

Contribution by the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) 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

28 July 2026

1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) welcomes the opportunity to provide feedback to the Secretariat on the Chair-Rapporteur's draft Key Principles for the elaboration of a potential optional protocol to the Convention on the Rights of the Child on free public pre-primary and secondary education. This submission addresses two matters: first, the retention of the reference to "public" education throughout the Key Principles and any subsequent draft instrument; and second, the design of the provision governing individual communications.

The reference to "public" education must be retained

2. Human Rights Council resolution 56/5 mandates the Working Group to elaborate a draft optional protocol whose aims include that States "[m]ake *public* pre-primary education available free to all, beginning with at least one year" and "[m]ake *public* secondary education available free to all" [italics added].¹ The reference to "public" education therefore forms part of the mandate under which the Working Group operates. Maintaining this mention is of central importance and must be retained, throughout the Key Principles and subsequent drafts, for the reasons that follow.
3. Education is a public good, and public education is the guaranteed gateway to the enjoyment of other human rights which ensure children's future in a life with dignity. Under international human rights law, States have recognised their primary responsibility for the provision of education as a common public good and are the custodians of the effective and equitable management and financing of public education that is accessible to all. It is clear from the relevant provisions of international human rights instruments (including articles 28 and 29 of the Convention on the Rights of the Child), as well as from the practice of their monitoring bodies, that public education should be regarded as the dominant form of education to

¹ Human Rights Council (2024) *Resolution adopted by the Human Rights Council on 10 July 2024. Open-ended intergovernmental working group on an optional protocol to the Convention on the Rights of the Child on the rights to early childhood education, free pre-primary education and free secondary education. A/HRC/RES/56/5*. Available at: <https://docs.un.org/en/A/HRC/RES/56/5> (Accessed 24 July 2026).

ensure 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.

4. A public option is essential to ensure that education is universally available to all children. For-profit private operators might not find it economically attractive to operate in certain areas, such as rural or low-income communities, where they might not find a sufficient market. Similarly, a public option is necessary to ensure quality, inclusive education. Only a system anchored in public provision can guarantee that no child's access to education depends on their commercial attractiveness to a provider.
5. States are also under an obligation to prioritise the funding of free, high-quality, inclusive public education. In allocating their maximum available resources for education (which should be at least 4-6 % of their GDP and at least 15-20 % of total public expenditure under the Incheon and Paris Declarations), States must prioritise the direct provision of free, public education of the highest attainable quality, and must ensure that any reallocation or expenditure of education budgets to other areas does not impair the delivery of such education. States must ensure that any support given to private educational institutions meets specific human rights requirements, as laid down in the Abidjan Guiding Principles on the human rights obligations of States to provide public education and regulate private actors' involvement in education.
6. Retaining the reference to "public" education does not exclude the provision of education by private providers. Families may choose private education for their children, including from religious entities, if they wish. The Convention on the Rights of the Child already makes clear that the right to education shall not be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions (article 29(2)).
7. Finally, the steady growth of private actors in education and the increased commercialisation of education in recent years should not in any way water down or dilute the obligations of States. On the contrary, even where private actors assume a growing share of provision, States remain the ultimate duty bearers for guaranteeing the full realisation of the right to education for all. On the one hand, by prioritising and strengthening direct public provision so that everyone, including the most marginalised populations, can enjoy this right. On the other hand, by regulating private actors' involvement to prevent systemic negative impacts on the right to education, including by ensuring that public resources are not used in ways that benefit corporate interests and by safeguarding educational decision-making and policies from corporate influence.
8. By retaining a focus on "public" education throughout the Key Principles and subsequent drafting documents, the Working Group will ensure that States' obligations to prioritise the provision and financing of public education are regularly considered, and that the understanding of education as a public good is upheld, in order truly to achieve the right to education for all children without discrimination and on the basis of equal opportunities.

The individual communications provision must not depend on an additional optional declaration

9. The draft article on communications (complaints procedure) provides that a State party to the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OP3 CRC) "may, at any time, declare" that it recognises the competence of the Committee on the Rights of the Child to receive and consider communications concerning the rights set forth in the new protocol, and that the Committee "shall not receive" communications concerning a State party that has not made such a declaration. GI-ESCR urges the Working Group to remove this additional declaration requirement. Competence should instead follow automatically for States parties to both OP3 and the potential new protocol, mirroring the existing structure of the Convention system. The following considerations support this position.
10. First, the draft provision departs from, and falls below, the existing architecture of the Convention on the Rights of the Child. Under article 1 of Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure (OP3), any State party to the OP3 recognises the competence of the Committee in respect to violations of rights set forth in the Convention, the Optional Protocol on the Involvement of Children in Armed conflict (OPAC), and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC), provided only that the State is party to the instrument concerned; no further declaration is required for any of these instruments.² The draft article would therefore make the rights in the potential new protocol and concerning a State that has already ratified both this potential new optional protocol and the OP3 the only in the entire CRC system to require a second, separate act of acceptance before a child, a group of children or their representatives could bring a communication (complaint) before the Committee on the Rights of the Child. This is a retrogressive measure within the Convention's own architecture, and it would signal that the rights to free public pre-primary and free, public secondary education are of a lesser order than every other right the Committee protects.
11. Second, the opt-in design would concentrate its exclusionary effect on the children who most need protection. Experience with declaration-based and optional mechanisms consistently shows that the States least likely to accept the competence of treaty bodies are those where violations are most acute. A protocol that proclaims the rights to free public pre-primary and free public secondary education, while allowing each State to decide separately whether those rights may ever be the subject of a communication, would create a right without a remedy for

² General Assembly (2012) *Resolution adopted by the General Assembly on 19 December 2011. Optional Protocol to the Convention on the Rights on a Communications Procedure*. A/RES/66/138. Available at: <https://treaties.un.org/doc/source/signature/2012/a-res-66-138-english.pdf> (Accessed 24 July 2026); Child Rights Connect (n.d.) *Information Pack about the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OP3 CRC)*. Available at: https://www.childrightsconnect.org/wp-content/uploads/2018/01/CRC_OP3_info_pack_web.pdf

children in non-declaring States, and would invite the interpretation that the rights concerned are aspirational commitments rather than legal obligations. This would undermine the protective purpose of the instrument itself. The justiciability of the rights protected must be embedded in the protocol, not left to a subsequent, revocable act of State discretion, particularly given that the draft also permits withdrawal of the declaration at any time.

12. GI-ESCR therefore recommends that the article be revised so that, for a State party to both OP3 and the potential new protocol, the competence of the Committee to receive and consider communications concerning the rights set forth in the protocol follows automatically from ratification, in the same manner as it does today for the Convention, the OPSC and the OPAC under article 1 of OPIC.

Closing remarks

13. GI-ESCR respectfully urges the Working Group to retain the reference to "public" education throughout the Key Principles, consistent with the mandate in resolution 56/5 and with States' obligations under international human rights law, and to embed the competence of the Committee on the Rights of the Child over a communications (complaints) procedure regarding the rights set forth in the protocol, rather than subjecting it to an additional optional declaration. GI-ESCR remains at the disposal of the Secretariat and the Chair-Rapporteur to provide further input.

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