

# DISCRIMINATION AGAINST PALESTINIAN ARAB CHILDREN IN THE ISRAELI EDUCATIONAL SYSTEM

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## I. INTRODUCTION

The Israeli government operates two separate school systems for its 1.8 million school children: a Jewish system and an Arab system.<sup>1</sup> The students in the latter are Palestinian Arab citizens of Israel,<sup>2</sup>

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This Article is based on the most recent data available at the time of writing, collected by the author for Human Rights Watch from 2000 through early 2005. Conclusions are drawn primarily from research conducted in 2004. Sources include nationwide statistics compiled by the Israeli government, visits to twenty-six schools in November and December 2000 and interviews with students, parents, teachers, administrators, and national education authorities. Yodon Thondon assisted in the research for and the initial drafting of the sections on curriculum. Research through mid-2001 was originally published in greater detail in a Human Rights Watch's report. HUMAN RIGHTS WATCH, *SECOND CLASS: DISCRIMINATION AGAINST PALESTINIAN ARAB CHILDREN IN ISRAEL'S SCHOOLS* (2001). The author is grateful for the assistance of Clarissa Bencomo, Jamil Dakwar, Lucy Mair, and Gadeer Nicola in the preparation of this Article.

1. Schools in this Article are referred to as "Jewish" and "Arab." These terms correspond with what government English publications and some other sources call "Hebrew schools" and "Arab schools." "Jewish" is used because it is parallel with "Arab"; it is also one translation of the Hebrew word that is used for these schools. "Arab schools" and "Arab education" are used because these are the terms that both Palestinian Arab and Jewish citizens used when interviewed.

2. Terminology regarding Israel's Arab citizens is highly politicized. Increasingly, individuals are rejecting the term "Israeli Arab," which is used by the Israeli government, in favor of "Palestinian" or "Palestinian Arab." *Compare* GIVAT HAVIVA, 2001 SURVEY—ATTITUDES OF THE ARABS TO THE STATE OF ISRAEL, at <http://www.dialogate.org.il/peace/publications.asp> (last visited Oct. 23, 2003), with Muhammad Amara & Izhak Schnell, *Identity Repertoires Among Arabs in Israel*, 30 J. ETHNIC & MIGRATION STUD. 175, 182 (2004). Many, but not all, Bedouin also identify themselves as Palestinian Arab or a variation of the term. See *Identity Crisis*, NEWSLETTER (Ctr. for Bedouin Stud. and Devel., Isr.), vol. 2, Winter 1999, at 1 (discussing Bedouin preferences). This Article uses "Palestinian Arab citizens of Israel" or "Palestinian Arabs" because that is how most people defined themselves when interviewed. However, not everyone in the Arab education system interviewed identified themselves as Palestinian, and a few rejected the term altogether.

Of Israel's Palestinian Arab citizens, 80 percent are Muslim, 11 percent

nearly one quarter of all Israeli school children.<sup>3</sup> Under international law, states may offer children separate educational systems for linguistic or religious reasons, but they may not discriminate in doing so. This Article will argue that, despite small advances in recent years, the discriminatory practices against Palestinian Arab school children that are institutionalized in its education system place Israel in violation of its international legal obligations.

According to official data released as recently as late 2004, the Israeli government continues to allocate less money per head for Palestinian Arab children than it does for Jewish children.<sup>4</sup> Arab schools are still overcrowded, understaffed, and sometimes unavailable.<sup>5</sup> On average, they offer far fewer facilities and educational opportunities than those offered to other Israeli children.<sup>6</sup> The greatest inequalities are found in kindergartens for three- and four-year olds and in special education.<sup>7</sup>

Education is only one of several areas in which Palestinian Arab citizens face discrimination in Israel.<sup>8</sup> Among other things, discrimination in employment and government subsidies to local municipalities limit the personal and community resources that might otherwise be used to compensate for government failings in Arab education.

Taken together, the consequences are devastating. Palestinian Arab children drop out of school at three times the rate of Jewish children and are less likely to pass the national matriculation exams for a high school diploma.<sup>9</sup> Only a small fraction of Palestinian Arabs

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are Christian, and 9 percent are Druze. Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Periodic Reports due in 1993: Israel*, at 292, U.N. Doc. CRC/C/8/Add.44 (2002) [hereinafter *2002 Periodic Reports: Israel*].

Regarding place names, it should be noted that many Palestinian Arabs use the term "Naqab," not "Negev," to refer to the desert in southern Israel.

3. Palestinian Arabs make up 19.5 percent of the country's population, over a quarter of school-aged children, and 23.5 percent of the nearly 1.8 million children enrolled in kindergarten through secondary schools. STAT. ABSTRACT ISR. 2004, tbls. 2.18, 8.12 (State of Isr. Cent. Bureau Stat., 2004), available at <http://www.cbs.gov.il/reader/shnatonenew.htm>; MONTHLY BULL. STAT., tbl. B/1 (State of Isr. Cen. Bureau Stat., 2004), available at [http://www.cbs.gov.il/yarhon/b1\\_e.htm](http://www.cbs.gov.il/yarhon/b1_e.htm).

4. See *infra* Parts II, II.A.

5. See *infra* Parts II.A, III.A.

6. See *infra* Parts II, II.A, III.A.

7. See *infra* Parts III.B-C.

8. See *infra* Parts II.A.3, II.B.

9. See *infra* Part IV and *infra* note 46.

will ever obtain a university degree.<sup>10</sup> Among Palestinian Arabs, Bedouin from the Negev desert fare the worst in every respect.<sup>11</sup>

A second-class education can have lifelong consequences. It can affect one's ability to exercise other civil and political rights, later opportunities for employment and income, and the future one can provide one's own children. For these reasons, education is one of the most protected rights in international law.

Israel's basic laws do not enshrine a right to education or guarantee equality. While Israel's Supreme Court has acknowledged a right to education and recognized equality as a judicial principle, in cases challenging discrimination against Palestinian Arab students, it has never found the state to be in violation of the law or ordered it to end discriminatory practices.

The Israeli government is aware of the differences between the two systems, and, in December 2001, the Director General of Israel's Ministry of Education promised that, within a year, the Ministry would have corrected some of the biggest gaps.<sup>12</sup> But more than three years later, significant discriminatory practices, and the institutional causes behind them, remain. Government-appointed committees continue to acknowledge some of the disparities and to call for changes,<sup>13</sup> but at the school level, the situation remains essentially unchanged. In January 2005, the Israeli government approved with reservations the report of the National Task Force for the Advancement of Education in Israel ("the Dovrat Commission"). The Commission recommended extensive reforms to the education system, including that Arab education have full budgetary equality.<sup>14</sup> At the

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10. See *infra* Part IV.

11. The Bedouin constitute most of the Palestinian Arab population of the Negev region of southern Israel, and about ten percent of the country's total Palestinian Arab population. See Penny Maddrell, *The Bedouin of the Negev*, 81 MINORITY RIGHTS GROUP REP. (Jan. 1990). The Bedouin who live in the northern part of the country have a somewhat different history and are less isolated than Bedouin in the Negev. See Salim Abu-Rabiyya et al., *Survey of Bedouin Schools in the Negev*, ISRAEL EQUALITY MONITOR No. 5, Mar. 1996, at 1, 20-21, available at <http://www.adva.org/trans.html>.

12. Interview with Ronit Tirosh, Director General, Ministry of Education, in Jerusalem, Isr. (Dec. 5, 2001).

13. For example, in September 2003, the Committee on Children and the Law, chaired by Ruth Levy, pointed out inequities between the Jewish and Arab education systems. Din Vekhesbon Benose Khinukh Shel Ha-ve-ada Livkhinat Ekronot Ha-yesod Bitkuhum Ha-yeled Ve-hamishpat Ve-yisumam Bakhakika [Committee on Children and the Law, Report on Education], available at <http://www.justice.gov.il/MOJHeb/HavaadLeZhuyot/DochHinuch>.

14. SHLOMO DOVRAT, ET AL, THE NATIONAL TASK FORCE FOR THE

time of writing, the recommendations had not been implemented.

This Article details how discrimination against Palestinian Arab children colors virtually every aspect of the Israeli education system and how Israeli law, as presently applied, fails to protect Palestinian Arab children from this discrimination, as required by the state's international legal obligations. Part II of this Article outlines the basic structure of the Israeli educational system, including the central government's primary responsibility for both the financing and content of education. It then compares how teaching funds and resources are allocated, both for regular classroom instruction and enrichment and remedial programs, and finds that Palestinian Arab children receive, on average, considerably less funding per student than Jewish students. Finally, it examines the influence financial contributions from parents and local authorities have on education. Part III observes the conditions of classrooms and school buildings in the two systems, and compares how counseling and other support services, vocational education, teacher training, kindergarten for three- and four-year-olds, and special education are provided to Jewish and Palestinian Arab children. It also briefly describes the curriculum in Arab schools, including delays in translation and the development of teaching materials, and the mandatory study of Jewish religious texts. Part IV explores the consequences of discrimination for Palestinian Arab students, including higher drop-out rates, lower pass rates on the matriculation examination, and less access to a university degree. Part V outlines state obligations under international law to provide education, particularly in the context of separate educational systems as exists in Israel. It then discusses the right to education in Israeli law and how courts have addressed claims of discrimination. In conclusion, several recommendations are offered for addressing the discrimination perpetuated against Palestinian Arab school children and inequalities between the Jewish and Arab systems.

## II. THE STRUCTURE OF THE ISRAELI EDUCATION SYSTEM

The Israeli government is directly responsible for the education of most Israeli school children. It regulates and heavily finances almost all schools in the country, including many run by private organizations. The government itself operates two separate school systems, one for Jewish children and one for Palestinian Arab

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ADVANCEMENT OF EDUCATION IN ISRAEL, DOKH DOVRAT [DOVRAT REPORT] (2005) [hereinafter DOVRAT REPORT].

children.<sup>15</sup> Palestinian Arab children are taught in Arabic, Jewish children in Hebrew.<sup>16</sup> The two systems' curricula are similar, but not identical. For example, Hebrew is taught as a second language in Arab schools, while Jewish students are required to study little or no Arabic.<sup>17</sup> The two systems run from preschool until university, at which point they merge into a single, Hebrew language system.<sup>18</sup>

Palestinian Arab parents are not legally barred from enrolling their children in Jewish schools, but in practice, few do. There is little support in either community for integrating the two systems.<sup>19</sup> Enrollment is based on residence;<sup>20</sup> thus, enrollment in a Jewish school is a real choice for Palestinian Arab children only in mixed cities like Jaffa and Haifa. Even in these cities, neighborhoods are mostly segregated, and there are separate schools for Palestinian Arabs and Jews.<sup>21</sup> The vast majority of Palestinian Arabs live in towns and villages with only Arab schools. The Palestinian Arab

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15. 2002 *Periodic Reports: Israel*, *supra* note 2, at 250.

16. *Id.*

17. HUMAN RIGHTS WATCH, SECOND CLASS: DISCRIMINATION AGAINST PALESTINIAN ARAB CHILDREN IN ISRAEL'S SCHOOLS 153-54 (2001); STATE OF ISR., MINISTRY OF EDUC., CULTURE & SPORT, FACTS AND FIGURES 30-32 (2004), available at <http://cms.education.gov.il/EducationCMS/Units/Owl/English/Figures/> [hereinafter 2004 FACTS AND FIGURES].

18. *Id.* at 3-4.

19. "There are no records of any serious attempts on the part of the state, nor records of any requests from the Arab side, to merge the Jewish and Arab school systems under one 'Israeli' roof . . . . There are individual cases of Arab pupils who study in Jewish schools, but no cases of Jews who study in Arab schools. The two national communities remain educationally separated. In Israel, the discourse of integration refers only to Jews of different origins." SHLOMO SWIRSKI, POLITICS AND EDUCATION IN ISRAEL: COMPARISONS WITH THE UNITED STATES 118 (1999). Although there are a few well-known exceptions, including several mixed kindergartens and private experiments with peace education, even these efforts have experienced great strain since October 2000. For a discussion of the advantages and costs of segregation in the Israeli education system, see Stephen Goldstein, *Multiculturalism, Parental Choice and Traditional Values*, in CHILDREN'S RIGHTS AND TRADITIONAL VALUES 118 (Gillian Douglas & Leslie Sebba eds., 1998).

20. 2002 *Periodic Reports: Israel*, *supra* note 2, at 253.

21. See H.C. 4091/96, Abu-Shamis v. Iriyat Tel-Aviv-Yafo et al. [Municipality of Tel Aviv-Jafa] (petition challenging the exclusion of a Palestinian Arab child from Jewish kindergarten withdrawn after the municipality issued guidelines stating that the religious, ethnic or linguistic affiliation of children cannot determine the preschool to which they are entitled to enroll), available at <http://62.90.71.124/files/96/910/040/f07/96040910.f07.htm>, cited in Ruth Gavison, Does Equality Require Integration? A Case Study (Oct. 23, 1998) (unpublished manuscript, on file with the New York University Journal of International Law and Politics).

children who do attend Jewish schools must be able to study in Hebrew from a curriculum designed for Jewish children.<sup>22</sup> For many Palestinian Arabs, school integration is, in fact, assimilation into the majority's Jewish education at the expense of Arabic language and their own cultures and religions. Accordingly, the primary concern for most Palestinian Arabs in Israel is not access to Jewish schools, but rather gaining more autonomy over their education system and equalizing the Arab system with the Jewish system.<sup>23</sup>

Until 1987, there was a separate (but not autonomous) department for Arab education within the Ministry of Education.<sup>24</sup> When the department was dissolved in 1987, its employees were spread out among the Ministry's various branches. While most divisions typically have a single Palestinian Arab representative, there are small departments for Arab education and Druze education within the Ministry's Pedagogical Secretariat.<sup>25</sup> Palestinian Arabs continue to be significantly under-represented in the Ministry, holding none of the top positions at the time of writing. In 2002, only 3.43 percent (118 persons) of the Ministry of Education's employees (excluding teachers) were Palestinian Arab.<sup>26</sup>

The Ministry of Education's schools are divided into state secular and state religious schools.<sup>27</sup> Arab state schools fall under the state secular framework; there are no state religious schools for Palestinian Arab children. Most Jewish and Palestinian Arab children attend state schools within this framework;<sup>28</sup> however, private

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22. 2002 *Periodic Reports: Israel*, *supra* note 2, at 250.

23. For example, university researchers who studied the underlying circumstances of the October 2000 demonstrations (in which the Israeli army and police shot and killed thirteen Palestinian Arab citizens), rejected full integration on the grounds that it would injure the group identities of both Palestinian Arabs and Jews, that the different starting points of the two groups would perpetuate inequality, and that segregated residences make full integration impossible. Instead, the researchers called for a separate administration for Arab education that would operate within the Ministry of Education's framework, but that would maintain absolute autonomy over management and curriculum content. See Majid Al-Haj et al., *Schooling and Further Education*, in *AFTER THE RIFT: NEW DIRECTIONS FOR GOVERNMENT POLICY TOWARDS THE ARAB POPULATION IN ISRAEL* 40-42 (Dan Rabinowitz et al. eds., 2000) [hereinafter *AFTER THE RIFT*].

24. HUMAN RIGHTS WATCH, *supra* note 17, at 25 (2001).

25. *Id.*

26. Ali Haider, *Follow Up: Arab Representation in the Civil Service, in Government Corporations and in the Court System*, SIKKUY REPORT 2002-2003 (Sikkuy: Ass'n for the Advancement of Civic Equality, Jerusalem, Isr.), July 2003, at 35 tbl. 14.

27. State Education Law, 1953, 7 L.S.I. 113.

28. 2002 *Periodic Reports: Israel*, *supra* note 2, at 251.

associations—primarily ultra-orthodox Jewish groups and Christian churches—also run schools that are considered “recognized but unofficial schools.”<sup>29</sup> Recognized but unofficial secondary schools run by Christian churches are perceived to offer a better quality education to Palestinian Arabs in cities such as Haifa and Nazareth. However, these schools do not exist in all areas with significant Palestinian Arab populations, particularly the Triangle region in the north and the Negev in the south, and run only about 5 percent of Arab schools.<sup>30</sup> The Ministry of Education regulates and provides most of the funding for these schools, which, in turn, are supposed to use the Ministry’s prescribed curricula. Only a very few students, mostly “ultra ultra-orthodox” Jewish students, attend schools that receive no government funding.<sup>31</sup> Even these are legally subject to the Ministry of Education’s supervision.<sup>32</sup>

Classes are divided into kindergarten (pre-primary), primary, secondary, and post-secondary levels. From ages two to five, children attend kindergarten. Primary education consists of grades one through eight, and secondary education of grades nine through twelve, with some schools separating grades seven through nine into intermediate (or lower secondary) schools, primarily in the Jewish system.<sup>33</sup>

The secondary level is designed to prepare students for the matriculation examinations (*bagrut*), a series of exams usually taken at the end of the twelfth grade that entitle those who pass to a matriculation certificate (high school diploma).<sup>34</sup> Students may elect academic or vocational tracks, the latter falling under the supervision of the Ministry of Labor and Social Affairs. Matriculation exams and

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29. In the 2003-2004 school year, 22.4 percent of Jewish primary students and 17.6 percent of Jewish secondary students attended an ultra-orthodox school. STAT. ABSTRACT ISR. 2004, *supra* note 3, tbl. 8.14. Private associations ran 5 percent of Arab schools. 2002 *Periodic Reports: Israel*, *supra* note 2, at 292. Parents, students, and teachers say that Christian schools, which charge tuition and educate Muslim as well as Christian children, play an important role in cities like Haifa, where the Arab system is particularly weak. *See id.* at 292 (stating that these “recognized but unofficial” schools are privately operated by churches, but are open to all denominations).

30. 2002 *Periodic Reports: Israel*, *supra* note 2, at 304.

31. *Id.* at 251.

32. Inspection of Schools Law, 1969, 23 L.S.I. 195.

33. 2002 *Periodic Reports: Israel*, *supra* note 2, at 250.

34. *See* Ministry of Foreign Affairs, Facts About Israel: Primary and Secondary Education, Mar. 15, 2003, *at* <http://www.mfa.gov.il/MFA/Facts+About+Israel/Education/EDUCATION-%20Primary%20and%20Secondary> [hereinafter Facts About Israel: Primary and Secondary Education].

certificates are available for both tracks.<sup>35</sup>

Post-secondary education includes thirteenth and fourteenth grades for vocational training, technical training institutes, colleges (including teacher training colleges), and universities.<sup>36</sup> Some colleges are accredited to award academic degrees. To attend a university and some teaching colleges, students must take prescribed secondary school classes, pass the requisite matriculation exams, and achieve a specified score on an educational aptitude test known as the psychometric exam.<sup>37</sup>

#### A. *Government Funding of Education*

Funding for government-run education comes primarily from the central government, and, to a lesser extent, from local councils or municipalities, private organizations, and parents. Arab schools, on average, receive proportionately less money than Jewish schools from each of these sources.

The central government is legally responsible for providing free education to children ages three to seventeen.<sup>38</sup> Through the Ministry of Education, the government accredits schools, determines curricula, approves textbooks, administers the matriculation examinations, awards diplomas, constructs school buildings, and finances about three quarters of the total cost of education.<sup>39</sup> The Ministry directly employs and pays kindergarten and primary school teachers, and provides the funds for secondary school teachers' salaries to local authorities who employ them directly.<sup>40</sup> Local authorities maintain the buildings and provide equipment, supplies, and administrative staff through local taxes and transfers from the central government,

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35. 2002 *Periodic Reports: Israel*, *supra* note 2, at 254.

36. *See id.*

37. The psychometric exam was suspended in 2003, but reinstated in 2004. Relly Sa'ar, *Universities Return to Aptitude Exams to Keep Arabs Out*, HA'ARETZ (Israel), Nov. 27, 2003.

38. Compulsory Education Law, 1949, 3 L.S.I. 125.

39. *See* Ministry of Foreign Affairs, Facts About Israel: Education, at <http://www.israel.org/mfa/go.asp?MFAH00110> [hereinafter Facts About Israel: Education] (stating that the "government and local authorities finance 80 percent of education, while the rest comes from other sources"). In 2000, the government financed 72.3 percent of the total national expenditure on education, local authorities financed 6.9 percent, and households financed 21.8 percent. However, this data includes post-secondary and higher education, in which non-government financing plays a larger role. STAT. ABSTRACT ISR. 2004, *supra* note 3, tbl. 8.2.

40. Facts About Israel: Education, *supra* note 39.



including the Ministry of Education.<sup>41</sup> The importance of financial contributions from parents to supplement the state's basic education has increased as real funding from the government has decreased.<sup>42</sup>

Other government ministries also fund and supervise certain educational facilities and programs. For example, the Ministry of Labor and Social Affairs operates vocational schools. The Ministry of Defense runs programs in schools to prepare students for military service. The Ministry of Immigrant Absorption provides assistance to immigrant students. The Ministry of Religious Affairs funds Jewish religious schools, and the Ministry of Health is involved in special education schools and health education.<sup>43</sup>

The Ministry of Education provides several kinds of funding to schools. The largest amount goes to teachers' salaries and related expenses such as in-service teacher training. The second type supports a range of supplemental programs, both enrichment and remedial, that play a critical role in the Israeli education system. Some of this funding is purportedly allocated on the basis of need, although even the least needy schools depend heavily on this funding. The Ministry also finances school construction.<sup>44</sup>

In the last decade, the government has attempted to address, at least in part, certain inequalities in government funding by allocating lump sums of money to Palestinian Arabs through "five-year plans." Plans passed in 1991, 1998, and 2000 promised money for Arab education, and a five-year plan for Arab education was launched in 1999; however, these plans have been implemented only in part.<sup>45</sup> Even if all aspects of the 1991, 1998, 1999, and 2000 plans were fully implemented, the monies allocated would not be sufficient to equalize the two systems or correct past discrimination against Palestinian Arab students.<sup>46</sup> In addition, the plans do not address ongoing inequalities

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41. Facts About Israel: Primary and Secondary Education, *supra* note 34.

42. SHLOMO SWIRSKI & YARON YECHESKEL, HOW THE 2000 ISRAEL STATE BUDGET AFFECTS ARAB CITIZENS (Adva Center, Isr. 1999), *available at* <http://www.adva.org/arabs2000.html>.

43. STATE OF ISR., MINISTRY OF EDUC., CULTURE & SPORT, FACTS AND FIGURES ABOUT EDUCATION AND CULTURE IN ISRAEL 38-39 (1998) [hereinafter 1998 FACTS AND FIGURES ABOUT EDUCATION AND CULTURE IN ISRAEL].

44. HUMAN RIGHTS WATCH, *supra* note 17, at 49.

45. 2002 *Periodic Reports: Israel*, *supra* note 2, at 295; SHLOMO SWIRSKI ET AL., LOOKING AT THE BUDGET OF THE STATE OF ISRAEL 2001 (Adva Center, Isr. 2000), *available at* <http://www.adva.org/bdg2001/bdg01a.html> [hereinafter SWIRSKI, 2001 BUDGET REPORT]; MOSSAWA CENTER, THE 2005 STATE BUDGET AND THE ARAB CITIZENS: A SOCIO-ECONOMIC REPORT (2004), *at* [www.mossawacenter.org/en/reports/2004/12/041224.html](http://www.mossawacenter.org/en/reports/2004/12/041224.html).

46. The Adva Center, a nonprofit policy analysis and advocacy organization,

in resource allocation.<sup>47</sup>

Although the Israeli government has previously acknowledged that Arab schools generally receive less funding than Jewish schools, it does not officially release data on how much it spends total per Palestinian Arab child compared to how much it spends per Jewish child.<sup>48</sup> There are no separate lines in the budget for Arab education,<sup>49</sup> and the Ministry of Education takes the position that it is not possible to determine the amount spent on Arab education.<sup>50</sup>

### 1. *Funds for Teaching*

Each year, the Ministry of Education allocates most of its budget in terms of “teaching hours,” units that represent particular sums of money. And each year the Ministry of Education allocates on average fewer hours per Palestinian Arab student than it does per Jewish student. Because not all teaching hours are worth the same amount and vary in value from year to year, it is difficult to convert the allocation of teaching hours into exact sums of money.<sup>51</sup> Nonetheless,

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has criticized the Ministry of Education’s decision to focus its five-year plan on the advancement of a minority of Arab pupils in order to assure quick results. “Since such a small proportion of Arab students succeed in their exams, presumably even a small numerical increase will boost the success rate considerably.” SWIRSKI & YECHESKEL, *supra* note 42; *see also* SWIRSKI, 2001 BUDGET REPORT, *supra* note 45; Bakr Awawdy, *The Five-Year Plan for Advancing Arab Education in Israel*, in THE SIKKUY REPORT 2001-2002: MONITORING CIVIC EQUALITY BETWEEN ARAB AND JEWISH CITIZENS OF ISRAEL 38, 38-39 (Shalom Dichter & As’ad Ghanem eds., 2002), at <http://www.sikkuy.org.il/reports.htm>; Wadi’a Awauda, *Five-Year Plan for Improving Arab Education: How It’s Holding Up in Reality*, in SIKKUY’S REPORT ON EQUALITY AND INTEGRATION OF THE ARAB CITIZENS IN ISRAEL 2000-2001 (Ass’n Advancement Civic Equality Isr. 2001), available at <http://www.sikkuy.org.il/english/report2001eng.htm> [hereinafter SIKKUY’S REPORT 2000-2001].

47. Wadi’a Awauda, *supra* note 46.

48. *2002 Periodic Reports: Israel*, *supra* note 2 at 291.

49. *See, e.g., Hatzza-At Takziv Le-Shanat 2004 Ve-Hearot Kfi She-Hutzag La-Knesset Ha-Shisha-asar*, 2005 [*Proposed Budget for the Fiscal Year 2005 and Commentary as Presented to the Sixteenth Knesset*, 2005], available at [www.mof.gov.il/budget2005/mainpage.htm](http://www.mof.gov.il/budget2005/mainpage.htm) [hereinafter *Proposed Budget 2005*].

50. Letter from Ady Hershcovitsh, Deputy Director General, Economics and Budgeting Administration, Ministry of Education, to Human Rights Watch (Aug. 19, 2001) (on file with Human Rights Watch).

51. *See* SWIRSKI, 2001 BUDGET REPORT, *supra* note 45. The National Task Force for the Advancement of Education in Israel (the Dovrat Commission) recommends ending this method of budgeting entirely and, in the interests of administrative flexibility and transparency, budgeting in the form of money. DOVRAT REPORT, *supra* note 14, at 179-202.

comparison of how teaching hours are distributed between Jewish and Arab education shows how basic resources are apportioned.

In 2004-2005, although 24.3 percent of children enrolled in primary through secondary schools were Palestinian Arab, only 20.8 percent of total teaching hours were allocated to them.<sup>52</sup> Per student, Jewish students received an average of 1.99 teaching hours per week; Palestinian Arab students an average of 1.62 teaching hours.<sup>53</sup> And the difference is evident at every grade level.<sup>54</sup> These data show that each year officials at the Ministry of Education consciously decide to allocate core education funds unequally, and each year the Knesset (Israel's parliament) approves a budget that makes this unequal allocation explicit.<sup>55</sup>

The inequality in average funding is significant not only because Palestinian Arab students receive less basic funding, but also because the difference has narrowed very little in the last six years. Moreover, the difference persists despite the Ministry of Education's introduction of a new budgeting system for regular primary schools in the 2003-2004 school year. The new system, discussed below, purportedly distributes teaching funds based on socio-economic need.<sup>56</sup>

In terms of teaching staff, the Ministry of Education also allocates, on average, more teachers per capita to Jewish schools than it does to Arab schools.<sup>57</sup> On average, Arab school classes were four students larger in 2004-2005, and five students larger at the primary level.<sup>58</sup> In 1999-2000, the most recent year for which data has been made public, the number of kindergarten children per full-time teacher (or teacher's aide) was twice as high in Arab kindergartens (39.3 students per teacher) as in Jewish kindergartens (19.8 students per

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52. *Proposed Budget 2005*, *supra* note 49, at 55, 59.

53. *Id.* at 59.

54. *Id.*

55. The proposed budget presented annually to the Knesset demonstrates in chart format the basic teaching hours allocated to Jewish children compared with Palestinian Arab children at the primary, intermediate, secondary, and special education levels. *Id.* at 55, 145.

56. 2004 FACTS AND FIGURES, *supra* note 17, at 35. The method of allocation is based on the recommendations of the Committee for the Examination of Budgeting Methods in Primary Education (the Shoshani Report). *Id.*

57. Of the 129,000 teachers in Israeli schools in 2004-2005, 23,000 (17.8 percent) were in the Arab system. *Id.* at 78. The Ministry of Education that year allocated the equivalent of one full-time teacher for every 13.5 children in Jewish primary schools and every 16.8 children in Arab primary schools. *Id.* at 55, 59.

58. In 2004-2005, there were an average of 25.8 students per class in Jewish schools and 29.7 students per class in Arab schools. *Id.* at 60.

teacher).<sup>59</sup> Although these data are averages and thus allow for significant variation among individual schools, they are generally in accord with what individual school administrators reported in late 2000.<sup>60</sup>

Class size affects the quality of education provided.<sup>61</sup> “It’s a problem for me,” a Palestinian Arab English teacher with around forty students explained. “The students should have the chance to share and talk and express themselves.”<sup>62</sup>

## 2. *Enrichment and Remedial Programs*

In addition to the resources for basic teaching are enrichment and remedial programs, which form an integral part of everyday education in Israeli schools. These programs are allocated on the basis of criteria that are weighted against Arab schools and often implemented in ways that exclude them. Legal challenges to these practices have sometimes succeeded in bringing individual programs to particular schools, but have not been successful in changing the way supplemental funds are distributed.<sup>63</sup>

Reporting to the Committee on the Rights of the Child in 2001 the Israeli government stated: “The gaps in government allocation

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59. PROPOSED BUDGET FOR THE MINISTRY OF EDUCATION 2001 AND COMMENTARY AS PRESENTED TO THE FIFTEENTH KNESSET (Ministry of Educ., Isr.), Oct. 2000, at 144 [hereinafter PROPOSED BUDGET 2001]. This information was not disclosed in later budget proposals, and the Central Bureau of Statistics did not have the data on teaching hours for three- and four-year-old kindergartens that it had for primary and secondary levels. E-mail from a staff-member of the Central Bureau of Statistics to Zama Coursen-Neff (Feb. 14, 2005) (on file with author).

60. *See, e.g.*, interview with primary school principal in Um El-Fahm, Isr. (Dec. 6, 2000).

61. For example, the Tennessee Student Teacher Achievement Ratio (STAR) project, a four-year longitudinal study begun in 1985, found a significant causal relationship between reducing class size and improving student achievement, especially for at-risk students. ELIZABETH WORD ET AL., THE STATE OF TENNESSEE’S STUDENT/TEACHER ACHIEVEMENT RATIO (STAR) PROJECT: FINAL SUMMARY REPORT 1985-1990, at 17 (1990) (concluding that “[s]tudents in small classes have higher performance than regular and regular/aide classes in all locations and at every grade level”).

62. Interview with English teacher in village in the Triangle region (Dec. 6, 2000).

63. *See, e.g.*, H.J. 2814/97, Va-Adat Ma-Akav Le-Chinuch Ba-Migzar Ha-Aravi v. Sar Ha-Chinuch [Follow-Up Comm. on Arab Educ. et al. v. Minister of Educ. et al.], 54 (3) P.D. 233, 238 (2000) (petition dismissed following the Ministry of Education’s admission that academic enrichment programs were being provided unequally to Palestinian Arab students and the Ministry’s promise to distribute the programs equally within five years).

[between Arab and Jewish schools] are mainly a result of more limited allocation to enrichment and extracurricular activities such as libraries, programs for weaker students, cultural activities, and counseling and support services.”<sup>64</sup> For example, while gifted Jewish children may receive enrichment in the regular curricula or attend a special boarding school, there were no boarding schools for gifted Palestinian Arab students in 2001 and, according to the government, “associations and programs for gifted children” were only recently approved for Arab education.<sup>65</sup> Staff in Arab schools confirmed that it was difficult to get enrichment for talented students.<sup>66</sup> Similarly, a 2000 study by professors at Hebrew University found that, per student, Jewish students received five times the amount that Palestinian Arab students received.<sup>67</sup>

Although all schools receive supplementary programs, the government distributes considerable resources ostensibly on the basis of need.<sup>68</sup> As discussed in the following section, the factors the Ministry of Education chooses to consider to assess need result in Jewish schools, on average, receiving many more supplementary programs than do Arab schools.<sup>69</sup>

In addition, some funding, by definition, goes only to Jewish students. For example, new immigrants, who are almost entirely Jewish, receive extra educational programs.<sup>70</sup> While new immigrants may well need extra help compared with other Jewish students, disadvantaged Palestinian Arab students do not receive comparable assistance.

Even enrichment and remedial programs for which Palestinian Arab students are eligible often never reach them because teachers administering the programs have considerable discretion on where to offer them. Few of these teachers are Palestinian Arab.<sup>71</sup>

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64. *2002 Periodic Reports: Israel*, *supra* note 2, at 291.

65. *See id.* at 258, 270.

66. Interview with primary school principal in village in the Triangle region (Dec. 6, 2000).

67. According to the study, the average Jewish student in need of remedial education received 0.2 hours per week of additional class time, while Palestinian Arab students received 0.04 hours per week. Sorrell Kahen & Yakov Yeleneck, *Haflaya Keneged Ha-Sector Ha-Lo Yehudi Behaktza-At Mashabim Le-Pituach Ha-Chinuch [Discrimination Against the Non-Jewish Sector in the Allocation of Resources for Educational Development]* (Isr. 2000) (unpublished manuscript, on file with Hebrew University).

68. *2002 Periodic Reports: Israel*, *supra* note 2, at 262.

69. *See* discussion *infra* Part II.A.3.

70. *See also* SWIRSKI, *supra* note 19, at 179, 234.

71. *See* HUMAN RIGHTS WATCH, *supra* note 17, at 64-66.

Most supplementary funding comes from the Ministry of Education. However, other government ministries also fund particular programs that appear to benefit primarily Jewish education. For example, the Ministry of Housing builds kindergartens in new Jewish communities, the Ministry of Immigrant Absorption gives educational assistance to new immigrants, and the Ministry of Religious Affairs contributes to Jewish religious schools.<sup>72</sup>

Local authorities and parents also fund programs in some schools.

### 3. *Needs-Based Funding*

The Ministry of Education ostensibly takes need into account when distributing both supplementary funding and, increasingly, basic teaching funds. Most Palestinian Arab children live under the poverty line;<sup>73</sup> Palestinian Arab citizens, on average, have the lowest incomes in Israel<sup>74</sup> and live in the poorest communities. However, the various indices the Israeli government uses to assess need favor Jewish schools and communities. This is true not only for education funding, but also for many other government benefits, such as transfers to local governments for development and infrastructure,<sup>75</sup> that benefit schools indirectly by freeing up additional municipal monies for education. Thus, despite their greatest need, Palestinian Arabs are not receiving a share of many needs-based educational programs that is even proportionate to their representation in the population.

The best available measurement of general need appears to be the Central Bureau of Statistics' socio-economic scale. Sociological studies have found that the lower a locality ranks on the scale, the less access residents have to educational credentials.<sup>76</sup> Most Palestinian

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72. 1998 FACTS AND FIGURES ABOUT EDUCATION AND CULTURE IN ISRAEL, *supra* note 43, at 38-39.

73. MOSSAWA CENTER, *supra* note 45 (citing data from the research department of the National Insurance Institute that in 2003, 57.5 percent of Palestinian Arab children live under the poverty line).

74. SHLOMO SWIRSKI & ETTY KONOR-ATTIAS, ADVA CTR., ISRAEL: A SOCIAL REPORT, Adva Center, 2003 at 8, available at <http://www.adva.org/englishd.html>; *Identity Crisis: Israel and Its Arab Citizens*, ICG MIDDLE EAST REPORT NO. 25 (INT'L CRISIS GROUP), March 4, 2004, at 12, available at [http://www.icg.org/library/documents/middle\\_east\\_\\_north\\_africa/arab\\_israeli\\_conflict/25\\_identity\\_crisis\\_israel\\_arab\\_citz.pdf](http://www.icg.org/library/documents/middle_east__north_africa/arab_israeli_conflict/25_identity_crisis_israel_arab_citz.pdf).

75. See *infra* Parts II.A.3, II.B; *Identity Crisis: Israel and Its Arab Citizens*, *supra* note 74, at 13-14; MOSSAWA CENTER, *supra* note 45.

76. Andre Elias Mazawi, *Region, Locality Characteristics, High School Tracking and Equality in Access to Educational Credentials: The Case of*

Arab communities rank at the bottom of the scale,<sup>77</sup> and unrecognized (Palestinian Arab) villages<sup>78</sup> and Jewish communal localities—kibbutzim and moshavim—are not ranked at all.<sup>79</sup> Thus, even the best scale is not comprehensive, as it excludes the poorest communities in Israel.

But instead of the socio-economic scale, the government generally uses other or additional criteria to allocate education-related subsidies and tax benefits. For example, in areas it classifies as “national priority areas,” teachers receive an extra stipend for travel and living expenses, four-year tenure, and exemption from workers’ compensation contributions. The Ministry of Education subsidizes kindergarten tuition, and residents may be eligible for loans or grants for higher education.<sup>80</sup> National priority areas with the highest level of classification are targets for implementation of the Long School

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*Palestinian Arab Communities in Israel*, 24 EDUC. STUD. 223, 236 (1998) [hereinafter Mazawi, EDUC. STUD.]; see Andre Elias Mazawi, *Concentrated Disadvantage and Access to Educational Credentials in Arab and Jewish Localities in Israel*, 25 BRIT. EDUC. RES. J. 355 (1999).

77. See CENTRAL BUREAU FOR STATISTICS, CHARACTERIZATION AND RANKING OF LOCAL AUTHORITIES, ACCORDING TO THE POPULATION’S SOCIO-ECONOMIC LEVEL IN 1999, tbl. 1 (Isr., 1999) [hereinafter CBS 1999 REPORT]; see also CENTRAL BUREAU FOR STATISTICS, CHARACTERIZATION AND RANKING OF LOCAL AUTHORITIES, tbl. A (Isr. 2002), at [http://www.cbs.gov.il/hodaot2002/13\\_02\\_48.htm#tabsgraphs](http://www.cbs.gov.il/hodaot2002/13_02_48.htm#tabsgraphs).

78. The government considers Bedouin, as well as other Palestinian Arabs, who live outside of localities approved by the Israeli government, to be living in illegal villages, known as “unrecognized villages.” These villages are not marked on government maps, lack recognized local government bodies, and receive limited or no government services such as schools, running water, electricity, sewage, and garbage collection. Since the late 1960s and early 1970s, the Israeli government has pressured the Bedouin in the Negev to leave their villages and settle in seven recognized urban localities. These towns lack many basic services and rank at the bottom of the government’s socio-economic index, making them the poorest in Israel. CBS 1999 REPORT, *supra* note 77, tbl. 2 and at 67-68.

79. See CBS 1999 REPORT, *supra* note 77, at 5; see also Eetta Prince-Gibson, *An Abundance of Despair*, JERUSALEM POST, Feb. 16, 2001, at 13 (noting that the CBS does not rank large cities, kibbutzim, or moshavim).

80. See *Proposed Budget 2005*, *supra* note 49, at 84, 125; MOSSAWA & THE ADVA CTR., STATUS OF NATIONAL PRIORITY IN THE AREA OF EDUCATION: ARAB SETTLEMENTS, DEVELOPMENT TOWNS, AND JEWISH SETTLEMENTS, ANALYSIS OF THE PRIORITY AREA MAP OF THE OFFICE OF THE PRIME MINISTER FROM 1998 AND THE DATA OF THE MINISTRY OF EDUCATION FROM 1997, at 2 (1999); DAVID KRETZMER, THE LEGAL STATUS OF ARABS IN ISRAEL 106, 112-13 n.37 (1990). “A-level” national priority areas include both settlements and communities inside Israel. See, e.g., Cabinet Communiqué, Dec. 13, 1996, available at [www.mfa.gov.il/MFA/Archive/Communiqués/1996/CABINET%20COMMUNIQUÉ%20-%2013-Dec-96](http://www.mfa.gov.il/MFA/Archive/Communiqués/1996/CABINET%20COMMUNIQUÉ%20-%2013-Dec-96).

Day Law, which, although not fully implemented, funds additional informal teaching and extra-curricular activities to compensate for what wealthier parents and municipalities provide.<sup>81</sup> Historically, only Jewish localities were designated as national priority areas: according to the government, the designation is not based on socio-economic factors, but rather is intended to encourage Israeli citizens to relocate to peripheral areas and to support towns that absorb new Jewish immigrants.<sup>82</sup> Although a few Palestinian Arab localities have since been added to the list, only four of the 418 communities with a national priority area status qualifying for education benefits were Arab.<sup>83</sup> Litigation challenging the exclusion of Arab towns from the list was pending at the time of writing.<sup>84</sup>

The Ministry of Education has also developed its own “index of educational disadvantage,” which it has used to distribute resources to primary and intermediate schools aimed at improving performance and decreasing drop out rates.<sup>85</sup> The Ministry applied two different measurements of need to Arab and Jewish schools and ranked them

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81. In 1990, the first year of the Long School Day Law’s implementation, only six of the 564 schools chosen for the program were Arab. Suit was brought against the Ministry of Education on the grounds that this policy was discriminatory. The Supreme Court held that educational support to development towns meets national needs; therefore, the government’s policy of providing benefits only to these towns was a legitimate distinction and not discriminatory. See C.A. 3491/90, *Agbaria v. Sar Ha-Chinuch Ve-Ha-Tarbut* [Minister of Education and Culture], 45(1) P.D. 221, 223 (1990). The government then renewed the program, and the petitioners re-filed. The Court again dismissed the case. See C.A. 3954/91, *Agbaria v. Sar Ha-Chinuch Ve-Ha-Tarbut* [Minister of Education and Culture], 45(5) P.D. 472, 474, 478 (1991); *2002 Periodic Reports: Israel*, *supra* note 2, at 246; *2004 FACTS AND FIGURES*, *supra* note 17, at 15.

82. *Supreme Court Questions State’s Exclusion of Arab Towns from National Priority Area ‘A’ for Education*, ADALAH NEWSL. (Adalah: Legal Center for Arab Minority Rights in Israel, Shafa’amr, Isr.), Nov. 2004, available at [www.adalah.org/newletter/eng/now04/6.php](http://www.adalah.org/newletter/eng/now04/6.php) (reporting the state’s arguments in hearing on a petition challenging the designation of only four Palestinian Arab towns out of 553 towns and villages as national priority areas).

83. *Id.*

84. H.C. 11163/03, High Follow-Up Comm. for the Arab Citizens in Isr., et al. v. Prime Minister of Isr. (petition filed Dec. 1998, claiming that the current designation of priority areas discriminates against Palestinian Arab towns and asking that clear criteria be set for selection) (order nisi issued Feb. 2004, ordering the state to explain the exclusion of Arab towns from the national priority list), cited in Adalah: Legal Advocacy, at <http://www.adalah.org/eng/legaladvocacycultural.php#1163> (last visited Mar. 22, 2005); Telephone interview with Gadeer Nicola, Staff Attorney, Adalah (Feb. 9, 2005). The case was pending before the Supreme Court at the time of writing.

85. *2002 Periodic Reports: Israel*, *supra* note 2, at 262.



separately.<sup>86</sup> In other words, instead of comparing all schools against a common standard, the Ministry compared and ranked Arab schools with other Arab schools and Jewish schools with other Jewish schools, but did not compare Arab schools with Jewish schools. Schools in the bottom rank of each sector got additional resources.

Given that Arab schools are more disadvantaged than Jewish schools by every measurement, comparing the two sectors separately significantly underestimated the need of Arab schools.<sup>87</sup>

Indeed, as the index was applied, Arab schools got fewer resources even than Jewish schools of equal rank. In the 1994-1995 school year, the Central Bureau of Statistics surveyed the recognized and official Arab and Jewish state primary and intermediate schools (with the exception of kibbutz schools) on the provision of education and welfare services, and found that at every economic level, Jewish schools had significantly more counseling, libraries, and educational and welfare programs than Arab schools.<sup>88</sup> The Israeli government frankly reported to the Committee on the Rights of the Child in 2001 that despite the index of disadvantage, which was intended to make it “easier to aptly allocate resources to schools in the Arab sector, so as to cultivate weak populations . . . the distribution of hours and budgets per schools is not equal in the two sectors, and does not take into consideration the existing gaps between the two sectors.”<sup>89</sup>

The government justified comparing Jewish and Arab schools separately on the grounds that certain criteria are unique to each sector.<sup>90</sup> For example, only Jews are new immigrants. However, a different set of criteria could be developed that does not favor one group over the other.

The Ministry of Education in the 2003-2004 school year began

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86. STATE OF ISR. CENT. BUREAU OF STATISTICS, SURVEY OF EDUCATION AND WELFARE SERVICES 1994/1995: PRIMARY AND INTERMEDIATE SCHOOLS, HEBREW AND ARAB EDUCATION at XIX (1997) [hereinafter 1994/1995 PRIMARY AND INTERMEDIATE SCHOOLS REPORT].

87. Arab schools that ranked at the top may well have fallen at the middle or bottom when compared with Jewish schools. Thus, an Arab school that would have qualified for additional resources if compared with Jewish schools may have received less or nothing because, when compared only with Arab schools, it was better off. For more information about how the index has been applied, see HUMAN RIGHTS WATCH, *supra* note 17, at 60-64.

88. For example, of primary schools categorized as most disadvantaged, almost all (93.6 percent) of Jewish schools offered psychological counseling to their students, while less than one-third (31.1 percent) of the Arab schools had these services. *Id.*, see also Part II.B.

89. 2002 *Periodic Reports: Israel*, *supra* note 2, at 296.

90. 1994/1995 PRIMARY AND INTERMEDIATE SCHOOLS REPORT, *supra* note 86.

phasing in a new method of allocating funds for primary schools, using various criteria to determine need.<sup>91</sup> These criteria are said to measure students' social, economic, and geographic conditions so that more teaching hours can be allocated to students with the greatest need.<sup>92</sup> Three criteria, however, accounting for 50 percent of assessment of need, apply almost exclusively to Jewish children: new immigrants, immigrants from poorer countries, and students from national priority areas, which, as explained above, exclude most Palestinian Arab communities.<sup>93</sup> Not surprisingly, the difference in average teaching funds allocated per Palestinian Arab student and per Jewish student at the primary level in 2003-2004 remained virtually unchanged from previous years.<sup>94</sup> In January 2005, the Dovrat Commission recommended applying this method to all levels of education, but substituting family income for whether the student resides in a national priority area. This recommendation had not been implemented at the time of writing.

#### B. *Funding from Parents and Local Authorities*

Parental funding of regular and after-school education, sometimes called "gray education," widens the gap between schools in high and middle income areas and schools in low income areas by affecting both the quality of education schools offer and students' academic performance.<sup>95</sup> These funds add teachers and reduce class

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91. 2004 FACTS AND FIGURES, *supra* note 17, at 35. Tovah Lazaroff, *Plan Promises Educational Equality*, JERUSALEM POST, Aug. 27, 2002, at 1, 12.

92. DOKH HA-VE-ADA LIVDIKAT SHITAT HA-TIKZTUV B'BATEY HA-SEFER HA-YESODIYIM: DOKH SHOSHANI [REPORT OF THE COMMITTEE FOR THE EXAMINATION OF BUDGETING METHODS IN PRIMARY EDUCATION: SHOSHANI COMMITTEE] 5, 9 (2002), available at [http://www.education.gov.il/moe/klali/download/doch\\_male.rtf](http://www.education.gov.il/moe/klali/download/doch_male.rtf) [hereinafter SHOSHANI REPORT].

93. Dalia Sprinzak et al., Ministry of Education, Culture and Sport, *Implementing the Shoshani Committee's Report*, at <http://cms.education.gov.il/EducationCMS/Units/ShivyonBachinuch/TahalichYisum.htm>.

94. *Proposed Budget 2005*, *supra* note 49, at 55, 59.

95. The State Education Law allows parent financing to increase regular school hours. State Education Law, 1953, 7 L.S.I. 113, 114. According to the nongovernmental organization, Adva Center:

The crafters of the education budget overlook the fact that, in the absence of sufficient state funding, private money ("gray education") becomes a main player in determining the quality of education that schools provide. Schools that offer "gray education" provide a more extensive and, sometimes, a more intensive curriculum than schools in which parents cannot afford to contribute. In high schools where parent co-payments in 1999 ranged from NIS 287 to NIS 2,657 [\$71.75 to

size, increase hours in particular subjects, improve school facilities, and pay for after-school classes and activities.

In 2000, households financed 6.2 percent of total national expenditures on primary education, and 22.2 percent of expenditures on post-primary education; local authorities financed 5.3 percent and 0.6 percent, respectively; and the national government financed 88.5 percent and 75.6 percent, respectively.<sup>96</sup> Jewish households on average spend more on education than Palestinian Arab households,<sup>97</sup> and Arab schools, on the whole, collect less money from parents than do Jewish schools.<sup>98</sup>

Local authorities generally pay for maintaining school buildings, furniture, and administrative staff.<sup>99</sup> As indicated by the Central Bureau of Statistics's socio-economic scale, Palestinian Arab communities tend to be the poorest in Israel. Compared with Jewish localities, they lack an industrial tax base and depend more heavily on residential property taxes. They also receive less money generally from the central government than Jewish communities.<sup>100</sup>

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\$664.25] per year (i.e., within the range recommended by the Education Ministry), 57 percent of students succeeded in passing their matriculation exams. In schools where co-payments ranged from NIS 1,269 to NIS 6,070 [\$317.25 to \$1,517.50], the proportion of matriculation-certificate eligibles was 87 percent.

SWIRSKI, 2001 BUDGET REPORT, *supra* note 45 (critiquing the proposed 2001 Budget). For more information about "gray education," see SWIRSKI, *supra* note 19, at 229.

96. STAT. ABSTRACT ISR. 2004, *supra* note 3, tbl. 8.2. These figures include goods and services and do not include expenditures on textbooks and stationary, which are entirely assumed by the household. *Id.*

97. *Education and Educational Resources 1990-1996*, no. 99/164 (CBS, Isr.), July 26, 1999, *cited in* NA'AMA YESHUVI, MEASURE FOR MEASURE: AN ACCOUNTING OF EQUALITY IN ISRAEL 62 (Association for Civil Rights in Isr. ed., 2000).

98. Anecdotally, in visits to Jewish and Arab schools in 2000, school administrators of Jewish schools reported collecting considerably more money from parents than did administrators of Arab schools. According to the Adva Center, its data "raise serious doubts as to whether [low-income families dependent] on income support are able to give their children the same educational opportunities as children from households in higher income brackets." SWIRSKI & KONOR-ATTIAS, *supra* note 74, at 16.

99. Interview with Yael Yakobi, Chief Inspector of the District of Haifa, Ministry of Education, in Haifa, Isr. (Dec. 7, 2000).

100. As'ad Ghanem et al., *Local Authorities, Welfare and Community, in AFTER THE RIFT*, *supra* note 23, at 26-28; *see also* ARAB ASS'N FOR HUMAN RIGHTS (HRA), THE PALESTINIAN ARAB MINORITY IN ISRAEL: ECONOMIC, SOCIAL AND CULTURAL RIGHTS 32-33 (1998) (stating that ordinary budgets of Arab communities are 60 percent of those of comparable Jewish communities).

Accordingly, Palestinian Arab localities must use money that other communities might spend on education for infrastructure and other development expenses.<sup>101</sup>

Parents are, of course, free to spend money on education for their children. The Ministry of Education, however, widens the gap between Arab and Jewish schools that funds from parents and local authorities create. First, the Ministry subsidizes supplementary education directly through transfers to local authorities and through matching funds. According to Israel's 2001 report to the Committee on the Rights of the Child:

The more limited investment by local authorities and parents can be ascribed to the dire financial state of the Arab local authorities, as well as to the higher level of poverty among Arab families. It is important to note that in many cases, allocation of government funding for extracurricular activities, special programs and support services is dependent on matching funds provided by the local authority and parents. As such funds are not available in the Arab local authorities, services of this type are often not implemented in the Arab education system.<sup>102</sup>

Second, the Ministry indirectly subsidizes parent-funded education through its infrastructure, since supplementary education takes place on school grounds and often during school hours.<sup>103</sup>

Third, the Ministry of Education funds parents' organizations which organize and implement supplementary and after-school programs, but it funds almost no Palestinian Arab parents' organizations.<sup>104</sup>

Fourth, as explained above, the government fails to distribute compensatory programs equally to Arab schools. Programs allocated through the Long School Day Law and the educational disadvantage index, truant officers, and support services, including counseling and other programs, are explicitly designed to counteract the inequities

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101. For examples of the lack of infrastructure in Palestinian Arab communities compared with Jewish communities, see Shalom Dichter, *The Government's Plan for Development in the Arab Localities*, in SIKKUY'S REPORT 2000-2001, *supra* note 46.

102. *2002 Periodic Reports: Israel*, *supra* note 2, at 291.

103. *Cf. id.* at 301-02 (detailing informal education programs held in schools).

104. Interview with Daphna Golan, Chair, Committee for Closing the Gap, Pedagogical Secretariat, Ministry of Education, in Jerusalem, Isr. (Dec. 20, 2000) (stating that about 1.5 percent of the NIS 1.3 billion (\$325 million) that the Ministry of Education gives to nongovernmental organizations goes to Palestinian Arab parents' organizations).

outside funding creates. However, these programs are not provided equally to Palestinian Arabs.<sup>105</sup>

### III. CONDITIONS IN ARAB SCHOOLS

#### A. Classrooms and Buildings

Arab schools need more classrooms, and those they have are often in poor condition, especially in the Negev.<sup>106</sup> In 2005, an estimated 1,700 classrooms were lacking in Arab elementary and secondary schools.<sup>107</sup> As a result of the classroom shortage, many classes in Arab schools are held in rented spaces, in some cases only a room in a private home, or in prefabricated buildings.<sup>108</sup> The Center for Bedouin Studies and Development at Ben Gurion University of the Negev estimated in 2004 that around one-third of classrooms in the seven recognized localities for Bedouin in the Negev were unsound.<sup>109</sup>

Recent litigation has pushed the Ministry of Education to address some egregious individual violations. For example, in July 2000, a petition was filed on behalf of the local residents of Beer Hadaj, the Regional Council for the Unrecognized Villages, and parents' committees demanding that schools be built for children in the village, who were traveling long distances to reach the nearest school or not attending at all. In response, the Ministry of Education agreed to open an elementary school in Beer Hadaj and a kindergarten and first grade

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105. See 2002 Periodic Reports: Israel, *supra* note 2, at 291-301.

106. See *id.* at 300 (reporting that some schools in unrecognized villages lack even electricity or water); Yaacov Katz et al., Excerpts from the Investigatory Committee on the Bedouin Educational System in the Negev (Ctr. Bedouin Stud. & Dev., Ben-Gurion Univ. Negev, Isr. 1998) [hereinafter Katz Committee Report], at <http://www.bgu.ac.il/bedouin/katz-excerpts.htm> ("Facilities and equipment are insufficient, and in some cases, altogether lacking.").

107. David Rudge, *Dovrat Report Gets Good Grades in Arab Sector*, JERUSALEM POST, Jan. 10, 2005, at 4 (citing Nabeh Abu Sahleh, chairman of the Follow-Up Committee on Arab Education); cf. MOSSAWA CENTER, *supra* note 45 (stating that the classroom shortage is about 1,500 classrooms, not 1,700).

108. HUMAN RIGHTS WATCH, *supra* note 17, at 81. According to the Center for Bedouin Studies and Development at Ben Gurion University of the Negev, 78.9 percent (217 out of 275) of kindergartens and preschools in the seven recognized Bedouin localities in the Negev were held in buildings not designated for that use in 2002-2003. CTR. FOR BEDOUIN STUDIES AND DEV. AT BEN GURION UNIV. OF THE NEGEV, 2 STATISTICAL YEARBOOK OF THE NEGEV BEDOUIN tbl. VI/1.2 (2004), available at [http://w3.bgu.ac.il/bedouin/statistical\\_yearbook\\_2004/board\\_f2.1.1.htm](http://w3.bgu.ac.il/bedouin/statistical_yearbook_2004/board_f2.1.1.htm).

109. *Id.* tbl. VI/3.4, available at [http://w3.bgu.ac.il/bedouin/statistical\\_yearbook\\_2004/board\\_f\\_3.4.htm](http://w3.bgu.ac.il/bedouin/statistical_yearbook_2004/board_f_3.4.htm).

school in another area. The schools were completed in February 2002 (although sufficient water was provided only after the plaintiffs made additional motions), and the petition was withdrawn.<sup>110</sup> In 2002, the Ministry of Education opened sixty new special education classes for Palestinian Arab students after the Supreme Court issued an order to show cause giving the Ministry two months to explain why it had not created more Arab special education classes.<sup>111</sup> In August 2003, the Supreme Court ordered the Ministry of Education to provide two classrooms for hearing impaired Palestinian Arab Children, ages three to five, who did not attend kindergarten for seven months because their classrooms were unsafe and substandard.<sup>112</sup>

Although the Israeli government built new classrooms for the Arab, as well as the Jewish, school system in the 1990s, the overall proportion of Arab school classrooms out of the total number of classrooms increased less than 1 percent from 1990 to 1998.<sup>113</sup> As of 1998, the proportion of Arab school classrooms—19.5 percent—still failed to reflect the proportion of students in the Arab system (23.5 percent). The Ministry of Education states that in 2001 it planned to build 585 classrooms for Arab, Bedouin, and Druze schools, 29.3 percent of the 2,000 classrooms planned for that year, but it has not reported how many were actually built.<sup>114</sup> In 2003, the Ministry of

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110. Adalah, Supreme Court Petitions: Cultural, Social and Economic Rights, at <http://www.adalah.org/eng/legaladvocacycultural.php#5221> (summarizing the results from the withdrawn petition filed as H.C. 5221/00, Dahlala Abu Ghardud et. al. v. Ramat HaNegev Regional Council et. al.); cf. H.C. 5108/04, Ismael Mohammad Abu Guda et al. v. Limor Livnat, Sarat Ha-Khinukh et al. [Minister of Education], available at <http://62.90.71.124/files/04/080/051/a03/04051080.a03.HTM> (dismissing petition requesting that the state provide kindergartens for 300 children in two unrecognized villages in the Negev, while recognizing that the children may not be able to reach the nearest kindergarten).

111. Dan Izenberg, *Government Ordered to Explain Lack of Special Ed Classes in Arab Sector*, JERUSALEM POST, Feb. 26, 2001 at 5; Ass'n Civil Rights Isr., *60 New Special Education Classes Opened in Arab Sector*, available at <http://www.acri.org.il/English-acri/engine/story.asp?id=69> (last visited Jan. 21, 2003).

112. Press Release, Adalah, Supreme Court: Education Ministry Must Prepare Suitable Classrooms for Hearing Impaired Arab Children Within One Week (Aug. 25, 2003), at <http://www.adalah.org/eng/pressreleases2003.php#> (discussing a decision by the Israeli Supreme Court concerning a petition submitted by Adalah on behalf of eight hearing-impaired Arab children in May 2003).

113. 2002 *Periodic Reports: Israel*, *supra* note 2, at 295.

114. 2004 FACTS AND FIGURES, *supra* note 17, at 41 (stating only that these classrooms were planned, not whether they were built). The Development Administration of the Ministry of Education, which is responsible for building classrooms, did not respond to inquiries as to how many classrooms were actually

Education reported that 22 percent of classrooms it planned to finance were in Arab education, but, again, is had not reported the number built.<sup>115</sup>

Existing Arab schools have fewer libraries, sports facilities, laboratories, and other auxiliary facilities than Jewish schools.<sup>116</sup> The problem is compounded by the fact that many Palestinian Arab communities lack services such as local libraries and recreational facilities that might compensate for shortages in schools. This is especially true in Negev Bedouin localities, both recognized and unrecognized.<sup>117</sup>

Many unrecognized villages lack a school of any kind, and, according to some reports, more than 6,000 Bedouin children must travel dozens of kilometers to school every day.<sup>118</sup> For example, school administrators at an unrecognized village in the Negev reported in December 2000 that the students came from as far as fifty kilometers away.<sup>119</sup> A first grade teacher said that some of her students travel more than an hour to reach the school.<sup>120</sup> A municipal official in the recognized Bedouin town of Kseife, said that 42 percent

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built in 2000 and 2001.

115. Ministry of Education, Building of Classrooms Financed by the Ministry of Education in 2003, at <http://cms.education.gov.il/NR/rdonlyres/05A253C6-624D-4246-AD59-2846B691E80A/11206/mispar10.pdf> (last visited Apr. 4, 2005) (stating that of the 850 total classrooms planned, 500 had been built and 350 remained subject to approval).

116. See STATE OF ISR. CENT. BUREAU OF STATISTICS, SURVEY OF EDUCATION AND WELFARE SERVICES 1995/1996: SECONDARY SCHOOLS, HEBREW AND ARAB EDUCATION (1999) [hereinafter 1995/1996 SECONDARY SCHOOLS REPORT]; 2002 Periodic Reports: Israel, *supra* note 2, at 309-10; HUMAN RIGHTS WATCH, *supra* note 17, at 89-94; CTR. FOR BEDOUIN STUDIES AND DEV. AT BEN GURION UNIV. OF THE NEGEV, *supra* note 108, tbl. VI/3.2, available at [http://w3.bgu.ac.il/bedouin/statistical\\_yearbook\\_2004/board\\_f\\_3.2.htm](http://w3.bgu.ac.il/bedouin/statistical_yearbook_2004/board_f_3.2.htm) (noting that in 2003 only four of the seven recognized Bedouin localities in the Negev had a school library, four had a school science center, and none had an art center).

117. CTR. FOR BEDOUIN STUDIES AND DEV. AT BEN GURION UNIV. OF THE NEGEV, *supra* note 108, tbl. VI/2, available at [http://w3.bgu.ac.il/bedouin/statistical\\_yearbook\\_2004/board\\_e2.htm](http://w3.bgu.ac.il/bedouin/statistical_yearbook_2004/board_e2.htm) (noting that in 2002 only two of the seven recognized Bedouin localities in the Negev had municipal libraries).

118. Aliza Arbeli, *Distance Learning: Thousands of Bedouin Children Travel Dozens of Kilometers Daily to Reach Their Schools*, HA'ARETZ (Israel), Oct. 20, 1999, available at <http://www.haaretz.com>.

119. Interviews with school principal and head of the parents' committee in an unrecognized village near Be'er Sheva (Dec. 17, 2000).

120. Interview with first grade teacher in an unrecognized village near Be'er Sheva (Dec. 17, 2000).

of children attending school there come from outside the town.<sup>121</sup> Students also traveled as far as fifty kilometers in 2000 to reach elementary schools in Al-Azazmeh, another unrecognized village.<sup>122</sup> Long travel distances tend to disparately impact girls' ability to go to school.<sup>123</sup>

School buildings are the joint responsibility of the Ministry of Education and the local governments. The Ministry funds most construction, the local governments purchase furniture, and both share maintenance costs.<sup>124</sup> Other central government bodies assist with the infrastructure, such as the Ministry of Housing, which constructs kindergartens in new Jewish communities, and the National Lottery, which finances auxiliary facilities. Parents and private organizations, in some instances, also contribute.

### B. *Kindergartens*

Although by law children must begin attending school at age three, many of the most impoverished Palestinian Arab communities have no kindergartens at all for three- and four-year olds. In the Negev, it was estimated in 2001 that only 38 percent of three- and four-year-old Bedouin children in recognized towns and only 17 percent of those children in unrecognized villages had access to kindergartens.<sup>125</sup> As described above, the Ministry of Education constructed some kindergartens in 2001-2003, partly in response to litigation. However, the need for many more schools remains. For example, according to a September 2004 Supreme Court decision, the Ministry of Interior has refused to issue permits for the construction of

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121. Interview with municipal official in Kseife (Dec. 14, 2000).

122. Joseph Algazy, *What About the Bedouin?*, HA'ARETZ (Israel), May 9, 2000, available at <http://www.haaretz.com>.

123. For example, a Bedouin teacher said that his eighteen-year-old sister had dropped out of school after the eighth grade. "The long distance between home and school makes it difficult for a girl to walk alone in the desert," he explained. Interview with teacher in Be'er Sheva (Dec. 16, 2000). The disparate effect of travel on girls' access to education is evident in a number of countries. See, e.g., HUMAN RIGHTS WATCH, "KILLING YOU IS A VERY EASY THING FOR US": HUMAN RIGHTS ABUSES IN SOUTHEAST AFGHANISTAN 78 n.355 (2003); HUMAN RIGHTS WATCH, SCARED AT SCHOOL: SEXUAL VIOLENCE AGAINST GIRLS IN SOUTH AFRICAN SCHOOLS 59-63 (2001).

124. At the secondary level, the Ministry of Education channels the funds through local governments, which are considered to "own" the secondary schools. HUMAN RIGHTS WATCH, *supra* note 17, at 79 n.239.

125. KNESSET CENTER FOR RESEARCH AND INFORMATION, BACKGROUND PAPER FOR DISCUSSION: BEDOUIN EDUCATION FOR PRESCHOOLERS IN THE NEGEV 4, 5 (Isr. 2001).



kindergartens in some unrecognized Bedouin villages, as part of the policy to pressure residents to resettle in recognized localities, and the Ministry of Education has refused to provide kindergartens in some of those villages.<sup>126</sup>

Kindergarten attendance at age three has been compulsory since 1984, when the age was lowered from five to three years. However, no serious steps were taken to implement the law until 1999, when the Knesset passed a bill calling on the state to subsidize education fees for three- and four-year olds.<sup>127</sup> The law is supposed to be gradually implemented over a ten-year period, during which the Education Minister has the authority to decide which towns will receive funding. After ten years, all three- and four-year olds are to be exempted from kindergarten fees.<sup>128</sup>

But the government has long subsidized kindergarten for many three- and four-year-old Jewish children, especially children considered disadvantaged, even before it was required by law.<sup>129</sup> Palestinian Arab children have not enjoyed the same support from national and local governments. Despite this, to date, the 1999 law to subsidize kindergarten education has disproportionately benefited Jewish communities, in part because it distributes resources based on residence in a national priority area, as discussed above.<sup>130</sup>

Kindergarten attendance rates among Palestinian Arab children improved from 1999 to 2004, but remained significantly lower than those of Jewish children.<sup>131</sup> In 2002-2003, 66.5 percent of Palestinian

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126. H.C. 5108/04, *Ismail Mohammed Abu-Guda* (dismissing petition requesting that the Ministry of Education establish kindergartens for approximately 300 Bedouin children in two unrecognized villages where the Ministry of the Interior had refused to issue building permits).

127. *Free, Compulsory Nursery School*, HA'ARETZ (Israel), Jan. 12, 1999, available at <http://www.haaretz.com>; Relly Sa'ar, *Free Education Law Won't Cover More Preschoolers Next Year*, HA'ARETZ (Israel), Feb. 16, 2000 available at <http://www.haaretz.com>.

128. Aryeh Dean Cohen, *ULA Head: Free Pre-School Law a Sham*, JERUSALEM POST, Apr. 16, 1999, at A6.

129. *2002 Periodic Reports: Israel*, *supra* note 2, at 245, 252.

130. Interview with Dalia Sprinzak, Economics and Budgeting Administration, Ministry of Education, in Jerusalem, Isr. (Dec. 19, 2000); Aryeh Dean Cohen, *More Arab Communities Made Eligible for Free Preschool*, JERUSALEM POST, July 29, 1999, at 3; Relly Sa'ar, *Free Kindergarten List Expanded*, HA'ARETZ (Israel), July 29, 1999, available at <http://www.haaretz.com>; Sa'ar, *supra* note 127.

131. The apparent improvement in enrollment rates is due in part to the exclusion in the calculation of Arab residents of Jerusalem on the grounds that data were not available for many institutions. STAT. ABSTRACT ISR. 2004, *supra* note 3, tbl. 8.6. However, the government also remitted additional funds for

Arab three-year-olds and 72.3 percent of Palestinian Arab four-year-olds attended kindergarten, compared with 100 and 97.3 percent of Jewish three- and four-year-olds, respectively.<sup>132</sup> In the 1999-2000 school year, the most recent year for which this data has been made public, only 11.5 percent of teaching hours for government-run (“official”) kindergartens went to Arab kindergartens.<sup>133</sup>

Some have argued that attendance rates are lower among Palestinian Arab children because Palestinian Arab parents do not recognize the value of kindergarten education. This assessment, however, does not take into account that the government has campaigned to raise awareness among Jewish parents about the importance of kindergarten.<sup>134</sup> Nabila Espanioly, director of the Al-Tufula Pedagogical Center, commented:

They say Arab parents won’t send their kids to kindergarten, but when we open kindergartens, children do come . . . . They don’t ask whether Jewish immigrants want to send their kids to kindergarten. They know it is important so they don’t ask—they build kindergartens and the need is created. When it exists and is easy to access, then people use it. If I don’t know about it, it doesn’t mean that I don’t want it.<sup>135</sup>

A father of three- and four-year-old children from a village outside of Haifa explained:

I pay for private preschool because the law doesn’t extend to my village. I can because I work and my wife works. But most in my village cannot [afford a private education]. If the law [was being implemented in] my village, preschool would be free. Parents know about the law and ask. There are two Arab villages near the sea that got preschools, and

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kindergartens in some Arab communities during this period. Telephone interview with Rina Rosenberg, Adalah (Sept. 15, 2003).

132. STAT. ABSTRACT ISR. 2004, *supra* note 3, tbl. 8.6; *see also* 2004 FACTS AND FIGURES, *supra* note 17, at 69 (stating that 66 percent of Palestinian Arab children ages three to five attended public kindergarten, while 88 percent of Jewish children of the same ages attended).

133. PROPOSED BUDGET 2001, *supra* note 59.

134. 2002 *Periodic Reports: Israel*, *supra* note 2, at 252 (explaining that the government has achieved “nearly universal participation in pre-compulsory education (ages two to four) in the Jewish sector. . . . [through the] investment of resources in the construction of preschools and day care centers and the training of teachers and aids . . . [and] efforts made to enable families with little means to send their children to such frameworks.”).

135. Interview with Nabila Espanioly, Director, Al-Tufula Pedagogical Centre, in Nazareth, Isr. (Dec. 8, 2000).

they are sending their kids.<sup>136</sup>

Some Palestinian Arabs have resorted to litigation to try to get kindergartens established in their communities.<sup>137</sup>

Existing Arab kindergartens suffer the same, and in some cases worse, problems as the rest of the Arab school system: poor physical plants, less-developed curricula, larger classes, and fewer university-trained teachers.<sup>138</sup>

A kindergarten education from ages three and four appears to have long-term academic and social benefits, including the reduction of drop-out rates.<sup>139</sup> Education is cumulative; thus, many Palestinian Arab children start out behind Jewish children.

### C. Special Education

Israel's Special Education Law requires the state to provide free special education from the ages of three to twenty-one to those who need it.<sup>140</sup> Although rates of disability are higher among Palestinian Arab children, not all who need special education are identified

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136. Interview with Basem Kanane, in Haifa, Isr. (Dec. 3, 2000).

137. See, e.g., H.C. 8534/99, Parents Comm. in Segev Shalom, et al. v. Government-Appointed Council in Segev Shalom, et al. (petition file Dec. 1999) (petitioning to compel the state to establish kindergartens for 400 Arab Bedouin children), cited in Adalah: Legal Advocacy, at <http://www.adalah.org/eng/legaladvocacycultural.php#1163> (last visited Mar. 22, 2005); H.C. 3757/03, Ismael Mohammad Abu Guda et al. v. Sar Ha-Chinuch [Minister of Education et al.], available at <http://62.90.71.124/files/03/570/037/f06/03037570.f06.htm> (petition withdrawn 2003); H.C. 5108/04, *Ismael Mohammad Abu Guda*; see also HUMAN RIGHTS WATCH, *supra* note 17, at 123.

138. HUMAN RIGHTS WATCH, *supra* note 17, at 119-22.

139. For example, in a fifteen-year study of low income children in Chicago public schools who attended preschool at the ages of three and four, when compared to children who began kindergarten at age five, researchers found that children who went to preschool had a higher rate of school completion; more years of completed education; and lower rates of juvenile arrests, violent arrests, school dropout, grade retention (being "held back"), and use of special education services. The researchers concluded that the better educational and social outcomes from preschool were evident up to age twenty. See Arthur J. Reynolds et al., *Long-Term Effects of an Early Childhood Intervention on Educational Achievement and Juvenile Arrest: A 15-Year Follow-Up of Low-Income Children in Public Schools*, 285 JAMA 2339 (2001). The Dovrat Commission also recognized the importance of preschool education and its long-term effects on children's lives, and recommended that the public preschool system be expanded so that every child could have a full day of preschool at no charge from age three. DOVRAT REPORT, *supra* note 14, at 184, 188.

140. Special Education Law, 1988, 42 L.S.I. 117.

because of “the lack of an appropriate system of identification and diagnosis of children with learning disabilities in the Arab sector.”<sup>141</sup>

Palestinian Arab children who are diagnosed with disabilities receive less funding and fewer in-school services, and have fewer special schools than Jewish children. In 2003-2004, the Ministry of Education allocated only 17.6 percent of total special education hours to Arab education, an increase from 10.8 percent in 1996, but still less than Palestinian Arab’s proportion in the education system.<sup>142</sup>

Palestinian Arab children are discriminated against in each of the three educational options for disabled students, which are: integration in a regular classroom (“mainstreaming”), placement in a special education classroom in a regular school, and placement in a separate special education school. It is less likely that a Palestinian Arab child will be able to learn in a regular school because the Ministry of Education allocates fewer resources per Palestinian Arab child for integration, and fewer special education services to help Palestinian Arab children remain in regular schools, compared with resources and services allocated for Jewish children.<sup>143</sup> For example, educational

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141. JDC-BROOKDALE INSTITUTE DISABILITIES RESEARCH UNIT, PEOPLE WITH DISABILITIES IN ISRAEL: FACTS AND FIGURES (2000), at [http://brookdale-en.pionet.com/files/English\\_Sreports/Disability/factsandfigures.rtf](http://brookdale-en.pionet.com/files/English_Sreports/Disability/factsandfigures.rtf) [hereinafter JDC-BROOKDALE FACTS AND FIGURES] (citing D. NAON ET AL., CHILDREN WITH SPECIAL NEEDS STAGE I AND STAGE II: AN ASSESSMENT OF NEEDS AND COVERAGE BY SERVICES (JDC-Brookdale Institute, Isr. 2000)); see also H.C. 4177/04, Ysef Abu-Abied et al. v. Misrad Ha-Khinukh et al. [Ministry of Education], at <http://62.90.71.124/files/04/770/041/m01/04041770.m01.pdf>, cited in Press Release, Adalah, Adalah Petitions Supreme Court Challenging Education Ministry’s Discriminatory Appointment of Educational Psychologists for Arab Bedouin Schools in the Naqad (May 6, 2004), available at [www.adalah.org/eng/pressreleases/pr.php?file=04\\_05\\_06](http://www.adalah.org/eng/pressreleases/pr.php?file=04_05_06) (challenging the Ministry of Education’s appointment of only 30 percent of the educational psychologists that the Ministry’s criteria requires for Bedouin towns in the Negev, compared with the Ministry’s appointment of 80 percent of the required number of educational psychologists in Jewish towns in the Negev).

142. *Proposed Budget 2005*, supra note 49, at 145 (including the Druze and Bedouin in the calculation of special education hours).

143. Only 8.5 percent of all integration hours went to Arab schools in 1998-1999. See DAPHNA GOLAN, COMM. FOR CLOSING THE GAP, CLOSING THE GAPS IN ARAB EDUCATION IN ISRAEL: DATA ABOUT HEBREW-ARAB EDUCATION (Isr., Dec. 2000) (author’s translation). The Ministry of Education’s integration services in regular schools include special education teaching; paramedical and therapeutic services; special aids and services for blind, visually impaired, deaf, and hearing impaired students; remedial education; and creative and expressive therapies. See Special Education Department, State of Israel Ministry of Education, *Mainstreaming Students with Special Needs*, at <http://www.education.gov.il/special/english6.htm> (accessed Apr. 6, 2001) (on file with the New York

psychologists who do work at Arab schools often have caseloads that are too large for them to provide adequate individualized care.<sup>144</sup> The special education classes are also larger in Arab schools than in Jewish schools,<sup>145</sup> and children with a wide range of abilities are often placed in a single class.<sup>146</sup>

Palestinian Arab children who cannot attend a regular school have very few alternatives, and there is often only one Arab school in the country for children with a particular disability. Proportionately, there are fewer special education schools for Palestinian Arab children than for Jewish children. In 1998-1999, only 8.5 percent of special education kindergartens and only 16.5 percent of other special education schools were Arab schools.<sup>147</sup> Palestinian Arab teachers and administrators report that children have been turned away from these schools because there is no space for them. For example, at one Arab school for mentally disabled children, the principal explained in late 2000 that, although enrollment was officially restricted to eighty students, one hundred students were enrolled and she had another

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University Journal of International Law and Politics); *2002 Periodic Reports: Israel*, *supra* note 2, at 201, 298-300; *see also* H.C. 4177/04, *Ysef Abu-Abied* (petition alleging that the failure to appoint educational psychologists to the seven Bedouin towns in the Negev—at the same level as Jewish schools in the Negev or at the level required by law—violates the students' right to education and is discriminatory) (case pending at the time of writing).

144. Orna Kohn, an attorney for the nongovernmental organization Adalah, wrote in March 2000 to the Ministry of Education-appointed committee—called the “Margalit Committee”—that was examining the implementation of the Special Education Law: “The number of psychologists and educational consultants allocated for Arab schools is much lower than for schools for the Jewish population . . . The great shortage compels psychologists in the schools and local authorities that have slots for psychologists to spend most of their time in locating and diagnosing children and almost no time for treating them.” Letter from Orna Cohen, attorney for Adalah, to Professor Malka Margalit, Chairperson, Public Commission to Examine Implementation of the Special Education Law 18, 20 (Mar. 22, 2000) (on file with Human Rights Watch). Tel Aviv University professor Malka Margalit headed the committee, which reported its findings to the Ministry of Education in July 2000. The Report of the Committee for the Evaluation of the Implementation of the Special Education Law (Isr. Ministry of Educ., July 2000), at [http://www.google.com/search?q=cache:zeHUUB\\_wgAkJ:207.232.9.131/special/download/specal%2520edacation%2520law-rev2.rtf+%22Evaluation+of+the+Implementation+of+the+Special+Education+Law%22&hl=en](http://www.google.com/search?q=cache:zeHUUB_wgAkJ:207.232.9.131/special/download/specal%2520edacation%2520law-rev2.rtf+%22Evaluation+of+the+Implementation+of+the+Special+Education+Law%22&hl=en) (last visited Oct. 19, 2004).

145. *2002 Periodic Reports: Israel*, *supra* note 2, at 299; GOLAN, *supra* note 143.

146. Interview with special education teacher, in village in the Triangle region (Dec. 6, 2000); interview with teacher, in Um El-Fahm (Dec. 6, 2000).

147. GOLAN, *supra* note 143.

forty-five to fifty students on her waiting list. “Every day I get phone calls from parents, especially parents in the villages, wanting to get their children in,” she said. “I have to turn them away.”<sup>148</sup> As described above, the Ministry of Education responded to litigation by building sixty new special education classrooms in 2002, a positive, though not sufficient, development.<sup>149</sup> Moreover, the Ministry has not changed the overall way it allocates special education resources, which promises ongoing inequalities in the future.

The state’s legal obligation to provide special education includes a duty to provide “physiotherapy, speech therapy, occupational therapy, and treatments in additional professional disciplines that shall be determined including ancillary services, all in accordance with the needs of the child with special needs.”<sup>150</sup> Fewer of these services go to Palestinian Arab children, according to both the JDC-Brookdale Institute<sup>151</sup> and the Israeli government, which reported to the Committee on the Rights of the Child in 2001: “A significant proportion of disabled Arab children do not receive the pedagogical, psychological, and paramedical services, or the hours of instruction, for which they are eligible.”<sup>152</sup> The Margalit Committee, appointed by the Ministry of Education to review the implementation of the Special Education Law, also concluded in 2000 that “the Arab education system is discriminated against in an insufficiency of professional personnel and outdated equipment.”<sup>153</sup>

For example, many Arab special education schools lack speech therapists. The nongovernmental Arab Association for Human Rights

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148. Interviews with speech therapist and principal, in Isr. (Dec. 11, 2000).

149. Izenberg, *supra* note 111; Ass’n Civil Rights Isr., *60 New Special Education Classes Opened in Arab Sector*, available at <http://www.acri.org.il/English-acri/engine/story.asp?id=69> (last visited Jan. 21, 2003); see also H.C. 4219/03, Hani Aamer et al. v. Sarat Ha-Khinukh et al. [Minister of Education], available at <http://62.90.71.124/files/03/190/042/109/03042190.109.HTM>.

150. Special Education Law, 1988, 42 L.S.I. 117. Ancillary services include transportation, meals, auxiliary aides, medical, paramedical, psychological, and social services, and any other services ordered by the Minister. *Id.*

151. “Services in many areas are lacking in the Arab sector, including diagnosis of learning disabilities in Arabic, educational counseling, para-medical services, and psycho-social services, etc.” JDC-BROOKDALE FACTS AND FIGURES, *supra* note 141 (citing D. NAON ET AL., *supra* note 141, and M. MARGALIT, REPORT OF THE COMMISSION TO MAXIMIZE THE ABILITY OF STUDENTS WITH LEARNING DISABILITIES (Ministry of Educ. & Culture and the Ministry of Sci., Isr. 1997)).

152. 2002 Periodic Reports: Israel, *supra* note 2, at 299.

153. MINISTRY OF EDUCATION, REPORT OF THE COMMITTEE TO EXAMINE THE IMPLEMENTATION OF THE SPECIAL EDUCATION LAW 29-30 (Isr. 2000).

(HRA) reported in 2000 that of 1,185 speech therapists in Israel, only twenty-one were Palestinian Arab.<sup>154</sup> This shortage means that some Palestinian Arab children are treated by speech therapists who do not speak Arabic.<sup>155</sup> The shortage also causes Arabic-speaking therapists to assume responsibility for more children than they can reasonably treat.<sup>156</sup>

Even Arabic-speaking speech therapists may not be trained to treat Arabic-speaking students. In a March 22, 2000 letter to the Margalit Committee, an attorney for Adalah wrote:

[T]he few Arab students who study in these fields [paramedical fields including communication therapy, occupational therapy, physiotherapy, and art therapy] at the universities are not trained to handle the special needs of Arab children. For example, the curricula in the study of communication disorders do not relate to treating disorders of pronunciation of consonants that do not exist in Hebrew.<sup>157</sup>

One Palestinian Arab speech therapist interviewed had a B.A. in Arabic and special education, and a master's degree in reading disabilities from Israeli universities. All of her university training, except for her reading disabilities exam, was in Hebrew, she said. She admitted that applying her training to Arabic-speakers had been difficult for this reason.<sup>158</sup> Speech therapists, teachers of blind and low vision children, and general special education teachers in Arab schools also reported that they lacked basic equipment compared with

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154. *The Dynamics of Arab Special Education in Israel*, DISCRIMINATION DIARY (Arab Association of Human Rights (HRA), Isr.), Aug. 28, 2000, at <http://www.arabhra.org/dd000828.html>; see also Tamar Rotem, *Special Education for Arab Children Is Only Available in Hebrew*, HA'ARETZ (Israel), July 16, 2000 available at <http://www.haaretz.com> (describing a lack of Palestinian Arab speech therapists).

155. See, e.g., Rotem, *supra* note 154.

156. For example, at an Arab special education school visited in late 2000, there were only two part-time speech therapists for approximately seventy deaf or hearing impaired children. This was not enough time to provide speech therapy for every child. One speech therapist said: "Other kids need it and you feel bad." Interview with speech therapist, in Isr. (Dec. 11, 2000). A municipal employee explained that it was difficult to find speech therapists because only one school in Israel teaches speech therapy, only a few Palestinian Arabs attend each year, and graduates could earn more money in private clinics than working for the school system. Interview with municipal employee, in Isr. (Dec. 11, 2000).

157. Letter from Orna Cohen, Attorney for Adalah, to Professor Malka Margalit, Chair, Public Commission to Examine Implementation of the Special Education Law ¶ 17 (Mar. 22, 2000) (on file with author).

158. Interview with speech therapist, in Isr. (Dec. 11, 2000).

their colleagues at Jewish schools.<sup>159</sup>

That Palestinian Arab children with special needs also receive proportionately fewer services from government bodies other than the Ministry of Education makes the work of special education schools even more difficult.<sup>160</sup> According to the JDC-Brookdale Institute: “In the case of most [in-kind] services, the percentage of children with special needs receiving services in Jewish areas is much higher (in most cases double or even triple) than the percentage of children living in Arab areas.”<sup>161</sup> A principal at an Arab special education school noted, “[w]e know that it is not enough in school. Not many children have funds for therapy.”<sup>162</sup>

The shortage of classes, and the poor conditions under which special education is offered, are particularly acute for Negev Bedouin.<sup>163</sup>

Disabled children in mixed cities or near a Jewish community may attend a Jewish special education school, if there is one available. But these schools are designed for Jewish children—from the curricula and holiday schedule to the language of instruction, Hebrew. For example, speech therapists in some schools with both Jewish and Palestinian Arab hearing-impaired students do not speak Arabic. Attorney Orna Kohn, who has expertise litigating special education issues, explained to a journalist: “The problem is especially serious for children whose ability to acquire language is limited. This situation, where children are not taught in Arabic, prevents them from deriving full benefit from the education given to them and undermines their ability to acquire language and integrate into their own society.”<sup>164</sup>

Some disabled Palestinian children simply do not receive special education. According to the Israeli government’s 2001 report to the

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159. Interviews with speech therapist and teacher of vision-impaired students, in Isr. (Dec. 11, 2000); interview with special education teacher, in village in the Triangle region (Dec. 6, 2000).

160. See HUMAN RIGHTS WATCH, *supra* note 17, at 134. But see 2002 Periodic Reports: Israel, *supra* note 2, at 190-97 (stating that a higher proportion of Palestinian children than Jewish children received National Insurance Institute disability benefits in accordance with the greater rate of severe disabilities among Palestinian children).

161. SUSAN SAWICKI, FIRST RESULTS OF STUDY ON CHILDREN WITH SPECIAL NEEDS IN ISRAEL (JDC-Brookdale Institute, Isr. Dec. 1999), at [http://brookdale-en.pionet.com/files/English\\_Sreports/Children/prdisability.rtf](http://brookdale-en.pionet.com/files/English_Sreports/Children/prdisability.rtf).

162. Interview with principal of Arab special education school, in Isr. (Dec. 11, 2000).

163. HUMAN RIGHTS WATCH, *supra* note 17, at 139-40.

164. Rotem, *supra* note 154.



Committee on the Rights of the Child, “the lack of special education institutions in the Arab sector often means that placement committees’ decisions cannot be implemented. Children who have been diagnosed as needing special education do not necessarily receive it.”<sup>165</sup> A speech therapist and the principal of an Arab school for physically disabled children said that there are no high schools for Palestinian Arab deaf students who are unable to integrate into regular classrooms.<sup>166</sup> Tel Aviv University senior lecturer Andre Elias Mazawi, who was a member of the Margalit Committee appointed by the Ministry of Education in 1998 to review the implementation of the Special Education Law, stated that the committee found a placement committee that had stopped screening children for special education because there was no place to send them: The children were being stigmatized by the placement committee’s label of “disabled” without getting the benefit of special education.<sup>167</sup>

The Israeli government partly blames the gap in services on a lack of awareness among Palestinian Arabs “of the importance of education for the disabled child.”<sup>168</sup> Parents, teachers, and principals, however, reported that their requests to the Ministry for special education services were often unheeded.<sup>169</sup>

#### D. *Counselors and Truant Officers*

Despite higher average drop-out rates and lower academic performance among Palestinian Arabs, far fewer Arab schools than Jewish schools have counselors or truant officers, positions designed to keep students from dropping out. Negev Bedouin schools, in particular, lack these services.<sup>170</sup>

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165. *2002 Periodic Reports: Israel*, *supra* note 2, at 299.

166. Interviews with speech therapist and principal, in Isr. (Dec. 11, 2000).

167. Interview with Andre Elias Mazawi, senior lecturer and head of the Sociology of Education Program, School of Education, Tel Aviv University, in Tel Aviv, Isr. (Nov. 30, 2000).

168. *2002 Periodic Reports: Israel*, *supra* note 2, at 298 (citing limited awareness in the Arab sector of the importance of education for the disabled child, lack of special education teaching hours, lack of professional supervision, under-diagnosis of children who need special education, and insufficient awareness on the part of parents on the needs of disabled children).

169. HUMAN RIGHTS WATCH, *supra* note 17, at 130-32.

170. *Id.* at 94-101; *2002 Periodic Reports: Israel*, *supra* note 2, at 297-300; Katz Committee Report, *supra* note 106 (citing MINISTRY OF EDUCATION, CULTURE AND SPORT, PERSONNEL DATA IN EDUCATION FOR 1995-96 (1995) (Isr.)); Salim Abu-Rabiyya et al., *Survey of Bedouin Schools in the Negev*, ISRAEL EQUALITY MONITOR No. 5, Mar. 1996, at 1, 20-21, available at <http://www.adva.org/trans.html>.

Part of the problem is that Arab schools are not receiving the counselor positions to which they are entitled under the Ministry of Education's policy: Of 432 counselor positions due to Arab schools, only sixty had been filled in 2003.<sup>171</sup>

In January 2005, the Supreme Court found that counselor positions were assigned unequally to Bedouin towns in the Negev and that the difference in drop out rate between Jewish and Bedouin pupils made that inequity even more severe.<sup>172</sup> The Court held that affirmative action was required in order to remove the gap between the two sections "within a reasonable time" but dismissed the petition upon the Minister of Education's promise to add 9.5 counselor positions for Bedouin towns in the Negev—a number that would bring them to the level of Jewish towns in the Negev, but still below the number to which they are entitled under ministry policy.<sup>173</sup>

Truant officers, whose "job is to reduce dropping out,"<sup>174</sup> are also present at far fewer Arab than Jewish schools, again in part because truant officers are not allocated to Arab schools at the level required by Ministry policy.<sup>175</sup>

#### E. *Vocational and Technical Education*

Vocational education is less available to Palestinian Arab students than to Jewish students, and a smaller proportion of Palestinian Arab students are enrolled.<sup>176</sup> By age seventeen, most

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171. Press Release, Adalah, Adalah Petitions Supreme Court Demanding that Education Ministry Appoint Counselors for Arab Bedouin Students in the Naqab Who Drop Out of School (July 28, 2003) at <http://www.adalah.org/eng/pressreleases2003.php#>.

172. H.C. 6671/03, Munjid Abu Ghanem et al. v. Misrad Ha-Khinukh et al. [Ministry of Education], available at <http://62.90.71.124/files/03/710/066/r07/03066710.r07.HTM>, quoted in *In a Precedent-Setting Judgment on a Petition Filed by Adalah, Supreme Court Rules that Affirmative Action Policies in Education Should be Applied for the Arab Bedouin*, ADALAH NEWSL. (Adalah: Legal Center for Arab Minority Rights in Israel, Shafa'amr, Isr.), Jan. 2005, at [www.adalah.org/newsletter/eng/jan05/1.php](http://www.adalah.org/newsletter/eng/jan05/1.php).

173. *Id.*

174. 2002 *Periodic Reports: Israel*, *supra* note 2, at 263.

175. See Algazy, *supra* note 122 (citing State Comptroller Report 2001); STATE COMPTROLLER, REPORT 318 (1997); 1994/1995 PRIMARY AND INTERMEDIATE SCHOOLS REPORT, *supra* note 86; 1995/1996 SECONDARY SCHOOLS REPORT, *supra* note 116.

176. STAT. ABSTRACT ISR. 2004, *supra* note 3, tbl. 8.12. Israel's vocational schools were originally designed to absorb low-achieving Jewish students, primarily *Mizrahim*. Nongovernmental organizations, which run most vocational schools through contacts with the government, did not begin running vocational

Jewish students who leave the academic track go to vocational or agricultural schools. In contrast, most Palestinian Arab students who leave the academic track drop out of school altogether.<sup>177</sup> One explanation for the difference appears to be that there are simply fewer Arab vocational schools and not all students live near enough to a vocational school to attend.<sup>178</sup> Thus, for many Palestinian Arab students, vocational education does not serve as a buffer against dropping out, as it does for Jewish students.<sup>179</sup>

Palestinian Arab students who do follow vocational tracks have fewer and lower quality subjects to choose from. Instead of the high-level technological subjects offered at many Jewish vocational schools, Palestinian Arab students who opt for vocational tracks are often limited to preparation for work as “carpenters, machinists, or mechanics in a garage,” as one school director described it.<sup>180</sup> Palestinian Arab students on vocational tracks also do not perform as well on the matriculation examinations as Jewish students on vocational tracks do.<sup>181</sup>

#### F. Teacher Training

Teachers in Jewish schools have, on average, a higher level of education and more years of teaching experience.<sup>182</sup> This is due in

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schools in Palestinian Arab villages until the 1980s. Interview with Yair Levin, Deputy Director-General, Head of International Relations of the Ministry of Education, in Jerusalem, Isr. (Dec. 19, 2000); SWIRSKI, *supra* note 19, at 180-82; Roslyn Arlin Mickelson et al., *Education, Ethnicity, Gender, and Social Transformation in Israel and South Africa*, 45 COMP. EDUC. REV. 1, 11 (2001).

177. HUMAN RIGHTS WATCH, *supra* note 17, at 102.

178. In 2003-2004, there were twenty-one Arab technical (vocational) schools and no Arab agricultural schools; there were 106 Jewish technical schools and two agricultural schools. STAT. ABSTRACT ISR. 2004, *supra* note 3, tbl. 8.10. Although the spokesperson for ORT/Israel, a contracted body running vocational schools in Israel, claimed that it did not maintain statistics on how many schools either were taught in Arabic or were attended by Palestinian Arabs, the director of an ORT school attended only by Palestinian Arab students said that there were three such schools for Palestinian Arabs. E-mails from Sherrie Gazit, Director, Foreign Relations Section, Department of Marketing, Public Relations, and Foreign Affairs, ORT/Israel, to the author (Mar. 1 and Mar. 18, 2001) (on file with Human Rights Watch); interview with school director, in Isr. (Dec. 9, 2000).

179. HUMAN RIGHTS WATCH, *supra* note 17, at 103-04.

180. Interview with school director, in Isr. (Dec. 9, 2000); *see also* HUMAN RIGHTS WATCH, *supra* note 17, at 104-07 (detailing interviews with students and school administrators).

181. STAT. ABSTRACT ISR. 2004, *supra* note 3, tpls. 8.21, 8.23.

182. *Id.*, tbl. 8.30; *Proposed Budget 2005*, *supra* note 49, at 80 (teaching experience). A 1994 study found the shortages of qualified teachers far worse at

part to the fact that Palestinian Arab teachers have had fewer opportunities to obtain academic credentials: discrimination against one generation produces less well-trained teachers in the next. There are far fewer Arab teacher training colleges—only two accredited to award an academic degree (B.Ed.) in 1999-2000 compared with about forty accredited Jewish teacher training colleges.<sup>183</sup> There is also evidence that the quality of education offered at Arab colleges is of a lower standard.<sup>184</sup>

The Ministry of Education also offers less “in-service” training to Palestinian Arab teachers already within the system than is routinely offered to Jewish teachers.<sup>185</sup> In-service training of teachers tends to improve students’ performance, according to a study published in 2001, which found that in secular primary schools in Jerusalem, an in-service training program “raised children’s achievement in reading and mathematics.”<sup>186</sup> Some of the largest differences in levels of training and experience, when compared with teachers in Jewish schools, are found in Arab special education schools and schools for Negev Bedouin.<sup>187</sup>

Teachers’ wages are determined both by their teaching experience and their level of education.<sup>188</sup> Because teachers at Jewish

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the preschool level. See GHADA ABU JABER, *A SURVEY OF EARLY CHILDHOOD EDUCATION IN THE ARAB SECTOR OF ISRAEL* 21, 45 (Hamutal De-Lima ed., 1994).

183. Institutions of Higher Education in Israel, Council for Higher Education, Ministry of Education, at <http://www.che.org.il/eng.htm> (July 2003). A few Jewish teacher training colleges offer programs tailored for Palestinian Arabs. HUMAN RIGHTS WATCH, *supra* note 17, at 108 n.355.

184. On average, Jewish colleges are smaller and have the equivalent of more full-time teachers per student than Arab colleges. STAT. ABSTRACT ISR. 2004, *supra* note 3, tbl. 8.36; see also HUMAN RIGHTS WATCH, *supra* note 17, at 109 (detailing interviews with students and professors).

185. 1994/1995 PRIMARY AND INTERMEDIATE SCHOOLS REPORT, *supra* note 86; see also HUMAN RIGHTS WATCH, *supra* note 17, at 111-12.

186. Joshua D. Angrist & Victor Lavy, *Does Teacher Training Affect Pupil Learning? Evidence from Matched Comparisons in Jerusalem Public Schools*, 19 J. LAB. ECON., 343, 365 (2001).

187. 2002 *Periodic Reports: Israel*, *supra* note 2, at 300; PARENTS’ COMMITTEE FOR SPECIAL EDUCATION FOR ARABS IN THE NEGEV, SHATIL, ARAB SPECIAL EDUCATION IN THE NEGEV: DISCRIMINATION IN AFFIRMATIVE ACTION 7 (Isr. 2000); Katz Committee Report, *supra* note 106 (citing A. MELITZ, CHANGES IN THE BEDOUIN EDUCATION SYSTEM (Ministry of Educ., Culture & Sport, Isr. 1995)).

188. MINISTRY OF EDUCATION, CRITERIA FOR ASSIGNING SALARY AND SENIORITY (Isr.), at [www.education.gov.il/sherut/download/1\\_29\\_1\\_2.rtf](http://www.education.gov.il/sherut/download/1_29_1_2.rtf) (last visited June 8, 2001); STAT. ABSTRACT ISR. 2004, *supra* note 3, at 64-65 (“the grade according to which the teachers’ wages are calculated is generally determined by the teacher’s educational level and pedagogical qualification”).

schools have, on average, a higher level of education and more years of experience, they are, on average, paid more than teachers at Arab schools. Moreover, financial incentives for teachers assigned in particularly deprived areas like parts of the Negev are lower than those made available to teachers at Jewish schools identified as hardship postings.<sup>189</sup> Thus, Arab schools receive less money for teacher salaries.

### G. Curriculum

Arabic is an official language of Israel and the language of instruction in Israel's Arab schools. Nevertheless, the government devotes inadequate resources toward developing Arabic curricula.<sup>190</sup> Common subjects are developed with little or no Palestinian Arab participation and translated years after the Hebrew language material is published; subjects unique to Arab education have been neglected.<sup>191</sup> No curriculum in Arabic for special education existed at all until 2000. "We adapt curriculum from regular schools and try to make it easier," a school speech therapist explained in December 2000.<sup>192</sup> Even where a sound curriculum is in place, Palestinian Arab teachers have considerably less choice in textbooks and teaching material than do Jewish teachers.<sup>193</sup>

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189. According to a 2001 news report, a comparative study undertaken by the Negev's Educational Coalition found that "bonuses given to Jewish teachers who work in national priority development areas are almost twice as lucrative as those which go to educators who teach in Bedouin communities in the Negev." Algazy, *supra* note 122. The news report went on to say that:

The Jewish teachers have their seniority status accelerated by three or four years (meaning that their wages are higher), and the worker's share of payments in "retraining and further study" funds (*keren hishtalmut*) are subsidized for these teachers. Nothing like that is provided to teachers who head south to teach Bedouin pupils in Negev schools. Teachers who work in Jewish schools in priority development areas receive rent subsidies worth NIS 12,000 [\$3,000] a year; and they can receive an additional NIS 8,000 [\$2,000] for travel expenses, and higher education tuition fees. Teachers who go south to work in the Negev Bedouin schools are eligible for annual rent and travel expense incentives worth just NIS 10,000 [\$2,500] total.

*Id.*; see also *Proposed Budget 2005*, *supra* note 49.

190. For more information about curricula in Arab education, see HUMAN RIGHTS WATCH, *supra* note 17, at 144-60.

191. HUMAN RIGHTS WATCH, *supra* note 17, at 146-49.

192. Interview with speech therapist, in Isr. (Dec. 11, 2000).

193. Interview with Khawla Saadi, Director of Curriculum for Israeli Arab Schools, Ministry of Education, in Jerusalem, Isr. (Dec. 20, 2000); Interview with Daphna Golan, Chair, Committee for Closing the Gap, Pedagogical Secretariat,

Both teachers and students reported that they found some of the curricula's content alienating.<sup>194</sup> For example, in Hebrew language class, Palestinian Arab students are required to study Jewish religious texts, including Tanach (Jewish bible).<sup>195</sup> There was no written curriculum for Hebrew instruction for grades ten to twelve as of the end of 2000,<sup>196</sup> but the matriculation exam (*bagrut*), which all students graduating from high school must take, contains a mandatory unit on Tanach. While the Ministry of Education states that Palestinian Arab students may take the bible portion of the matriculation exams on Christianity, Islam or the Druze religion, Palestinian Arab students and teachers reported that their Hebrew language exam covers Jewish religious texts.<sup>197</sup> Also, the Central Bureau of Statistics has written that compulsory subjects in Arab education include "Hebrew (incl. Bible and literature)."<sup>198</sup> A Hebrew language teacher in an Arab high school described her pupils' reaction: "Some children see it as imposed on them. It makes it hard for the teacher to motivate students to study. It doesn't relate to Arab children as a whole. . . but because of the *bagrut* [matriculation exam] we have to cover the material."<sup>199</sup> Although in Arab schools students also study Arab culture or Christianity, Islam, or Druze heritage, less time is allocated for the study of these subjects than is allocated for the study of Jewish culture and religion in Jewish schools.<sup>200</sup>

Palestinian Arab students and teachers also expressed a desire to

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Ministry of Education, in Jerusalem, Isr. (Dec. 20, 2000); Interview with Said Barghouti, Inspector of History for Arab Schools, Ministry of Education, in Nazareth, Isr. (Dec. 9, 2000); Interview with Nabila Espanioly, Director, Al-Tufula Pedagogical Center, in Nazareth, Isr. (Dec. 8, 2000); Interview with Zafer Shurbaji, Fund for the Development of Technological Education in the Arab Sector, in Haifa, Isr. (Dec. 7, 2000); Interview with Professor Butrus Abu-Manneh, Haifa University, member of the committee charged with revising the history curriculum for Arab high schools, in Haifa, Isr. (Dec. 5, 2000); Interview with Jony Mansour, Dean of Mar Elias College, in I'blin, Isr. (Dec. 5, 2000); Interviews with teachers and school administrators in Arab schools, in Isr. (Nov.-Dec. 2000); see also HUMAN RIGHTS WATCH, *supra* note 17, at 151-52.

194. Interviews with teachers and students in Arab schools, in Isr. (Nov.-Dec. 2000).

195. *Id.*; CENTRAL BUREAU OF STATISTICS, PUPILS WHO TOOK MATRICULATION AND FINAL EXAMS AND ARE ENTITLED TO CERTIFICATES 1995/1996, at XXIII (2000).

196. Interview with Khawla Saadi, Director of Curriculum for Arab Israeli Schools, Ministry of Education, in Jerusalem, Isr. (Dec. 20, 2000).

197. Interviews with teachers and students in Arab schools, *supra* note 194.

198. CENTRAL BUREAU OF STATISTICS, *supra* note 195.

199. Interview with Hebrew language teacher, in Nazareth, Isr. (Dec. 8, 2000).

200. 2004 FACTS AND FIGURES, *supra* note 17, at 30-33.

study more works of Palestinian writers, including those who write in Hebrew, and more about Palestinian history. Others suggested including material related to Palestinian Arab identity in subjects common to Jewish and Arab schools, and not just those subjects studied only in Arab schools.<sup>201</sup> Indeed, some textbooks in use in 2000-2001 included only Hebrew names and Jewish cultural references and presented stereotypical depictions of Palestinian Arabs describing them, for example, as strictly manual laborers.<sup>202</sup>

Thus, while appreciation for different cultures and values is an important part of education, considering the relatively minimal instruction available to Palestinian Arab children in their own cultural identity and religion compared with their Jewish counterparts, the state's educational emphasis on instilling Jewish culture and religion in Palestinian Arab children is problematic.

The Ministry of Education has recently made some positive reforms in Arabic curricula, including history, geography, and civics. Many of these changes, however, have not been fully implemented due to a lack of textbooks and other teaching materials.<sup>203</sup>

#### IV. DISCRIMINATION AND ACADEMIC PERFORMANCE

Palestinian Arab students drop out at higher rates and, on average, at a younger age than Jewish students. Those who persevere are still less likely to earn a high school diploma, and more likely to be turned away from higher education and trained for low-skill work.

In 2003, Palestinian Arab seventeen-year-olds had dropped out at more than three times the rate and at a younger average age than their Jewish counterparts.<sup>204</sup> Those who stayed in school did not perform as well on national examinations, especially the matriculation examinations (*bagrut*)—the prerequisite for a high school diploma and university application.<sup>205</sup> Those who did pass were less likely to meet

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201. Interview with Andre Elias Mazawi, Senior Lecturer and Head of the Sociology of Education Program, School of Education, Tel Aviv University, in Tel Aviv, Isr. (Nov. 30, 2000).

202. *Id.*; Interview with high school teacher, in Nazareth, in Isr. (Dec. 8, 2000); Interview with Nabila Espanioly, Director, Al-Tufula Pedagogical Center, in Nazareth, Isr. (Dec. 8, 2000).

203. *See supra* note 193; HUMAN RIGHTS WATCH, *supra* note 17, at 147-60.

204. In the 2002-2003 school year, 20.1 percent of Palestinian Arab seventeen-year olds, compared with 5.4 percent of Jewish seventeen-year olds, were no longer in school. STAT. ABSTRACT ISR. 2004, *supra* note 3, tbl. 8.7. This data excludes Arab residents of Jerusalem, which would likely increase the disparity between the two groups. *Id.*, tbl. 8.7, n.2.

205. In 2003, 70 percent of students in Jewish schools who took the

the standards for university admittance.<sup>206</sup> Others were barred from a university education by the required psychometric examination, a translation of the aptitude test given to students in the Jewish school system, which Palestinian Arab educators describe as culturally weighted and a greater bar for Palestinian Arab students than for Jewish students.<sup>207</sup> Palestinian Arabs seeking university admission were rejected at a far higher rate than were Jewish applicants,<sup>208</sup> and Palestinian Arabs comprised only 6.4 percent of the students receiving their first university degree in the 2001-2002 school year.<sup>209</sup>

What determines a student's educational performance is, of course, complex. In addition to the discrimination addressed here, factors within the Palestinian Arab community<sup>210</sup> as well as lower returns on, or benefits from, education for Palestinian Arabs also play a role.<sup>211</sup> However, many of these factors, too, are indirect

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matriculation examination were entitled to a certificate, compared with 56.9 percent of students in Arab schools. *Id.*, tbl. 8.23. The percentage of Bedouin seventeen-year-olds entitled to a matriculation certificate was half that of Jewish seventeen-year-olds in 2002. 2004 FACTS AND FIGURES, *supra* note 17, at 84.

206. STAT. ABSTRACT ISR. 2004, *supra* note 3, tbl. 8.21.

207. HUMAN RIGHTS WATCH, *supra* note 17, at 34-35; see also Haim Watzman, *Israel's Arab Education Gap*, CHRON. HIGHER EDUC. (ISR.), Mar. 26, 2004, at 39; Relly Sa'ar, *Universities Return to Aptitude Exams to Keep Arabs Out*, HA'ARETZ (Israel), Nov. 27, 2003.

208. In 2002-2003, 46.5 percent of Palestinian Arab university applicants were rejected, compared to 18.8 percent of Jewish applicants. STAT. ABSTRACT ISR. 2004, *supra* note 3, tbl. 8.38.

209. *Id.*, tbl. 8.45. It should be noted that other factors outside of the scope of this Article, especially advantages for military service such as grants for higher education or, in some cases, partial or total exemptions from university tuition, affect university attendance and academic performance.

210. For a detailed analysis of internal factors that affect Palestinian Arabs' performance, see Khalil Rinnawi, *Structural Obstacles to Education Amongst the Palestinian Minority in Israel*, ISRAEL EQUALITY MONITOR No. 6, Mar. 1996, at 1, 8, 12, 18-19, 24, 28. Rinnawi concludes that along with discrimination, teachers' status; teaching methods; relations among the school, the municipality, and the Ministry of Education; parental attitudes toward education; and, especially, tracking affect Palestinian Arab school children's performance. *Id.* Among Negev Bedouin, low parental involvement, low economic status, the marginality of Bedouin society in Israel, lack of Bedouin representation at high levels in the Ministry of Education, and "the absence of any official encouragement" contribute to high drop-out rates. Salim Abu-Rabiyya et al., *Survey of Bedouin Schools in the Negev*, ISRAEL EQUALITY MONITOR No. 5, Mar. 1996, at 7-8, available at <http://www.adva.org/trans.html>.

211. See SWIRSKI, *supra* note 19, at 220 (discussing low returns on education for Palestinian Arabs); Interview with Andre Elias Mazawi, senior lecturer and head of the Sociology of Education Program, School of Education, Tel Aviv University, in Tel Aviv, Isr. (Nov. 30, 2000).



consequences of discrimination. For example, students who benefit less from academic credentials because of discrimination from employers have less incentive to acquire these credentials.

Undeniably, discrimination has an effect on academic performance.<sup>212</sup> The link is particularly striking when the Israeli government implements programs designed to improve performance and decrease drop-out rates in a discriminatory manner. The government has used low academic performance among certain groups of Jewish children to justify additional programs and resources for those students without providing equal assistance to similarly or worse situated Palestinian Arab students.

Some claim that cultural attitudes towards girls' education are responsible for Palestinian Arabs' lower academic performance. Cultural attitudes have carried greater weight in the past, and by many reports they are still an issue among Bedouin, particularly for higher education.<sup>213</sup> If these were a primary barrier, however, Palestinian Arab girls would be performing at lower rates than boys, driving down the average. They are not. In 2003, Palestinian Arab girls on average outperformed boys on the matriculation examinations<sup>214</sup> and were less likely than boys to drop out of grades seven through twelve.<sup>215</sup> This is true for Bedouin girls,<sup>216</sup> as well as Palestinian Arab girls nationally.

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212. See, e.g., Victor Lavy, *Disparities Between Arabs and Jews in School Resources and Student Achievement in Israel*, 47 ECON. DEV. & CULTURAL CHANGE 175, 189 (1998) (finding that the gaps between resources allocated by the central government to Jewish and Arab schools "is a major cause for the poor performance of Arab primary school children in cognitive achievement tests in arithmetics [sic] and reading comprehension relative to the performance of Jewish school children. The gap in resources is augmented by a much lower socioeconomic status of the Arab population[.]").

213. It should be noted, however, that a privately funded program that provides scholarships and academic support to Negev Bedouin students at Ben Gurion University has dramatically increased girls' attendance; see Lily Galili, *Patron Saint of the Bedouin: A Jewish Millionaire*, HA'ARETZ, Oct. 16, 2003, available at <http://www.haaretz.com>; *Bedouin Students at BGU: Overall Growth Triples, Women's Enrollment Soars*, NEWSLETTER (Ctr. for Bedouin Stud. & Dev., Isr.), vol. 4, Summer 2003, at 1, 10.

214. STAT. ABSTRACT ISR. 2003, *supra* note 3, tbls. 8.21, 8.23.

215. *Proposed Budget 2005*, *supra* note 49, at 165; 2004 FACTS AND FIGURES, *supra* note 17, at 77; STAT. ABSTRACT ISR. 2004, *supra* note 3, tbl. 8.19.

216. In 2002-2003, in both recognized and unrecognized Bedouin localities in the Negev, fewer than half of the students in grades one through nine were girls. See CTR. FOR BEDOUIN STUDIES AND DEV. AT BEN GURION UNIV. OF THE NEGEV, *supra* note 108, tbl. VI/2.1.1, available at [http://w3.bgu.ac.il/bedouin/statistical\\_yearbook\\_2004/board\\_e2.htm](http://w3.bgu.ac.il/bedouin/statistical_yearbook_2004/board_e2.htm). According to a study of Bedouin mothers' attitudes towards their children's education, Bedouin girls and women

One possible explanation for this fact is that there are fewer high schools and, thus, students are more likely to have to travel farther to reach them. Travel distance appears to disproportionately cause girls to drop out.<sup>217</sup> As explained above, many Bedouin living in unrecognized villages in the Negev must travel long distances even to reach a primary school.<sup>218</sup>

It is also argued that family income, rather than discrimination, explains differences between Jewish and Palestinian Arab students. Economic class clearly affects educational performance. When Jewish and Palestinian Arab children of the same economic level are compared, however, Jewish children appear to out-perform Palestinian Arab children. Although available data is incomplete, it seems that Jewish children on average still drop out at lower rates and perform better on national examinations than Palestinian Arab children of the same economic level.<sup>219</sup> For example, according to news reports,

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“were (and continue to be) considered the ‘bearers of the family honor,’ and thus, their families preferred not to risk their reputations by allowing girls to travel among and mix with males from other tribes. Therefore, there has been much more reluctance among the Bedouin over sending their daughters to school than over sending their sons to school, especially when schools were far away.” Ismael Abu-Saad et al., *Bedouin Arab Mothers’ Aspirations for Their Children’s Education in the Context of Radical Social Change*, 18 INT’L J. EDUC. DEV. 347, 351 (1998) (internal citations omitted). Of three hundred nine women surveyed from 1991-1992 about their daughters finishing high school, 79.6 percent wanted their daughters to finish; although, of those surveyed, 24.6 percent stated that financial barriers, the fact that their extended families did not allow girls to finish high school, and the fact that schools were too far away would prevent their daughters from finishing. *Id.* at 353. It should be noted that there was no difference in responses from mothers who lived in recognized and unrecognized settlements. The authors conclude that the data do not support the hypothesis “that the planned towns would lead to a social change in relation to girls’ education, given the easier access to schools.” *Id.* at 357; *see also* Ismael Abu-Saad, *Bedouin Arab Education in the Context of Radical Social Change: What is the Future?*, 25 COMPARE 149, 157 (1999).

217. *See supra* note 123. The head of a parents’ committee in an unrecognized Bedouin village outside of Be’er Sheva said that many of the girls in the village primary school would not continue their studies because of the distance to the nearest high school. Interview with the head of a parents’ committee, in *Isr.*, (Dec. 17, 2000).

218. *See* Part III.A.

219. *See 2002 Periodic Reports: Israel, supra* note 2, at 256 (reporting that in 1993, 81 percent of “lower class” and 99 percent of “middle and upper class” Jewish students ages fifteen to eighteen attended school, compared with 59 percent of lower class and 81 percent of middle and upper class Palestinian Arabs and 31 percent of lower class Bedouin); GOLAN, *supra* note 143, at 5 (results of national math, English, and science exams in the fourth, sixth, and eighth grades by sector and economic level) (author’s translation); STAT. ABSTRACT ISR. 2004,

between 1991 and 1998, 13 percent of students in development towns who passed the matriculation examinations went on to university, compared with 5 percent of students in Palestinian Arab localities.<sup>220</sup> Moreover, although low income Jewish students—especially new immigrant, Sephardic, or Mizrahi students<sup>221</sup>—face some of the same challenges related to poverty that Palestinian Arab students do, the government provides disadvantaged Jewish students with a battery of resources designed to improve academic performance and to keep them from dropping out. As explained above, these are not provided equally to Palestinian Arab students. Indeed, the argument is circular in that discrimination perpetuates class differences: When one generation has fewer educational opportunities of poorer quality, their children grow up in families with lower incomes and learn from less well-educated teachers.

#### V. ISRAEL'S OBLIGATIONS UNDER INTERNATIONAL AND NATIONAL LAW

The right to education straddles the division of human rights into civil and political, on one hand, and economic, social and cultural, on the other hand, thereby affirming the conceptual universality of human rights. Both the right to education and rights in education thus ought to be recognized and protected.

Moreover, many human rights can only be accessed through education.

—K. Tomaševski, U.N. Special Rapporteur  
on the Right to Education<sup>222</sup>

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*supra* note 3, tbl. 8.21 (providing statistics for matriculation exam results by sector and socio-economic cluster of locality of residence; however, many twelfth graders are not classified according to this last classification); *see also* SHLOMO SWIRSKI, STUDENTS PASSING MATRICULATION EXAMS IN 1999 (Adva Center, Isr. 2000), *available at* <http://www.adva.org/bagrut1999e.html>; and Mazawi, EDUC. STUD., *supra* note 76, at 223-40 (discussing the importance of socio-economic status and locality of residence in relation to education).

220. *See* Hana Kim, *The Demon World of Sharon and Livnat*, HA'ARETZ (Israel), Mar. 13, 2001, *available at* <http://www.haaretz.com>.

221. Ashkenazi Jews are of Eastern European origin; Sephardic Jews are descendants of Jews expelled from Spain and Portugal in the fifteenth and sixteenth centuries who resettled in the Mediterranean region, the Balkans, and elsewhere; Mizrahi Jews are, literally, Eastern Jews, or Jews from the Middle East.

222. KATARINA TOMAŠEVSKI, REMOVING OBSTACLES IN THE WAY OF THE RIGHT TO EDUCATION 9 (Swedish International Development Cooperation Agency, Right to Education Primers No. 1, 2001).

### A. *International Law*

Education is one of the most protected rights in international law. Fundamental to the right to education is the state's obligation to provide it in a non-discriminatory manner. The Universal Declaration of Human Rights, which establishes a right to education, explicitly prohibits discrimination and provides all persons equal protection under the law.<sup>223</sup> Israel is a party to the International Covenant on Civil and Political Rights (ICCPR),<sup>224</sup> the International Covenant on Economic, Social, and Cultural Rights (ICESCR),<sup>225</sup> the Convention on the Rights of the Child (CRC),<sup>226</sup> the Convention Against Discrimination in Education,<sup>227</sup> the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),<sup>228</sup> and the Convention on the Elimination of All Forms of Discrimination against

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223. Universal Declaration of Human Rights, G.A. Res. 217(A), U.N. GAOR, 3d Sess., arts. 2, 7, 26, U.N. Doc. A/810 (1948) [hereinafter UDHR].

224. International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976, and ratified by Israel Oct. 3, 1991) [hereinafter ICCPR]. Although the ICCPR does not list primary education as a core civil and political right, Article 24 guarantees each child "the right to such measures of protection as are required by his status as a minor on the part of his family, society and the State." *Id.* art. 24. This provision of Article 24 has been interpreted to include education sufficient to enable each child to develop his or her capacities and enjoy civil and political rights as a measure of protection. *General Comment 17, Article 24*, U.N. GAOR Hum. Rts. Comm., 35th Sess., ¶¶ 3, 5 (1989), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 23, U.N. Doc. HRI/GEN/1/Rev.1 (1994). On the right to education in international law, see generally Manfred Nowak, *The Right to Education, in ECONOMIC, SOCIAL, AND CULTURAL RIGHTS* 245-71 (Asbjorn Eide et al. eds., 2d ed. 2001).

225. International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force Jan. 2, 1976, and ratified by Israel Oct. 3, 1991) [hereinafter ICESCR].

226. Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., 61st plen. mtg. at 167, U.N. Doc. A/RES/44/25 (ratified by Israel Nov. 2, 1991).

227. Convention Against Discrimination in Education, *adopted* Dec. 14, 1960, art. 2(b), 429 U.N.T.S. 93, 96-98.

228. The Convention on the Elimination of All Forms of Racial Discrimination obligates Israel to "guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . [t]he right to education." Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, art. 5, 660 U.N.T.S. 195, 220-21 (ratified by Israel Feb. 2, 1979).

Women (CEDAW),<sup>229</sup> which contain similar provisions.

1. *The Right to Education*

Everyone has the right to education.

—Universal Declaration of Human Rights, Article 26

The right to education is set forth in the Universal Declaration of Human Rights, the ICESCR, and the Convention on the Rights of the Child.<sup>230</sup> Each of these documents specifies that primary education must be “compulsory and available free to all.” Secondary education, including vocational education, must be “available and accessible to every child,” with the progressive introduction of free secondary education.<sup>231</sup> The Convention on the Rights of the Child further specifies that states must “make educational and vocational information and guidance available and accessible to all children” and “take measures to encourage regular attendance and the reduction of drop-out rates.”<sup>232</sup>

The U.N. Committee on Economic, Social, and Cultural Rights has interpreted what is required to fulfill the right to education in a General Comment on article 13 of the ICESCR.<sup>233</sup> According to the committee, educational institutions must be both available in sufficient quantity and physically accessible—that is, “within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g., a neighbourhood school) or via modern technology (e.g., access to a ‘distance learning’ programme).”<sup>234</sup>

2. *The Right to Freedom from Discrimination in Education*

Because different states have different levels of resources, international law does not mandate exactly what kind of education

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229. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, art. 10, G.A. Res. 34/180, U.N. GAOR, Hum. Rts. Comm., 34th Sess., Supp. No. 40, at 195, U.N. Doc. A/RES/34/180 (1979) (ratified by Israel Nov. 2, 1991).

230. UDHR, *supra* note 223, art. 26; ICESCR, *supra* note 225, art. 13; Convention on the Rights of the Child, *supra* note 226, art. 28, at 170.

231. Convention on the Rights of the Child, *supra* note 226, art. 28(1)(a)-(b), at 170; ICESCR, *supra* note 225, art. 13(2); *see* UDHR, *supra* note 223, art. 26(1).

232. Convention on the Rights of the Child, *supra* note 226, art. 28(1)(d)-(e), at 170.

233. *General Comment 13, The Right to Education (Article 13 of the Covenant)*, U.N. ESCOR Comm. on Econ., Soc. & Cultural Rts., 21st Sess., at ¶ 37, U.N. Doc. E/C.12/1999/10 (1999) [hereinafter *General Comment 13*].

234. *Id.* ¶ 6.

must be provided beyond certain minimum standards. Accordingly, the right to education is considered a progressive right: by becoming party to the international agreements, a state agrees “to take steps . . . to the maximum of its available resources” to the full realization of the right to education.<sup>235</sup> But although the right to education is a right of progressive implementation, the prohibition on discrimination is not. The Committee on Economic, Social and Cultural Rights has stated: “The prohibition against discrimination enshrined in Article 2(2) of the [ICESCR] is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.”<sup>236</sup>

Thus, regardless of its resources, the state must provide education “on the basis of equal opportunity, . . . without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”<sup>237</sup> In addition, the guarantees of equality before the law and the equal protection of law prevent a government from arbitrarily making distinctions among classes of persons in promulgating and enforcing its laws. A state violates the prohibition on discrimination in education both with direct action, such as introducing or failing to repeal discriminatory laws, as well as when it fails to take measures “which address de facto educational

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235. ICESCR, *supra* note 225, art. 2(1); *see also* Convention on the Rights of the Child, *supra* note 226, art. 28, at 170. *But see General Comment 13, supra* note 233, ¶ 44 (“The realization of the right to education over time, that is ‘progressively,’ should not be interpreted as depriving States parties’ obligations of all meaningful content. Progressive realization means that States parties have a specific and continuing obligation ‘to move as expeditiously and effectively as possible’ towards the full realization of article 13.”); *General Comment 3, The Nature of States Parties Obligations*, U.N. ESCOR Comm. on Econ., Soc. and Cultural Rts., 5th Sess., ¶ 2 (1990), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 48, U.N. Doc. HRI/GEN/1/Rev.1 (1994) [hereinafter *General Comment 3*] (“Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”).

236. *General Comment 13, supra* note 233, ¶ 31; *see also General Comment 11, Plans of Action for Primary Education*, U.N. ESCOR Comm. on Econ., Soc. and Cultural Rts., 20th Sess., ¶ 10, U.N. Doc. E/C.12/1999/4 (1999); *General Comment 3, supra* note 235, ¶ 1 (stating that the obligation to guarantee the exercise of rights in the ICESCR without discrimination is “of immediate effect”).

237. Convention on the Rights of the Child, *supra* note 226, art. 2(1), 28(1), at 167, 170.

discrimination.”<sup>238</sup> States must ensure that their domestic legal systems provide “appropriate means of redress, or remedies, . . . to any aggrieved individual or groups,” including judicial remedies.<sup>239</sup>

The Convention Against Discrimination in Education, ratified by Israel in 1961, spells out what constitutes discrimination in education. The convention defines “discrimination” as:

any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular . . . [o]f limiting any person or group of persons to education of an inferior standard.<sup>240</sup>

The convention prohibits discrimination in “access to education, the standards and quality of education, and the conditions under which it is given.”<sup>241</sup> Specifically, it prohibits:

any differences of treatment by the public authorities between nationals, except on the basis of merit or need . . . [and] in any form of assistance granted by the public authorities to educational institutions, any restrictions or

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238. *General Comment 13*, *supra* note 233, ¶ 59.

239. *General Comment 9, The Domestic Application of the Covenant*, U.N. ESCOR Comm. on Econ., Soc. and Cultural Rts., 19th Sess., ¶¶ 2, 9, U.N. Doc. E/C.12/1998/24 (1998); *see also General Comment 3*, *supra* note 235, ¶ 5.

240. Convention Against Discrimination in Education, *supra* note 227, art. 1, at 96. This convention was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) on December 14, 1960, and entered into force on May 22, 1962. The Convention Against Discrimination in Education and the subsequent Protocol Instituting a Conciliation and Good Offices Commission established a mechanism for states parties to enforce the convention against other states parties, but these provisions have never been used. Despite this, the convention remains an important source of international law on education, as attested to by recent references to it in the UNESCO Executive Board Decisions adopted at the 152nd session in Paris, October 16-17, 1997, 152 EX/Decisions, UNESCO, 152d Sess., at 26-28, U.N. Doc. 152 EX/SR.7 (1997); at the Committee on Economic, Social and Cultural Rights, 21st session, November 15-December 3, 1999, U.N. ESCOR, 21st Sess., Supp. No. 2, at 119-20, U.N. Doc. E/C.12/1999/11 (2000); and in the thirteen new signatories to the Convention Against Discrimination in Education since 1993, bringing the total number of states-parties to ninety-one, State-Parties to the Convention Against Discrimination in Education, UNESCO Legal Instruments, at <http://erc.unesco.org/cp/convention.asp?KO=12949&language=E> (last visited Oct. 15, 2004).

241. Convention Against Discrimination in Education, *supra* note 227, art. 1(2).

preference based solely on the ground that pupils belong to a particular group.<sup>242</sup>

While the Convention Against Discrimination in Education permits the establishment and maintenance of separate educational systems for religious or linguistic reasons, participation in these systems must be optional, the education offered must be “in keeping with the wishes of the pupil’s parents or legal guardians,” and the education provided must conform to standards for “education of the same level.”<sup>243</sup> For example, states must ensure that “in all public education institutions of the same level . . . the conditions relating to the quality of education are also equivalent.”<sup>244</sup>

In addition, as a party to the convention, Israel has agreed to develop and apply a national policy that “ensure[s] that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent.”<sup>245</sup>

The Committee on Economic, Social and Cultural Rights has interpreted the prohibition on discrimination and the rights to education in Articles 2(2) and 13 of the ICESCR in accord with the Convention Against Discrimination in Education.<sup>246</sup> International law also explicitly guarantees the right to education without discrimination for disabled children.<sup>247</sup>

The prohibition on all forms of discrimination does not mean that every distinction is impermissible. The U.N. Human Rights Committee has interpreted the ICCPR to mean that “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”<sup>248</sup> Indeed, the principle of equality sometimes requires

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242. *Id.* art. 3.

243. *Id.* art. 2(b); see *General Comment 13*, *supra* note 233, ¶ 33 (affirming Article 2 of the Convention Against Discrimination in Education).

244. Convention Against Discrimination in Education, *supra* note 227, art. 4(b), at 100.

245. Convention Against Discrimination in Education, *supra* note 227, art. 4(b), at 100.

246. *General Comment 13*, *supra* note 233, at ¶¶ 31, 33-34.

247. See Convention on the Rights of the Child, *supra* note 226, arts. 2(1), 23(3), at 167, 169; Declaration on the Rights of Disabled Persons, G.A. Res. 3447 (XXX), 30 U.N. GAOR, 30th Sess., Supp. No. 34, ¶¶ 2, 6, 10, U.N. Doc. A/10034 (1975).

248. *General Comment 18, Non-Discrimination*, U.N. GAOR Hum. Rts. Comm., 37th Sess., ¶ 13 (1989), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 26, U.N.



states “to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.”<sup>249</sup> The International Covenant on Economic, Social and Cultural Rights, requires states parties to monitor educational programs and spending patterns, to disaggregate educational data “by the prohibited grounds of discrimination,” and to use this information “to identify and take measures to redress any de facto discrimination.”<sup>250</sup>

### 3. *The Status of International Law in Israeli Law*

Israel is legally bound by the treaties that it has ratified, but these treaties generally will not have the status of law in Israeli courts until the Knesset passes additional, enacting legislation. Nevertheless, the courts in their rulings have cited international treaties, including the Convention on the Rights of the Child, as having interpretive authority.<sup>251</sup> And the 2000 Pupils’ Rights Law states that its aim is to “establish principles for the rights of pupils in the spirit of human dignity and the principles of the United Nations Convention on the Rights of the Child.”<sup>252</sup>

#### B. *Israeli Law*

As it is currently applied, Israel’s domestic legal framework fails to protect all children from discrimination in education. Although many, including the Israeli government, argue that Israeli law as it currently exists should protect the right to education and freedom from discrimination, Israel’s courts have yet to use either these laws or more general principles of equality to protect Palestinian Arab children from discrimination in education.<sup>253</sup>

#### 1. *Sources of Law*

The state of Israel may use both constitutional law and ordinary

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Doc. HRI\GEN\1\Rev.1 (1994).

249. *Id.* ¶ 10.

250. *General Comment 13*, *supra* note 233, at ¶ 37.

251. *See, e.g.*, H.C. 4363/00, *Vaad Poria Illit v. Sar Ha-Chinuch* [Minister of Education], 56(4) P.D. 203, 213 (2002) (referring to international law on the right to education).

252. Pupils’ Rights Law, 2000, S.H. 42.

253. *See* Gadeer Nicola, *The Limitations on the Right to Education Before the Supreme Court*, ADALAH NEWSL. (Adalah: Legal Center for Arab Minority Rights in Israel, Shafa’amr, Isr.), Sept. 2004, available at <http://www.adalah.org/newsletter/eng/sep04/sep04.html>.

statutes to protect children's rights. Israel has no formal constitution and no bill of rights. Rather, the Knesset has enacted a series of Basic Laws that define the government's forms and powers.<sup>254</sup> Only two Basic Laws address civil liberties expressly: the 1992 Basic Law: Freedom of Occupation, which establishes the right to choose one's occupation;<sup>255</sup> and the 1992 Basic Law: Human Dignity and Liberty, which provides that "[a]ll persons are entitled to protection of their life, body and dignity."<sup>256</sup>

The Basic Laws, together with the decisions of the Israeli Supreme Court, form an unwritten constitution and bill of rights that are considered constitutional law.<sup>257</sup> The Supreme Court in a series of decisions has singled out and enforced certain basic civil and political rights in limited contexts, including the freedom of speech, the right to demonstrate, and the principle of equality. While these judicially recognized principles guide the Court's own decisions, the Court has not used them to strike down primary legislation.<sup>258</sup>

Similarly, the extent of the Court's power to invalidate ordinary statutes on the grounds that they violate a Basic Law is not entirely clear. Before 1992, the Supreme Court would only strike down legislation that violated the few provisions of the Basic Laws that it considered "entrenched," none of which contained civil rights. Following the passage of the 1992 Basic Laws, which contained provisions that appeared to limit the Knesset's power to infringe upon the rights the Basic Laws protect, the Court has suggested that in some circumstances it could strike down laws that violate individual

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254. The Knesset originally intended the Basic Laws to be the basis of a legislatively enacted constitution, but this has never occurred. See The Harari Resolution, 5 Knesset Protocols 1743 (1950); SAMUAL SAGAR, *THE PARLIAMENTARY SYSTEM OF ISRAEL* 36-37 (1985); ASHER ZIDON, *KNESSET: THE PARLIAMENT OF ISRAEL* 293 (Aryeh Rubinstein & Gertrude Hirschler trans., 1967). The failure to enact a formal constitution is due, at least in part, to opposition from Jewish religious parties, who have opposed laws regarding civil liberties and human rights that might invalidate certain religious laws. See Martin Edelman, *The New Israeli Constitution*, 36 *MIDDLE E. STUD.*, Apr. 2000, at 13-15.

255. Basic Law: Freedom of Occupation, 1994, S.H. 90, § 3.

256. Basic Law: Human Dignity and Liberty, 1992, S.H. 150, § 4 (amended 1994). The law also prohibits the "the violation of the property of a person," and the deprivation of or restrictions on liberty; provides for a general right to leave Israel and for citizens' rights to re-enter; and establishes a right of privacy. *Id.* §§ 3, 5-7.

257. For more information generally, see KRETZMER, *supra* note 80, at 7-11 (describing the constitutional and legal system of Israel) and Daphne Barak-Erez, *From an Unwritten to a Written Constitution: The Israeli Challenge in American Perspective*, 26 *COLUM. HUM. RTS. L. REV.* 309, 312-17 (1995).

258. KRETZMER, *supra* note 80, at 8, 11.

rights.<sup>259</sup>

## 2. *Right to Education*

The Basic Laws do not expressly mention the right to education, and the Supreme Court has ruled that the right to human dignity does not encompass it.<sup>260</sup> However, the Supreme Court has acknowledged a right to education, albeit not a constitutional one, drawing on both domestic and international law.<sup>261</sup> Domestic law on education includes the Compulsory Education Law, under which the state is responsible for providing free education.<sup>262</sup> School attendance between the ages of three (kindergarten) and fifteen (grade ten) is compulsory and free for all. Grades eleven and twelve are also free by law,<sup>263</sup> and “schools are obligated by the policy of the Ministry of Education to enable [pupils in grades eleven and twelve] to study and encourage them to continue their schooling.”<sup>264</sup> The Pupils’ Rights Law, passed by the Knesset in December 2000, also stipulates that “every child and adolescent in the State of Israel is entitled to education in accordance with the provisions of any law.”<sup>265</sup>

## 3. *Nondiscrimination/The Principle of Equality*

Israel does not categorize its citizens consistently. Frequently the government divides them into “Jews” and “Arabs.” Sometimes it breaks them down on the basis of religion—“Jewish,” “Muslim,” “Christian,” and “Druze,” or, simply, “non-Jewish.” Other times it categorizes them by what appears to be ethnicity—Arab, Bedouin, Ashkenazi, and Sephardic (or Mizrahi). The education system is divided by language—Hebrew and Arabic. Regardless of how Palestinian Arab citizens of Israel are categorized—by race, religion,

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259. See H.C. 240/98, *Adalah v. Sar Hadadot* [Minister of Religious Affairs], P.D. 52 (5) 167, 176; *Bank Ha-Mizrahi Ha-Meuchad, Baa'm v. Moshav Shitufi Migdal* [United Bank Hamezrahi Ltd. v. Migdal Cooperative Village], 49(4) P.D. 221 (1995); Barak Cohen, *Empowering Constitutionalism with Text from an Israeli Perspective*, 18 AM. U. INT'L L. REV. 585, 633-35.

260. H.C. 1554/95, *Amutat Shokharey Gilat v. Sar Ha-Khinukh, Ha-Tabut V'Ha-Sport* [Shocharei GILAT Assoc. v. Minister of Education, Culture and Sport], 50(3) P.D. 2, 24-26.

261. See, e.g., *Vaad Poria Illit*, 56(4) P.D. 203 (holding that students cannot be required to pay certain school fees).

262. Compulsory Education Law, 1949, 3 L.S.I. 125.

263. *Id.*

264. 1998 FACTS AND FIGURES ABOUT EDUCATION AND CULTURE IN ISRAEL, *supra* note 43, at 80.

265. Pupil's Rights Law, 2000, S.H. 42.

language, nationality, or ethnicity—international law protects them from discrimination on any of these and other grounds.

In the ordinary law relating to education, Part II of the Compulsory Education Law prohibits local educational authorities from discriminating on the basis of ethnicity in the registration and admission of students, and in tracking or creating separate classrooms for students within a school.<sup>266</sup> The Pupils Rights Law contains a similar provision.<sup>267</sup> However, these laws apply only to local authorities or the schools themselves, and not to the central government; therefore, they have not been used to address discrimination against Palestinian Arab students.

There is no general prohibition of discrimination or guarantee of equality in any of Israel's Basic Laws. Indeed, equality was explicitly excluded from the Basic Law: Human Dignity and Liberty when it was drafted.<sup>268</sup> Despite this, some argue that the Basic Law: Human

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266. The Compulsory Education Law specifies:

The local education authority and an education institution will not discriminate on the basis of ethnicity in any of the following areas:

- 1) registration and admission of students;
- 2) designation of separate educational programs and paths for advancement in the same educational institution;
- 3) creation of separate classrooms within the same institute.

Amendment No. 18 to the 1949 Compulsory Education Law, 1991, S.H. 155. The provision resulted from an amendment to the law passed in May 1991 following a lawsuit brought by Mizrahi parents from B'nai Brak whose children had not been admitted to a local Orthodox parochial school due to a quota of 30 percent for Mizrahi children. ISRAEL EQUALITY MONITOR (Adva Center, Isr.), Sept. 1991, at 4.

267. Article 5(a) of the Pupils' Rights Law states:

A district education authority, educational institution, or any person acting on their behalf, shall not discriminate against a pupil for sectarian reasons, for socioeconomic reasons, or by reason of political orientation, whether of the child or of his parents, in any of the following:

- 1) registration of a pupil, or his admission to or expulsion from an educational institution;
- 2) establishment of separate educational curricula or advancement tracks in the same educational institution;
- 3) holding of separate classes in the same educational institution;
- 4) rights and obligations of pupils, including disciplinary rules and their application.

Pupils' Rights Law, 2000, S.H. 42.

268. The religious lobby in Israel opposed the inclusion of a principle of equality in the Basic Law because it might have invalidated religious law, particularly in the area of family law. Generally speaking, Israeli citizens are subject to the family law of their own religion. See Ruth Halperin-Kaddari, *Women, Religion and Multiculturalism in Israel*, 5 UCLA J. INT'L L. & FOREIGN AFF. 339, 344 (2000); see also Gila Stopler, *The Free Exercise of Discrimination: Religious*

Dignity and Liberty does create a constitutional right to equality.<sup>269</sup> The Israeli Supreme Court has specifically declined to address this argument.<sup>270</sup>

The Supreme Court has, however, recognized equality as a judicial principle and has declared that administrative discretion may not be used to discriminate on the grounds of religion or race.<sup>271</sup> But with the exception of a few cases, which are limited in scope, it has ultimately dismissed petitions dealing with equal rights for Palestinian Arab citizens.

In several recent cases, the Supreme Court for the first time addressed the unequal treatment of Palestinian Arab citizens. In *Qa'dan v. the Israeli Lands Administration*, brought by Palestinian Arab citizens of Israel who were barred from purchasing a home in a cooperative Jewish community built on state lands, the Court stated that the principle of equality prohibits the state from distinguishing among its citizens on the basis of religion or nationality. Confining its decision to the facts of the case, it ruled that the authorities could not allocate land to citizens solely on the basis of their religion, though it noted that discrimination between Jews and non-Jews might be acceptable under unspecified "special circumstances." The Court then ordered the government to take such "special circumstances" into account when it determined whether it would allow the family to settle in the neighborhood; it did not rule that the family could move into the Jewish community.<sup>272</sup>

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*Liberty, Civic Community and Women's Equality*, 10 WM. & MARY J. WOMEN & LAW 459, 483-85 (2004).

269. Although the Israeli Supreme Court held in 1948 that the Declaration of Independence by itself is not "constitutional law which determines the validity or invalidity of ordinances and statutes," C.A. 10/48, Zeev v. Gubernik P.D. 1 85, 89 (1948) (author's translation), the 1994 amendment to the Basic Law: Human Dignity and Liberty states that fundamental human rights "shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel." Basic Law: Human Dignity and Liberty, 1992, S.H. 150, § 1 (amended 1994). The Declaration of the Establishment states that the "State of Israel will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; . . . and it will be faithful to the principles of the Charter of the United Nations." Declaration of the Establishment of the State of Israel, 1 L.S.I. 3, 4 (1948).

270. In the first case to raise the issue, the Supreme Court declined to address it. *Adalah*, P.D. 52 (5) at 177.

271. See C.A. 16/61, *Rasham Ha-Chevrot [Registrar of Companies] v. Kardosh*, 16 P.D. 1209, 1224 (1961); H.C. 262/62, *Peretz v. Kfar Shmaryahu*, 16 P.D. 2101 (1962).

272. C.A. 6698/95, *Qa'adan v. Minhal Mi-Karka'ei Yisrael* [Isr. Lands

In *Adalah v. The Minister of Religious Affairs* (the “*Ministry of Religious Affairs Case*”), the Court found that the Ministry’s 1998 budget discriminated against Palestinian Arab religious communities:

We can say, unfortunately, that today there is no equality for Arab religious communities in budget allocations of the Ministry of Religious Affairs. This conclusion is evident in the gap between the percentage of resources allocated to the non-Jewish and Jewish sectors . . . . Thus, the Arab religious communities that comprise 20 percent of the state’s population are allocated only 2 percent of the budget of the Ministry of Religious Affairs. This gap speaks for itself.

Despite its finding, the Court refused to invalidate the provisions of the Budget Law at issue:

[I]t is not enough to argue that the Arab community does not receive a portion of the budget of the Ministry of Religious Affairs which is proportional to this community’s percentage in the population. Even if this is the case, it does not mean that substantive inequality exists. To establish the existence of substantive inequality, it is necessary to examine the religious needs of each religious community. Only after such an examination can we conclude that substantive inequality exists.

The Court found that the petitioner’s requests were too general for the Court to give a “concrete and specific remedy.”<sup>273</sup>

*Adalah* subsequently petitioned the Supreme Court against the Minister of Religious Affairs to distribute funds for religious cemeteries equally to Jewish and Arab religious communities. The Court ruled that the Ministry should allocate the monies on an equal basis.<sup>274</sup>

#### 4. *Discrimination in Education*

The Supreme Court has never ruled on whether the general education budget discriminates against Palestinian Arabs. Indeed, if the 1998 *Ministry of Religious Affairs Case* is any indication, the

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Admin.], 54(1) P.D. 258 (2000). The decision did not invalidate past discriminatory land allocations. *Id.* At the time of writing, more than four years later, the petitioners had still not been permitted to purchase land in the community.

273. *Adalah*, P.D. 52(5) at 178-91.

274. H.C. 1113/99, *Adalah v. Sar Hadadot* [Minister of Religious Affairs], P.D. 54(2) 164.

Court might well find such a petition too general to provide a remedy. Discrimination cases are difficult to prove, in part because the Ministry of Education controls national education data and does not release budgets disaggregated by sector.<sup>275</sup> Regarding particular education policies that discriminate against Palestinian Arab students, some have argued that the Court is placing an unreasonably high burden of proof on petitioners, effectively requiring the petitioner to establish both the existence of discrimination and the lack of justification for it.<sup>276</sup>

Where parties have petitioned the Supreme Court regarding a particular discriminatory education policy, the Ministry typically corrects or promises to correct the inequality, and the Court accepts the Ministry's promise without ruling that the change is legally required. For example, in the *Follow-Up Committee on Arab Education v. the Minister of Education* (the "Shahar Case"), the Ministry of Education conceded that it had not provided Shahar academic enrichment programs to the Palestinian Arab sector and promised to allocate 20 percent of that budget for the Palestinian Arab sector within five years. The Supreme Court in its decision explicitly declined to consider "whether the state has a duty to include the Arab sector in the special programs that are part of the educational and welfare services that the Ministry of Education provides." The Court concluded that "it is superfluous, of course, to discuss in principle the question of the duty of the state to ensure parity in educational allocations for the Arab sector."<sup>277</sup>

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275. Telephone interview with Yousef Taiseer Jabareen, former attorney with the Association for Civil Rights in Israel (ACRI), in Washington, D.C. (July 17, 2001). For information about the difficulties in proving discrimination under Israeli law, see KRETZMER, *supra* note 80, at 128-29. In 2004, the Supreme Court ruled that the state must allocate a sum of money to implement, at a minimal level, Amendment 7 to the Special Education Law (1988), which requires the Ministers of Education and Finance to allocate budgets on a gradual basis to increase the number of special needs students taught in regular schools. Nicola, *supra* note 253, at 3-4 (citing H.C. 247/04, Sar Ha-Otzar, et al. [Minister of Finance] v. Liat Natan Martzino (unpublished decision)). However, it has been argued that this case was unique, given the class of students (special-needs students), the wording of the law and the unusual fact that the Ministry of Education had already specified in writing a minimal sum needed to implement the law. *See id.* at 5.

276. *See* Nicola, *supra* note 253, at 2; Dori Spivak, *Case Review: Unrecognized Education System*, ADALAH NEWSL. (Adalah: Legal Center for Arab Minority Rights in Israel, Shafa'amr, Isr.), Sept. 2004, available at <http://www.adalah.org/newsletter/eng/sep04/sep04.html>; *see also* H.C. 5108/04, *Ismail Mohammed Abu-Guda*.

277. H.J. 2814/97, *Follow-Up Comm. on Arab Educ. et al.*, 54(3) P.D. at 236.

Similarly, in *The Parents Committee in Segev Shalom v. The Government-Appointed Council in Segev Shalom*, the local Parents Committee sued to compel the establishment of kindergartens for all 400 kindergarten-aged Bedouin children in the locality. The Court dismissed the case when the council and the Ministry of Education agreed to reopen kindergartens for 200 children. Thus, the Court did not rule on whether the government was legally bound to provide the children with kindergartens.<sup>278</sup>

However, when the Supreme Court has found advantages for Jewish students over Palestinian Arab students, it has ruled that government policies are not invalid because they further legitimate distinctions.<sup>279</sup> In *Agbaria v. The Minister of Education*, the Court considered a challenge to the government policy of implementing the Long School Day law in development areas, which at the time included only Jewish localities. The Court upheld the policy on the grounds that providing benefits to those towns alone was a legitimate distinction because educational support to development areas met national needs; it was not, therefore, discriminatory.<sup>280</sup>

Accordingly, the Supreme Court, as well as the Israeli government, has recognized the legality and value of affirmative action.<sup>281</sup> Judge Eliahu Matza wrote in 1994:

Whether caused by discriminatory laws which existed in the past and are no longer valid, or whether through faulty perceptions which have become engrained in society, a gap

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278. H.C. 8534/99, *Parents Comm. in Segev Shalom*; see also H.C. 6671/03, *Munjid Abu Ghanem* (dismissing petition when the Ministry of Education promised to appoint counselors for Bedouin students in the Negev at the same level as those provided for Jewish students in the south).

279. For cases upholding differential treatment outside of the area of education, see H.C. 200/83, *Wattad v. Sar Ha-Otzar* [Minister of Finance], 38(3) P.D. 113 (1983) (upholding a government policy of paying extra child allowances to Jewish religious students who had not served in the army despite a provision in the law that payments be made only to students who had completed army service, which, thus, excluded Palestinian Arab students), and H.C. 528/88, *Avitan v. Minhal Mekarka-ey Yisra-el* [Isr. Lands Admin.], 43(4) P.D. 297 (upholding the Israel Lands Administration's refusal to lease to a Jewish citizen property in a Bedouin settlement set up by the government on the grounds the government policy was legitimate, that it was justifiable for government to offer special terms to Bedouin and that there was no discrimination based on ethnic or national group because the Bedouin were favored not because they were Arab but because of their nomadic lifestyle).

280. See *Agbaria*, 45(1) P.D. at 223. In 1991 the government renewed the program, the petitioners re-filed, and the Court again dismissed the case. See *Agbaria*, 45(5) P.D. at 474, 478.

281. See *id.* at 478



is evident in the equality of opportunity, which increases the chances of the stronger groups and decreases those of the weaker ones. Balance can be effected on this gap by affirmative action. It is based on the precept that certain members of society are in an inferior position and providing equal opportunity will no longer be sufficient to close the gap. Providing equal opportunity under these circumstances will only fulfill a formal theory of equality but will not afford the underprivileged groups a viable change to receive their portion of society's resources. Long-term implementation of formal equality only increases the danger that human nature and character will result in the perpetuation of discrimination. Remedying the inequities of the past and attaining actual equality can, therefore, be accomplished only by giving preference to the weaker group.<sup>282</sup>

In January 2005, in a case regarding the unequal appointment of school counselors, the Supreme Court for the first time stated that affirmative action should be taken for Bedouin in the Negev, in light of the gap in education between Jewish and Bedouin sectors in the Negev.<sup>283</sup> Although the court noted the higher drop-out rates among Bedouin and also stated that the value of equality may require more support for needy groups, it dismissed the petition when the Ministry of Education promised to appoint 9.5 additional counselors, which would bring the Bedouin schools to the level of Jewish school in the Negev.

Thus, as the above Parts demonstrate, while Israel pursues policies of affirmative action in education, in practice the Court is allowing these policies primarily to benefit Jewish students, while failing to address longstanding discrimination against Palestinian Arab students.

### C. *Israeli and International Law and Curriculum*

The eleventh goal of the state educational system, according to

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282. H.C. 453/94, *Shdulat Ha-Nashim B'Yisra-el v. Memshetlet Yisra-el* [Israeli Women's Lobby v. The Israeli Gov't], 48(5) P.D. 529 (1994) (J. Eliahu Matza).

283. H.C. 6671/03, *Munjid Abu Ghanem*, quoted in *In a Precedent-Setting Judgment on a Petition Filed by Adalah, Supreme Court Rules that Affirmative Action Policies in Education Should be Applied for the Arab Bedouin*, ADALAH NEWSL. (Adalah: Legal Center for Arab Minority Rights in Israel, Shafa'amr, Isr.), Jan. 2005, at [www.adalah.org/newsletter/eng/jan05/1.php](http://www.adalah.org/newsletter/eng/jan05/1.php).

Israel's State Education Law as amended in 2000, is: "to teach the language, culture, history, heritage and tradition unique to the Arab population and other population groups in the State of Israel, and to recognize the equal rights of all citizens of Israel."<sup>284</sup> The Arab education system, however, has been widely criticized by Palestinian Arabs as failing to adequately consider the Palestinian identity of Arabs in Israel.<sup>285</sup> Although some changes in the curriculum have been recently made, the overarching aims of education remain based on the transmission of Jewish values and culture, and Zionist thought.

Article 29(1) of the Convention on the Rights of the Child focuses on the aims of children's education:

- (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic national and religious groups and persons of indigenous origin; and
- (e) the development of respect for the natural environment.<sup>286</sup>

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284. State Education Law, 1953, 7 L.S.I. 113 (amended 2000).

285. Interview with Andre Elias Mazawi, Lecturer and Head of the Sociology of Education Program, School of Education, Tel Aviv University, in Tel Aviv, Isr. (Nov. 30, 2000); Interview with Professor Majid Al-Haj, Haifa University, in Haifa, Isr. (Dec. 5, 2000); Interview with Amal Elsana-Alhooj, Shatil, in Be'er Sheva, Isr. (Dec. 15, 2000); Interview with tenth-grade girl, in Nazareth, (Dec. 9, 2000; see also Sami Khalil Mar'i, *The Future of Palestinian Arab Education in Israel*, 14 J. PALESTINE STUD. 52 (1985).

286. Article 29(1) builds upon the aims of education as articulated in Article 13(1) of the International Covenant of Economic, Social and Cultural Rights: [States parties] agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups,

The Convention does not attempt to prescribe the specific content of education but makes clear that the development of respect for the child's cultural identity shall be one of the purposes of education. While the diverse aims of Article 29 at times may appear to be in conflict with one another, the U.N. Committee on the Rights of the Child has stated that "the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference."<sup>287</sup> Thus, while instruction on the state's national values shall be a part of education, state authorities should make special effort to harmonize this with lessons on the child's own cultural identity, language, and values, even where perceived to be in conflict. Pursuit of one aim shall not trump another, but rather all aims must be considered together in the best interests of the child.

The Committee on the Rights of the Child has commented that Article 29(1) emphasizes the child's "individual and subjective right to a specific quality of education" that is "child-centered," and where "the curriculum must be of direct relevance to the child's social, cultural, environmental, and economic context . . . ."<sup>288</sup> The U.N. Committee on Economic, Social and Cultural Rights has similarly stated that "the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students . . . ."<sup>289</sup> Curricula must be culturally relevant for children to receive the full benefits of education.

Children belonging to ethnic, religious, or linguistic minorities, or of indigenous origin, are entitled to further special consideration and protection, taking into account their unique group identities. The Committee on Economic, Social and Cultural Rights interpreting Article 13 of the ICESCR on the right to education, has declared that states must "fulfil (facilitate) the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples . . . ."<sup>290</sup> Article 30 of the Convention on the Rights of the Child provides further general

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and further the activities of the United Nations for the maintenance of peace.

ICESCR, *supra* note 225, art. 13(1).

287. *General Comment 1, Article 29(1): The Aims of Education*, U.N. Comm. on the Rts. of the Child, ¶ 4, U.N. Doc. CRC/GC/2001/1 (2001).

288. *Id.* ¶ 9.

289. *General Comment 13, supra* note 233, ¶ 6(c).

290. *Id.* ¶ 50.

protection to children belonging to ethnic, religious, or linguistic minorities, or who are indigenous; such a child “shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.”<sup>291</sup>

Finally, regarding the content of education, religious instruction is singled out for special consideration in international law. Interpreting Article 13(3) of the ICESCR, on the right of parents to ensure the religious and moral education of their children, the Committee on Economic, Social and Cultural Rights has stated that the ICESCR “permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression . . . . [P]ublic education that includes instruction in a particular religion or belief is inconsistent with article 13(3) unless a provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.”<sup>292</sup>

Similarly, under the Convention Against Discrimination in Education, “no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction.”<sup>293</sup>

## V. CONCLUSION

The Israeli government has acknowledged, to some extent, that it provides a lower quality education to Palestinian Arabs.<sup>294</sup> As recently as January 2005, official committees have found striking gaps in the way the government treats Jewish and Palestinian Arab students

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291. Convention on the Rights of the Child, *supra* note 226, art. 30, at 170. In addition, the U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, which is not binding but which provides authoritative guidance to states, declares that: “States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory.” G.A. Res. 47/135, U.N. GAOR, 47th Sess., Supp. No. 49, Annex, U.N. Doc A/RES/47/135 (1992).

292. *General Comment 13*, *supra* note 233, ¶ 28.

293. Convention Against Discrimination in Education, *supra* note 227, art. 5(1)(b), at 100.

294. For example, in its 2001 report to the Committee on the Rights of the Child, Israel stated that government investment per Palestinian Arab pupil was about 60 percent of its investment per Jewish pupil in 1991. *2002 Periodic Reports: Israel*, *supra* note 4, at 291, 295.

and made policy recommendations to address the problem.<sup>295</sup> But despite this compelling evidence, the government has not changed the way its education system operates. Instead, the government has set up needs-based criteria that are weighted against Palestinian Arab students and promised lump sums of money for Arab education, insufficient to equalize the two systems, and then largely failed to deliver these amounts. Even with these temporary measures, funding for Arab education in most areas does not adequately reflect the Palestinian Arab representation in the Israeli population, much less begin to correct for years of past discrimination.

Some Israeli government officials point to improvements in Arab education in the fifty-five years since Israel became a state.<sup>296</sup> But at the present rate, Israel will not close the gap between Jewish and Arab education, even if it were to allocate equally annual allowances to schools. Equal funding, alone, is not enough to overcome the cumulative effect of generations of educational disadvantage.

Addressing institutionalized discrimination in the Israeli education system requires major new initiatives by the government. Israel should commit to equalizing every aspect of education, make the structural changes necessary to implement this commitment, and monitor the educational system to ensure that it is done. In short, it should institutionalize equality.

At minimum, the following is necessary to fight discrimination against Palestinian Arab schoolchildren: First, the Israeli government should recognize that discrimination against Palestinian Arab citizens has been, and continues to be, a major social and political problem in the Israeli education system. It should adopt and immediately implement a written policy of equality that explicitly prohibits discrimination on the basis of religion, race, ethnicity, or gender. The policy should require all Ministry of Education programs and funds to be allocated to all schools, Jewish and Arab, on the basis of non-discriminatory criteria and, where appropriate, seek to correct past discrimination. Accordingly, the Ministry of Education should restructure the way it allocates resources, including teaching funds, and enrichment and remedial programs, so that Jewish and Arab

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295. DOVRAT REPORT, *supra* note 14, at 12, 32-34.

296. Interview with Yair Levin, Deputy Director-General, Head of International Relations of the Ministry of Education, in Jerusalem, Isr. (Dec.19, 2000); *see, e.g., 2002 Periodic Reports: Israel, supra* note 2, at 291. As a party to the International Covenant on Civil and Political Rights, Israel was obligated to submit this report to the U.N. Human Rights Committee, which is responsible for receiving and commenting on state party reports and for interpreting the covenant. *See ICCPR, supra* note 224, art. 40, 999 U.N.T.S. 171, 181-82.

schools are funded on a non-discriminatory basis. In particular, where funding is allocated on the basis of need, need should be determined through criteria that do not discriminate against Palestinian Arab students. Palestinian Arabs should participate and be included in all aspects of the decision-making process, particularly at the highest levels, of education policies and resources, including curricula development.

The Knesset should amend Part II, 3B(a) of the Compulsory Education Law and Article 5(a) of the Pupils' Rights Law to prohibit discrimination by the national government, as well as by local education authorities and institutions. It should also fully fund the annual Budget Law's current plans to address inadequacies in Arab education and should allocate additional funding to close the gaps between Jewish and Arab education in all areas, including the construction and maintenance of school buildings, libraries, laboratories, and recreation facilities; in the availability of kindergartens, vocational education, counseling, special education, and teacher training; and in the development of curricula.

Finally, the Israeli courts should obligate the government to fulfill the right to education for all of its citizens, without discrimination.