

Comments to the UN Forum on Minority Issues:

[Draft] Recommendations on Minorities and the Right to Education

**Comments by Adalah Attorney Sawsan Zaher
15-16 December 2008**

Adalah would like to present its comments to the Draft Recommendations as follows:

Section III – Access to education for Minorities, in Particular Women and Girls

In general, the subject of budgets receives little attention in the draft recommendations. This lack of emphasis contrasts sharply with the crucial nature of budgetary allocation in respecting, protecting and fulfilling the educational rights of minorities. Further, the language contained in this draft concerning the issue of budgets is weaker overall than the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its General Comment 13 on the right to education as detailed in our following comments:

1) "The costing of educational policies should proceed accurately as possible on the basis of holistic appraisals of minority needs"

The language of this provision is insufficient. The “costing” of educational policies should not be calculated according to needs only, but also on the basis of the principle of equal treatment, and in a manner that will ensure that education is readily accessible for all. Equal treatment could entail the allocation of resources for advancing the right to education among minority groups that have been victims of historical injustices committed against them or discrimination in realizing the right to education. This critique should be seen within the context of the obligation stipulated by the International Covenant on Economic, Social and Cultural Rights (ICESCR) for State Parties to take *immediate* steps to provide primary education (and General Comment 14 of the Committee on Economic, Social and Cultural Rights) on a non-discriminatory basis.

In the drafting of budgets for education in the case of minorities, clear criteria are required that are tailored to the special needs of the minority group. For example, in a case litigated before the Supreme Court of Israel, Adalah challenged a long-standing governmental socio-economic plan that classifies select towns and villages in Israel as “National Priority Areas” (NPAs) in the field of education. Towns and villages classified as NPAs receive these lucrative educational benefits designed to support the development of these communities. As Adalah argued, the government’s decision arbitrarily and discriminatorily excluded the vast majority of Arab towns and villages in Israel; while over 535 Jewish towns received these benefits, only four Arab villages were eligible. Adalah demanded the setting of clear, objective and transparent criteria for the allocation of these educational benefits. If socio-economic need was the basis of the program, then almost all Arab towns and villages would qualify. In February 2006, the Supreme Court delivered a landmark judgment canceling the governmental decision on the grounds that it discriminates against Palestinian Arab citizens of Israel on the basis of nationality. The State, however, has been foot-dragging and thus far has refused to implement the Court’s decision claiming a lack of financial resources. The cost

of implementing the decision, according to the state is around NIS 65 million only (US \$16,250,000).

2) "Budgetary allocations for minority education should be transparent and amenable to external scrutiny"

This provision is extremely important. Israel, for example, does not regularly release official data detailing how much it spends in total on each Arab student compared with each Jewish student. The failure to release such data greatly hampers advocacy work aimed at securing equality in budgetary allocations and perpetuates the current state of inequality and under-achievement. The lack of information provided in this area indicates a lack of a genuine commitment to achieve this equality, particularly in light of data provided released by the Central Bureau of Statistics in 2004 which revealed that for the academic year 2000-2001, state investment in Arab school students totaled on average 534 New Israeli Shekels per student, compared to 1,779 per Jewish student; i.e. over three times as much. The result is more students per class (almost 30 students per class in Arab schools as compared to 26 in Jewish schools); fewer teaching hours per class (48 in the Arab education system as compared to 50 in the Jewish education system); and fewer teaching hours per student (1.62 teaching hours per Arab student as compared with 1.95 teaching hours per Jewish student), to cite just a few figures.

In addition to recommending transparency in budgetary allocations, additional language is required specifying that budgetary allocation should also be disaggregated according to gender to allow for scrutiny of budgets for girls from minority groups.

Section IV - Equal Access to Quality Education for Minorities

In Adalah's opinion, the language in this section should be strengthened as well:

1) "Adequate resources should be provided so that education is a financially viable proposition for members of minorities"

The current wording of the following provision is inadequate. Adequate resources are not necessarily equal resources, and as it currently stands this provision would not contribute to the efforts of many minority groups for equal rights and opportunities in education.

2) "Members of minorities must have realistic and effective access to [quality] educational services"

This language is inadequate and vague. This provision is unlikely to act as an impetus to states, since what constitutes "realistic and effective" access to education is subject to wide interpretation. As noted in the ICESR and General Comment 13, accessibility has three overlapping dimensions: Non-discrimination on any of the prohibited grounds; physical accessibility; and economic accessibility.

3) "Barriers to educational access may be the result of single or multiple factors, whether physical or social, financial or pedagogical. States need to address all such factors in order to promote effective access, especially in cases where barriers to

access are compounded, resulting in a vicious circle leading to severe educational exclusion"

Adalah welcomes this provision. *We suggest the addition of language relating to barriers to educational access that have a specific impact on girl pupils.* In the Naqab (Negev) region in southern Israel, for example, the dropout rates among Arab Bedouin girls reach over 77% in some "unrecognized villages". These villages are very poor, deprived of basic services from the state, including the provision of drinking water, electricity and health and educational services, due to their lack of official status. In a recent Supreme Court petition, Adalah argued that the absence of any local high school in these villages has a detrimental impact on educational levels, especially for girls, and that it is the state's duty to provide such access to education. As many Arab Bedouin girls must be accompanied by a relative to leave their villages, and are prevented from studying with students who belong to other tribes and being in the company of unfamiliar boys, the journey to the nearest high school poses an insurmountable barrier to the girls' continued education. Adalah stresses that the draft should address that the existence of local customs governing the conduct of movement of girls and women does not relieve the state's responsibilities to guarantee educational access for minorities.

- 4) "In order to ensure effective access to education for members of minority communities, authorities should address impediments resulting from poverty and child labour, low nutrition levels and poor health and sanitation among the communities"**

Adalah suggests that *language be added to this provision regarding impediments resulting from a policy of historical discrimination or injustice in realizing the right to education to the above list such as in the case of the Palestinian minority in Israel.*

Further, the current text refers to the duty of state authorities to "address" impediments and difficulties in school enrolment. This language is weak. Rather, this provision should stress that states should take immediate and positive steps to resolve these difficulties.

- 5) "Enrolment and registration formalities and cost burdens should be eased to facilitate the admission of minority pupils into schools; such inhibiting factors may be a matter of strengthened concern in relation to the admission of girl pupils"**

In Adalah's opinion, the word "eased" in this provision is weak and should be replaced with alternative wording such as "States should take all appropriate measures to ensure the admission of minority pupils into schools" in line with corresponding provisions of the article 13 of the ICESCR and article 10 of CEDAW.

- 6) "Exclusions of members of minorities from schools, and their dropout rates, should be carefully monitored and the problems effectively addressed, in co-operation with parents, associations and communities"**

Adalah suggests that the words "carefully monitored" and "effectively addressed" do not go far enough; instead, states should be obliged to take positive steps to lower high dropout rates among minority groups and bring them into line with rates among the majority population. In addition, states should be required to bring down any barriers to education that lead to high dropout rates, be they cultural, social, economic or of any other nature.

7) "Particular attention regarding access to education should be paid to the situation of women and girls, upon whom poverty and family responsibilities may have a disproportionate impact, as well as aggravated discrimination, including in extreme cases violence, on the basis of culture, gender or caste"

In Adalah's opinion, the wording "Particular attention" needs to be strengthened to indicate explicitly that states have a duty to ensure equal access to education for women and girls from minority groups.

In addition to the comments on this section of the draft, Adalah further suggests the insertion of two additional provisions regarding the access of minorities to education:

1) Adalah recommends a provision on the need for affirmative action in education for minority groups that have been subject to a policy of historical discrimination or injustices in realizing the right to education. A petition filed by Adalah to the Israeli Supreme Court illustrates the need for such an addition. In the case, the petitioners demanded that the Education Ministry appoint counselors for Arab Bedouin students at risk of dropping out of school. Adalah stressed that Arab Bedouin towns and villages in the Naqab suffer from the highest rates of dropping out in the country, and yet are discriminated against in relation to Jewish towns and villages in the designation of dropout counselors. Adalah argued that a policy of affirmative action was required in this case since, even if an equal percentage of counselors were appointed for Arab Bedouin students in the Naqab as for Jewish students they would still be discriminated against, since the Arab Bedouin students are in greatest need due to the high dropout rate and low overall levels of educational achievement resulting from decades of discriminatory educational policies. In 2005, the Israeli Supreme Court ruled that the educational gap between the Jewish and Arab Bedouin students in the Naqab required a policy of affirmative action to bring the Arab Bedouin students to a similar starting point to that of the Jewish students, in order to achieve equal opportunities for all social groups. This provision should also include affirmative action for minorities in higher education, where the cumulative impact of discrimination at the lower levels of education often results in low levels of representation for members of minority groups as both students and academic staff at colleges and universities.

2) There is currently no mention of adult education for members of minority groups in the current draft. Article 13 (2)(d) of the ICESCR stipulates that "Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education". Adalah suggests that a parallel provision be added to the draft, in particular given that minority groups often suffer from higher-than-average dropout rates and illiteracy rates than the majority population.

Section VI of the draft - Content and delivery of the curriculum

In Adalah's opinion the language of this section should be strengthened as well:

1) "Curricula relating to minorities should be developed in co-operation with bodies representative of minorities"

The wording "in cooperation with" is weak. To comply with this provision, states would be required to do very little. For example, a state committee charged with developing curricula for minorities holding a consultative meeting with an educational body from a minority group could technically

amount to cooperation, although this minority body may have had no real scope to influence the development of the curriculum. It is Adalah's view that bodies representative of minorities should be granted decision-making powers over the content of curricula relating to minorities. Further, members of minority groups should have representation in positions of power in education ministries or other authorities deciding upon curriculum. In the case of Israel, for example, Palestinian Arab schools in Israel have their own curriculum, but it is designed and supervised by the Ministry of Education, where almost no Arab educators or administrators have decision-making power.

2) "State educational authorities should ensure that the general compulsory curriculum for all in the State includes teaching of the histories, cultures and traditions of the minorities"

This provision should be expanded to include a stipulation that the teaching of the histories, cultures and traditions of the minorities should be given from the perspective of the minorities themselves. Without this clarification, educational material on minority histories, cultures and traditions may reinforce majority-held stereotypes and prejudices against minorities.

Such additional language is relevant in a context such as that of the Palestinian Arab minority in Israel. Since the establishment of the state in 1948, the General Security Services (GSS or Shabak) maintained tight control over the Arab education system in Israel and a GSS officer held a high-ranking position in the Arab Education Division of the Education Ministry. The GSS officer, in effect, determined the hiring and firing of Arab teachers, principals and inspectors; Arab educators were always fearful of the ever-observant eye of the GSS and of losing their jobs causing an atmosphere of suspicion in Arab schools among students and faculty.

Further, in 2000, Israel amended the State Education Law of 1953. While the new law added human rights and fundamental liberties as educational goals, it also included three separate provisions regarding the inculcation and teaching of Jewish values, history, and religious studies - codifying each as distinct areas of required study, and thus expanding the range of Jewish-identified education that must be taught throughout the educational system. Section (2) defines the state as Jewish and democratic, a pairing that codifies discrimination against "non-Jewish" citizens and impedes the realization of full democracy. Section (3) perpetuates the teaching a version of history that contorts or completely omits the history of the Palestinian people. Section (4) was drafted to require compulsory teaching of Torah in all public schools, including Arab schools. Section (11) acknowledges the presence of "non-Jews" in the educational system but it has weaker language than any other section of the amendment. Where the other ten sections begin with directives like "teach" and "inculcate," Section (11) suggests that students should "know" the language and heritage of others, but does not recommend how the state education system should help them reach that goal. While Arabic is one of Israel's two official languages, Arabic is not compulsory in the Jewish school system and is not required for high school matriculation.

Moreover, in March 2000, Yossi Sarid, the then-Education Minister of Israel, suggested including poems by the prominent Palestinian national poet Mahmoud Darwish in the general Israeli high school curriculum. This move promoted a no-confidence vote in Israel's parliament against the government, and then-Prime Minister Ehud Barak declared that Israel was "not ready" for Mr. Darwish's work.

3) "Educational curricula should not include materials stereotyping or demeaning minorities, and teachers and other education personnel should avoid the use of

offensive names for an individual or a community or names not freely chosen by the individual or community concerned"

Adalah welcomes this provision, and suggests the insertion of additional text relating to the particular stereotyping of girls and women from minority groups. Just as girls and women from minority groups may be vulnerable to compound discrimination on the basis of both their national or ethnic belonging and their sex, so they may also be subject to demeaning curricular materials on both of these bases.

In addition to the comments mentioned above, Adalah recommends that the following issues should be added to the draft, as following:

- 1) The current draft lacks a recommendation for states to incorporate the right to education in general and for minorities in particular into their constitutions and primary legislation.
- 2) In *section I*, text should be added to the definition of education as “a primary means by which individuals and communities can sustainably lift themselves out of poverty” to further state that education is a means of helping minorities to overcome historical injustice or discrimination committed against them.
- 3) In *section II*, text should be added stipulating that every person is entitled to accessible, free and high-quality education, and that states should take reasonable legislative and other measures to achieve the progressive realization of this right.
- 4) The current draft states that, “Educational curricula should not include materials stereotyping or demeaning minorities, and teachers and other education personnel should avoid the use of offensive names for an individual or a community or names not freely chosen by the individual or community concerned” (*section VII. Content and delivery of the curriculum*). However, Adalah believes that this provision does not go far enough and suggests that language be added that recommends the educational curricula taught to the non-minority groups within the state should include materials designed to reduce stereotypes and racist attitudes toward minorities.
- 5) While the current draft states that “Human rights education for all should be made an integral part of the national educational experience” (*section V. The learning environment*), it is not sufficient that there be national education on human rights and anti-discrimination, and states must take measures to teach the narrative of the minority to other groups.
- 6) The Draft Recommendations do not but should stipulate the right of minorities to higher educational institutions in which education is provided in their own language and in accordance to curricula determined by the minorities.
- 7) The draft lacks language about the need for cultural and educational contacts between minorities with members of their national group living outside their state, if they exist, in accordance with Article 2(5) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities), which provides that “Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom

they are related by national or ethnic, religious or linguistic ties” including the exchange of books and others educational materials and access to universities run by members of their national group in other states.

- 8) The draft needs additional language regarding the promotion of the cultural rights of minorities in order to further the fulfillment of their educational rights. These include the availability of written, audio and visual media materials in their own language in order to enrich the cultural lives of minorities; without such access the language of the minority will not flourish, which is likely to have a detrimental impact on the educational levels within the minority.
- 9) The Draft Recommendations should specify that where separate educational institutions are established for minorities for linguistic or cultural reasons that no barriers should be erected to prevent members of minority groups, should they or their families so wish, from studying at general educational institutions.

Sincerely,

Sawsan Zaher, Staff Attorney

Adalah – the Legal Center for Arab Minority Rights in Israel

www.adalah.org