Contribution by the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) and the Right to Education Initiative (RTE) to the call for inputs by the Office of the High Commissioner for Human Rights for the Open-ended intergovernmental working group on an optional protocol to the Convention on the Rights of the Child

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1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) and the Right to Education Initiative (RTE) welcome the opportunity to provide input to the Open-ended Intergovernmental Working Group on the optional protocol to the Convention on the Rights of the Child. This submission contributes to the ongoing dialogue regarding the optional protocol by focusing on the financial mechanisms necessary to ensure the full and effective implementation of quality, free public Early Childhood Care and Education (ECCE) and free public secondary education for all.

2. The right to public education is essential for individual development and the realisation of other fundamental human rights. Public education serves as a cornerstone of equity and social justice, guaranteeing equal access to opportunities and a life with dignity for all. Under international human rights law, States have recognised their primary responsibility for providing education as a common public good and serve as custodians of the effective and equitable management and financing of public education.

3. International human rights instruments (including CRC articles 28-29) and the practice of UN Treaty Bodies, including the Committee on the Rights of the Child, clearly establish that public education should be regarded as the primary form of education. This ensures the full enjoyment of the right to education for everyone without discrimination and on the basis of equality, while private provision should only be supplementary. The steady growth of private actors in education in recent years should not dilute States' obligations. On the contrary, even if private actors assume a growing share of education provision, States remain the ultimate duty bearers for guaranteeing the full realisation of the right to education for all. This includes prioritising public provision and its funding, as well as regulating private actors involved in education, including early childhood care and education.

4. A focus on 'public' education in the Working Group's discussions will ensure that States fulfil their human rights obligations by prioritising the provision and financing of public education. This will also ensure that the understanding of education as a public good is reinforced and

upheld to truly achieve the right to education for all without discrimination and on the basis of equal opportunities.

5. The importance of providing quality, free public Early Childhood Care and Education (ECCE) and free public secondary education cannot be overstated. These levels of education are foundational for children's holistic development, contribute to their long-term well-being and support their abilities to fully participate in society.

6. The right to education starts from birth, yet ECCE, while fundamental, lacks explicit recognition as an independent right within international law. Nevertheless, international human rights law recognises a range of rights relevant to early childhood, including education, health, nutrition, care, and protection.[1] The right to pre-primary education is implicitly encompassed within the broader goals of the universal right to education as outlined in several international human rights treaties. Moreover, UN Treaty Bodies including the Committee on the Rights of the Child have affirmed both the existence of the right to pre-primary education and the corresponding obligations of States through General Comments and Concluding Observations.[2] For instance, the Committee on the Rights of the Child's General Comment No. 7 explicitly recognises ECCE and presents it as critical for children's development and the realisation of their rights. [3]

7. Existing legal frameworks provide that primary education shall be freely available for all and secondary shall be made progressively free of charge.[4] While this means that States must prioritise the provision of free primary education, they also have an obligation to take concrete steps towards achieving free secondary education.[5] Regarding the progressive realisation of ESC Rights, the Committee on the Rights of the Child has stressed that 'States need to be able to demonstrate that they have mobilised "the maximum extent of their available resources"

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[1] Right to Education Initiative (2025) *Monitoring Early Childhood Care and Education: From a Human Rights Perspective*. Available at: https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_ECCE_Monitoring%20Guide_2025_en.pdf

[2] For more comprehensive information on the international human rights law on ECCE, refer to Right to Education Initiative (2020) *International Instruments: Right to Education and Early Childhood Care and Education*. Available at: https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/International_Instruments_ECCE_Issue_2020_EN.pdf; Right to Education Initiative (2025) ¨Chapter 3 Early Childhood Care and Education in International Human Rights Law¨ in *Monitoring Early Childhood Care and Education: From a Human Rights Perspective*, pp. 22-29. Available at: https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_ECCE_Monitoring%20Guide_2025_en.pdf; Fredman S. (2022) 'Recognizing Early Childhood Education as a Human Right in International Law' *Human Rights Law Review*, 22 (4), pp.1-20, https://doi.org/10.1093/hrlr/ngac024; and Nyitray, Z. (2024) *The Evolving Human Right to Education from the Aspects of Pre-Primary and Secondary Education*. PhD thesis. Eötvös Loránd University, Budapest. DOI: 10.15476/ELTE.2024.032.

[3] UN Committee on the Rights of the Child (2005) *General comment No. 7*. UN Doc CRC/C/GC/7/Rev.1. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F7%2FRev.1&Lang=es

[4] *Convention on the Rights of the Child* (1989) Article 28(1)(a); *International Covenant on Economic, Social and Cultural Rights* (1966) Article 13(2)(a); *Convention on the Elimination of All Forms of Discrimination against Women* (1979) Article 4(a).

[5] Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, UN doc. E/C.12/1999/108, para.14.

and, where necessary, have sought international cooperation'. The Committee has also emphasised that '[w]hatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups.'[6] It is also crucial to stress that States have to provide *free, public education of the highest attainable quality at all levels as effectively and expeditiously as possible and must immediately take steps to ensure that no individual is excluded from any public educational institution on the basis of the inability to pay.*[7] While the commitment to "make public secondary education available free to all" would strengthen the right to access secondary education, it does not in itself address the quality dimension. To ensure that access is meaningful, sufficient public resources must be mobilised to guarantee both access and quality. Without this, there is a risk of further entrenching inequality through the expansion of fee-paying private schools that cater to those who can afford them. This submission will therefore focus on Question 3 of the call.

Financing quality public ECCE and public secondary education

8. More than innovative financial mechanisms, States should focus on structural reforms that place progressive fiscal reforms at the cornerstone of sustainable financing.

9. Structural reforms that create equitable and sustainable public finance systems are essential to ensure that adequate domestic resources are available to fund quality public education, including ECCE and secondary education. These reforms should focus on progressive national tax systems that implement income-based taxes —including taxing the ultra-rich—, combat illicit financial flows, tax avoidance and evasion by individuals and multinational corporations, address corruption, and ensure debt management, among others. Such measures must be accompanied by the political commitment to expand public spending on public education, including quality, free, public ECCE and quality, free, public secondary education. This is particularly relevant as data showcases how the global median for spending on pre-primary education is 0.4% of the GDP, significantly below the recommended 1%.[8]

10. Public funding directed towards ECCE is particularly critical, as insufficient public funding for early childhood care and education has led to a growing reliance on fee-charging private providers, many of which operate for profit. [9] The 2021-2022 UNESCO Global Education Monitoring Report on Non-State Actors reveals that the proportion of children enrolled in

[6] Committee on the Rights of the Child (2003) *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, UN Doc. CRC/GC/2003/527.
[7] Abidjan Principles (2019) *Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. Guiding Principle 36.
[8] UNESCO and UNICEF (2024) *Global report on early childhood care and education: the right to a strong foundation*. Available at: https://www.unicef.org/reports/global-report-early-childhood-care-and-education-right-strong-foundation
[9] Right to Education Initiative (2025) *Monitoring Early Childhood Care and Education: From a Human Rights Perspective*. Available at: https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_ECCE_Monitoring%20Guide_2025_en.pdf

private pre-primary institutions rose from 28.5% in 2000 to 37% in 2019.[10] In 2018, private providers made up 57% of pre-primary institutions in high-income countries and 46% in middle-income countries.[11] In some parts of the world, such as Oceania, nearly all preschool-aged children attend non-state institutions.[12] This growing dependence on private provision risks undermining States' obligations to ensure free and quality ECCE for all, contributing to educational disparities and discrimination before children even enter primary school.

11. By implementing progressive fiscal reforms, States can more effectively mobilise domestic resources to ensure public provision of free education at all levels, prioritising ECCE and secondary education. Political commitment remains pivotal –governments must prioritise education in their national budgets, ensuring that adequate funds are allocated to public ECCE and public secondary education. While international cooperation can play a role in supporting countries to meet their educational commitments, it should never replace national responsibility and domestic resource mobilisation.

Closing remarks

12. Ensuring the right to free, quality public ECCE and secondary education for all children requires a sustained commitment to progressive fiscal reforms. By focusing on structural changes to raise adequate resources through domestic means, alongside political prioritisation of free public ECCE and free public secondary education, States can ensure that they meet their human rights obligations.

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[11] Op.cit.

[12] Op.cit.

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