São Paulo, May 15, 2025

To
The Working Group on an optional protocol to the Convention on the Rights of the Child

Ref.: Call for submissions - Open-ended intergovernmental working group on an optional protocol to the Convention on the Rights of the Child

The **Jô Clemente Institute (IJC)** is a non-profit civil society organization that has been working for over 61 years to promote the inclusion of individuals with intellectual disabilities, Autism Spectrum Disorder (ASD), and rare diseases in society. Since 2009, IJC has been continually enhancing its efforts in advocacy work, consolidating its innovative vision. In 2021, the IJC was granted consultative status at ECOSOC.

We herein present some consideration to contribute to this call for submission aimed at improving access and fruition of the rights to education. This submission addresses the main barriers to public pre-primary and free secondary education in Brazil, analyzing legal, policy, and practical dimensions. It also highlights the impact on marginalized children and those in vulnerable situations, and implications for the rights of the child as enshrined in national and international, including the Convention on the Rights of the Child (CRC).

1) What are the main barriers to public pre-primary education available free to all in law, policy, and practice in your country and what is their impact on the rights of the child? Please consider the specific situation of marginalized children and those in vulnerable situations in your response.

The Brazilian Federal Constitution (Art. 208) and the Law of Guidelines and Bases of National Education (LDB – Law No. 9,394/1996) guarantee free and compulsory education for children aged 4 to 5 (pre-school) and access to public early childhood education (daycare) for those aged 0 to 3.

Since at least 2016, some governments have attempted to limit this obligation through the judiciary. This culminated in the Federal Supreme Court's judgment of Topic 586, which affirmed that the State must ensure access to daycare and pre-school, with immediate applicability of the constitutional provision and no need for further regulation.

The National Policy on Special Education from the Perspective of Inclusive Education (PNEEPEI/2008) and Supreme Court rulings, such as ADI 5357, have reinforced inclusive education. In this case, the Court upheld the constitutionality of a provision in the Statute of Persons with Disabilities (Law 13.146/2015) requiring schools to include students with disabilities and provide necessary adaptations without additional costs—strengthening the domestic implementation of the CRPD.

However, inclusive education has faced setbacks. During the previous administration, there were proposals promoting segregated education, as seen in ADI 6590. In response, the Jô Clemente Institute and civil society organizations challenged a decree that allowed this model.

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Despite legal guarantees and favorable rulings, significant barriers remain. There is a chronic shortage of public daycare centers and pre-schools, especially in rural areas, urban peripheries, and Indigenous communities. Many municipalities lack either funding or political commitment to expand services. Long waiting lists, especially in large cities, further delay access to private childcare and education.

Children with disabilities: face inadequate infrastructure, untrained personnel, and attitudinal barriers. Many schools lack resources such as assistive technologies and inclusive pedagogies, violating the rights enshrined in Article 24 of the CRPD and Articles 2 and 28 of the CRC.

Lack of adapted transportation and shortage of trained professionals to support children with disabilities in general, and particularly those with intellectual Disability or Autism Spectrum Disorder (ASD), along with attitudinal barriers and ableism, prevents equal access to education. The referred challenges increase inequality and push children with disabilities out of the regular education system. Without adequate support, their educational journeys are interrupted and their right to quality education is violated.

These barriers violate multiple rights under the CRC: Article 28: Right to education; Article 6: Right to life, survival, and development; Article 2: Non-discrimination; Article 23: Rights of children with disabilities.

Recommendations

- Make early childhood education (ages 0–3) a compulsory right with enforceable obligations for municipal governments.
- Expand and adequately fund public pre-primary infrastructure in underserved areas.
- Ensure inclusive education through teacher training, provision of assistive technologies, and inclusive curricula.
- Strengthen intersectoral coordination between education, health, and social services.
- Increase oversight ensure free access to public pre-primary education.

2) What are the main barriers to public secondary education available free to all in law, policy, and practice in your country and what is their impact on the rights of the child? Please consider the specific situation of marginalized children and those in vulnerable situations in your response.

Secondary education is guaranteed under the Federal Constitution and the Law of Guidelines and Bases of National Education (LDB – Law No. 9,394/1996). However, enforcement varies across states and municipalities, and dropout rates remain high due to limited support mechanisms.

Infrastructure and Accessibility: Many public schools, especially in rural and marginalized urban areas, lack adequate infrastructure and transportation. These barriers disproportionately affect students with disabilities, girls, and children from Indigenous or remote communities.

Disability and Socioeconomic Barriers: Lack of accessibility, assistive technologies, and inclusive teaching practices violate international commitments like the CRPD and CRC. Poverty, child labor, domestic duties, and unsafe transport often prevent school attendance and continuity—especially for girls and students with disabilities.

Education Quality and Relevance: Curricula often lack connection to students' realities and job market needs. Poor materials and limited support contribute to disengagement and dropouts.

Violence and Discrimination: Afro-Brazilian, Indigenous, LGBTQIA+ youth, and students with disabilities frequently face bullying, discrimination, and a lack of cultural inclusion in schools.

Digital Divide: Unequal access to internet and digital tools, especially in low-income areas—worsened educational disparities during the COVID-19 pandemic.

These barriers significantly affect the realization of the following rights under the CRC:

Article 28: Right to education; Article 2: Non-discrimination; Article 6: Right to development; Article 19: Protection from all forms of violence; and Article 23: Rights of children with disabilities. Educational exclusion at the secondary level limits children's future opportunities, reinforces social inequality, and hinders Brazil's commitments to the Sustainable Development Goals (SDG 4 in particular).

Recommendations

- Strengthen enforcement of compulsory education up to age 17 with accountability mechanisms for school retention.
- Invest in public school infrastructure, particularly in rural, Indigenous, and marginalized urban areas.
- Implement targeted social protection programs to address child labor and family income insecurity.
- Promote inclusive, relevant, and culturally responsive education with adequate teacher training.
- Bridge the digital divide with equitable access to technology and connectivity for all students.
- Create safer and more inclusive school environments free from violence and discrimination.

3) What are examples of innovative and sustainable financial mechanisms to support the full and effective implementation of public pre-primary and secondary education available free to all children in your country?

Fundeb (Fund for Maintenance and Development of Basic Education and Valorization of Education Professionals)

FUNDEB is Brazil's main funding mechanism for public basic education, financed by state and municipal taxes with federal support for poorer regions. Made permanent by Law No. 14,113/2020, FUNDEB is increasing federal contributions from 10% to 23% by 2026, improving equity in resource distribution.

Some municipalities partner with civil society organizations to expand access to Specialized Educational Assistance (AEE) for students with disabilities. However, funding is still insufficient. Educating a student with disabilities costs, on average, 40% more than a student without disabilities — around R$225 (USD 40) extra per year.

Additionally, students enrolled in regular schools can be dual-registered in technical courses or in AEE programs offered by partner organizations under public agreements.

National Education Plan (PNE) and Linked Budget Targets: The PNE (2014–2024) includes explicit targets for expanding pre-primary and secondary education access and quality. Public spending on education is linked to GDP, aiming to reach 10%. Although it offers a legislative binding of education investment to national development goals, its implementation is uneven and threatened by fiscal austerity.

Early Childhood Education Grant Programs (Programa Brasil Carinhoso, Creche para Todos): These programs aim to support municipalities in expanding early childhood education infrastructure and services, including conditional cash transfers linked to pre-school attendance.

Innovative Feature: Blends education policy with social protection mechanisms. **Impact**: Boosts enrollment of children from low-income families in pre-primary education.

PAR (Articulated Action Plan): Administered by the Ministry of Education, PAR provides technical and financial support to municipalities for school infrastructure, teacher training, and inclusive education. The PAR provides tailored interventions based on local diagnostics and **e**ncourages long-term planning and decentralized accountability.

Partnerships with Civil Society Organizations: In Brazil, civil society organizations (CSOs) play a key role in education by providing services, building infrastructure, and developing digital and inclusive solutions. These organizations often receive public funding for projects aligned with government priorities, such as digital tools in remote areas or inclusive education pilots.

The **Instituto Jô Clemente (IJC)** is one such example. After closing its special school in 2009, IJC redefined its educational role. It now partners with São Paulo's city government to provide specialized support services (AEE) for students with disabilities in public schools and promotes awareness of inclusive education policies.

Challenges and Opportunities

Despite progress, Brazil faces fiscal constraints, political shifts, and regional inequalities. Austerity measures like the EC 95/2016 spending cap hinder social investment. Still, opportunities for progress include:

- Strengthening FUNDEB governance and transparency
- Updating the National Education Plan (PNE) with binding goals
- Promoting participatory budgeting
- Supporting local innovation with federal backing
- Earmarking funds for inclusive education
- Increasing participation of people with disabilities in budget decisions
- Incentivizing training and hiring of professionals and assistive technology
- Improving oversight to ensure equitable use of education funds

4) What steps is the Government taking to remove barriers and make public pre-primary and secondary education available free to all, including through the allocation of adequate resources and cross-sectoral and international cooperation? Please provide examples of specific laws and regulations, measures, policies, and programmes.

The Brazilian government has implemented a range of legislative, policy, and programmatic initiatives aimed at eliminating barriers and ensuring access to free public pre-primary and secondary education for all children. These efforts prioritize equitable resource allocation, cross-sector collaboration, and international partnerships, with particular attention to marginalized and vulnerable populations.

Key legal frameworks include the Federal Constitution, the Law of Guidelines and Bases of National Education (LDB), the National Education Plan (PNE – Law No. 13,005/2014), the Fund for the Maintenance and Development of Basic Education (FUNDEB), and the Brazilian Inclusion Law (Law No. 13,146/2015).

Furthermore, following the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) with constitutional status in Brazil, advocacy by social movements and civil society organizations promoting inclusive education has intensified. This has led to significant legal decisions supporting the right to inclusive education in the country.

Key Government Programs and Initiatives

- **Pé-de-Meia (2024):** Provides R$2,000 annually to low-income high school students, conditional on attendance, to reduce dropout rates.
- **Bolsa Família:** Conditional cash transfer program linking school attendance and child vaccination to poverty reduction and human development.
- **Multifunctional Resource Rooms:** Established by Resolution CD/FNDE/MEC No. 15/2020 to provide specialized support for students with disabilities.
- **BPC at School:** Ensures school access and retention for children with disabilities receiving the Continuous Cash Benefit (BPC).

Cross-Sectoral and International Cooperation

- **IDB Partnership:** Supports early childhood education through infrastructure, staff training, and health initiatives.
- **Integration with Social Programs:** Programs like Bolsa Família connect education with health and social services.

Impact on Marginalized Populations: These initiatives have increased school enrollment, especially in underserved areas, expanded access, and improved support for students with disabilities, promoting equity and inclusion.

Final Considerations

While considerable progress has been made, challenges remain in ensuring consistent implementation and addressing regional disparities. Continued investment, monitoring, and collaboration are essential to fully realize the right to education for all children in Brazil.

The new Optional Protocol must recognize inclusive education as an inalienable right from early childhood, with guarantees of individualized support, universal accessibility, and effective mechanisms for monitoring and holding States accountable for violations of this right.

Sincerely,

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