OIDEL contribution to the **Call for submissions for the open-ended intergovernmental working group on an optional protocol to the Convention on the Rights of the Child**

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Recommendation: Acknowledge the Role of Public Funding for Non-Governmental Schools to Ensure that pre-primary and secondary Education are Acceptable, Adaptable, and Appropriate for All Children – *Related with question 3 of the Call for submissions for Open-ended intergovernmental working group on an optional protocol to the Convention on the Rights of the Child*

- **Funding in Education**

Question 3 of the consultation concerns innovative and sustainable financial mechanisms to ensure the full and effective implementation of free pre-primary and secondary education for all.

Funding is a critical aspect for the proper realization of the right to education at all levels, given the importance of adequate facilities and well-trained personnel.

As most of human rights mechanisms state, it is not enough to just provide education, but education has to be **available, accessible, acceptable and adaptable** (UN Economic and Social Council, 1999). Also, bearing in mind that education is essential to grant cultural rights, it is critical to recall that education also has to be **appropriate** (UN Committee on Economic, Social and Cultural Rights (CESCR), 2009).

In an increasingly pluralistic world, it seems difficult—if not impossible—to provide an education that is culturally acceptable, adaptable, and appropriate for all by a single, homogeneous provider, even if that provider is the State. Focusing the Optional protocol on an education exclusively provided by public authorities risks undermining the *"right of the child to preserve his or her identity,"* as enshrined in Article 8 of the Convention on the Rights of the Child. Furthermore, it must be recalled that one of the stated aims of education, according to Article 29.1(c) of the CRC, is "*the development of respect for the child's parents, his or her own cultural identity, language and values*."

If **the Optional Protocol** aims to explore how to ensure access to pre-primary and secondary education for all, it **must guarantee that every child can receive an education that is adaptable, acceptable, and appropriate**. Achieving this through a homogeneous system appears highly challenging. Moreover, it would be unjust if children from non-mainstream groups could only access such education in schools that require tuition fees.

The Optional Protocol must go beyond a framework in which only State-run schools are eligible for public funding, in order to ensure that children belonging to cultural minorities can access an education that is acceptable, adaptable, and appropriate. In this context, the liberty of parents to choose schools for their

children—particularly when such choice is essential to securing an education that meets the above-mentioned criteria—should not be contingent upon the family's income. As the UN Special Rapporteur on the right to education has noted: "*While there is no State obligation to fund private schools, the protection and promotion of cultural diversity, and particularly the protections due to minorities, strongly support such measures. Free, community-run schools merit consideration too*" (SHAHEED, 2023). The Special Rapporteur on minority issues has also warned about that "*States should support minority-led non-governmental schools to enable them to offer free and culturally relevant education*" (LEVRAT, 2025).

It is not uncommon for authoritative governments to restrict access to public funding for non-governmental schools as a means of discriminating against children of minority groups.

- **Public funding of non-governmental schools:**

The funding of non-governmental schools is not unusual (BOESKENS 2016), specially in democracies. Some states, recognizing the pluralism within their societies, even enshrine the right of non-governmental schools to receive public funding in their constitutions. Notable examples include the Netherlands (Article 23.2 of the Dutch Constitution) and Slovenia (Article 54 of the Slovenian Constitution). In other cases, constitutional courts have affirmed the crucial role that public funding plays in ensuring educational pluralism and preventing discrimination. Germany (Federal Constitutional Court decision 2 BvR 1693/04) and the United States (Supreme Court decision in Carson v. Makin) provide strong precedents in this regard.

The mechanisms through which the government can publicly fund non-governmental actors in education to grant pluralism, either primary, secondary or pre-primary, can vary largely from one country to another, and the funding always depends on certain minimum requirements. For instance, in countries such as the USA there are many different legislative initiatives and programs to grant this pluralism depending on the State: Education savings accounts, Scholarships, Vouchers, Tax Credits, Tax Deductions … (EdChoice, 2025). In other countries, the only way through which non-governmental actors can be publicly funded in the field of education is exclusively through contract with the public administration, this is the case in Spain, the Netherlands or Belgium (OIDEL, 2023).

Moreover, in a recent report produced by OIDEL has seen that public funding to grant accessible, available, acceptable and adaptable education happens all around the world (OIDEL, 2024).

- **Recommendation:**

In light of these considerations, we recommend that the Optional Protocol explicitly recognizes the **importance of public funding as a tool to guarantee the right to an education that is accessible, acceptable, adaptable, and appropriate for all children**, regardless of the nature of the provider – state owned or not stated owned of the school- they attend. The focus should not be on whether a school is public or private, but on whether it contributes to the

fulfillment of children's rights and educational aims set out in the Convention on the Rights of the Child.

At the regional level, we have observed this link. A good example would be the European Parliament resolution of 12 June 2018 on modernisation of education in the EU (2017/2224(INI)) which states " *to increasing inclusiveness and ensuring freedom of educational choice, the provision of adequate financial support for schools of all categories and levels, both state schools and not-for-profit private schools, provided the curriculum offered is based on the principles enshrined in the Charter of Fundamental Rights of the European Union* " (par 76). An adaptation of this language would be useful to grant inclusive acceptable and adaptable pre-primary and secondary education for all. [1]

Public funding should be structured to support **educational diversity and equity**, especially in contexts where non-governmental or community-run schools are best positioned to provide culturally relevant, linguistically appropriate, or pedagogically suitable education. Rather than reinforcing a binary between public and private provision, the Protocol should promote a rights-based funding approach: one that ensures **that no child is excluded from their right to a meaningful education because their family cannot afford the school that meets their needs**.

In this sense, **public funding is not an endorsement of private interests, but a means of realizing public obligations**—namely, the obligation to provide an inclusive, rights-respecting education for all.

[1] https://www.europarl.europa.eu/doceo/document/TA-8-2018-0247_EN.html

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