



Thematic report

Building and strengthening the legal framework on ECCE rights

Achievements, challenges and actions for change

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Abstract

There is undisputed recognition of the critical importance of the first years of a child's life for development and that ensuring access to quality Early Childhood Care and Education (ECCE) provides tremendous benefits throughout life.

Yet, despite progress made in recent years, the most disadvantaged continue to face considerable challenges in accessing quality and inclusive early childhood programmes and services with great disparities within and across countries. The expanding digital environment and the wide-ranging modes of ECCE settings, further underline the need for greater state guidance.

Perhaps more so than any other age group, children, from birth to the age of eight, require legal and policy measures that ensure a holistic, integrated and multisectoral approach, as not only are they highly dependent on their parents and caregivers, but their education, health, care and development are all firmly interconnected, making the realization of ECCE rights particularly complex. Besides, as the right to education begins at birth and continues throughout life, adopting a lifelong learning approach has now become a fundamental right from the early years, including through ensuring equitable access to quality, free and compulsory pre-primary education.

ECCE is a human right yet significant inequalities persist in terms of access to quality services with those who would benefit most often excluded.

By adopting a rights-based approach, this thematic report aims to unravel the existing rights and obligations that states should comply with while evaluating how, in light of today's challenges, the right to ECCE can be further protected in the international human rights framework and national education systems.

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I. Introduction

Early Childhood Care and Education (ECCE), represents a critical opportunity for societies to make positive changes in children's lives and work towards the Sustainable Development Goals (SDGs) (UN Special Rapporteur on extreme poverty and human rights, 2021). Appropriate legal frameworks and policies in ECCE also have a crucial role in guaranteeing equality to children from vulnerable households and communities who stand to gain the most from access to quality early learning opportunities, enabling them to start school on an equal footing with their peers, improve overall educational achievement, and enhance social equity (UNESCO, 2022). ECCE also relates to parental rights and the rights of the ECCE workforce. In this sense, national legislation, policies and international instruments should be in place to implement and guarantee full ECCE rights.

Nevertheless, ECCE is not an explicit right under international law (UNESCO, 2019), and there are many disparities in the realization of ECCE rights and programmes between states (UNESCO, 2021a).

In order to define ECCE, it is important to determine the period of early childhood. The UN Committee on the Rights of the Child (CRC Committee) offers a working definition, while noting that it varies across countries and regions. The Committee, in its General Comment No. 7 (CRC Committee, 2006), recognizes that early childhood includes all young children 'at birth and throughout infancy; during the preschool years; as well as during the transition to school' (CRC Committee, 2006, para 4). The Committee therefore defines the period as spanning 0 to 8 years.

There is not one single internationally agreed upon definition of ECCE. Nevertheless, the language used at the international level is reaching congruence. The CRC Committee recognizes that 'early childhood is a critical period for realizing children's rights' (CRC Committee, 2006, para. 6) and 'interprets the right to education during early childhood as beginning at birth and closely linked to young children's right to maximum development' (CRC Committee, 2006, para. 28). The Moscow Framework for Action and Cooperation (2010) adopts a 'broad and holistic concept of ECCE as the provision of care, education, health, nutrition, and protection of children aged zero to eight years of age' (Preamble, para. 2). Similarly, the Framework for Action Education 2030 notes that 'Beginning at birth, early childhood care and education (ECCE) lays the foundation for children's long-term development, well-being and health' (para. 35).

The International Standard Classification of Education (ISCED) 2011, further classifies ECCE into two subcategories: 1) early childhood educational development, where educational content is designed for younger children (in the age range of 0 to 2 years); and 2) pre-primary education, where educational content is designed for children from age 3 to the start of primary education.

Furthermore, several terms are used to refer to similar concepts, including: early childhood education (ECE), early childhood education and care (ECEC), early childhood development (ECD), early childhood health and development (ECHD), early childhood educational development (ECED), or early childhood education and development (ECED). Some of the terms place more emphasis on cognitive development and education, while others signify a more holistic consideration of every aspect of early child development. It is important to bear in mind that the CRC Committee recommends avoiding divisions between 'education' and 'care' and suggests the use of the concept 'Educare' as a term to reach, in the

best interest of the child, a holistic, multisectoral approach to early childhood where services are integrated and coordinated (CRC Committee, 2006, para. 30).

Based on the above and for the purpose of this report, the following working definition is given: ECCE shall refer to an umbrella term for all policies, programmes and/or services aimed at the holistic development of the child, below eight years of age, in all developmental domains and across all sectors, and includes education (including pre-primary education), child health, nutrition, water, sanitation and hygiene and protection as well as involving all actors (primary care-takers, educators, community, etc.).

Although the Universal Declaration of Human Rights (UDHR) proclaimed in 1948 that everyone has the right to education, only a few international treaties have mentioned pre-primary education or expressly established some ECCE rights. Despite the restricted development in the international legal framework compared to other levels of education, UN Committees, some regional treaties and International Labour Organization (ILO) treaties on the protection of social security rights have created international obligations to protect ECCE rights and to implement public policies to support and protect early childhood and the actors involved.

The right to education, as conceived over half a century ago in early treaties, has also evolved. Today, it is understood as a continuum from birth to old age, which is not only delivered in schools through formal education but takes place in many settings and various ways. The digital learning dimension has been increasingly influential in the sector as well. Despite the essential protections already in the legal framework, numerous challenges have emerged affecting the right to education of various populations: people on the move, people affected by crises, people with disabilities, and people belonging to minority groups continue to be denied their right to education. Therefore, the need to develop a new international human rights framework, including the evolving changes, has been recognized on various platforms and is strongly expressed by multiple civil society organizations (UNESCO, 2022b).

The evolving dimensions in relation to ECCE rights may involve those dimensions lacking in the current international legal framework that need to be enhanced in the national systems. This may include, for instance, ensuring an adequate number of programmes and institutions for every child who wishes to benefit from out-of-home educational facilities in an accessible and affordable manner. States are also required to assist parents and caregivers by developing institutions, facilities, and services for the care of children. More generally, the interdependence of all human rights also applies to early childhood, including the child's right to maximum development, the right to participate in cultural life and the arts, and the right to play, requiring a holistic approach to ECCE. States thus need more substantial obligations regarding quality standards and teacher training. The international right to education framework should improve standards at this level by creating legal rights and responsibilities (UNESCO, 2022b).

In this perspective, this report aims to give context and meaning to ECCE rights, describe how they can be a gateway to achieving the right to education for all, and reach other human rights (**Part II**). The report then delves into the critical components of the ECCE framework by considering existing rights and obligations as well as reflecting on what deserves to be better protected in the international human rights framework to pave the way for supportive national policies (**Part III**). The report also considers possible options for evolving the right to education framework to enable the expansion of ECCE rights and their adequate protection in today's context (**Part IV**). Finally, the report presents key highlights and articulates certain questions for consideration (**Part V**).

II. Rights in early childhood: the holistic dimension and its linkages with other human rights

A. Rights in early childhood

Childhood is a period ‘entitled to special protection and assistance’ (UDHR, 1948, article 25.2). Young children are particularly vulnerable, with limited means of communication, self-direction and freedom of choice, and very much dependent on the care of their families or guardians. The rights that young children hold are therefore often connected to their particular vulnerabilities, and lifelong rights such as the right to education, or the right to health, must be interpreted precisely to ensure their relevance to young children’s experiences.

The Convention on the Rights of the Child (CRC, 1989) is the most prominent source of rights in early childhood. These include: the right to protection (article 3); the right to survival (article 6); the right to freedom of expression (article 13); the right to health (article 24); the right to a standard of living adequate for the child’s development (article 27); the right to education (articles 28 and 29); the right to culture (article 30); the right to rest, leisure and play (article 31); the right to non-discrimination (article 2) and the overarching principles the child’s views should be respected (article 12) and that children’s best interests shall be a primary consideration (articles 3, 9, 18, 20 and 21, called by CRC Committee, 2006, para. 13).

In 1948, the UDHR also proclaimed that ‘Everyone has the right to education’ (article 26.1). Ensuring the rights of young children to education anticipates the contribution of organized programmes of early childhood education provided by the state, the community or civil society programmes, yet there is little explicit guidance available in international law. Three major international treaties¹ have subsequently enshrined the general dimensions of this right with regards to primary, secondary, and higher education, while another twelve treaties² have expounded upon how this right applies to certain categories of children. Among these, only two global treaties explicitly reference education prior to primary school. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1989) requires states to ensure equality for girls ‘in pre-school’ (article 10.a). In the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW, 1990), states agree that access to ‘public pre-school educational institutions’ shall not be denied due to the parents’ or child’s ‘irregular situation with respect to stay’ (article 30). Additionally, two treaties can also be read as applying to pre-primary education. The Convention on the Rights of Persons with Disabilities (CRPD, 2006) states that ‘States Parties shall ensure an inclusive education system at all levels’ (article 24.1). Similarly, the UNESCO Convention against Discrimination in Education

¹ UNESCO Convention against Discrimination in Education (1960); Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (1966); and Articles 28 and 29 of the Convention on the Rights of the Child (1989).

² Articles 24 and 50 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949); Article 22 of the Convention Relating to the Status of Refugees (1951); Article 22 of the Convention Relating to the Status of Stateless Persons (1954); Articles 5 and 7 of the Convention on the Elimination of All Forms of Racial Discrimination (1965), Articles 2.3–2.4 and 7.1 of the Minimum Age Convention, No. 138 (1973); Article 4.3.A of the Protocol Additional to the Geneva Conventions, Relating to the Protection of Victims of Non-International Armed Conflicts (1977); Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention on Technical and Vocational Education (1989); Articles 26–31 of the Indigenous and Tribal Peoples Convention, No. 169 (1989); Article 30 of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990); Article 7.2.c of the Convention Concerning the Elimination of the Worst Forms of Child Labor, No 182 (1999); and Article 24 of the Convention on the Rights of Persons with Disabilities (2006)

(1960) which provides for a comprehensive protection against discrimination in education specifically states that the term ‘education’ is to be understood as referring ‘to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given’ (article 1.2). This paucity of references to pre-primary education in international treaties led one scholar to conclude: ‘international law provides no effective protection of the right to pre-primary education.’ (Beiter, K., 2006, p. 19).

Among the regional legally-binding human rights instruments, only the European Charter for Regional or Minority Languages (1992) specifically addresses pre-primary education, committing states to make available pre-school education in relevant languages, or a declining scale of alternatives, within territories in which such languages are used (article 8.1.a.i–iv).

While not legally binding, at the international level, SDG 4 has thrown momentum behind the right to access ECCE, including the encouragement of at least one year of free and compulsory quality pre-primary education. ECCE is taken to include adequate health and nutrition, stimulation within the home, community and school environments, protection from violence and attention to cognitive, linguistic, social, emotional and physical development (para. 36).

The CEDAW also supports some rights in ECCE as they relate to women’s rights, calling on states to take measures to ‘encourage the provision of the necessary supporting services to enable parents to combine family obligations with work obligations and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities’ in article 11.2.c.

B. ECCE is a gateway to achieving the right to education for all

ECCE, including in the first few years of life where the most dramatic brain development occurs, provides the building blocks for the lifelong enjoyment of the right to education (UNESCO, 2015, para. 36). Early experiences in the home and other care settings, or in the community, shape the developing nature and quality of the brain’s architecture, including cognitive skills such as language, literacy and maths, social skills including perspective-taking and empathy, as well as self-regulation, concentration and executive function skills (Yoshikawa and Kabay, 2014).

Developing these skills in a stimulating, nurturing and child-centred environment is also a way to ensure children’s well-being and encourage school readiness. Studies have shown that early childhood education programmes positively affect cognitive development, social skills and school progress (Camilli et al., 2010). A year of free and compulsory pre-primary education is associated with an increase in primary school graduation, with particularly noticeable effects in low and low-middle income countries (Earle et al., 2018).

However, ECCE does not only lay the foundation for primary education, but for a lifetime of learning. Where opportunities exist, primary school graduates follow their learning pathways to secondary school and beyond. In 2015, the Special Rapporteur on the right to education recommended that Algeria make access to pre-school education universal, as a solution to the problem of school dropouts (UN Special Rapporteur on the right to education, 2015, para. 67).

Quality ECCE is critical in the acquisition of concepts and the development of skills and attitudes that lay the foundations for lifelong learning. For example, in a 2006 report on Botswana visit, the UN Special Rapporteur on the right to education stated ‘Pre-school is especially necessary for children from

disadvantaged communities such as the Basarwa, who face steeper hurdles in adjusting to school life. The authorities are aware of the importance of pre-school education as a condition of improved quality of learning' (Special Rapporteur on the right to education, 2006, para. 66).

Children thus develop resilience, self-confidence and curiosity in the world around them from a young age and nurturing these skills will lead to a lifetime propensity for learning. Importantly, it will be mainly healthy children, that are well-nourished, immunized, have access to safe drinking water and medical services that have the capacity to learn, illustrating the complete interconnectedness of the rights to health, protection and education.

ECCE also has extra significance for children who may be disadvantaged as they begin primary education. Those from underprivileged or chaotic families will find a safe space to learn through socialization and play. ECCE is also the site of early childhood interventions, allowing for the early identification of developmental delays and disabilities when effective intervention can provide appropriate support (UNESCO, 2021). On this point, the Committee on the Rights of Persons with Disabilities (CRPD Committee) has stated that 'Early childhood interventions can be particularly valuable for children with disabilities, serving to strengthen their capacity to benefit from education and promoting their enrolment and attendance' (CRPD Committee, 2016, para. 67). ECCE is known to play an imperative role in leveling the playing field somewhat, so disadvantaged children have a stronger start in life and enter primary education ready to learn.

ECCE is also imperative for the ongoing exercise of the right to education for those that speak alternative languages to the language of instruction. This may include migrants, refugees, asylum-seekers, indigenous groups or other minorities. For these children, being offered the opportunity to develop their language skills, while still respecting the principle that children should learn first in their mother tongue, is indispensable to their ability both to succeed at primary level and engage in the local community.

C. ECCE is an indispensable means to the realization of other human rights

One of the key features of ECCE is its indispensable role in the realization of other human rights. In the first years of life, many ECCE services are intrinsically linked to working parents' need for childcare. This is a recognized right in international law, contained in both the CRC (article 18.3) and CEDAW (article 11.2.c). The CRC Committee has stated that in conformity with this provision, 'States should create employment conditions within business enterprises which assist working parents and caregivers in fulfilling their responsibilities to children in their care such as: the introduction of family-friendly workplace policies, including parental leave; support and facilitate breastfeeding; access to quality childcare services; payment of wages sufficient for an adequate standard of living; protection from discrimination and violence in the workplace; and, security and safety in the workplace' (CRC Committee, 2013, para. 54).

An obligation on states to provide appropriate child care facilities and services that are safe and well-regulated does not just allow both parents to pursue their careers but is also essential for achieving gender equality both in the workforce and in the domestic sphere. In fact, as recognized by the Committee on the Elimination of Discrimination against Women (CEDAW Committee), in all nations, the most significant factors inhibiting women's ability to participate in public life have been the cultural

framework of values and religious beliefs, the lack of services, and men's failure to share the tasks associated with the organization of the household and with the care and raising of children (CEDAW Committee, 1997, para. 10). In line with the above, interrupted education and employment histories and child care responsibilities are some of the main reasons that prevent women from establishing a path to employment or property (CEDAW Committee, 2013, para. 44).

In countries where child care is difficult to obtain, overly expensive or of a poor standard, it is, more often than not, mothers that must overcome these significant barriers to work, or face having their economic empowerment compromised. They may choose to give up paid work outside the home, or take work that is part-time, informal, insecure or home-based (UNICEF, 2019). The CEDAW Committee recognizes the lack of childcare facilities as one of the reasons for curtailment of school attendance and political participation of rural women (CEDAW Committee, 2016, para. 42). The Committee, therefore, recommends the adoption of gender-responsive social protection floors to ensure that all rural women have access to child care facilities (para. 41.b). Also, states must not expel pregnant girls from school and provide them with child care facilities, breastfeeding rooms and provide child care facilities in rural areas to alleviate the unpaid care workload, facilitating their participation in paid work and allowing them to breastfeed during working hours (para. 43.g). As a result, affordable and accessible ECCE arrangements have a role in ensuring the realization of girls' and women's right to education.

There are human rights frameworks and international labour standards established by the ILO that seek adequate protection for the right to child care for all, including informal workers; that support the demands of the most vulnerable workers for child care; and that seek to fill some gaps in social security coverage that particularly disadvantage the most vulnerable. The ILO also advocates for the development of national policies that take into account the rights of children and their caregivers; and the working conditions and incomes of informal workers caring for children (ILO and WIEGO, 2020).

However, the number of ratifications of these conventions is not very high; the Convention No. 102 on Social Security, Minimum Standards (1952) has been ratified by 63 States; Convention No. 156 on Workers with Family Responsibilities (1981) has been ratified by 45 States; and Convention No. 183 on Maternity Protection (2002) has been ratified by 43 States. The recommendations: R202 Social Protection Floors Recommendation (2012) and R204 Transition from the Informal to the Formal Economy Recommendation (2015), depend on the willingness of countries to integrate them into their national systems and policies. Therefore, an international ECCE framework also covering the realization of other human rights that is widely implemented by states would be very appropriate.

III. Right to ECCE: key constituents of the ECCE framework and international human rights law

This chapter focuses on the substantive aspects of what can be considered ECCE rights. Initially, it will discuss how to understand the 5 A's framework applied for ECCE and then move on to examine state obligations that have emerged internationally or nationally, given the pronouncements of different bodies on services to be provided in preschool education, the roles of caregivers and the state towards early childhood, free and compulsory education, access, inclusion and non-discrimination, emergencies in ECCE, and aspects of children's digital rights. This section also reviews financial aspects, governance

and structure in ECCE, non-state actors, ECCE workforce, data collection, curriculum, pedagogy, mother tongue, intercultural approach and gender equality.

A. Understanding the status of ECCE implementation through the 5As framework

As outlined by the UN Committee on Economic, Social and Cultural Rights (ESCR Committee), education in all its forms and at all levels shall exhibit the following interrelated and essential features: availability, accessibility, acceptability and adaptability of education. The original 4As framework on the right to education, which is the most common analytical framework used for interpreting and understanding the normative content of the right to education, is based on these four core dimensions of education. In recent years, there has been an evolution towards adding accountability as a fifth dimension, so that it is referred to as the 5As framework. As the CRC Committee has explained, these core features must be adapted to the interests, concerns and changing capacities of children during early childhood. In advocating the fulfillment of the right to education, UNESCO promotes the 5As framework to understand the status of ECCE and encourage Member States to adopt and implement solid legal and policy frameworks protecting the right to ECCE for all.

Availability of ECCE

States must ensure, including through their establishment, development and management, appropriate and effective ECCE services in all locations and in sufficient quantity to meet the needs of all young children within their jurisdiction, with particular attention to children from vulnerable groups or living in remote or rural areas. In addition, considerations must be taken into account when planning and developing the relevant infrastructure and services. Making ECCE available also requires governments to not interfere with the freedom of non-state actors to establish independent ECCE institutions. To enable better ECCE, the availability of qualified ECCE teachers and educators should be encouraged taking into account the need for a gender-balanced workforce. States should also take measures to make sure that ECCE workers are socially valued and properly paid, and benefit from the same work conditions as in other levels of education. Moreover, ECCE personnel should receive a highly qualitative training, both initial and on-going, as well as strong supervision and support, to be able to recognize and respond to the evolving development needs for specific age groups. In that sense, states should increase the attractiveness of ECCE professions so that ECCE institutions can offer a sufficient number of available teachers and educators and ensure appropriate child/staff ratios.

Accessibility of ECCE

As defined by the CRC Committee, children have the right to participate in moulding their own development in accordance with their age and maturity, and this without discrimination on any grounds. States' legislations must reflect the principle of non-discrimination as foundation for the development of inclusive ECCE services. This includes the adoption of targeted measures to eliminate direct, indirect and intersectional forms of discrimination³ in connection with ECCE. Disparities in early

³ 'Direct discrimination is when a person, on account of one or more of the prohibited grounds, is treated less favourably than someone else in comparable circumstances'; 'Indirect discrimination is when a practice, rule, policy, or requirement is outwardly neutral but has a disproportionate impact upon a particular group'; 'Intersectional discrimination refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable' (UNESCO, 2019, pp. 82 and 86).

development can lead to inequality in accessing the next levels of education and then have other outcomes later in life. Particular attention must be given to access to education by marginalized groups. States must also ensure the existence of ECCE institutions within a safe and reachable physical distance for all and provide transportation where necessary. Special attention should be given to providing ECCE services to rural and remote communities. Similarly, states must ensure the economic accessibility of ECCE by eliminating financial barriers, such as tuition fees, and providing for progressively free ECCE services through increased and appropriate national and subnational budgets.

States must adopt ECCE policies enabling children to have adequate standards of living and development, through strategies to reduce poverty in early childhood and combat its negative effects on children's well-being using all possible means (subsidies, welfare programmes...).

States must take steps to identify and address discrimination and potential obstacles to access ECCE through systematic data collection, disaggregated in terms of major variables related to children's and families' background and circumstances. States must formalize their commitment to ECCE by explicitly acknowledging in their national legislation at least one year of pre-school education available and significantly free of cost for all children. As there is still no common practice in the manner to insert ECCE legal grounds in national legislations, states must simplify their identification by making sure that they are explicit and specific to ECCE.

Acceptability of ECCE

ECCE services must be able to meet the specific needs of young children and their families, supporting their early cognitive, physical and social and emotional development to its maximum capacity, in accordance with the aims of education. In addition, pre-primary education must aim to prepare them for their transition to primary education and their insertion into society. In that regard, ECCE must incorporate human rights education, providing practical opportunities for children to exercise their rights and responsibilities in ways tailored to their interests, concerns and capacities.

States must also develop ECCE programmes and educational objectives which respect the cultural and religious orientations of children and their families, which takes them into account and promotes them in the social aspect of such programmes. These should aim to redress historical and current patterns of disadvantage, address harmful stereotypes, prejudice and violence, transform biased institutional structures and practices, and facilitate social inclusion and participation. Moreover, ECCE services such as those for indigenous people and minorities which offer alternative pedagogies or languages of instruction, should not be closed or prevented from opening.

States are required to regulate the quality and the suitability of ECCE by supervising and monitoring both public and private ECCE institutions ensuring that the children's right are protected, and their best interests served. All ECCE institutions must ensure the protection of children's dignity, safety and wellbeing, in particular by protecting them against any form of violence (including corporal violence) and by providing relevant mental health and psychosocial support services for the most vulnerable.

Adaptability of ECCE

States must ensure the quality of ECCE for all children by making sure that it is adapted to their individual needs, with a special attention to vulnerable children. Legal provisions and/or policy measures must be adopted to identify these specific needs as well as to implement age-appropriate

programme standards (assuring that children's emotional needs are met) and quality criteria (regarding health and safety). States must also adopt targeted measures to eliminate direct, indirect and intersectional forms of discrimination in connection with ECCE and take action to ensure that all children have positive, inclusive experiences and receive appropriate support towards a smooth transition into primary schooling.

Adaptability of ECCE also involves that all young children must be guaranteed continuous access to appropriate and effective ECCE services to combat barriers in accessing ECCE institutions, such as poverty or physical barriers in accessing the educational infrastructures (for example, for children living in rural areas or in conflicts areas or children with disabilities). Similarly, ECCE services must respond to local needs and context which requires an appropriate balance between international target setting and the promotion and support of localized, contextually grounded approaches to supporting relevant policies and practices. Assistance from parents and local communities is necessary to develop such programmes.

ECCE programmes and educational objectives must also provide children with the knowledge and skills to thrive and be resilient in ever-changing communities, societies and socio-economic realities. In particular, ECCE programmes must provide children with human rights education to raise awareness of tolerance and diversity; but also provide them with the digital skills needed to evolve in our increasingly digital society.

Accountability of ECCE

For ECCE to be accountable, it must be clearly and specifically addressed in state policies. Mechanisms allowing the active participation of children, their parents, their local communities and early childhood development professionals in the design and implementation of educational policies must also be implemented, keeping in mind that the main priority of such policies must be the best interests of the child. This is particularly important regarding the complementary roles of ECCE institutions and parental/caregiver roles in early education and development. Therefore, the effective involvement of the relevant stakeholders must be monitored and evaluated in a comprehensive and exhaustive manner, both in public and private ECCE institutions, programmes and services.

States must develop available and understandable databases about the number of children attending ECCE and the barriers they encounter in accessing such services. These data must concern both theoretical and practical information about children's education and development as well as being collected on a regular basis and by following precise indicators (number of female and male children enrolled, retention, drop out and attendance rates, successful transition to primary education rates...). Such information must be used to inform decision-making, policy formulation and periodic reports. In light of this overview using the 5As framework, some key constituents of the ECCE framework are analyzed to identify the aspects that need further guarantees and regulation at international level to ensure full enforcement of the right to ECCE.

B. ECCE services and pre-primary education

- Roles of primary caregivers and state assistance

Parents, legal guardians, immediate and extended family and communities have a crucial role in the lives of young children with the primary responsibility to promote children's development and well-being and with the child's best interests as their basic concern (CRC, article 18.1). States are therefore not to separate children from their parents unless it is in the best interest of the child (CRC Committee, 2006, para. 18). In ensuring the exercise of the rights of the child, parents are responsible to provide 'in a manner consistent with the evolving capacities of the child, appropriate direction and guidance' (CRC, article 5).

Yet, while parents have this primary responsibility, this does not preclude the state from playing its part, as parents need to be equipped to provide 'appropriate direction and guidance'. In this respect, states parties to the CRC are held legally obligated to ensure the fulfilment of the rights of the child by offering appropriate assistance to parents and legal guardians in child-rearing and child development (CRC, article 18.2). Concretely, states must take measures to enhance parents' understanding of their role in their children's early education and provide parental education and parenting counseling (CRC Committee, 2006, paras. 20.c and 29.a), as the quality of a child's environment, early stimulation and learning opportunities play an important role in cognitive development (World Bank, 2013). Parental education includes ensuring that parents and caregivers have education and knowledge in child health, nutrition, breastfeeding, hygiene, environmental sanitation and the prevention of accidents (CRC, article 24.e). In providing assistance, states shall offer support in ways that encourage positive and sensitive relationships with young children and enhance the understanding of the child's rights and best interests (CRC Committee, 2006, paras. 20.c-d).

In ensuring the realization of the rights of the child, states also have a responsibility to provide appropriate pre- and post-natal health care measures to mothers due to their fundamental role (CRC, article 24.d) and CEDAW elaborates further in its article 12.2, stating that 'States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting *free services* where necessary, as well as adequate nutrition during pregnancy and lactation' (*emphasis added*). States are also to 'develop preventive health care, guidance for parents and family planning education and services' (CRC, article 24.2.f).

While international human rights law details to quite some extent the types of support, education and services which are to be offered to parents, it is not clear which are to be guaranteed on a free basis. Addressing this could allow for a greater enforcement of State obligations.

- State obligations in providing ECCE services

As defined in the introduction, ECCE covers the period up to the age of eight years. The first 1,000 days of a child's life, starting from conception, are known to be a critical period affecting the whole of the child's lifespan requiring a particularly integrated approach to ensure an optimum foundation for their physical and mental health, emotional security, cultural and personal identity, as well as developing competencies. In addition, babies and infants are entirely dependent on others. As learning begins at birth (Jomtien World Declaration on Education for All, 1990, article 5) and recognizing that ECCE is a right and an indispensable foundation for lifelong learning (Moscow Framework for Action and

Cooperation, para. 2), States are required to provide certain services, which are particularly essential for children in their early years of life.

First, it is central to note that the CRC Committee recognizes that ‘young children are holders of all rights enshrined in the Convention [on the Rights of the Child] and [that] early childhood is a critical period for the realization of these rights’ (CRC Committee, 2006, para. 3). The CRC Committee identified the following general principles which have implications for the rights in early childhood: right to life, survival and development, the right to non-discrimination, the best interest of the child and respect for the views and feelings of the young child (CRC Committee, 2006, section III). The Convention protects these rights by setting minimum standards that governments must meet.

According to the CRC, States have the legal obligation to register the child immediately after birth (article 7) by putting in place comprehensive services which are accessible to all (including through mobile registration units where appropriate) and free of charge (CRC Committee, 2006, para. 25). States are to guarantee ‘access to appropriate and effective services, including programmes of health, care and education specifically designed to promote their well-being’ (CRC Committee, 2006, para. 24).

In terms of standard of living, this requires that States offer ‘material assistance and support programmes particularly with regard to nutrition, clothing and housing’ (CRC, article 27.3) and as such, measures should be taken to ensure access to nutritious foods and clean drinking water (CRC, article 24.2.c).

States need to ensure ‘social security, including social insurance’ (CRC, article 26.1) and healthcare services, which offer perinatal care, immunization and medical services (CRC, article 24). The CRC Committee adds that young children should also participate in appropriate, child-centered health education programmes as they can also contribute to ensuring their personal health and encourage healthy lifestyles (CRC Committee, 2006, para 27.b).

All institutions, services and facilities responsible for early childhood should conform to quality standards, including those for health and safety, and staff competences and training (CRC Committee, 2006, para. 23). The Education 2030 Framework for Action adds that States also need to ensure protection from violence (para. 36). This requires state monitoring, which could include developmental screenings and home visits and also the assessment of the impacts of laws and policies on children (CRC Committee, 2006, para. 5).

Fulfilling the right to rest, leisure and play requires the creation of opportunities for young children to meet and play in child-centered, secure, stimulating, stress-free and supportive environments (CRC Committee, 2006, para. 34).

States also need to provide appropriate child-care services and facilities for children of working parents (CRC, article 18.3). It is important that fees do not constitute a preventative factor, as access to a minimum level of ECCE services and programmes is essential to ensure inclusion (UNESCO GEMR, 2021). States should therefore ensure ‘that there are an appropriate number of programmes and institutions to ensure access for all children and subsidization or the waiving of fees’ (UNESCO, 2015). In addition, parental leave, for which the ILO Conventions (notably the Maternity Protection Convention, 2000 (No. 183)) lays out specific rights for mothers, also should be guaranteed to ensure quality education and care of young infants.

Particular focus is given to the most vulnerable. In any circumstance whereby a child lacks adequate protection from their parent or caregiver, the child is at risk of disease, trauma, and distorted or disturbed development. States should therefore ensure that all legislation, policies and interventions promote physical and psychological recovery and social reintegration within an environment that promotes dignity and self-respect (CRC Committee, 2006, para. 37).

The level of interrelated human rights in early childhood and considering that children's development in the early childhood occurs across several domains, requires multisectoral strategies. As noted by the CRC Committee, ECCE 'services have often been fragmented. They have frequently been the responsibility of several government departments at central and local levels, and their planning has often been piecemeal and uncoordinated' (CRC Committee, 2006, para. 22). While there are no explicit obligations in this respect, to ensure rights-based, quality services which ensure the child's best interest, coordinated, integrated and multisectoral strategies must be developed. Aside from avoiding duplication, it can also 'maximize scarce financial, human and material resources' (Neuman, 2007 as cited in the World Bank, 2013, para. 66). The role of parents' responsibilities is to be respected notably by consulting them in planning comprehensive services (ibid.).

For example, in Jamaica, the Early Childhood Commission was established by the Education Childhood Commission Act of 2003, to improve the quality of early childhood care, education and development within the early childhood sector. To reduce fragmentation and duplication, and through an integrated approach, it coordinates all activities, development plans and programmes within the early childhood sector. According to the schedule of the Education Childhood Commission Act, the commission includes representatives of all key ministries (education, youth and culture, labour and social security, health, finance and planning, local government and community development), the executive branch, the opposition political party, non-state actors and ECD experts.

In monitoring the implementation of the CRC, the Committee revealed that 'legislation exists either within comprehensive laws to implement all child rights or within sectoral laws on health and especially on education. Only a few countries have enacted separate comprehensive ECCE legislation.' (UNESCO, 2015, p. 49). Setting legal foundations for ECCE is fundamental in the effective implementation of child rights. International human rights law could further set out the obligations of the State to provide services provided in ECCE, including their free nature.

- **Free and compulsory pre-primary education**

Compulsory education has been defined in the international rights framework as a mandatory presence for children and youth (according to the specified age group) to attend school. The Universal Declaration of Human Rights (art. 26.1) identifies compulsory education at the elementary level. As a direct consequence, national governments are responsible for the universal provision of access to public schools at that compulsory level as they see fit (UNESCO 2021a). Although the ESCR Committee referred to primary education, it has stated that the element of compulsion serves to highlight the fact that neither parents, caregivers, nor the State is entitled to treat as optional the decision as to whether the child should have access to education (ESCR Committee, 1999, para. 6).

The free and compulsory nature of specific levels of education are enshrined in human rights law: primary education must be free and compulsory, and secondary and higher education are to be progressively free (International Covenant on Economic, Social and Cultural Rights (ICESCR), article 13.2). At the time of the elaboration of human rights instruments, State obligations on the free and

compulsory nature of pre-primary were not included, even though pre-primary education is crucial in promoting the child's development. Pre-primary education, typically designed for children from the age of three (depending on the country) to the start of primary school, allows for the development of language and social skills as well as logic, reasoning and literacy skills that help in developing a child's autonomy and school readiness (UNESCO UIS, 2012).

Aside from the provisions of CEDAW and ICRMW which provide for equality and non-discrimination in pre-school (see section II), there is an absence of what the right to pre-primary education concretely entails in treaty law. Nevertheless, relevant treaty bodies have expounded upon how the right to education applies prior to primary school. As early as 1994, the ESCR Committee viewed pre-primary education within its remit when reviewing States' compliance with the right to education. It regretted that in the United Kingdom, 'insufficient measures have been taken towards the development of a universal pre-school education scheme,' and recommended that 'priority should be given to expand access to pre-school education' (ESCR Committee, 1994, paras. 13 and 15).

The CRC Committee has long addressed pre-primary education within the context of the right to education. In their 2005 General Comment on early childhood, the Committee interpreted the right to education 'as beginning at birth,' and called on States 'to ensure that all young children receive education in the broadest sense' (CRC Committee, 2006, para. 28), acknowledging a role for family and community, as well as organized government and civil society early childhood education programmes. It recognized 'with appreciation that some States parties are planning to make one year of preschool education available and free of cost for all children' (ibid.).

They have also taken opportunities to underscore that making it free is key to its accessibility, especially for lower-income families' children. As noted by the CEDAW Committee 'inability to pay user fees and/or meet hidden costs' must not impede girls and women from lower socio-economic strata to access any level of education' (CEDAW Committee, 2017, para. 39.c). In addition, as noted by Sheppard, B. (2022), it is difficult to reconcile the best interest of the child, with an education system that establishes parent's ability or willingness to pay fees as a threshold barrier to accessing pre-primary education, particularly when 'economic condition' is a prohibited ground of discrimination in the UNESCO Convention against Discrimination in Education (article 1.1).

In this regard, in 2002, the CRC Committee expressed concern that pre-primary education in Bahrain was only available through private institutions and recommended the government 'take steps to provide free pre-primary education' (CRC Committee, 2002, para. 42). In 2003, the Committee recommended that Republic of Korea 'develop a time-bound strategy for reducing and eliminating the cost of pre-school' (CRC Committee, 2003, para 53.b). In 2005, it regretted that 'at least one year of pre-school education was not made compulsory' in Albania and urged it to consider doing so (CRC Committee, 2005, paras. 60-61). And in 2006, the Committee expressed concern that Mexico had not allocated 'necessary resources...to ensure that preschools will have sufficient human and material resources to be free and accessible to all,' and recommended that they do so 'to ensure that quality preschool education will effectively be available to all children' within three years (CRC Committee, 2006, paras. 56-57).

Fredman, S. et al. (2021) led a review of 264 concluding observations by the ESCR Committee, the CRC Committee, and the CRPD Committee, for 152 countries between 2015-2020, and found all three

expect States to provide affordable, accessible, quality early childhood care and education that is inclusive and non-discriminatory, and with adequate financial, technical, and human resources.

Regionally, the African Commission on Human and Peoples' Rights, urged African States in 2016 to 'guarantee the full scope of the right to education,' including the 'provision of pre-school' (ACHPR, 2016).

It is only in 2015, with the Education 2030 Framework for Action, that States worldwide take a strong commitment to introduce at least one year of free and compulsory pre-primary education (para. 12) by 2030. This was then followed by General Recommendation No. 36 of the CEDAW Committee adopted in 2017, which calls upon States to provide 'universal, free and compulsory education from pre-school to secondary school, regardless of socioeconomic status for citizens of the State party, as well as for girls and women with migrant or refugee status' (para. 39.a).

Besides the importance of pre-primary education for a child's development, ensuring that pre-primary education is made compulsory would also allow to redress inequalities and ensure that all children start on an equal footing. In France, where 97% of children already attended this level of schooling, the decision to make pre-primary education compulsory from the age of three as of 2019 was intended to 'even out social inequalities' with the greatest effect on children in overseas French territories, where the enrolment rate was previously around 70% (UNESCO World Education Blog, 2018).

While States have committed to introducing *at least one year* of free and compulsory pre-primary education, the duration does vary. According to the UNESCO study (UNESCO, 2021a), 57% of countries who legally guarantee compulsory pre-primary education opted for one year, 26% opted for two years, and 18% for three or more years. Among the same list of countries, eight countries have established longer periods of free pre-primary education than the compulsory period. This is the case for Paraguay and Sweden guarantee three and four years of free pre-primary education, respectively, but only one year is compulsory. In this regard, the extension of free pre-primary education allows to further enhance its accessibility so that parents have an actual choice in their child's enrolment, rather than having to weigh up the financial burden it could lead to. Yet, this does require an important government investment. Depending on the resources available, States may need to elaborate a plan to achieve the necessary funds to finance the additional years of free pre-primary education.

On the other hand, extending the duration of compulsory pre-primary education to more than one year can lead to tension between parental roles, the best interests of the child and the role of the State. For example, a study in Czech Republic (Horníckova et al., 2021) revealed that while parents generally were convinced of the importance of compulsory pre-primary education as it offers a 'broader social environment which the family could no longer secure' (p. 1), respondents to the study were in disagreement with the possible extension of compulsory preschool attendance to lower year groups. The author explains that in recognizing that the rate of maturity is individual for each child, a child may experience 'separation anxiety, and problems with the nature of self-care, operating within a social environment' which affect the success of their adaptation. As a result, the parent's role in assessing the child's readiness to determine whether they enroll in a pre-primary school prior to the compulsory period, was deemed important. There must also be sensitivity as to the age of the child from which pre-primary education is made compulsory, recognizing the quite varied age-range that children begin primary school in different countries.

Finally, the provision of pre-primary education can be detrimental if quality standards are not woven into its fabric. Quality education is at the heart of all SDG4 targets and States need to ensure that pre-primary education is specifically designed to be child-centered, child-friendly and promote well-being (CRC Committee, 2006, paras. 24 and 28).

In light of the above, the immediate introduction of at least one year of quality, free and compulsory pre-primary education in a legally-binding instrument would therefore allow for a natural progression of human rights law. In this regard, according to the UNESCO study (UNESCO, 2021a) among the 193 countries analyzed, 63 countries have adopted free pre-primary education and 51 adopted compulsory pre-primary education in their legislation. Among the 46 countries which have adopted free and compulsory pre-primary education in their laws, there seems to be: higher rates of early childhood well-being, as measured by UNICEF's Early Childhood Development Index (ECDI); increased government expenditure on early childhood care and education; and higher enrolment rate in pre-primary education. As noted by Human Rights Watch (Sheppard, B., 2022), such an obligation should be part of the minimum core obligations of the right to education. The realization of additional years of free pre-primary education could be ensured progressively, while the obligations in relation to the duration of compulsory pre-primary education requires further analysis which takes into account contextual differences across States.

C. Access to ECCE and inclusion

- Non-discrimination and equal access to ECCE services

The right to equality and non-discrimination is potentially an important way for the most marginalized children to claim their entitlement to ECCE in international law. This is because ECCE, where available, is limited to the more privileged young children either in access or quality. The right to equality and non-discrimination is particularly important in this context because it is immediately realizable in international human rights instruments (CRC article 2, ICESCR article 2(2)). This contrasts with the right to education in the CRC and the ICESCR, which does not have to be realized immediately. Instead, States are required achieve the right progressively to the maximum extent of their available resources (CRC article 4, article 28(1); CRC Committee, 2011, para. 44; ICESCR, article 2(1)).

The most explicit reference to the right to equality and non-discrimination in relation to ECCE is in the CEDAW, which states that States Parties should take all appropriate measure to eliminate discrimination against women and ensure equal rights with men inter alia, in pre-school education (CEDAW, article 10). The express reference to pre-school education is not found in the CRC or ICESCR. Instead, these conventions include a general non-discrimination clause requiring States to 'respect and ensure' (CRC article 2(1)) or 'guarantee' (ICESCR, article 2(2)) that the rights in the respective conventions are exercised without discrimination on a wide range of grounds. These include race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, or birth as well as a more general category, 'other status.' The CRPD, while not referencing pre-school education directly, does require that States Parties should ensure an inclusive education system 'at all levels,' (CRPD, article 24(1)) which can be read to include early education. In addition, the CRPD has a non-discrimination and equality clause under which States Parties are required to prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. This Convention also provides a duty on States

Parties to recognize that all persons are equal before and under the law and are entitled to the equal protection and benefit of the law without any discrimination (CRPD, article 5).

Notably, the CRPD equality and non-discrimination clauses are autonomous, in that they are not confined to exercise of the rights under the Convention. Article 5 of the CRPD states both that all persons are entitled to the equal benefit of the law, and that State Parties must prohibit ‘all discrimination on the basis of disability’. Similarly, CEDAW requires States Parties to eliminate all discrimination against women, not just in respect of the rights set out in the Convention (article 2).

The non-discrimination clauses in the CRC and ICESCR, by contrast, are not explicitly autonomous, in that they refer only to the exercise of the rights in the respective Conventions. This might be regarded as problematic since the right to ECCE is not expressly mentioned as part of the right to education in either of these Conventions. Nevertheless, there are two ways in which the non-discrimination guarantee could be invoked where ECCE is provided in a discriminatory manner. The first is to regard the right to ECCE as implicit in the broader right to education, given the stated purpose of the right, which is to ensure the full development of personality and the ability to participate in democracy (Fredman, S. and Donati, G., 2022). The second way in which the non-discrimination provision can be invoked is to rely on article 26 ICCPR which simply states that ‘all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.’ In CCPR General Comment No. 18 on Non-Discrimination (1989), the Human Rights Committee (HR Committee) stated that article 26 does not simply replicate the non-discrimination provision in article 2 ICCPR. Instead, it ‘prohibits discrimination in law or in fact in any field regulated and protected by public authorities’ (HR Committee, 1989, para. 12). This does not require States to legislate or otherwise provide for any particular issue. However, if the State does legislate or make other policy provision, it must do so without discrimination. Thus, in a case regarding social security, the HR Committee has stated, ‘Although article 26 requires that legislations should prohibit discrimination, it does not of itself contain any obligation with respect to matters that may be provided for by legislation. Thus, it does not, for example, require any States to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a state’s sovereign power, then such legislation must comply with article 26 of the Covenant’ (HR Committee, 1987, para. 12.4).

Similarly, in relation to the right to education, the HR Committee has held ‘In this context, the Committee observes that the Covenant does not oblige States parties to fund schools which are established on a religious basis. However, if a State party chooses to provide public funding to religious schools, it should make this funding available without discrimination’ (HR Committee, 1999). This reflects the approach under article 14 of the European Convention on Human Rights (ECHR), on which the non-discrimination provisions in the CRC and ICESCR were modelled. Here there is a well-established principle that, to trigger the non-discrimination obligation, there is no need for an express breach of a Convention right, as long as the action of the State falls within the ambit of a right. In the *Belgian Linguistics* case in 1968, the European Court of Human Rights held that although there is no express right to education in the language of choice, the State should not unjustifiably discriminate by providing education to some in the language of choice and not to others.

This approach is reflected in the practice of the UN committees responsible for monitoring the CRC and the ICESCR. This was summed up by the ESCR Committee in 2018 in relation to South Africa, when it welcomed the improved access to ECCE benefiting 88% of children aged 5 and 6. However, it noted that access remains very limited among children of the poorest families. It expressed its concern that, in

spite of the States' efforts, participation among children in low-income families in early education remained low. It therefore recommended that the State Party guarantee high-quality early education for all children, especially from disadvantaged families (ESCR Committee, 2018, para. 71.e).

Similarly, in relation to the Dominican Republic the CRC Committee in 2015 noted 'the adoption of the Ten-Year Education Plan 2008-2018 and the increase in educational coverage, in particular in regard to primary education.' However, it expressed its concern about reports that the majority of children aged 3 and 4 do not have access to early educational programmes (CRC Committee, 2015, para. 57.g). In relation to Ecuador in 2019, the ESCR Committee took note of increased access to and quality of education as a result of the progressive increase in investment and of multi-year education policies. It was nevertheless 'concerned at the stalled increase in preschool education coverage, the persistence of disparities between rural and urban areas and the higher dropout rate among low-income groups, indigenous peoples, people of African descent and Montubio people.' It therefore recommended that the State party increase social spending on education 'in order to ensure universal and equal access to quality early, primary and secondary education.' (ESCR Committee, 2019, paras. 55 and 56.a).

The CRC and ICESCR both include a list of grounds of discrimination, including race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, or birth as well as a more general category, 'other status.' The UN monitoring committees use the more general category generously to go beyond the specified grounds and to include intersectionality. The list of marginalized groups referred to in Concluding Observations includes girls, refugees, asylum seekers and migrant children, street children, those imprisoned with mothers, indigenous children and specific ethnic groups, such as Roma children, gypsy and traveller children as well as children with disabilities, those of single parents, parents with HIV, those who are gender non-conforming, LGBTQ+, live with albinism or are affected by leprosy. The Committees are also sensitive to the pervasive intersectionality of these groups and the fact that the overlap between groups is systematically reproduced within society, as with ethnicity and poverty. Added to this, disparities are often regional, with children living in rural, island or poorer communities mostly missing out on ECCE or otherwise receiving poorer quality ECCE (Fredman, S. and Donati, G., 2022).

The Early Childhood Education section of the CRC's Concluding Observations from Colombia 2015 illustrates ways in which the Committee stresses the need to extend existing provision in a non-discriminatory manner to a wide range of groups marginalized within the country: 'The Committee welcomes the adoption of the policy on early childhood and its related strategy. It is concerned, nevertheless, about the insufficient measures taken to ensure that all children throughout the territory benefit from the effective implementation of the strategy. The Committee recommends that the State party strengthen coordination among relevant entities and allocate adequate human, technical and financial resources to the strategy on early childhood to ensure that all children benefit from its implementation, in particular children in rural and remote areas, children with disabilities, children living with HIV/AIDS, children in prison with their mothers, children of adolescent mothers, and displaced, indigenous and Afro-Colombian children' (CRC Committee, 2015, paras. 53-54).

- Inclusion in ECCE

The central principle of the 2030 Agenda for Sustainable Development, 'Leave no one behind', is a transformative promise that endeavours to 'reach the furthest behind first' (UNGA, 2015, para. 4). With the specific emphasis on ECCE in SDG 4.2, it aims to ensure the inclusion of children from marginalized groups from the very start of early education, as it is the gateway for inclusive education. Driven by this

core principle, the Global Partnership Strategy for Early Childhood (GPS), launched in December 2021, seeks to ensure ‘inclusive, accessible, affordable, gender-responsive, equitable and developmentally appropriate’ ECCE services for all children (UNESCO, 2022a, p. 6).

ECCE being a powerful equalizer (Irwin, L. G. et al., 2007), has the potential to expand opportunities and enable all children, including the most vulnerable and disadvantaged, to start school on an equal footing with their peers and improve overall educational achievement (UNESCO, 2021b). Various studies conducted on the impact of ECCE on children’s learning and development demonstrate that it has long-term individual and social benefits for inclusion (UNESCO, 2021b). In spite of this, access to ECCE has been uneven within countries and across, with vulnerable children being disproportionately excluded from ECCE (UNICEF, 2019a). According to UNICEF, ‘the poorest children in low-income countries are eight times less likely than children from the wealthiest families to attend an ECCE and in middle- and high-income countries, children from poor households are four times less likely to participate in pre-primary education’ (UNICEF, 2019a). Globally, over one-sixth of forcibly displaced persons are children under the age of five (UNESCO GEMR, 2019) and a significant number of these children face severe restrictions to access early childhood education (NGO Committee on Migration, 2016).

Some of the key observations of the treaty monitoring bodies and country visit reports of the UN Special Rapporteurs on the right to education confirm this exclusion at the early childhood stage and its impact leading to unequal opportunities and lifelong marginalization (Right to Education Initiative, 2022). For instance, in his 2010 report on the right to education for migrants, refugees, and asylum seekers, former UN Special Rapporteur Mr. Vernor Muñoz expressed concern about the inconsistency of policy and provisions and the lack of funding for quality and quantity early childhood education programmes in refugee camps and warned that this ‘inconsistency would contribute directly and indirectly to lifelong marginalization’ (UN Special Rapporteur on the right to education, 2010). In the Concluding Observations to the Vanuatu, the CRC Committee (2017) recommended to ‘Expand coverage to reach groups in disadvantaged situations that currently do not have improved access to water and sanitation, especially in rural and remote communities, in healthcare facilities and schools including early childhood care education centres’ (para. 45.b).

The right to education in international law encompasses the right to inclusive education, and some human rights treaties categorically reiterate the right to inclusive education from early childhood education. Article 24 of the CRPD recognizes the right of persons with disabilities to education and calls upon State Parties to ensure an inclusive education system at all levels and lifelong learning. While this refers to all levels of education including ECCE, the CRPD Committee elaborates on the state obligation for providing inclusive ECCE in General Comment No. 4 (2016):

Early childhood interventions can be particularly valuable for children with disabilities, serving to strengthen their capacity to benefit from education and promoting their enrolment and attendance. All such interventions must guarantee respect for the dignity and autonomy of the child. In line with the 2030 Agenda for Sustainable Development, including Sustainable Development Goal 4, state parties are urged to ensure access to quality early childhood development, care, and pre-primary education, together with the provision of support and training to parents and caregivers of young children with disabilities. If identified and supported early, young children with disabilities are more likely to transition smoothly into pre-primary and primary inclusive education settings. States parties

must ensure coordination between all relevant ministries, authorities, and bodies as well as organizations of persons with disabilities and other non-governmental partners.

Article 30 of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (1990) recognizes the right to education of migrants including the right to preschool education:

Each child of a migrant worker shall have the basic right of access to education based on equality of treatment with nationals of the State concerned. Access to public preschool educational institutions or schools shall not be refused or limited because of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

Further, the Committee on the Protection of the Rights to All Migrant Workers and Members of their Families (CMW) and the CRC, in a Joint General Comment No. 4 (2017), affirm that all migrant children, irrespective of their migration status should have full access to all levels and all aspects of education, including early childhood education based on equality with nationals. It further recognizes the provision of early childhood education as one of the appropriate measures to promote equality and overcome education barriers. Hence it affirms: 'State efforts should include the provision of early childhood education as well as psychosocial support' (CMW and CRC, 2017).

Article 10 of the CEDAW, calls upon State Parties to eliminate gender discrimination in the field of education and ensures equality in accessing the right to education at all levels including preschool. The CRC in its General Comment No. 7 calls upon States to have 'comprehensive policies and programmes for early childhood, especially for vulnerable children'. The Committee's emphasis has 'particular attention to the most vulnerable groups of young children and to those who are at the risk of discrimination (CRC. art.2)' (CRC, 2006).

This call for inclusive early childhood care and education has been further reemphasized in various declarations and political commitments made by the States, including New York Declaration for Refugees and Migrants adopted by the UN General Assembly in 2016, the Global Compact for Migration adopted in July 2018 and Education 2030 Incheon Declaration and Framework for Action.

The human rights treaty bodies and special rapporteurs on right to education repeatedly recommend States to adopt equitable and inclusive education policies and approaches from the very start of early education. For instance, the former Special Rapporteur on the right to education, Dr. Koumbou Boly Barry in her report on the 'role of equity and inclusion in the right to education', wrote: 'The right to education encompasses all aspects of education, from early childhood care and education to adult literacy programmes, and the right to lifelong learning. Equitable, inclusive approaches should be applied at all levels of education, not just the primary level' (UN Special Rapporteur on the right to education, 2017, para. 110).

Similarly, the CRPD Committee in its Concluding Observations of Sudan (2018) recommended to 'Take measures to establish an inclusive education system at all levels, to include preschool, primary, secondary and tertiary education, and vocational training, without discrimination and on an equal basis with others' (para. 48.b).

At the national level, a few countries have adopted inclusive education laws and policies from the very start of early education. For example, under a 2017 Swedish law, children who are seeking asylum have an equal right to preschool education as residents, funded by the Swedish Migration Agency (UN Special Rapporteur on the right to education, 2017). Similarly, children without Serbian citizenship as well as Serbian children from vulnerable groups that do not have proof of residence have the right to enroll in preschools and preparatory preschool programmes in Serbia (UN Special Rapporteur on the right to education, 2017).

- ECCE in emergencies

In emergencies, when communities are devastated by conflict, violence, disasters, or disease outbreaks, young children are exposed to various forms of vulnerabilities. According to UNICEF (2014, p. 2), ‘worldwide, over 1 billion children live in areas affected by conflict and high levels of violence, with an additional 175 million children likely to be affected by climate-related disasters each year’. Children may experience violence, abuse, separation from family members, breakdown of support systems, shortage of food and health care services, psychosocial distress and forced relocation to a new environment (Right to Education Initiative, 2021a). Children in conflict-affected settings are twice as likely to die before they reach their fifth birthday (UNICEF, 2014). According to UNICEF (2014), more than half of under-five deaths are estimated to occur in settings affected by armed conflict, displacement or natural disasters. These traumatic experiences may have developmental and psychological consequences and may have devastating impact in the formation of intelligence, personality, social behaviours and their lifelong learning, well-being and education.

In such situations, ECCE programmes have the potential to play a crucial role in identifying and addressing the mental health challenges faced by young children and their families. ECCE can help develop resilience to alleviate childhood trauma, toxic stress, and deprivation. It also helps ensure a smooth transition to primary school, a better chance of completing basic education, and a route out of poverty and disadvantage. In spite of this, ECCE in emergencies is not a priority and only a small percentage of humanitarian and refugee response strategies and policies have included ECCE (UNICEF, 2014). Very often, young children are ‘invisible’ with the assumption made that they will be automatically taken care of by their families/parents (Right to Education Initiative, 2021a). According to UNESCO’s 2019 Global Education Monitoring Report (GEMR), the pre-primary agenda is not part of many humanitarian and refugee responses. It says, ‘A review of 26 active humanitarian and refugee response plans revealed that nearly half made no mention of learning or education for children under 5 and less than one-third specifically mentioned pre-primary education’ (UNESCO GEMR, 2019, p. 132). Even if ECCE is included, in most places it does not sustain for lasting impact due to scarcity of funds.

The state obligation to respect, protect, fulfill right to education which includes early childhood care and education endures throughout emergency situations. Both the international human rights law and international humanitarian law provides a regulatory framework for the protection of right to education in emergency situations (UN Special Rapporteur on right to education, 2008), although it did not explicitly mention ECCE. The Convention relating to the Status of Refugees, obligates States to accord the same treatment as is accorded to nationals with respect to elementary education (article 22, para. 1) and treatment no less favorable than that accorded to foreigners with respect to education other than elementary education (article 22, para. 2). Additional Protocol II to the Geneva Conventions, of 1977, establishes in article 4.3.a the obligation to provide children with the care and aid they require, and the right to receive education.

The CRC Committee, in its General Comment No. 6 emphasized that ‘every unaccompanied and separated child, irrespective of status, shall have full access to education in the country’ including the early learning programmes to young children (CRC, 2015, paras. 41-42). Similarly, in General Comment No. 7, the Committee recommended particular consideration for young children in difficult circumstances. Referring to refugees, it emphasized that young children and their parents are ‘entitled to equal access to health care, education and other services’ (CRC Committee, 2016, para. 36.c). Further it recommended early placement in family-based or family-like care for children without families in emergency situations. The Committee on Economic, Social and Cultural Rights also reiterated the need providing ECCE to children in distress. For instance, in its concluding observation to Norway, the committee was concerned, that ‘asylum-seeking children living in reception centres are not entitled to preschool education’ and therefore recommended to ‘extend the right to preschool education to asylum-seeking children living in reception centres’ (2020, para. 44b & 45b)

Various international agreements affirm the right to early childhood education for migrant and refugee children. In the New York Declaration for Refugees and Migrants adopted by the UN General Assembly in 2016, States commit to ‘protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child’ (para. 32). It further commits to ‘comply with the obligations under the Convention on the Rights of the Child’ (ibid.), and ‘support early childhood education for refugee children’ (para. 82).

The International Labour Organisation (ILO) Policy guidelines on the promotion of decent work for early childhood education personnel insisted that the States have special responsibilities in areas affected by armed conflict, in ensuring that ECCE centers, staff and children are protected from violence. It also recommends community-based early warning capacities to monitor risks of violence (ILO, 2013).

The recent COVID 19 crisis has had a major impact on realization of the right to education with massive closure of schools, especially the ECCE centers across the world. Some of the key learnings in terms of crisis and disaster management should be integrated in the long-term plan to ensure that children have access to education even in emergencies. All decisions concerning children should be undertaken keeping the best interests of the child, and any restrictions on children’s rights must serve a legitimate aim, be necessary, proportionate, and non-discriminatory’ (Human Rights Watch, 2021, p. 117). As the UN Special Rapporteur on the right to education recommended in the 2020 report, ‘limitations imposed on the right to education should strictly comply with the conditions set out in article 4 of the International Covenant on Economic, Social and Cultural Rights, article 29 of the Universal Declaration of Human Rights and other relevant provisions of international human rights law’ (para. 84.a). Further, as recommended by the Special Rapporteur, States should ‘integrate the availability, accessibility, acceptability and adaptability framework’ as an ECCE policy guide, develop emergency preparedness within ECCE education systems and create an institutional mechanism for crisis and disaster planning and management (UN Special Rapporteur on the right to education, 2020. para 84).

Importantly, ECCE in emergencies requires an integrated approach that holistically addresses the needs of children in childcare, health, nutrition, protection and education from birth through the first 8 years of life (UNICEF, 2014).

- Protecting and accessing children's digital rights in ECCE

The use of technology in education has grown over the recent years and developed rapidly and widely since the COVID-19 pandemic, including in early childhood education. Some of the issues and challenges raised by the use of technology in education are also seen in early childhood education, such as disparities in access, the risk of datafication and surveillance, the standardization of education to the detriment of cultural diversity, the threats to face to face education among other (UN Special Rapporteur on the right to education, 2016 and 2022). For very young children, specific considerations must be looked at due to their age and form of education.

The CRC Committee notes that innovations in digital technologies affect children's lives and their rights in ways that are wide-ranging and interdependent, even where children do not themselves access the Internet (CRC Committee, 2021, para. 4), which is often the case for very young children, and affirmed that the rights of every child must be respected, protected and fulfilled in the digital environment, using the following four principles as a guide for determining the measures to guarantee such rights: non-discrimination; best interests of the child; right to life, survival and development; respect for the views of the child (CRC Committee, 2021, para. 8).

The CRC Committee, in its General Comment No. 25 on children's rights in relation to the digital environment (2021) makes particular recommendations for the use of technology in the early years, including in education. Underlining the importance of child development at this age, the Committee notes that 'States parties should pay specific attention to the effects of technology in the earliest years of life, when brain plasticity is maximal and the social environment, in particular relationships with parents and caregivers, is crucial to shaping children's cognitive, emotional and social development.' (CRC Committee, 2021, para. 15). The Committee stresses that 'in the early years, precautions may be required, depending on the design, purpose and uses of technologies. Training and advice on the appropriate use of digital devices should be given to parents, caregivers, educators and other relevant actors, taking into account the research on the effects of digital technologies on children's development, especially during the critical neurological growth spurts of early childhood (ibid.).

Opinions diverge on the use of digital tools in ECCE, with some advocating for a delay on their usage until more is known about their potentially negative effects. Recommendations tend to err towards a limited use of screens for young children – the World Health Organization suggests no screen-time for children younger than 2 years old, then a maximum of sixty minutes per day for 2–4-year-olds, based on the sedentary nature of this activity (WHO, 2019). Other concerns around screen-time are often linked to behavioural problems, speech delays and academic issues.

On the other hand, many technologies can be used in ECCE that can support the education of young children. Computers, digital cameras, beamers, microscopes, scanners and tablets with different softwares can encourage different forms of play and facilitate the learning of various subjects (Lindeman, S. et al., 2021). Moreover, learning digital literacy skills, both functional and analytical, are seen as increasingly vital for meaningful engagement in all aspects of education and wider life, suggesting there may be some value to giving opportunities to young children to learn these skills at an age-appropriate level. Studies of pre-school children's use of tablets in early years settings indicate that devices can foster creativity, for example through the development of art and drawing skills, film-making, music creation and photography (Marsh, J. et al., 2018).

It is important that digitalization in ECCE should not come at the expense of collaborative play and the socialization of young children. Digital tools should support, rather than supplant play and expand children's ability for creativity, problem-solving and self-expression. In fact, as regards the importance

of face-to-face interaction with other people and play, the Committee recommends that States parties ‘ensure that the promotion of opportunities for culture, leisure and play in the digital environment is balanced with the provision of attractive alternatives in the physical locations where children live.’ (CRC Committee, 2021, para. 109). It notes that ‘especially in their early years, children acquire language, coordination, social skills and emotional intelligence largely through play that involves physical movement and direct face-to-face interaction with other people’ (ibid.).

In this General Comment, the Committee also makes a recommendation on digital literacy that applies for preschool. It indicates in paragraph 104:

States parties should ensure that digital literacy is taught in schools, as part of basic education curricula, from the preschool level and throughout all school years, and that such pedagogies are assessed on the basis of their results. Curricula should include the knowledge and skills to safely handle a wide range of digital tools and resources, including those relating to content, creation, collaboration, participation, socialization and civic engagement. Curricula should also include critical understanding, guidance on how to find trusted sources of information and to identify misinformation and other forms of biased or false content, including on sexual and reproductive health issues, human rights, including the rights of the child in the digital environment, and available forms of support and remedy. They should promote awareness among children of the possible adverse consequences of exposure to risks relating to content, contact, conduct and contract, including cyberaggression, trafficking, sexual exploitation and abuse and other forms of violence, as well as coping strategies to reduce harm and strategies to protect their personal data and those of others and to build children’s social and emotional skills and resilience.

As regards the development of law and policies, the Committee advised in paragraph 103 that:

States parties should develop evidence-based policies, standards and guidelines for schools and other relevant bodies responsible for procuring and using educational technologies and materials to enhance the provision of valuable educational benefits. Standards for digital educational technologies should ensure that the use of those technologies is ethical and appropriate for educational purposes and does not expose children to violence, discrimination, misuse of their personal data, commercial exploitation or other infringements of their rights, such as the use of digital technologies to document a child’s activity and share it with parents or caregivers without the child’s knowledge or consent.

As regards the protection of children’s rights to privacy, the UN Special Rapporteur on the right to privacy’s report on Artificial intelligence and privacy, and children’s privacy (2021) provides recommendations applying to early childhood education. In considering principles and recommendations on the right to privacy of children, he affirmed that the CRC guarantee of a right to privacy for children must be interpreted broadly to fully accommodate their privacy experiences (para. 70).

Regarding education and schooling in particular, the report reiterated the purpose of education as set out in the human rights framework and noted the large role played by schools in how children experience privacy on a day-to-day basis (para. 105). Noting the shift to online education during the COVID-19 pandemic, the UN Special Rapporteur on the right to privacy raises concerns about the fact that this phenomena ‘amplified existing power imbalances between education technology companies and children, and between Governments and children and parents, with several Governments waiving existing child data privacy laws’ (para. 106). He indicates that ‘in Wales, for example, the Government waived the requirement for parents’ and students’ consent’ and that ‘in other places, there is no

protection for children's right to privacy in government schools' adding that 'yet non-State actors routinely control children's digital educational records' (ibid.).

It is also stressed that 'most children and parents do not have the capacity to challenge educational technology companies' privacy arrangements or to refuse to provide data, as education is compulsory' (para. 107). This is of particular concern for very young children who may not even be able to report to their parents what happens in the classroom. The UN Special Rapporteur notes that 'the selection of applications and web-based learning tools by schools has focused on curriculum and financial considerations over privacy' (para. 108) and informs that 'schools themselves hold significant amounts of children's information and increasingly track children by monitoring students' online activities and surveillance cameras (para. 109). He stresses that the 'usage of that technology requires accountability, meaningful consent, purpose limitation, data minimization, transparency and security safeguards' (ibid.).

D. ECCE and financing

Investing in young children is one of the smartest investments that countries can make, recommends the World Bank (Sayre, R. et al., 2015). Public investment in ECCE is key for the overall realization of the right to ECCE as it is closely interconnected with all other issues including access, inclusion, equity, governance, etc. Article 4 of the CRC calls upon States parties to 'undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention. General Comment No. 19, of the CRC Committee, which provides a legal analysis of Article 4 concerning public budgets, categorically acknowledges that investment in early childhood development has a positive impact on children's ability to exercise their rights, breaks poverty cycles and brings high economic returns. It also alerts that the 'underinvestment in children in their early years can be detrimental to cognitive development and can reinforce existing deprivations, inequalities, and intergenerational poverty' (CRC Committee, 2016, para. 50). In General Comment No. 7, the Committee also emphasizes 'sufficient public investment' as a crucial factor to achieve 'comprehensive, strategic and time-bound plans for early childhood within a rights-based framework' (CRC Committee, 2006, para. 38).

The CRC committee and committee on Economic, Social and Cultural rights also consistently recommended State parties to allocate adequate financial resources and this has been reflected in most of the concluding observations to different countries, across all regions. For instance, the CRC committee, in concluding observation to Nepal and Benin recommended to, 'Allocate sufficient financial resources for the development and expansion of early childhood education, based on a comprehensive and holistic policy of early childhood care and development' (CRC committee, 2016, para. 58.h and 2016a, para. 61.e). Similarly, the Committee on Economic, social and cultural rights, in its concluding observation to Slovakia expressed that 'low enrolment rate is the result of the low investment in preschool education, limited levels of support to families and the persistence of stereotypes regarding gender roles. The Committee reminds the State party of the importance of combating stereotypes and investing in the early years in terms of preparing children to achieve good educational outcomes (articles 10 and 13)' (2019, para. 48).

While public investment in education is crucial for the overall realization of the rights guaranteed in the convention, the data on the current financing trends for ECCE indicates the urgency for prioritizing public investment for ECCE. The government expenditure on ECCE is very low and it is one of the most underfunded sectors in relation to other education levels (UNESCO, 2016). According to UNICEF, the distribution of funds across education levels is highly inequitable with 'Low-income countries invest, on average, less than 2 percent of their education budgets in pre-primary education, while high- and upper-middle-income countries allocate, on average, 9 percent and 8 percent, respectively (UNICEF,

2019a). Article 4 of the CRC obligates States to undertake measures to the ‘maximum extent of their available resources’ to be focused on achieving children’s rights. This should be understood as a call for the prioritization of children within the State budget (UN Human Rights Council, 2014) in general. ECCE being an essential component for the overall wellbeing of the child and realization of other rights guaranteed in the convention, it requires precedence. Further, on the basis of the principle of progressive universalism, states should prioritize public investment towards achieving universal and equity-sensitive early years education (UN Transforming Education Summit, 2022), as it is the foundation for achieving universalization of education at other levels. Achieving universalization of education in the early years can be transformative for enhancing equity at other levels.

Therefore, the government expenditure on ECCE should be equitable to other levels of education as it sets the footing for lifelong learning and development. This requires both an increased and adequate resourcing for overall education as well as for ECCE, based on the recommended international benchmark. The Education 2030 Framework recommends governments allocate at least 4% to 6% of GDP to education, and/or allocate at least 15% to 20% of public expenditure to education (UNESCO, 2015a). Similarly, UNICEF recommends that states should allocate at least 10 percent of the total education budget to pre-primary education (UNICEF, 2019a). Since there is an interdependency between investments in all levels of education, the systematic approach to planning and budgeting for all levels of education is of crucial importance (UN Transforming Education Summit, 2022). Importantly, the public resourcing for overall education and ECCE in specific should be ‘adequate’ and ‘sustainable’, especially in context when countries rely on external donors for education programmes, measures should be taken to sustain and generate domestic funding.

Further, the ECCE budgeting should be planned based on the principles of equity, efficiency, transparency, and strengthening national accountability mechanisms. ECCE budgeting should be aimed at promoting inclusive education. Various studies, including an analysis of the reports of UN Special Rapporteurs on the right to education, indicates that the lack of public investment is one of the main reasons for the exclusion of disadvantaged children from education at the early childhood stage. Due to the lack of public investment, there is a dependency on fee-charging private provision, making it unaffordable for the poorest families who would most benefit from it. This trend threatens to undermine state obligations to provide free and quality ECCE and creates inequalities and discrimination in education much before children start school. Therefore, investing in inclusive ECCE programmes is key to laying the foundation for the lifelong inclusion of children in education and society (Michaelsamy, R. and D’Helft. S, 2022). Special funds should be directed to reach the most marginalized and vulnerable groups of children and families to ensure equal and quality ECCE education for all children. The CRC committee and Committee on Economic, Social and Cultural Rights also placed these recommendations in their concluding observations. For instance, the Committee on Economic, Social and Cultural rights in its concluding observations to Bulgaria, recommended to ‘remove the financial and material barriers to enrolment of children in preschool and primary school, particularly in marginalized and disadvantaged communities’ (2019, para. 48). In the case Ghana, the CRC committee recommended to ‘allocate sufficient financial resources for the development and expansion of early childhood education in rural areas’ (CRC Committee, 2015, 58c). In the case of Australia, the committee recommended ‘to invest more in improving education at the early childhood, primary and secondary levels, paying particular attention to children living in remote areas, Aboriginal and Torres Strait Islander children, children with disabilities, children in marginalized and disadvantaged situations, children in alternative care and children from refugee and migrant backgrounds’ (CRC Committee, 2019a, para. 43b)

ECCE budget allocation should also focus on the different components including, the well-being of the children, adequate nutrition and health care services, teacher/staff recruitment and professional training, child-friendly infrastructure facilities, the development of pedagogies, enhancing support systems for families, and targeted measures to integrate the diversity and intercultural approach to

early childhood education. If, ECCE program is based on a multi-sectoral approach, effective coordination, and management systems are required to channel the funds effectively between the different ministries responsible for education, nutrition, health, social protection, and families.

E. ECCE systems and services

- ECCE governance and institutional framework

Since early childhood is a critical developmental period, the ECCE policies aim at providing integrated services for the holistic development of young children. Due to this holistic approach, different government departments are involved in decision-making, planning, and execution. This multi-sectoral involvement without a dedicated social sector to ECCE, often makes the ECCE governance a bit complex. As observed by the CRC Committee in its General Comment No. 7, the ‘services are often fragmented and frequently been the responsibility of several government departments at central and local levels and their planning has often been piecemeal and uncoordinated’ (CRC Committee, 2006, para. 22).

The key element of an ECCE policy is governance - as it refers to policies, organizational structures, allocation of responsibility for decision making, and service delivery across government departments, levels of government, and public and private sectors (Neuman, M. J., 2007). Good governance is vital to achieving national goals for the expansion, equity, access, quality, and accountability of ECCE systems (Vargas-Barón, E. in UNESCO, 2015). Commission on Human Rights resolution 2000/64 provides some of the general attributes of good governance and these principles underlie a rights-based approach to developing governance systems that will promote the realization of the right to education. This includes access to information, Transparency, Participation and Accountability. The ECCE policy framework should reflect these principles in demonstrating the governance structure and the institutional framework. The CRC Committee in its General Comment No. 7, urged States ‘to develop rights-based, coordinated, multisector strategies’, based around a systematic and integrated approach to law and policy development in relation to all children up to 8 years old.

Decentralization of ECCE to federal governments, and local governments along with community participation is an essential segment of governance. Decentralization of powers to the local governments will support providing faster responses to local needs, improved delivery of basic services, better information flows, more sustainable projects, and more accountability and transparency. Besides, the local governments are vibrant democratic units that have ample opportunities for community participation in the decision-making process. The preamble to the CRC refers to the family as ‘the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children’. The CRC Committee in its General Comment No. 7 has a dedicated section to describe parental responsibilities and the obligations of the State in assisting the parents of young children, including quality child care services based on article 5 and 18 of the CRC. The Committee recognizes that parents play a crucial role in the achievement of the rights of young children and thereby emphasizes that ‘Parents should also be consulted and involved in the planning of comprehensive services.’ (CRC Committee, 2006, para. 22). While decentralization is essential, the central governments should ensure well-targeted funding, professional training, and adequate monitoring systems and address geographic and socio-economic disparities that may arise due to decentralization.

The other key segment of ECCE governance is multi-sectoral engagement as it can bring together different agencies, expertise, and resources (Vargas-Barón, E. in UNESCO, 2015). Many countries divide the responsibility of ECCE among two or three ministries. However, this may lead to fragmentation of services and inter-agency conflict (ibid.). Designating a lead agency helps to reduce some inefficiency. For example, Nordic countries pioneered this approach and ensured high access and quality. Some countries⁴ have made the education ministry the lead agency. This has both opportunities and risks, as the ‘schoolification’ that happens in some countries might affect early childhood-specific pedagogy, especially for children from 3-6 years, which also can lead to neglect children under 3 years (UNESCO, 2010a).

Regardless of the lead agency, inter-sectoral coordination across all ministries involved in ECCE is needed. ECCE policy guidelines should delineate the responsibilities of ECCE among the different ministries. This also involves ensuring inter-sectoral representation in policy decisions and other service delivery processes.

Importantly, ECCE governance can be effective only when it has well-established monitoring and evaluation systems that apply equally to the full range of public and private settings. This involves developing indicators based on the national legislations and treaty obligations related to right to education, adapting data driven approaches including qualitative data arising from consultations and participatory engagement, establishing accountability mechanisms, providing technical assistance and seeking international cooperation (UN Special Rapporteur on right to education, 2018).

- ECCE service providers - Involvement of non-state actors

Recent data, highlighted by the latest UNESCO GEMR on non-state actors in education (2021), show that non-state actors lead care and education services for children under age three. In 2018, as a proportion of total enrolment among children under 3, private institutions accounted for 57% in high-income countries and 46% in middle-income countries. Non-state provision is increasing in pre-primary education. The share of private institutions in total pre-primary education enrolment increased from 28.5% in 2000 to 37% in 2019. In Oceania, some countries have close to 100% of preschool children enrolled in non-state institutions.

The important share of non-state actor providers of ECCE raise particular concerns as it remains unaffordable for families, particularly the poorest who need the most. In Ghana for instance, private provision costs 6% of annual consumption for the richest and 17% for the poorest; the equivalents in Ethiopia are 4% and 21%. In certain urban areas only non-state ECCE provisions are available, which are not accessible to poorer urban children as the cost is too high (UNESCO GEMR, 2021).

The UN Special Rapporteurs on the right to education, in their country reports, flagged the lack of public provision and privatization of pre-primary as one of the main drivers of exclusion for children from disadvantaged communities (Michaelsamy, R. et al., 2022).

In 2004, Katarina Tomasevski noted in her report about Colombia that the privatization of education had widened the gap between the rich and poor, and as a result pre-school education had become the ‘privilege of those in the higher income bracket’ (UN Special Rapporteur on the right to education, 2004, para. 22). In 2012, in his report about Kazakhstan, Kishore Singh observed that the shortage of public preschools led to exclusion as private pre-schools are unaffordable to low-income families (UN

⁴ This includes Brazil, Jamaica, Kenya, New-Zealand and Norway.

Special Rapporteur on the right to education, 2012). In his report on Privatization and right to education, he stresses that ‘private providers find it lucrative to provide early childhood care and education, which has remained scantily covered by the public education system’, adding that ‘in most developing countries, the public education system is rudimentary in this respect and private providers have an open market for catering to working families and the middle class’ (UN Special Rapporteur on the right to education, 2014, para.35).

The CRC Committee, in its General Comment No. 7 on implementing child rights in early education highlights that potential discrimination in access to quality services for young children is a particular concern, especially where health, education, welfare and other services are not universally available and are provided through a combination of State, private and charitable organizations (CRC Committee, 2006, para. 12).

The ESCR Committee, in its Concluding Observations to Ireland was ‘concerned at the very high cost of childcare services provided by private actors and the lack of affordable public childcare services in the State party (art. 10). It also recommends that the State party take all the necessary measures to meet the childcare needs of families, including through expanding affordable public childcare services.’ (ESCR Committee, 2015, para. 23).

The current international human rights treaties guaranteeing the right to education do not expressly refer to ECCE, particularly the provision of free public pre-primary education. This lack of clear binding obligation for States has led them to focus on the implementation of the other education levels and explain the important involvement of non-state actors in the provision of ECCE. To address this issue, the UN Special Rapporteurs on the right to education strongly recommended making ECCE a state’s responsibility. In 2009, in its report about Malaysia, Vernor Muñoz recommended to ‘establish policies that enable preschool education and infant care to be made the responsibility of the State, thereby guaranteeing access to those services on an equal footing for all children’ (UN Special Rapporteur on the right to education, 2009, para. 87). In the 2019 report on ‘The implementation of the right to education and SDG4 in the context of the growth of private actors in education’, Koumbou Boly Barry asked States to prioritise free, quality, public education at pre-primary level for everyone, especially for the vulnerable, disadvantaged, and marginalized groups (UN Special Rapporteur on the right to education, 2019). The Abidjan Principles on the Right to Education, adopted in 2019 to clarify States obligations in the context of the growing involvement of non-state actors in education reflect these recommendations stating that ‘states have the obligation to realize the right to education including by prioritising the provision of free, quality, public pre-primary education’ (Guiding Principle 17), including through international assistance and cooperation for education and especially for vulnerable, disadvantaged, and marginalized groups (Guiding Principle 38). They also affirm that ‘where private provision of education is the result of the lack of availability of free, quality, public education, States must take all effective measures to develop or restore universal access to free, quality, public education as effectively and expeditiously as possible’ (Guiding Principle 50).

In its report on non-states actors in education, the UNESCO GEM Report highlights another issue: most countries struggle to govern fragmented ECCE provision systems with many countries lacking comprehensive regulatory frameworks or failing to implement them. The UN Special Rapporteur on the right to education addressed this issue in their report calling for the development of a regulatory framework for governing the privatization of education. For instance, Kishore Singh, who challenged the privatization of the ECCE in the 2014 report on ‘Privatization and right to education’, recommended States to develop a regulatory framework based on the principles of social justice and equality. He stated: ‘States should develop a regulatory framework governing the privatization of education. Such a framework should be inspired by general principles of social justice and equity as well as by education

as a public good, subjecting private providers to full accountability for their operations and rigorous scrutiny’ (UN Special Rapporteur on the right to education, 2014). This was reemphasized by Koumbou Boly Barry in her 2017 report on the ‘role of equity and inclusion in the right to education’ in which she states that State obligations to realize the right to education include the obligation to regulate private educational institutions, as set out in General Comment No. 24 (2017) on State obligations under the ICESCR in the context of business activities, of the ESCR Committee (ESCR Committee, 2017, para. 21). She also stresses that ‘private schools must not be permitted to engage in any form of discrimination’ and ‘States must ensure that any private school system does not create economic discrimination or segregation in the education system’ (UN Special Rapporteur on the right to education, 2017, para. 106). The CRC Committee too emphasized the need for regulating private institutes. For example, in the case Bahrain, the committee recommended ‘strengthen mechanisms for monitoring the compliance of private preschools and day-care institutions with minimum educational standards, curriculum requirements and teacher qualifications, taking note of target 4.2 of the Sustainable Development Goals’ (CRC Committee, 2019, para. 39.b).

The Abidjan Principles on the Right to Education provide guidance for the regulation of non-states actors in education, including the adoption of minimum standards applicable to private instructional educational institutions covering governance, protection of learners’ rights, teachers’ qualifications and working conditions, fees regulation, secure and safe environment among others (Guiding Principles 54 to 57). They also state that ‘States should impose public service obligations on private actors involved in education to ensure that such private actors contribute to the realization of the right to education in such a way that: a. at the level of the institution, education delivered in all private instructional educational institutions is consistent with applicable human rights law and standards relating to the right to education; and b. at the systemic level, there are no adverse effects of private educational institutions on the enjoyment of the right to education (Guiding Principle 51). As regards the financing of education they stress that ‘States must prioritise the funding and provision of free, quality, public education, and may only fund eligible private instructional educational institutions, whether directly or indirectly, including through tax deductions, land concessions, international assistance and cooperation, or other forms of indirect support, if they comply with applicable human rights law and standards and strictly observe all substantive, procedural, and operational requirements’ (Overarching Principle 5). Part IV provides detailed guidance under this overarching principle (Guiding Principles 64 to 79).

- **ECCE infrastructure and workforce**

States must ensure the availability of appropriate ECCE infrastructure and a professional ECCE workforce, as a means to achieve universal access and high-quality ECCE services, through adequate funding and other enabling measures. But, in many countries, pre-primary education centres do not have the basic amenities such as school buildings, water, toilets, and play areas. Teachers and others involved in ECCE have worked under poorer conditions than teachers at other levels of education, with little formal training, low pay, long hours of work and low status, etc. (Right to Education initiative, 2020). The CRC Committee, in General Comment No. 7 calls upon States to have adequate ‘infrastructure and overall resources specifically allocated to early childhood’. The Committee further emphasizes the need for professional ECCE training appropriate to the early childhood period, so that providers can recognize and respond to the evolving developmental needs for specific age groups and can incorporate key child’s rights principles into this field. The Council of Europe has recommended that all those contributing to ECCE be able to benefit from the findings of up-to-date research and

knowledge of developments in the ECCE field and, whenever appropriate, to participate in such research (Council of Europe, 1981).

States should ensure the very basic amenities⁵, safe and child friendly learning environment, reasonable accommodation measures for children with disabilities, adequate and developmentally and culturally appropriate teaching aids or materials, including ICT equipment and assistive devices. The CRC Committee in its concluding observations to the Republic of Moldova recommended, ‘to expand access to early education for all children and continue to improve facilities, including the provision of teaching materials and books, and teaching methodologies.’ (2017b.para.36g). The locations and broader environmental conditions in which ECCE takes place are increasing importance, with research indicating that access to green spaces is important to the mental well-being, overall health, and cognitive development of children. The UN Special Rapporteur on Human Rights and the environment highlights that exposure to environmental harm – such as air pollution, toxic substances, and the loss of biodiversity and access to nature – has especially severe effects on children under the age of five (UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2018). This requires States to set norms, standards, and guidelines for ECCE/pre-primary infrastructure and child safety, either in the domestic law or by the ministry of education or other relevant ministries or by the statutory bodies.

Similarly, ensuring a professional ECCE workforce is key in assuring quality education. ILO policy Guidelines on the promotion of decent work for early childhood education personnel covers range of issue with relation to ECCE personnel, including: a) Education and training, b) Recruitment, deployment and retention, c) Professional development, d) Work and employment conditions, e) Ensuring diversity, f) Social security, g) Other labour rights including the right to form a labour union, h) Providing safe environment, etc. ILO guidelines highlight the importance of setting standards for ECCE personnel on par with the teaching profession in other education levels. The guidelines recommend that the base salaries and overall remuneration for ECCE personnel should reflect the importance of ECE in relation to national income levels and be set at the same level as the equivalent job in primary education with similar qualifications and competency requirements. It reaffirms the rights of ECCE personnel to exercise their right to form a trade union and to be a part of it. It also calls upon states to adapt appropriate policies to protect ECCE personnel from discrimination and to protect ECCE centres, staff, and children during armed conflicts and other violent situations.

The CRC committee too constantly recommends state parties to allocate adequate technical and human resources along with financial resources for ECCE. It is reflected in the concluding observations of many countries⁶. Further it emphasizes the importance of employing a sufficient number of teachers, ensuring quality requirements of the teachers, professional training, monitoring mechanisms and specialized training in minority cultures and supporting children with disabilities. The CRC committee recommended Ireland, ‘to train and employ a sufficient number of specialized teachers and professionals in order to provide special needs education support and early childhood education for children with disabilities’ (CRC Committee, 2016b. para. 48c).

⁵ Basic amenities include: safe building suitable for all-weather, fan/air-condition/heating facilities as suitable to the weather condition, separate class/activity room for children under care and pre-primary education, a kitchen/dining area, separate room for resting, storage space, hygienic toilets and water facilities, indoor and outdoor play area, boundary wall or fencing for safety, electricity, pollution-free environment and fire exits.

⁶ Some of the countries include Cook Islands, Costa Rica, Portugal, Ivory Coast, Montenegro, Spain, Suriname, Sierra Leone, United Kingdom of Great Britain and Northern Island, Zambia, Zimbabwe, Colombia and Jamaica.

This also requires applying the diversity principle in the employment and recruiting procedure of ECCE workforce to include representation from ethnic and minority communities. People from indigenous, ethnic minorities, immigrants, refugees, asylum seekers should be identified and trained as preschool teachers and caretakers. Besides, gender bias and gender stereotyping should be addressed in the recruitment process.

Legal framework and public investment for establishing adequate infrastructure facilities and a dedicated workforce is key, without which universal access and quality ECCE is a distant dream. The norms and standards recommended in ILO guidelines should be reflected in policies, strategies, legislations, administrative measures and other social dialogue mechanisms.

- **Data collection and management**

Data is necessary for the realization of human rights and without which we cannot understand the prevailing human rights situation (ESCR Net, 2022). States should monitor the right to education and maintain a national data collection system and provide comprehensive analysis on the situation of the children. However, as observed by the CRC Committee, adequate national data collection systems on ECCE are lacking, in particular, specific and disaggregated information on children in the early years are not readily available. In General Comment No. 7, the Committee reiterates the ‘importance of comprehensive and up-to-date quantitative and qualitative data on all aspects of early childhood for the formulation, monitoring and evaluation of progress achieved, and for assessment of the impact of policies’ (CRC Committee, 2006, para. 39). Further the Committee urges all States parties to:

develop a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, family structure, urban and rural residence, and other relevant categories. This system should cover all children up to the age of 18 years, with specific emphasis on early childhood, particularly children belonging to vulnerable groups (ibid.).

The CRC Committee also expressed concerns regarding the lack of data on early childhood in some of the concluding observations and recommended State parties to collect disaggregated data. For instance, in the concluding observation to Barbados, the committee is ‘concerned at the insufficient data on early childhood care and education, which limits analysis of the situation. Taking note of target 4.2 of the Sustainable Development Goals on ensuring that all girls and boys have access to quality early childhood development, care and pre-primary education, the Committee recommends that the State party further strengthen its efforts to improve access to quality early childhood care and education and collect disaggregated data on early childhood care.’ (CRC Committee, 2017a.paras 51 & 52)

States should produce high quality data on young children, by enabling the participation of everyone, particularly the marginalized groups. Data should be used to eliminate discrimination and bring about substantive equality. While collecting data, the rights to privacy and security of children and their families should be protected. Importantly, the data should be transparent and publicly available and accessible (ESCR -Net, 2022).

F. ECCE curriculum and pedagogy

- ECCE teaching approaches and learning materials

Recognizing the incredible opportunities for cognitive and social development in early childhood, the quality of ECCE institutions, services and facilities must go beyond structural dimensions of quality, such as child-to-adult ratios or minimum space requirements, and look to ‘process quality’, reflecting the value of the interactions and experiences children have within ECCE settings (OECD, 2021). This means considering the interactions that children have with teachers, the physical and emotional care and support they receive, the organization of activities and spaces and the provision of materials and activities to stimulate development.

Curriculum and pedagogy in ECCE must be designed to harness the particular interests and motivations of young children. Play is the primary approach for learning in the early years - it is joyful, meaningful, actively engaging and socially interactive (UNICEF, 2018). Play is also a right of children under the CRC (article 31), and in their General Comment No. 17, the CRC Committee emphasizes the positive benefit of play to children’s educational development and found that inclusive play ‘should be facilitated during the course of every day throughout early childhood education and care’ and that play is ‘particularly significant in the early years of schooling’ (CRC Committee, 2013, para. 27). The Committee also finds that pressure for academic achievement, including a focus on academic targets and formal learning in early childhood education, often comes at the expense of play and therefore could be considered a denial of rights under article 31 (para. 41). Indeed, any strengthening of a right to pre-primary education must be made with clarification that ‘schoolification’ of the last year before primary education is not the goal, and the curriculum should remain age-appropriate, and avoid focusing on the acquisition of foundational literacy and numeracy skills and in pedagogical methods which are more adapted for older children (UNESCO, 2021, p. 21).

Children of every culture in the world engage in play naturally, independently choosing to repeat games and patterns of play that actively develop their skills in all areas of development: intellectual, social, emotional and physical. In organized settings, encouraging learning through play will rely upon teachers and other adults in the room setting out appropriate materials that pique children’s natural curiosity, and taking part in spontaneous interactions, for example following the children’s lead in pretend play (UNICEF, 2018). Outside of formal ECCE settings, communities should have spaces for children to play and interact, such as playgrounds or drop-in centers and playgroups.

Curriculum and pedagogies must also be aligned with the right to inclusive education for persons with disabilities (article 24, CRPD), and in General Comment No. 4 the CRPD Committee confirmed that this right applies to pre-school. This means that the entire education system be accessible, including curriculum, materials, teaching methods and the environment should foster inclusion including hygiene and toilet facilities; school cafeterias; and recreational spaces (CRPD Committee, 2016).

The idea of curriculum at such a young age can seem at odds with the desirability of offering uninhibited freedom to young children to play and explore the world with a certain level of self-direction. However, a curriculum can be translated for early childhood to retain a level of flexibility, while still ensuring that certain learning outcomes are met. An example can be found in the early childhood education curriculum of New Zealand, *Te Whāriki*. The document is organized around 5 strands, wellbeing, belonging, contribution, communication and exploration, and each strand has goals

and learning outcomes that are translated for even the youngest children. For example, in the communication strand, infants should experience settings with books, stories, songs and be observed carefully for gestures of assent or dissent in caregiving practices, while toddlers are supported to learn in their first language and have opportunities to explore and experience other languages and cultures.

- **Mother tongue and ECCE**

Learning first in one's mother tongue in early years education is known to lead to better outcomes in the future. Basic educational theory states that attaining literacy is most successful when it happens in the 'known', home language, and that those skills can then be transferred more easily to second and other languages (UNESCO, 2020). The ease with which this primary literacy is gained has many positive knock-on effects for learning outcomes for children, allows for parental participation in education, inserts local knowledge into the classroom and promotes national unity and integration.

Mother-tongue instruction in ECCE is not without challenges – for some languages there may be a lack of alphabet or script, there may be limited materials, or teachers or staff that are able to speak minority languages and there may be opposition to mother-tongue usage from both within communities or from dominant political and economic groups (UNESCO, 2020). As stated by the ESCR Committee, States should adopt measures and spare no effort to ensure that educational programmes for minorities and indigenous groups are conducted on or in their own language, taking into consideration the wishes expressed by communities and in the international human rights standards in this area (ESCR Committee, 2009, para. 27). On the other hand, teachers of indigenous children should to the extent possible be recruited from within indigenous communities and given adequate support and training (CRC Committee, 2009, para. 62). There are therefore several actions that the public authorities can take to encourage the use or preservation of minority languages, such as producing books for young children in different languages or training early years educators for multilingual provision of ECCE. UNESCO is calling for enhanced protection of a right to mother tongue education in international law as part of the *Initiative on the evolving right to education*, suggesting that States should be obligated to take appropriate measures so that, wherever possible, indigenous peoples and persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

- **Intercultural approach in ECCE curriculum**

Interculturalism is gaining ground as an important guiding principle for the organization of education. While multiculturalism refers to the culturally diverse nature of society, interculturalism has been defined as 'the existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and mutual respect' (UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, article 8). There is arguably a legal basis for education to be culturally appropriate, as this is an essential feature of the 'acceptability' aspect of the 4As framework, which applies at all levels of education (UNESCO and Right to Education Initiative, 2019).

Intercultural education is education that respects the cultural identity of every learner, provides learners with the cultural knowledge, attitudes and skills necessary to achieve active and full participation in society and enables all learners to contribute to respect, understanding and solidarity among individuals, ethnic, social, cultural and religious groups and nations (UNESCO, 2006). In terms of the design of ECCE curricula, young children can be introduced to concepts of cultural diversity and

respect for cultural heritage, they can learn about different histories, traditions, languages and cultures, be offered opportunities to celebrate their own culture in ECCE environments and gain an age-appropriate understanding of the struggle against racism and discrimination (ESCR Committee, 2009, para. 27). The ESCR Committee has stated that States have an obligation of providing the inclusion of cultural education at every level in school curricula, including history, literature, music and the history of other cultures, in consultation with all concerned (ESCR Committee, 2009, para 54 (c)).

Recently, the UN Special Rapporteur on the right to education has recommended (2021, paras. 76-77) that States and all relevant audiences recognize that cultural diversity is a fundamental characteristic of contemporary societies that should be reflected and harnessed at all levels of the education system. It has also recommended that these actors should seek to promote respect for universal values and diversity of cultural references not only in their curricula and teaching methods, but also in their determination to respect and welcome people of different cultural traditions.

- **Integration of human rights education and gender equity education**

Human rights education (HRE) is a deliberate and participatory practice aimed at empowering children to imbibe the fundamental values of dignity, equality, and mutual respect for others in them through an embedded learning process. The World Conference on Human Rights in the Vienna Declaration and Programme of Action pronounced HRE as a fundamental need for the promotion of human rights and for fostering a culture of mutual understanding, tolerance, and peace (World Conference on Human Rights, 1993, para. 33). Further, the CRC Committee, in its General Comment No. 1 (2001), which elaborated on article 29 of the CRC reinforces HRE as one of the aims of education. Further, it interprets HRE as a comprehensive, life-long process that starts with the daily life and experiences of children. In line with Article 29(1) and its General Comment No. 1 (2001), the Committee in General Comment No. 7 categorically recommends that State Parties include human rights education within early childhood education. It says that HRE should be participatory and empowering and should provide opportunities for young children to exercise their rights and responsibilities based on their interests, concerns, and evolving capacities. It further recommends that ‘the human rights education of young should focus on everyday issues, in childcare centres, in early education programmes and other community settings with which young children can identify’ (CRC Committee, 2006, para. 33).

Similarly, General Recommendation No. 35 on gender-based violence against women of the CEDAW Committee, recommends the ‘Integration of content on gender equality into curricula at all levels of education, both public and private, from early childhood onwards and into education programmes with a human rights approach’ (CEDAW Committee, 2017, para. 30).

IV. Evolving a new legal framework on ECCE in the international human rights law: Prospects and challenges

The first international human rights treaties emerged just after World War II. Legally binding the States that ratified these instruments, they set normative standards, lay out the legal obligations of duty-bearers as well as delimit rights owed to rights-holders. While the existing legal framework remains fully applicable in today's context, the world in which these human rights were initially drafted has undergone great change. Technological advancements have allowed for innovative practices and expanded learning opportunities, but at what cost? Human movement has increased exponentially, creating new demands and challenges for states. Climate change, pandemics, natural hazards, conflicts and social unrest have further threatened the realization of several human rights.

It is against this backdrop that UNESCO has embarked on a journey to review the international legal framework through the *Initiative on the evolving right to education* (UNESCO, 2022b), to further clarify lifelong learning and development opportunities starting right from birth. While international human rights law lays out a certain number of rights and obligations related to ECCE, the emergence of these new challenges poses a threat to their realization and implementation, requiring strengthening of the international legal framework.

It is interesting to note, as highlighted by Sheppard, B. (2022), that already during the drafting of the CRC, UNESCO proposed to include the obligation to 'facilitate the provision of early childhood care and education, using all possible means, in particular for the disadvantaged child, in order to contribute to the young child's growth, development and to enhance his or her later success at other levels of education'. While this was not supported by States at the time, the CRC Committee developed in 2005, General Comment No. 7 on 'Implementing child rights in early childhood',⁷ which interpreted the right to education 'as beginning at birth and closely linked to young children's right to maximum development' (para. 28). What concretely this implies in terms of State obligations, is however lacking.

Nevertheless, as reported in the recent 10th Consultation with Member States on the Convention against Discrimination in Education (UNESCO, 2022), States are now surpassing their legal obligations by, for example, extending free and compulsory education to include the pre-primary level, as reflected in States' commitment to achieve Sustainable Development Goal 4, through Target 4.2. In addition, human rights committees expect States to provide affordable, accessible, quality early childhood care and education that is inclusive and non-discriminatory, with adequate financial, technical, and human resources (Fredman, S. et al., 2021).

There is, therefore, a growing consensus on the need to further strengthen children's rights in early childhood by recognizing a legal right to ECCE, which would allow for greater State accountability, monitoring as well as investment. It is also important that any recognition of a 'right to ECCE' contains sufficient clarity as to the specific rights and duties it implies. There is widespread consensus that ECCE encompasses free and compulsory pre-primary education, for example. Other rights in the early years

⁷ While not legally-binding, general comments elaborated by the UN human rights treaty bodies, offer authoritative interpretations of the normative content and obligations on human rights.

could include a progressive right to free or affordable childcare settings outside the home for families wishing to benefit, rights for parents in terms of parental education in healthy child development for the early years, parental counseling and quality appropriate assistance in their child-rearing and child development duties, minimum quality standards in ECCE and measures that support early childhood interventions for children with developmental delays, disabilities and/or in at-risk situations.

It has been over sixty years since the first international human rights treaties were elaborated, it is now timely to take stock of the progress made, the new challenges and opportunities, to expand the international human rights framework in order for ECCE to be implemented in a human rights compliant way.

- Possible pathways or modalities for a new legal framework in international human rights law

There are several options for evolving the international human rights framework related to the right to education to ensure specific ECCE rights guarantees and obligations. There are also initiatives that are moving in the direction of having a framework specially dedicated to ECCE and early learning that includes legally binding international obligations (RTE, 2021). The GPS (UNESCO 2022) also includes a component on strengthening policy and governance highlighting the need for such a legal framework on ECCE. The recommendation thus for an international instrument on ECCE strongly emerged in these conversations and is outlined here along with the key challenges among the different options, and the opportunities for the realization of ECCE rights at the international level.

New independent human rights treaty, or updated treaty/Convention on the right to education that incorporates rights to ECCE

An option of a new independent human rights treaty is being envisaged with the perspective of broadening the scope of the right to education to embrace a lifelong learning approach that incorporates rights to ECCE, and standard setting of some important rights.

This option is being explored in depth by the current *Initiative on the evolving right to education* that UNESCO has instigated. This Initiative is investigating how the right to education could be reinforced or expanded to take into account 21st century norms and standards. After a number of consultation processes with a wide range of stakeholders, the research has concluded that there is strong appetite for better protection of learning entitlements that reach from birth to old age, that interpret the lifelong nature of the right to education for different stages of life. There is growing consensus that recognizing ECCE as a legal right is vital to hold governments accountable and ensure adequate investment across the sectors, especially with regard to the level of international momentum behind legal protection for pre-primary education, but also rights in very early childhood. UNESCO is considering the possibility of a new convention on lifelong learning that could support the rights found in the Convention against Discrimination in Education, which was adopted in 1960, or updating this Convention.

The added value of this option would allow for a holistic approach to education, including the ECCE dimension. The interdependence of ECCE rights, as developed in this document, would be adequately reflected in an international instrument linking correctly to the other levels of education. The challenges that this proposal may present include the possible development of a lengthy and potentially time-consuming process. Some Member States may be reluctant to develop some

components of ECCE, such as labour standards to protect parents' income during maternity and paternity leave and childcare protection from public budgets. There is also a risk that the Member States will not immediately or promptly ratify the new treaty, jeopardizing the whole project. There may be a possibility that some existing rights will be undermined by new regressive provisions included in the new instrument.

Optional Protocol to existing UN Treaties guaranteeing the right to education: to the CRC, the ICESCR or an Optional Joint Protocol

According to the 'Definition of key terms used in the UN Treaty Collection', an Optional Protocol to a Treaty is an instrument that establishes additional rights and obligations to a treaty. However, it is of independent character and subject to independent ratification. Such protocols enable certain parties of the treaty to establish among themselves a framework of obligations which reach further than the general treaty and to which not all parties of the general treaty consent, creating a "two-tier system".

Since the existing international law guarantees the right to education for all but does not explicitly guarantee children's right to ECCE, a new Optional Protocol to the CRC, to the ICESCR, or an Optional Joint Protocol could be considered.

The added value of an Optional Protocol would be that it can focus only on key issues that are currently excluded in existing international law creating legally binding obligations for the States Parties. Compared to a new treaty, it could take less time to be drafted and ratified. Also, since the CRC is ratified by almost all countries, there could be a potential opportunity that a large number of Member States might easily and quickly recognize the Optional Protocol.

Limiting the scope of this instrument would enhance the likelihood of its ratification. Yet, challenges would include that if only ECCE issues are to be covered, it would leave out other important key education matters, such as lifelong learning or regulation of non-state intervention at other levels of education. On the other hand, there may be recommendations for optional protocols on other issues and where they are competing, there may be challenges in choosing one option over another, which would jeopardize the initial aim of adequately protecting ECCE rights. In addition, as for the adoption of any legally-binding instrument, States may argue a lack of funding for ECCE provision and financing.

Some States have not ratified optional protocols to the primary treaties, potentially undermining the argument for a higher ratification rate by States to additional protocols versus a new treaty on education or ECCE. However, the lack of ratification is linked to the communication procedures. Indeed, while the Optional Protocol on a Communications Procedure (OPCP) of the CRC has only been ratified by 48 countries and the Optional Protocol to the ICESCR, has been ratified by only 26 countries, the Optional Protocol of the CRC on the involvement of children in armed conflict and the Optional Protocol of the CRC on the sale of children, child prostitution and child pornography, have been ratified by 172 and 177 countries respectively.

Amendment to General Comment No. 7 of CRC on implementing child rights in early childhood

The CRC Committee, in General Comment No. 7, reaffirms young children as rights holders, interprets the rights of young children and calls upon States to ensure that the rights of young children are protected, through policies, programmes and adequate budget allocation. However, it doesn't provide a legal obligation on the States to provide at least a year of free and compulsory pre-primary education or has not included some other recently developed components related to ECCE rights.

On the other hand, the CRC Committee - in its Concluding Observations to different States Parties - calls for the accountability of States in the implementation of ECCE-related obligations as research by Fredman, S. et al. (2021) has shown.

The added value of updating the CCRC's General Comment would be that the different components of ECCE would be integrated into the General Comments as a whole. As a General Comment, accession by States is not required to achieve the creation of this soft law instrument. It could be a quicker process in its realization, as compared to a Treaty or an Optional Protocol. It would be an expeditious solution to the urgent problems of ECCE. Existing recommendations to States on ECCE can easily be collated and brought together in this new general comment.

Challenges would be mainly that, as a General Comment, it is soft law. Therefore, States may not give it due application and importance.

Recommendation or Declaration on ECCE

UNESCO has developed the legal framework for its action based on Article IV, paragraph 4, of its Constitution, which provides that the General Conference 'shall, in adopting proposals for submission to the Member States, distinguish between recommendations and international conventions submitted for their approval ...'.

Recommendations of UNESCO are instruments by which the General Conference formulates principles and guidelines for regulating any particular question.

The process is that once a recommendation is adopted, member states shall, within one year of its adoption, submit the ECCE recommendation to their national authorities to implement the laws and policies that the recommendation aims to establish at the national level. According to article VIII of the UNESCO constitution, member states of UNESCO should also submit regular reports to the organization on the follow-up given to an eventual ECCE recommendation. Thus, unless otherwise provided for in the text of the recommendation, the Committee on Conventions and Recommendations (CR Committee) of the Executive Board would be responsible for monitoring the implementation of the ECCE recommendation such as the 'Recommendation on Open Educational Resources' (OER) (25 November 2019), 'Recommendation on Adult Learning and Education' (13 November 2015) or the 'Recommendation concerning Technical and Vocational Education and Training' (TVET) (13 November 2015).

Besides, declarations and charters seek to establish norms and principles without being binding under international law, as is the case of the International Charter of Physical Education, Physical Activity and Sport - 17 November 2015.

According to the organization's practice, since this category is not included in the UNESCO constitution, an ECCE declaration or charter would be adopted by the Organisation's General Conference and would not be subject to ratification. Member States would not be obliged to submit the ECCE declaration to their national authorities for action, unless otherwise decided in the text of the instrument.

The limitations of such options are that these instruments are not binding under international law and are not subject to ratification. They are, by definition, expressions of soft law.

The added values of these options are that they would be an authoritative instrument for developing national ECCE laws and policies covering all UNESCO Member States. With regards to implementation, the advantage is that they can be monitored periodically by the CR Committee or whoever is designated in the text of the instrument.

V. Key highlights and questions for consideration

Reinforcing rights in the early years of life

- The UN CRC is the most prominent source of **rights in childhood**, including, for example, the rights to protection; survival; freedom of expression; health; a standard of living adequate for the child's development; education; culture; rest, leisure and play; non-discrimination and the overarching principles the child's views should be respected and that the children's best interests shall be a primary consideration. These rights are interpreted for the period of early childhood by General Comment No. 7 of the CRC Committee, though this instrument is not legally binding, and there are few references to ECCE rights in other instruments.
- **Young children are rights holders.** The CRC Committee in its General Comment No. 7 reaffirms young children as right holders and reiterates that 'the Convention on the Rights of the Child is to be applied holistically in early childhood'.

Question for consideration: How can we ensure that young children can fully exercise existing rights?

Ensuring access to quality programmes and services

- **Certain services are increasingly considered integral to fulfill the rights of the child**, including appropriate pre- and post-natal health care measures for mothers, and assistance and education for parents in child-rearing, child development, health, breastfeeding and hygiene. Birth registration and social security, including social insurance are considered responsibilities of the State, as are healthcare services for young children that include immunization and medical services. States should offer material assistance and support with nutrition, clothing and housing to ensure a minimum standard of living.
- Although there already exists a legal obligation for States to provide appropriate **child-care services and facilities for working parents**, it is important that fees do not constitute a preventative factor and that there is an appropriate number of programmes and institutions to ensure full access to services.

- The protection of at least **one year of free and compulsory pre-primary education** has gained momentum under SDG4. By making this level free and compulsory, children from every background are offered a more equal playing field to begin primary education.
- Curriculum and pedagogy in ECCE must harness the particular interests and motivations of young children, and **play should be the primary means of learning**. Any strengthening or expansion of pre-primary education must avoid the ‘schoolification’ of this level of education. Curricula should include principles of interculturalism, introducing children to concepts of cultural diversity and respect and celebration of difference.
- ECCE must be advanced with consideration for a **right to mother tongue education**, where feasible, based on the principle that educational outcomes are better when children first attain literacy in their home language.
- The CRC Committee recommends that the State should include **Human Rights Education** in ECCE and it ‘should focus on everyday issues, in childcare centres, in early education programmes and other community settings with which young children can identify. ‘Similarly, General Recommendation No. 35 on gender-based violence against women of the CEDAW Committee, recommends the ‘Integration of content on gender equality into curricula at all levels of education.

Question for consideration: Which components of ECCE should be expressly defined in the normative framework to ensure access to quality programmes and services for both children and parents?

Enhancing inclusion and equity in ECCE

- **Young children are particularly vulnerable**, very much dependent on their families and guardians and in need of support to exercise their rights in ways that are relevant to their experiences. ECCE is therefore critical for the protection and healthy development of young children, however there is no internationally common agreed-upon definition, and no explicit right to ECCE in the international legal framework.
- Availability of **appropriate ECCE infrastructure and a professional ECCE workforce**, is a means to achieve universal access and high-quality ECCE services. States should ensure the very basic amenities⁸, safe and child friendly learning environment, reasonable accommodation measures for children with disabilities, adequate and developmentally and culturally appropriate teaching aids or materials, including ICT equipment and assistive devices. In terms of ECCE workforce recruitment, training, remuneration and other labour rights, the ECCE personnel should be treated on par with the teaching profession in other education levels. Importantly, the norms and standards set in ILO policy Guidelines on the promotion of decent work for early childhood education personnel should reflect in ECCE politics, legislations and other administrative measures. ECCE also must mean the regulation of quality standards for all institutions, services and facilities responsible for early childhood, including those for health and safety, and staff competences and training.
- **Vulnerable children** in particular require access to ECCE services. Children from vulnerable or less-privileged backgrounds have a greater need for safe spaces of learning and development. Children with special developmental needs will benefit from early interventions, which are made possible by ECCE services.

⁸ Basic amenities include: safe building suitable for all-weather; fan/air-condition/heating facilities as suitable to the weather condition; separate class/activity room for children under care and pre-primary education; a kitchen/dining area; separate room for resting; storage space; hygienic [toilets](#) and water facilities; indoor and outdoor play area; boundary wall or fencing for safety, [Electricity](#); pollution free environment and; fire exit.

- ECCE, lacking an entitlement in international law, is often limited to more privileged children in access or quality. Even where ECCE services are widespread, it is often those from the poorest families, or rural locations, that miss out. This has the effect of entrenching disadvantages.

Question for consideration: What conditions are required to make sure that ECCE reaches every single child irrespective of background or context?

Prioritizing ECCE financing

- **Public investment in ECCE** is key for the overall realization of the right to education and other rights guaranteed in the UN CRC. ECCE budgeting should be planned based on the principles of equity, efficiency, transparency, and strengthening national accountability mechanisms. The government expenditure on ECCE should be equitable to other levels of education as it sets the footing for lifelong learning and development. It should promote inclusive education with special funds directed to reach the most marginalized and vulnerable groups of children for accessing equal and quality ECCE. The budget allocation should also focus on the different components including, the well-being of the children, adequate nutrition and health care services, teacher/staff recruitment and professional training, child-friendly infrastructure facilities, the development of pedagogies, enhancing support systems for families, and targeted measures to integrate the diversity and intercultural approach to early childhood education.

Question for consideration: Should international commitments define a specific government budget allocation to ECCE to fully enforce children's rights at country level?

Strengthening governance

- **ECCE is indispensable in the achievement of certain established rights**, such as the right to education, health, gender equality and work. Experiences in the very first years of life (and even during pregnancy), have the most dramatic effect on the cognitive and social development of children, creating the building blocks not only for primary education, but for a lifetime of learning. ECCE services are integral for both parents to be able to pursue their careers and to achieve gender equality both in the workforce and the domestic sphere. The holistic dimension of ECCE requires multisectoral, coordinated strategies.
- A **national data collection system** should provide comprehensive analysis on the situation of children and, in particular, disaggregated information on children in the early years should be readily available.
- The important share of **non-state actor providers of ECCE** raises particular concerns as it remains unaffordable for families, particularly the poorest who need them the most. As highlighted by the Guiding Principle 51 of the Abidjan Principles, states should impose public service obligations on private actors involved in education to ensure that such private actors contribute to the realization of the right to education in such a way that education delivered in all private instructional educational institutions is consistent with applicable human rights law and standards relating to the right to education and that there are no adverse effects of private educational institutions on the enjoyment of the right to education.

Questions for consideration: What obligations and mechanisms should be introduced to ensure a multisectoral approach to ECCE? Should the international normative framework establish obligations in relation to monitoring and regulatory systems?

Evolving the international normative framework

- Keeping in mind the clear desirability of strengthening children's rights in early childhood by recognizing a legal right to ECCE, this report has outlined a number of options to guarantee certain rights and hold governments accountable with regard to their obligations. The ***Initiative on the evolving right to education*** is currently investigating the possibility of reinforcing and expanding the right to education in light of twenty-first century norms and standards and has found there is strong appetite for a new treaty that could support the rights enshrined in the Convention against Discrimination in Education (1960) while interpreting the lifelong nature of the right to education for Early childhood. While a new binding instrument could be a lengthy and time-consuming process, the opportunity to set legally-binding norms and standards would be invaluable. Similarly, an Optional Protocol to existing UN Treaties, such as the CRC or the ICESCR, or an Optional Joint Protocol could also be envisaged. **Less persuasive but potentially more achievable possibilities include:** an amendment to General Comment No. 7 of the CRC; and/or a UNESCO Recommendation or Declaration on ECCE. A combination of all these options could also be pursued.

Question for consideration: What type of instrument (legally-binding or non-legally binding) would be the most effective to ensure national implementation?

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