East African Centre for Human Rights (EACHRights) and the Global Initiative for Economic, Social and Cultural Rights (GIESCR). According to this survey (Education International & KNUT, 2016), the first BIA school in Kenya opened in 2009 in Mukuru, an informal settlement in Nairobi. In 2016, over 400 such schools were operating with over a hundred thousand pupils up to class 8. What concerns the question of compliance with the national school system, it is important to say, that BIA schools were generally not registered by the government as private schools, nor did they fall in line with notions of ‘non-formal’ education

for out-of-school children and youths (ibid., pp. 17f.). To summarize some of the findings, most of the teachers lacked adequate teacher training and had also not been sufficiently prepared to teach in these schools. Working conditions were deficient with heavy teaching loads and low salaries. BIA pupils were taught according to a uniform BIA curriculum with ready-made lessons on teachers' computer tablets which hardly matched the prescribed Kenyan curriculum. Tuition-fees were often higher (with an average between USD 7.31 and 8.43 per month) than the proclaimed ones (around 5 or 6 USD) to which costs for uniforms, registration, stationary, lunch at the premises, etc. have to be added. Though BIA schools claim to offer education for low income-groups they cannot be afforded by very poor households with several school-age children in Kenya. The report was meant to serve "as a wake-up call for the Government to take immediate action" (ibid., p. 55), in other words: these CSOs fulfilled their role as 'watch-dogs' for the public interest in education. And indeed, the report seems to have upstirred BIA schools' representatives as well as government officials and civil society, let alone the Kenyan public and parents and teachers of these BIAs and of other schools. On the website of EACHRights we find a press release about the Kenyan court preventing attempts by BIA to muzzle critics which probably dates from around 2017. But the decisive step, the key, or critical incident, that got things going, was the decision of Kenyan citizens in concert with like-minded CSO organizations to complain about BIA schools at the World Bank. This particular 'Kenyan complaint story' will now be told like a storyline along condensed key events.

#### **April – June 2018 and April 2019: Kenyans effectively submit a complaint to the World Bank's Compliance Advisor Ombudsman (CAO) on BIA schools in Kenya**

On 16 April 2018, ten Kenyan activists (some former parents and teachers of BIAs) together with EACHRights (who arranged the research published in: Education International & KNUT 2016) submitted a complaint report to the World Bank's Compliance Advisor Ombudsman (CAO) on the deficiencies of the about 400 BIA schools in Kenya and their incompatibilities with standards laid down in national, international and World Bank policies. The reason why this concerned the World Bank is, that the International Finance Corporation (IFC), part of the World Bank Group, had financially supported the expansion of for-profit school chains in Africa, among them BIA. The CAO accepted the complaint as valid and announced further investigations: "Human rights organisations welcomed the decision by the World Bank's Compliance Advisor Ombudsman (CAO) to accept a complaint regarding the International Finance Corporation (IFC)'s investment in Bridge International Academies (Bridge) in Kenya [...]."

Following numerous civil society meetings since 2015 with World Bank staff, and three joint statements addressing the World Bank and other investors in Bridge, EACHRights and eight Kenyan citizens filed a complaint on 16 April 2018 demonstrating grave violations of IFC standards and human rights law. The complainants are demanding that IFC act to stop the harm caused by the multinational chain [...].<sup>7</sup>

One year later, in April 2019, the CAO published its assessment report on BIA schools in Kenya as a response to the Kenyan April 2018 complaint, which had officially been accepted as eligible for further CAO investigations in June 2018. Following the official acceptance was an assessment in Kenya, during which "the CAO gathered views and statements from all parties concerned. The assessment report, which makes no judgment on the matter, presents the issues discussed from the perspective of each party. The complaint is now moving into the appraisal stage where the CAO will determine whether a compliance investigation of the IFC's involvement is required."<sup>8</sup>

#### **November 2018: Resolution of the European Parliament that the EU and its member states must not use development aid money to fund commercial private schools.**

From this resolution, it is undisputable that 'national education systems' consist (as a norm and at least) of 12 years of primary and secondary education for all ('compulsory education'), and that they have to be free of charge for all (essentials of 'public education'). The text is also relevant for researchers and practitioners in international education, since it bans public support for private for-profit interests in development cooperation. The European Parliament: "Stresses, in particular, the importance of SDG 4.1, whose aim is a full, quality 12-year primary and secondary education cycle, provided free of charge for all; reiterates that education should be a key pillar of the Africa-EU partnership, in keeping with the strategic priorities approved at the 2017 European Union-African Union summit; considers that the condition of being 'free of charge' should apply not only to schooling itself, but also to hidden costs, such as school supplies, transport and food; Takes the view that States should consider scholarship schemes to provide schooling for the most disadvantaged children; points out that it is important to guarantee pluralism and freedom of choice for parents; insists, nevertheless, that the European Union and the Member States, in accordance with SDG 4.1 and Article 26 of the UDHR, must not use ODA to support private, commercial educational establishments, which do not uphold the Union's principles and values."<sup>9</sup>

CSO organisations around the world welcomed this resolution, as may be seen in a press release of "Right to Education (RTE)"<sup>10</sup> of 16 November 2018: "While the Resolution does not prevent the European Commission from funding small-scale non-profit private schools, such as faith-based, NGO or community schools, it calls on prohibiting funding to 'commercial establishments' [...]. The resolution makes clear that for-profit private providers such as the highly controversial school chain multinational Bridge International Academies [...], which are commercial establishments, do not align with EU's principles and values. It is in the DNA of the EU and European countries to guarantee education as a right and public service" said Sylvain Aubry, from the Global Initiative for Economic, Social and Cultural Rights.<sup>11</sup>

#### **February 2019: Abidjan Principles**

The Abidjan Principles (2019) formulate ten "guiding principles on the human rights obligations of states to provide public

education and to regulate private involvement in education". According to the organization's self-description, this document resulted from "an open, transparent, and widely consultative process" of various experts and education stakeholders that started in 2015, conducted international meetings and online consultations between 2016 and 2018, and adopted the finalized text of its principles during a conference in Abidjan, Ivory Coast, on 13 February 2019. The text does not only pinpoint the heart of the controversy of the Kenyan case discussed here, but it also acknowledges by name the input of seven experts' background papers, among them Linda Oduor-Noah (then working at EACHRights) (*ibid.*, p. 5). The drafting committee was made up of human rights experts chaired by Ann Skelton, holding the UNESCO Chair for Education Law in Africa at the University of Pretoria, South Africa. On the occasion of their adoption the Abidjan principles were signed by 55 experts from all regions of the world and coming from universities and international governmental and non-governmental organisations (*cf.* names of signatories, *ibid.*, pp. 7–10), among them also experts who are known from the literature referred to above.<sup>12</sup> Based on SDG4.1, the Abidjan principles cling to free, equitable and quality primary and secondary schooling under the auspices of the state as the universal norm, which, however, especially leads to tensions "between State obligations to ensure the provision of free quality education to all without discrimination, and the liberty to choose and establish a private school. This and other tensions often surface in education policy debates, in particular in the context of growing privatisation and commercialisation of education, where private interests and profit-making are sought over and above respecting, protecting, and fulfilling the right to education" (*ibid.*, p. 4). The Abidjan principles adhere to two basic logics, in that they "clearly recall States' obligations to establish free, quality, public education systems ... and clarify the State's obligation to regulate private actors" (*ibid.*, p. 5). It is exactly these two arguments which re-affirm the principles of state sovereignty over education as an 'historical achievement' discussed in the first part of this article.

### **October 2019: The World Bank and the Global Partnership for Education (GPE) start to question their pro-for-profit-education policies**

In October 2019 two major actors who had included the funding of commercial schools, including large-scale private profit-seeking enterprises (school chains) in their portfolio, started to review their policies: The World Bank raised concerns about the IFC financing BIAs; and the Global Partnership for Education turned away from for-profit education in its revised Private Sector Strategy. How did this come about?

Obviously, the Kenyan complaint had not been treated by the CAO just as a kind of 'local affair' of deficient behavior of a particular company (BIA) in a specific location (Kenya), but had led the World Bank to re-consider and to further investigate the whole question of financing private for-profit providers of education. In a press release, EACHRights references this report of the CAO published the day before (*i.e.*, 24 October 2019) and explains: "the CAO determined that BIA's operations raise "substantial concerns" regarding: "(a) the spe-

cific allegations of adverse impacts to teachers, parents and students raised in the complaints; (b) the Environmental and Social risk profile of the schools in light of their number, locations and concerns regarding their construction methods; and (c) the registration status of the schools and adherence to relevant health and safety requirements. The CAO raised concerns regarding the adequacy of the IFCs supervision and due diligence regarding its investment in BIA. The investigation by the CAO will also look into the IFC's supervision of BIA's compliance with national laws, and its capacity and commitment to implement IFC performance standards including those relating to labour practices and the environment, health and safety aspects of its schools." The text continues to say: "It is anticipated that the compliance investigation will be completed by September 2020."<sup>13</sup> But, according to the annual report of the organization, this investigation is not yet completed (EACHRights, 2021, p. 14), which, however, does not mean anything, because it might be due to constraints of the COVID 19 pandemic situation.

The Global Partnership for Education (GPE) is an outstanding example of 'global education alliances', which have been defined as neither international governmental organizations, nor private global players (like the Bill and Melinda Gates Foundation), but, instead, a rather new kind of transnational consortia acting beyond and between national governmental education institutions (*e.g.*, ministries), international governmental organizations (*e.g.*, UNESCO) and national and international non-governmental organizations (NGOs) (Adick, 2020a). The GPE originated in 2012 as an offspring of the World Bank's Fast Track Initiative (FTI), which had started in 2002 to accelerate the progress of the Education for All (EFA) Program in about 60 countries (*cf.* Richter, 2010, pp. 195–226).

GPE is a Multi-Stakeholder-Partnership operating as a kind of broker of funds to improve education between various types of donors (countries, philanthropic foundations, international organizations, the EU), and recipients (the so-called developing countries). Its Headquarters is located in Washington, D.C. (USA). GPE's strong relation to the World Bank has been seen as a challenge to its autonomy and the source of its ambivalence towards the privatization of education (Menashe, 2017). The relation was also discussed in GPE's Board of Directors December 2018 session, *i.e.*, following the Kenyan complaint to the World Bank (and as a result of it?) and in view of the events that followed in 2018. In this session it was decided to have an independent evaluation of the relation between GPE and World Bank until June 2021, and if this would signal grave differences, possibly to completely dissolve GPE from the World Bank (Adick, 2020a, p. 275).

The organization claims to adhere to the Abidjan Principles. Its private sector strategy is directed to the following fields: expertise, finance, provision of goods & services, and advocacy & voice (GPE, 2019, pp. 11f.). After elaborating back and forth the various private sector activities in various settings of education including passages that touch the delicate question of for-profit schools, the figure in Annex 8 at the last page of the strategy paper finally makes it clear, that 'for profit core services' (*i.e.*, the running of K-12 schools in a national school system) are "ineligible for GPE funding", eye-catching by a red font with for-profit in the figure, and with green in the permit-



ted areas of not for profit core services, such as faith-based schools, which are “eligible for GPE funding” (ibid., p. 40).

### **March – May 2020: CSOs applaud World Bank's decision to freeze investments in private for-profit K-12 schools**

After several years of various civil society campaigns against increasing privatization of education, two years after the effectively placed Kenyan complaint at the World Bank, and indeed perhaps quite unexpectedly for researchers, policy analysts, educationists and activists alike, the World Bank did dismiss its policy to fund for-profit education. Even though somehow ‘concealed’ in (just) a letter, the news about this massive change of policy was rapidly disseminated within international CSOs networks. The important message is contained in a letter of David Malpass (then World Bank President), to Steven T. Mnuchin (then the US Secretary of the Treasury) dating from 20 March 2020 which reads: “We understand that communities and external stakeholders have expressed concerns about investments in private for-profit K-12 schools. In response, we instituted a freeze on direct investments in such schools. Going forward, we will make public on our website our decision to formally freeze investments in private for-profit K-12 schools as a result of these concerns, which will also apply to any advisory and indirect investments through new funds, including with existing clients [...]. We will also request the Independent Evaluation Group (IEG) undertake an evaluation of IFC investments in K-12 private education provision, including impacts on educational outcomes, access, poverty and inequality. This will be followed by an inclusive and transparent consultation process, including the Board, education experts, and civil society, to determine whether there are any exceptional circumstances under which future IFC investments in such schools could be made without impacting negatively on poverty, inequality, the right to education, or the provision of public education.”<sup>14</sup>

Reconstructing how the information in the letter of Malpass to Mnuchin was propelled to CSOs around the world, the line of communication was followed step by step backwards from Germany to Washington (cf. Adick, 2020). Reading this vice versa, the World Bank President's letter (of 20 March) was passed on to Congresswomen Maxine Waters, Chairwomen of the US House Committee on Financial Services on the very next day (March 21). About two weeks later (April 9), it had arrived at Education International where it was linked under the heading “Teachers’ struggles pay off: World Bank to freeze investment in private for-profit schools”<sup>15</sup>, and on its website it was extensively commented including links to other topical documents, some also from the scientific community. From Educational International the news then sprang, as it seems, throughout relevant CSO networks of the world. For instance, in Germany, it was included under ‘news’ (April 23) in the website of the Gewerkschaft Erziehung und Wissenschaft (GEW), the German education union, which is a member of Education International. And, as has to be expected, in Kenya, it was highlighted on Eachrights’ website.<sup>16</sup> On 1 May 2020, the IFC officially announced its “freeze on investment in K-12 private, fee-charging education.”<sup>17</sup> Linda Oduor-Noah, who

had then mainly been in charge of the ‘Kenya complaint affair’ at EACHRights, comments: “This is a departure from the IFC's previous approach in which they posited that the engagement of for-profit providers in education contributed to their poverty alleviation goals. It was with this thinking in mind that IFC invested in Bridge [...]. A freeze on future investments is therefore timely and welcome, inevitably contributing to mitigating any further entrenchment of inequality and segregation.”<sup>18</sup>

### **Public education reaffirmed: Mission achieved**

The most recent developments around the Global Education Summit tend to sustain the thesis portrayed in this article that CSO interventions have effectively stopped the proliferation of profit-oriented school chains such as BIA and others. Not only was it achieved, first, that the World Bank reversed its policy on investments of the IFC into companies offering for-profit schools, and that, second, GPE, the largest funding consortium of education in so-called developing countries, also turned away from for-profit provisions of education in its private education sector policy, and that, third, the EU, the largest donor of GPE also declared to step out of supporting private school businesses, but as a result of all this the whole discourse has now definitely turned into explicitly pro-public education declarations. This is considered as a memorable achievement. Of course, future research will have to show if these declarations come true.

This turn manifested in latest events around the Global Education Summit in July 2021 which was devoted to acquiring funds for financing the GPE 2021–2025 schedule, not least by donor countries from ‘the Global North’. In addition, 36 CSOs, among them EACHRights, RTE, OXFAM, Action-AID, Plan International, the US-branch of the Global Campaign for Education<sup>19</sup>, and others, launched a joint statement directed “to use multi-billion Dollars Funding to Support Public Education” and to “urge GPE and its partners to use the money raised during the summit in support of free public education and to ensure that no funding is used to support commercial actors, in accordance with human rights requirements.”<sup>20</sup>

As a corollary of the Global Education Summit, the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) also published a “Policy Brief July 2021” under the title “Public education works: five lessons from low- and middle-income countries”<sup>21</sup>, namely Bolivia, Brazil, Cuba, Ecuador, India, Namibia and Vietnam. The lessons learnt presented in this brochure “should offer inspiration to donors and implementing countries alike to renew their efforts for free public education and move away from the policies of the last two decades focused on private involvement and partnerships, which have shown their failure” (p. 1). Longer case studies are announced by GI-ESCR to be published. The final take-home message sounds like: Public education works – even in low- and middle-income countries, so no need for commercial school chains any longer.

Meanwhile EACHRights, founded in 2010 and still located in Kenya, which had been the main institutional actor

to launch the April 2018 complaint about BIA schools in Kenya at the World Bank, published their first Annual Report ever, covering the years 2019–2020 (EACHRights, 2021). The organization runs an Education Support Programme (ESP) in order to enhance “access to free, quality, basic education for all children” and “reduce the increasing trend of privatization of education” (ibid., p. 5). Networking with other CSOs worldwide, among them GI-ESCR mentioned above and many others, seems to be very important as well as research in order to strengthen their advocacy and evidence-based programming. The report announces a continuation of its “advocacy around the negative impacts of privatization of education in Kenya” and recalls the stages of the complaint to the CAO of the World Bank presented above, adding that there had been several more complaints afterwards on other incidents which were also sent to the CAO. Important to note for further reconstructions of the ‘Kenyan complaint history’ presented here, is, that the initial complaint is obviously still under investigation (ibid., p. 14). Follow-up research is, then, needed to sustain the thesis purported in this article that evidence-based and internationally coordinated civil society advocacy, like the one portrayed here, has really succeeded to regain education as a public good over for-profit education in low-fee private schools.

## Notes

- 1 Access on 01.12.2019 as well as on 16.11.2021 [https://images.squarespace-cdn.com/content/v1/5a6e0958f6576ebde0e78c18/1533672139738-A4QEP79-UDUSCR4N085ED/ke17ZwdGBToddI8pDm48kGyMcrHuwGkP7-jXuHsY3JN1Zw-zPPgdn4jUwVcJE1ZvWQUxwkmYExglNqGp0IvTJZamWLI2zvYWH8K3-s\\_4yszcP2ryTIOHqTOaaUohrl8PIUV4A8lQojhUiQHvJ-xN\\_3fHrWZSRj5reIrCp79na13T4/Commercial+Schools+classifications.png?format=500w](https://images.squarespace-cdn.com/content/v1/5a6e0958f6576ebde0e78c18/1533672139738-A4QEP79-UDUSCR4N085ED/ke17ZwdGBToddI8pDm48kGyMcrHuwGkP7-jXuHsY3JN1Zw-zPPgdn4jUwVcJE1ZvWQUxwkmYExglNqGp0IvTJZamWLI2zvYWH8K3-s_4yszcP2ryTIOHqTOaaUohrl8PIUV4A8lQojhUiQHvJ-xN_3fHrWZSRj5reIrCp79na13T4/Commercial+Schools+classifications.png?format=500w). At both occasions, I addressed the organization on its internet contact link posing the question, if they could name the author(s) of this figure to me, for the sake of including him/her/them in my publication, but I never got an answer.
- 2 Access on 23.02.2022 <https://www.gi-escr.org/private-actors-social-services/education/commercial-schools/>
- 3 For an evaluation of the performance of the Kenyan education system at the end of the EFA period (2015) in respect of universal access, equity, and quality cf. Mugo, Nderitu & Ruto, 2015.
- 4 Linda Oduor-Noah had worked in the Education Support Programme at the East African Centre for Human Rights (EACHRights) before she became Programme Manager in the Education Partnerships Group (EPG) in 2021. The author wants to thank her for the several enriching correspondences about the ‘Kenyan complaint case’ between us over the last years.
- 5 My approach falls in line with methods used in (ethnographic) qualitative case studies, like displayed in Kroon & Sturm 2000, where ‘Key Incident Analysis’ is discussed and applied in a German-Dutch research project on intercultural education. I will not discuss this methodology further here, but suppose, the ‘storyline’ presented here might be inspiring to imagine further research including interviews with key persons, systematic analyses of websites and networks, or, possibly, even consider the ‘storyline’ for a documentary film.
- 6 How the broader transnational CSO context and international researchers discussed LFPs and especially school chains like the BIAs over the years would need to be the topic of another article to be written.
- 7 Access on 22.11.2021 <https://campaignforeducation.org/en/2018/06/29/world-bank-accepts-complaint-on-its-investment-in-bridge-international-academies/>
- 8 Access on 23.02.2022 <https://eachrights.or.ke/complaints-body-publishes-assessment-report-regarding-concerns-relating-to-the-ifcs-investment-in-bridge-international-academies/>
- 9 Access on 21.11.2021 [https://www.europarl.europa.eu/doceo/document/TA-8201-8-0441\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-8201-8-0441_EN.pdf).
- 10 According to its website, Right to Education (RTE) was “established in 2000 by the first UN Special Rapporteur on the right to education, Katarina Tomaševski, RTE was re-launched in 2008 as the ‘Right to Education Project’, a collaborative initiative supported by ActionAid International, Amnesty International, Global Campaign for

Education, Save the Children, and Human Rights Watch. Since May 2017 the Right to Education Initiative is a charity registered in England and Wales with the charity number 1173115” Access on 21.11.2021 <https://www.right-to-education.org/page/about-us>

- 11 Access on 21.11.2021 <https://www.right-to-education.org/news/european-parliament-bans-eu-development-aid-funding-commercial-private-schools>
- 12 Like Frank Adamson, Christopher Lubieniski, Jacqueline Mowbray, Prachi Srivastava, and Gita Steiner-Khamsi, illustrating networks between academia and civil society in human rights’ based education affairs.
- 13 Access on 22.11.2021 <https://eachrights.or.ke/world-banks-accountability-body-raises-substantial-concerns-regarding-ifcs-investment-in-bridge-international-academies/>
- 14 Access on 20.07.2020 [https://financialservices.house.gov/uploadedfiles/malpass\\_ltr\\_mnuchin\\_3202020.pdf](https://financialservices.house.gov/uploadedfiles/malpass_ltr_mnuchin_3202020.pdf)
- 15 Access on 22.11.2021 <https://www.ei-ie.org/en/item/23305:teachers-struggles-pay-off-world-bank-to-freeze-investment-in-private-for-profit-schools>
- 16 Access on 22.11.2021 <https://eachrights.or.ke/civil-society-organisations-applaud-international-finance-corporation-decision-to-move-away-from-for-profit-education-investments/>
- 17 Access on 22.11.2021 [https://www.ifc.org/wps/wcm/connect/industry\\_ext\\_content/ifc\\_external\\_corporate\\_site/education/](https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/education/)
- 18 Access on 22.11.2020 Blog by Linda Oduor-Noah, originally published 11 May 2020: <https://eachrights.or.ke/ifc-to-freeze-investment-to-for-profit-education-small-win-in-a-long-fight/>
- 19 The Global Campaign for Education (GCE) is another ‘global education alliance’ (Adick, 2020, pp. 270–274); even though similar in name, it should not be confused with the GPE addressed in this article.
- 20 Access on 22.11.2021 [https://iser-uganda.org/images/downloads/CSO\\_Joint\\_Statement\\_at\\_GES\\_Summit\\_2021.pdf](https://iser-uganda.org/images/downloads/CSO_Joint_Statement_at_GES_Summit_2021.pdf).
- 21 Access on 07.2021 <https://static1.squarespace.com/static/5a6e0958f6576ebde0e78c18/t/61011f7933ab7c0085abb3ca/1627463546255/Policy+brief+English.pdf>

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