

Response to the Chair-Rapporteur's Draft Principles for the Elaboration of an Optional Protocol to the Convention on the Rights of the Child on Free Public Pre-Primary and Secondary Education

I. Analysis of the draft Key Principles paper.

Having carefully reviewed the Chair-Rapporteur's draft Key Principles paper, we wish to express serious concerns about its suitability as the basis for drafting a new Optional Protocol to the Convention on the Rights of the Child (CRC) on the right to education (RTE). In our view, the current approach risks regression in protecting the right to education. While we appreciate the considerable work by the Intergovernmental Working Group (IGWG) reflected in this paper, we are concerned it does not capture the range of objections and concerns raised during the September 2025 meeting. It also does not sufficiently consider alternative ways to strengthen the right to education. Moreover, contrary to the position articulated in the paper, we remain unconvinced that the proposed approach would strengthen existing international legal standards on the right to education or avoid unnecessary duplication within the CRC framework. We are also concerned the paper does not fully reflect the scope and complexity of the diverse obligations under the right to education in the CRC. This highlights the need for further consideration of the proposal's practicality, implementability, and overall effectiveness.

1. This paper does not respond to the mandate of the IGWG.

The first part of the mandate of the IGWG was to **“explore the possibility of elaborating and submitting”** a draft OP on the RTE. This means that the first role of the IGWG was to identify the advantages but also the risks of engaging in the drafting of a new OP. Furthermore, the IGWG had to explore other ways to address the need for strengthening the RTE.

It must be observed that none of the substantive objections raised during last September meeting were properly taken into consideration or received a proper answer in this paper with a sufficient analysis of the pros and cons (see below).

This paper proceeds directly to seeking to “provide a coherent conceptual and legal framework to guide the preparation of the draft OP” as if the first part of the mandate was concluded, without having been brought back to the IGWG.

2. Realizing the right to education for all children without any discrimination, including at pre-primary and secondary levels, is already integral to States obligations under several binding international instruments, such as the Convention on the Rights of the Child and International Covenant on Economic Social and Cultural rights. States parties to the relevant treaties already have an existing legal obligation to lift all barriers – including financial ones – to respect, protect and fulfil the right to education for all children under their jurisdiction, without any discrimination of any kind, including based on age. The main objections to the proposed OP remain unanswered: namely, that free secondary education is already guaranteed by the Convention, as a progressive right (that should have already been attained by most of the SP 35 years after the ratification of the Convention). In addition, the jurisprudence of the Committee makes clear that free secondary education is guaranteed by the Convention and as such needs to be implemented and financed by the SP; this has formed part of the Committee's Concluding Observations for several years. Many States representatives who took the floor during the first meeting of the IGWG in September 2025, have made it clear that they would not accept an obligation that would not be progressive (meaning that the OP will not add an immediately enforceable obligation). The Chair-Rapporteur of the Working Group endorsed this position (in the Non-Paper shared in November 2025) stating :

A. Progressive Realization and National Contexts

Concerns about resource constraints and implementation capacity are fully recognised. Progressive realisation remains a core principle, consistent with Article 4 of the CRC and Article 2(1) of the ICESCR. States have the flexibility to implement their obligations according to their national capacity, starting with the resources available to them and expanding progressively over time. The Protocol will encourage international cooperation to support States by providing financial, technical and policy assistance, and by encouraging them to explore funding initiatives.

The same goes with early childhood care and education which, on a holistic reading of the CRC, is already accepted as part of the right to education. It should be noted that the inclusion of an article in the OP stating that “States Parties recognize that the right of the child to education includes early childhood care and education” is a clear demonstration that this right already exists which has been confirmed by a long-standing, extensive jurisprudence of the Committee on this issue. What is proposed thus poses a potential risk to the holistic, comprehensive understanding of education reflected in the CRC and the work of the Committee.

3. Multiple principles included in this Paper do not require an OP for their implementation. This is the case for international cooperation (which is also already encompassed by the CRC - art. 4 and 44 CRC, as well as by the International Covenant on Economic, Social and Cultural Rights, for example). The same is true with regard the financing of free education for which initiatives already exist that need to be strengthened and supported, such as the Global Partnership for Education. It is important to be clear that nothing in the OP as envisaged will create a new obligation for States to continue / increase their international cooperation to ensure that the RTE is achieved in less developed States. On the contrary, by implying that the existing provisions do not suffice, it would undermine the CRC and may result in some States considering themselves not to be bound by these pre-existing provisions.
4. The Committee does not observe, in its review of State parties’ implementation of the CRC, that progress in the implementation of the right to education is impeded by a possible gap in the international legal framework. Rather, the challenge is in terms of investing the necessary resources to implement the existing obligations both equitably and at scale. In the Committee’s experience therefore, the gap lies in the implementation of the existing standards, rather than in a possible need for more standards.
5. A significant concern in the Draft Key Principles paper is the proposal that the applicability of the OPIC would be optional for the rights under this OP. This means that States parties to the OPIC will have to explicitly opt in to make the OPIC applicable to the rights of the fourth OP. This situation would constitute a clear regression in terms of existing protection of the right to education in terms of the CRC where States have accepted OPIC : while a child (or an adult on his/her behalf) could submit an individual complain about the lack of free pre-primary or secondary education in her or his country before the ratification of the fourth OP, this would not be possible anymore for a State that ratifies the fourth OP but does not opt in. In other words, the OP potentially reduces the existing justiciability of rights already guaranteed by the CRC.
6. The many other possible ways to strengthen the RTE in all its aspects and to address all the existing obstacles which hinder its implementation, have not been properly discussed in the IGWG. This represents a missed opportunity to address these important issues and to develop an action plan to be implemented whilst we wait for the ratification of a possible optional protocol which would enter into force in 10 or 15 years at the earliest and solely in the States that will have ratified it.

7. The cost of this Intergovernmental Working Group (IGWG) and all the investment needed by the Office of the High Commissioner for Human Rights (OHCHR) remains to be considered. At a time when the entire UN system has to drastically cut its budgets, the Committee on the Rights of the Child in particular does not have the means to fulfil its present mandate. It faces a considerable backlog of SP reports and individual complaints and is not able to conduct inquiries involving field visits.

In short, this document does not accurately reflect the discussions that took place at the working group meeting; it overlooks important aspects, does not provide a holistic approach of the right to education and risks undermining the rights it is intended to protect.

II. Statement by ten members of the Committee on the Right of the Child

Having carefully analysed the Chair-Rapporteur's Draft Key Principles, the ten members of the Committee on the rights of the Child whose names appear below :

- Reiterate their deep commitment to all the provisions of the Convention on the Rights of the Child, in particular the right to education;
- note that far too many children are unable to fully enjoy their right to education as provided for under the CRC in all its dimensions;
- deplore the fact that the obstacles to the exercise of this right remain extremely numerous and varied; these include, in particular, overcrowded classrooms, an often-inadequate standard of education, irrelevant curricula, lack of inclusion facilities for children with disabilities, inadequately trained teachers, discrimination and gender stereotypes, various forms of violence, a lack of school supplies and proper sanitation facilities, disciplinary practices that fail to respect children's rights, long distances to school, health crises, climate crises; armed conflicts, population displacements and other barriers to access.
- point out that free education is not limited to the absence of tuition fees but should cover all aspects of education, including school supplies, transportation, meals and other costs.
- recall that the implementation of this right requires a comprehensive, determined and multidimensional approach in line with all other rights guaranteed in the Convention;
- recall that States Parties to the Convention are obliged to implement the right to education by adopting the necessary legislation and policies, and by allocating the necessary resources for its full implementation throughout their territory, including in contexts of armed conflict, population displacement, humanitarian and climate crises, and without any discrimination;
- recall the commitment made by all States under the Sustainable Development Goals, including with regard to the financing of education and international cooperation

The signatories, members of Committee on the rights of the Child consider that :

- the draft protocol on the right to education currently being discussed by an Intergovernmental Working Group of the Human Rights Council presents a risk of regression in relation to the education rights already guaranteed in the Convention and which the States Parties have already committed to implementing;
- the draft risks weakening the protection of the right to education and its justiciability in terms of international human rights law relative to the existing situation under the CRC;
- the cost of this IGWG remains considerable. It has taken place at a time where the UN system as a whole has had to drastically cut budgets and where the treaty bodies do not have the means to carry out their mandates fully, effectively and efficiently. The Committee on the Rights of the Child currently faces a considerable and growing backlog of SP reports and individual complaints, and is not able to conduct inquiries with field visits. in light of the

United Nations' severe budgetary crisis, the resources allocated to the drafting of this possible protocol should be used to determine and implement actions immediately enforceable to strengthen the right to education and redirected to enable the Committee on the Rights of the Child to fulfil its mandate to monitor the Convention;

- Therefore, the signatories, members of the Committee on the Rights of the Child, cannot support drafting this protocol based on its current objectives. They recommend the IGWG seriously consider alternative, more immediate and universal ways to strengthen the right to education. The signatories remain committed to supporting any process that effectively reinforces existing protections and advances full implementation of the right to education for all children.

Signatories :

Suzanne Aho, Thuwayba Al Barwani, Hynd Ayoubi Idrissi, Rinchen Chopel, Bragi Gudbrandsson, Mariana Ianachevici, Cephas Lumina, Faith Marshall-Harris, Zeinebou Taleb Moussa, Benoit Van Keirsbilck

Members of the Committee on the Rights of the Child