



The Right to Higher Education in Israel

A Legal and Fiscal Perspective

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Introduction: On Human Rights, Civil Rights, and Fiscal Policy

In this paper we examine the status and implementation in Israel of international rights regarding education and work.

We focus on education and work because these together constitute the core of social and economic policy, and reflect the degree of equality and opportunity for mobility of different social groups.

The definition of the right to education and work can be found in the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the United Nations in 1966, which came into effect in 1976. Israel signed the covenant in 1991. This covenant delineates the desirable situation, while establishing a universal yardstick that allows for measurement of progress within each country.

The need for a discussion that integrates an analysis of social rights with an analysis of fiscal policy has become critically urgent in recent years. During the past decade, Israel has experienced a severe economic recession that led to unprecedented budget cutbacks. The recession and cutbacks brought about sharp increases in the ongoing, multi-year trend of widening economic and social gaps. If during the 1960s Israel was considered the most egalitarian country in the developed world (Dahan, 2006: 4), today it ranks second in the west on every measure of inequality (International Comparisons: www.adva.org). With regard to educational achievement, Israel is characterized by marked gaps between the center and the periphery, and between ethnic groups.

Against this background, a discussion of fiscal and social policies that focuses on social and economic rights is of critical importance. Such a discussion opens the door to the greater involvement of civil society, both for the purpose of examining the constitutional status of social and economic rights, and for the purpose of reflecting on fiscal policies that determine the

allocation of the collective resources of the Israeli community.

At the time of writing, we are witnessing two significant trends in Israel. The first is the increased recourse to the courts for resolving public issues in dispute. This trend has been evident for some time, at least since the 1980s, as political bodies, labor organizations, employers' associations, and NGOs turn to the courts to adjudicate their affairs. Implicit here is an appeal to the court to impose their social and economic agendas on the executive branch of government. The Supreme Court has become a key arena in which civil society pleads its case regarding values and political issues.

In parallel, the state budget deliberations have become more open and public over the past decade than they have been in the past. From the moment the budget data come into the light from the vaults of the Ministry of Finance and become accessible to the public, thanks in part to the budget analyses of the Adva Center, many voices begin to be heard about budgetary matters, which until recently had been perceived as the exclusive domain of "experts." Nevertheless, the public discussion of budget policies is still in its infancy due to the extreme centralization and lack of transparency in the process of formulating the budget.

Regarding the state budget as well, the courts have become a venue for politicians and social advocacy organizations to wage their struggle over allocations, as the legal arena is more accessible and transparent. Indeed, the court finds itself in a bind as it is called upon to engage in extreme activism. Rather than filling its traditional consensual role as a watchdog of democracy – whose main job is to monitor and oversee the executive branch – the court is called upon to rule on issues in deep dispute and is asked to impose controversial values and policy directions upon the political system. Groups that seek to realize their social rights move their efforts into the legal arena, rather than continuing to advocate for them within the public political arena, the more appropriate forum.

We believe that this paper, in which we link the discussion of social and economic rights, in part a legal examination, with a discussion of fiscal policy, the main tool for realizing those rights, can contribute to elucidating the connection between these two areas and delineate the road to creating a more egalitarian society that strives to realize the fundamental rights of its members.

1. Political Rights and Social Rights

The constitutive document that defines human rights as recognized by the entire human community is the Universal Declaration of Human Rights from 1948. The rights described in this declaration served as the basis for two international covenants passed in 1966: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The **political rights** anchored in the international covenant from 1966 are the right to self-determination of all peoples; the inherent right to life; a prohibition on torture, cruel punishment, slavery and servitude of all kinds; the right to dignity, liberty and personal security; freedom of movement, assembly, and association; equality before the law, and the right to fair legal process; the right to privacy; and freedom of thought, expression, religion, and conscience.

The **social rights** anchored in the international covenant from 1966 are the right to work; social security; health; education; and cultural life.

The division into two families of rights reflects the historical emergence in western countries of a liberal democratic political system that held sacred the individual and his/her property, in keeping with the interests of the business and industrial classes, and the later appearance of political and workers' trade associations that bore aloft the banner of social rights and the welfare state.

Political rights are perceived as negative rights ("freedom from...") as they derive from the principle of protecting an individual from harm by the government. Generally speaking, implementing political rights does not require a

significant allocation of resources. These rights well suit a free market economy and are today regarded as the cornerstone of western democratic governments. Social rights, on the other hand, are perceived to be positive rights ("freedom to...") and reflect a reality in which the state acts to prevent inequality. The implementation of these rights generally requires the allocation of public funds.

These two families of rights are also distinguished from each other by their enforcement mechanisms: for political-civil rights, states that are signatories to the covenant are required to enact laws, create suitable conditions, and build an institutional infrastructure whose goal is to reduce the violation of these rights. In contrast, the covenant for economic and social rights establishes a very loose supervisory mechanism and mandates member states only to make an effort to gradually implement these rights.

Let us qualify this by saying that among scholars and in the legal discourse in some countries, the distinction between two "generations" of rights is gradually fading; the tendency today is to see positive and negative aspects in both. There is also an increasing tendency to view social rights as a necessary instrument to actualize civil rights (Shany and Rabin, 2004: 15-16). Nevertheless, the small number of countries that enshrine in their legislation the principles of the International Covenant on Economic, Social and Cultural Rights suggests how salient this distinction is in reality.

In Israel, as in many countries, enacting legislation to entrench these second-generation rights – social and economic – is very difficult. One might have thought that in Israel, of all places, one would find a greater willingness to enshrine these rights legally in light of the central role of socialist values among the leadership of the Zionist movement and the early political leadership of the state. Over time, however, and especially since the late 1970s, there has been a gradual erosion of socialist ideology in favor of liberal capitalism, which sanctifies the value of the individual and a market economy. While Israel's constitutive document in 1948, the

Declaration of Independence, contains values that reflect both these generations of rights, the “constitutional revolution” of the 1990s addressed only political rights as expressed legislatively in two Basic Laws – Human Dignity and Liberty, and Freedom of Occupation. In parallel, the many bills tabled to legislate social and economic laws made no headway. What’s more, many social rights that were not called “human rights,” but anchored in Israeli legislation – such as the comprehensive legislation on labor relations – fell in status following the “constitutional revolution” of the 1990s.

In other words, not only did Israel import the neo-liberal and political ideology of the market economy, it also imported the concept of human rights as it evolved in the west, which gives constitutional primacy to civil rights, reflecting capitalist-liberal values that suit the interests of the affluent. This shift diminished the values embodied by and the legal standing of the Declaration of Independence, which does accord equal status to the two generations of rights, and weakens the social legislation of the first decades of the state. In contemporary Israel, the struggle to enshrine social rights in legislation is to a large extent an effort to return to the good old days – the priorities of the past – using the concept of rights.

The Legal Status in Israel of the Right to Education and the Right to Work

The Declaration of Independence from 1948 is the legal constitutive document of the state of Israel. This document defines the character, values, and goals of the state, and thus lays the foundation for recognizing social and economic rights:

The State of Israel will be open to Jewish immigration and the ingathering of the exiles; it will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisioned by the prophets of

Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or gender; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations.

The Declaration of Independence, like the Universal Declaration of Human Rights (UDHR), integrates the two generations of human rights – the political-civil and the economic-social. However, while the UDHR expresses universal principles, Israel’s Declaration of Independence contains conflicting universal and particularistic principles. This is because of the basic contradiction, integral to the state of Israel since its founding, between its definition as a Jewish state – in matters related to having the state belong to the Jewish nation – and its commitment to democracy and equality for all its inhabitants, including those who are not Jewish. This internal contradiction has implications that are relevant for our discussion.

First, the contradiction provides legitimacy to state institutions to privilege the Jewish population in all matters related to immigration and settlement, creating a stratified citizenry marked by systemic bias in favor of Jewish citizens and bending the rights of non-Jewish citizens to national Zionist interests.

Second, the debate about the weight of each of these principles – the universal and the particularistic – partially overlaps the public debate that has marked the state since its inception: the appropriate relationship between religion and state. Religious and nationalist Jewish groups attribute greater import to the Jewish particularistic principle than the universal democratic principle. Secular and non-Jewish groups, on the other hand, emphasize democracy and civic equality as weightier than the particularistic Jewish principle; these groups side with the separation of religion and state.

Third, the ongoing tension between the universal-democratic and particularistic-Jewish principles is also the main reason that Israel's lawmakers have been unable to create a constitution for the state of Israel.

Israel's Ratification of the International Human Rights Covenants

In 1991, Israel ratified the International Covenant on Economic, Social and Cultural Rights, which had been adopted by the U.N. in 1966. That same year, Israel also ratified the International Covenant on Civil and Political Rights. For an international covenant to be legally binding in Israel, it must become part of Israeli legislation (High Court of Justice 802/79 Samara v. West Bank Regional Commander, P.D. 34(4) 567). The state can adopt a human right as a basic right in one of three ways:

1. Declaratory recognition as part of a court decision. For example, the right of workers to form associations, recognized in the Universal Declaration of Human Rights in 1948 and in Israeli court decisions as a basic right (Labor Court 55/30-4, "Amit"—Maccabi Trade Union, Center for Local Authorities, et al., P.D.A. 29, 61, 76).
2. Recognition as a basic legal right. This refers to ordinary legislation. For example, the international human right of protection from unemployment was recognized in Israel as a basic legal right in article 7 of the Social Security Law (integrated version) 1995.
3. Recognition as a constitutional Basic Law. This is the most preferable form of adoption, and refers to recognition as part of a written constitution or Basic Law. For example, Basic Law: Freedom of Occupation (Ben Israel, 2002: 189).

Israel did not enact laws to entrench the rights in the International Covenant on Economic, Social and Cultural Rights. Therefore, these rights have an interpretive standing that permits judges to accord them declaratory recognition, but regard them as recommendations only. Courts can make

use of the covenants to demonstrate desirable norms and behavior, but the covenants themselves are not binding.

To date, all efforts to enshrine basic social rights in a constitution or Basic Law have failed.

Of all the rights cited in the international covenant with reference to work, Israel accorded legal recognition only to the freedom of occupation. Other social rights, especially those related to work, are protected only by ordinary legislation or court rulings.

The "Constitutional Revolution": Legislating Basic Laws in Israel

Israel operates without a constitution. As early as 1949, however, Knesset Member Yehuda Pinhas Cohen submitted a proposal to the Provisional Council of State to create a constitution for Israel. The proposal, deliberated in the Council and the first Knesset, included very clear statements on social and economic rights. Paragraph 21 of the proposed law notes, "*The economic system of Israel will be based on the principles of social justice. Every citizen will enjoy his rightful share of the nation's income, and the state will ensure the social security of the citizen.*" The proposal also included specific arrangements for fair employment conditions, the right to form associations and strike, and the right to health and education. However, the proposed constitution was not passed by the Knesset, primarily because of the opposition of the religious and ultra-Orthodox parties. Instead the Knesset chose to adopt the proposal of Knesset Member Yizhar Harari to write the constitution chapter by chapter through Basic Laws, on the assumption that in the future they would serve as articles in the constitution. Indeed, over the years the Knesset legislated a series of Basic Laws intended to delineate the activities of central state authorities. These Basic Laws include: The Knesset; The President; The Government; The State Economy; The Army; Jerusalem: The Capital of Israel; Israeli Lands; The Judiciary; and the State Comptroller.

As noted, the many efforts to enshrine economic and social rights in Basic Laws were

unsuccessful. Not a single one of these bills passed the second reading. Recently, the Israel Democracy Institute established a committee to write a “Constitution by Consensus”, which submitted its recommendations to the President on February 2, 2006. However, examination of the chapter on human rights in this proposal reveals that the right to work and the right to education were significantly diminished in this document compared with the formulation of these rights in the international covenants. In other words, even if the “Constitution by Consensus” passes the hurdle of the Knesset and is ratified, it contains no breakthrough regarding social and economic rights.

In 1992, about a year after Israel ratified the International Covenant on Economic, Social and Cultural Rights, the Knesset first legislated two Basic Laws that dealt with civil and political rights: One is the Basic Law: Freedom of Occupation, which accords “the right of every citizen or resident to engage in any occupation, profession, or trade” unless “a law befitting the values of the State of Israel, enacted for a worthy purpose” is deemed to conflict with it. This paragraph is part of the “limitation clause” of the law according to which the court measures the legality of laws and actions that *prima facie* infringe upon the freedom of occupation. The second is the Basic Law: Human Dignity and Liberty, which declares that the basic rights of the individual in Israel are founded on the recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free. This law affirms the freedom of the individual in Israel to leave and enter Israel as well as the right to privacy and personal integrity, and affirms that the dignity or liberty of an individual can be violated only by reference to specific legislation. It should be noted that the law refers to the values of the state of Israel as cited in the Declaration of Independence, while adopting the controversial phrase, “Jewish and democratic,” and asserting that the dignity and liberty of the individual are based on both these principles.

Enactment of these two Basic Laws was termed the “constitutional revolution”, despite the fact that they constitutionally enshrine only two of

the human rights set forth in the international covenants.

Legal and Political Interpretation of the Right to Work and Education

Without constitutional enshrinement of social-economic rights, there is concern that the new Basic Laws will erode existing legislation on work and education, whose legal status is inferior to that of Basic Laws. This is because Basic Laws enable the court under certain circumstances to invalidate legislation related to education and labor (such as protective labor laws, expansion orders, etc.) when that legislation conflicts with articles in the Basic Law: Human Dignity and Liberty or the Basic Law: Freedom of Occupation.

The legal inferiority of economic and social rights is particularly troubling in light of the government’s current espousal of neo-liberal economic policies and the enactment of Basic Laws that enshrine only those human rights that are compatible with a neo-liberal policy.

Regarding labor relations, the new basic laws support excessive rights of the employer, but not the employee:

- a. The right to property anchored in para. 3 of the Basic Law: Human Dignity and Liberty strengthens an employer’s property link to his business and expands his managerial prerogatives so that he is entitled to determine the legal structure of his business, the management style, and how the work is done – by employees, sub-contractors, employment contractors, or even borrowing workers from another employer (Barak, 1992: 467; Ben Israel, 2002: 246-247).
- b. The freedom of occupation anchored in para. 3 of the Basic Law: Freedom of Occupation enhances the right of the employer to enter into an agreement or shape a contract and the conditions under which his business will be conducted. Indeed, the protection afforded by High Court of Justice decisions to the freedom of occupation of the employer is greater than the protection it affords to the

freedom of occupation of the employee (Ben Israel, 2002: 248).

- c. The autonomy of the individual derived from the Human Dignity and Liberty law also reinforces by interpretation (Barak, 1992: 688) the managerial prerogative of the employer to hire and fire employees and conduct his business at will.

The labor laws were legislated during a period of broad consensus in Israel about the values of social solidarity, as well as an assumption about the obligation of the state to serve as a counterweight to a market economy. The new Basic Laws, on the other hand, were enacted at a time when the dominant ideology was a market economy, private initiative, and free enterprise – an ideology that emphasizes the autonomy of the individual and self-interest (Ben Israel 2002: 256-257).

Regarding education, only in recent years did the Israeli judiciary begin to cite the right to education in decisions. In the case of Shoharei Gilat (High Court of Justice 1554/95, Shoharei Gilat v. Minister of Education, Culture and Sport P.D. 50(3)(2)), Justice Benjamin Orr ruled that without clear constitutional entrenchment, there is no basic right to education in Israel, and he even refrained from deriving the right to education by implication from the principle of human dignity. This approach changed in the Yated case that dealt with the issue of providing funds for the integration of children with special needs into schools. Justice Dalia Dorner based the state's obligation to pay for this on an interpretation of the Special Education Law in light of the international covenants ratified by Israel (the Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child), which do recognize the right to free education (High Court of Justice 2599/00 Yated v. Ministry of Education, P.D. 56(5) 834). The Poriah case deliberated the funding of additional school curricula by parents whose children were placed in a kibbutz school by the Ministry of Education. Justice Ayala Procaccia extolled the importance of the right to education and its special standing in the Israeli judiciary based on the Universal Declaration of Human

Rights from 1948 and the Declaration of Independence, which reflects the comprehensive “value infrastructure” of the state (High Court of Justice, Committee of Poriah Elite v. Minister of Education et al, P.D. 56(4) 203).

Yoav Dotan argues that changes in the High Court's view of the right to education are inconsistent and do not necessarily reflect increased recognition of the right to education. Furthermore, in many cases there is a problematic discrepancy between the rights that the court declares and their concrete implementation (Dotan, 2004: 114-115).

There are instances in which the court protects the right to education as defined in the international covenant, but does not rely on these declarations to establish the status of this right. In such cases, the court appeals to the principle of equality, recognized as a basic value, existing legislation, and the prohibition against discrimination. Thus in the case of the Zevulun Regional Council, the District Court accepted the petition of parents against a school that demanded payments exorbitantly higher than permissible by law and for matters for which payment is illegal. This ruling was based primarily on the principle of equality as expressed in the Compulsory Education Law and the State Education Law, while citing the “importance” of the right to education (ATM 1086/05, Hila Dines et al. v. Ministry of Education and Zevulun Regional Council, issued 16 November 2005).

Aharon Barak, recently retired Chief Justice of the Supreme Court, acknowledged the broad room for interpretation in an article that discusses a constitution for Israel: “...The constitution is not a political manifesto. It is not a concrete political plan of action. Both nationalization and privatization can exist within its framework. A market economy and centralized economic management can co-exist there.../The court will suffice with an examination of the reasonableness of its purpose and the rationale of the methods...In this sense, one can speak of the neutrality of our constitution” (Barak, 1997: 17). This approach of the former Chief Justice of the Supreme Court

makes possible the investment of any content into the constitutional human rights based on the interests of those in power and under the cover of neutrality. And yet the main goal of legislating human rights, especially social rights, is to protect the weak.

In summary, the legislation of two Basic Laws that entrench civil-political rights but not social rights undermines the status of social rights such as the right to work and also, to some extent, the right to education.

The damage occurs because social rights are anchored in ordinary legislation, whose status is inferior and which can be limited and invalidated through Basic Laws, and also from the judicial interpretation given these rights after the “constitutional revolution.” Hence the importance of advancing economic-social rights by enacting Basic Laws. As noted, the proposed bill for Basic Law: Social, Economic, and Cultural Rights was consistently rebuffed by the Knesset, operating in an atmosphere that extols a market economy and private interests, and distances itself from the collective values that characterized Israel in its early years. Without a change in this policy and a re-ordering of these values, it is doubtful that social rights can be enshrined in Basic Law in the near future.

Even if social rights are successfully enshrined in Basic Law, the content and scope of these rights will still rely on Supreme Court interpretation. The court will also have to rule on clashes between rights in decisions that will perforce reflect values and political views.

The Language of Rights as a Double-Edged Sword and the Importance of Linking Rights and Fiscal Policy

While the language of universal human rights was developing, and following the ratification by many countries of the international covenants that anchor these rights, criticism emerged about the excessive use of the concept of rights, noting its limitations for eliminating inequality. These critics also point to the problematic linkage between rights language and the actions of political systems. Scholars belonging to the

Critical Legal Studies (CLS) school of thought consider the concept of rights a double-edged sword and caution against its improvident use as a social change agent. The criticism focuses on two main areas: the limitations of the concept itself and the limitations of its use as a tool to promote social change.

According to the critics, the definition of rights in the international covenants and national constitutions allows for a range of interpretations, and even the promotion of conflicting interests and values by virtue of the “catalogue” of rights. Furthermore, a fundamental conflict of values exists between civil-political rights that are derived from a liberal, individualistic worldview that values property and ownership and the second generation economic-social rights that are derived from a communal worldview that values the principle of equality and challenges the current distribution of wealth and property. Another drawback stems from defining a basket of universal rights that applies to all human beings everywhere, while in reality the economic and social gaps between developed and developing states, and between groups and regions within each state, render meaningless the principle of equality embedded in this concept of rights.

Regarding the usefulness of the language of rights as a tool for social change, critics note the increased appeal to the courts for resolving social issues in dispute, which forces the definition of social justice as specific individual cases. They note the problematic nature of leaving key social issues to rulings by a court rather than elected representatives, as required in a democracy. To these should be added the limitations of judicial enforcement – the extent to which courts are willing and able to force the implementation of human rights on the state and its institutions. They note that courts are not necessarily the appropriate forums to arbitrate complex and multifocal issues such as policies for the distribution of resources (Horowitz, 1988; Tushnet, 1984; Dotan, 2004; Medina, 2004).

Because of the vague and problematic nature of the concept of rights, linking rights language to

fiscal policy is of paramount importance. This link would promote rights by introducing clear and defined content to rights language. For example, deliberations about the right to free education would be coupled with the cost of providing that education to all the state residents; in other words, the scope of realizing the right is linked to the scope of resources allocated to it. Correspondingly, deliberations about fiscal policy would be enriched by the concept of rights, which would be used to define needs that the budget should address. Furthermore, focusing on the link between rights and the budget would enhance the democratic process by moving the discussion about the interpretation and enforcement of rights from the Supreme Court to public discourse – the Knesset and civil society.

2. The State Budget – Based on a Rights Orientation?

The state budget is the most important material resource at the disposal of a community that comes together as a state (Swirski, 2004: 9). It is the main instrument for realizing human and civil rights, particularly social and economic. Analysis of the budget reveals the priorities of the state and the extent of its commitment to human rights. Through the budget, society's plans and priorities are translated into deeds: the allocations are a reflection of the state's commitment to each right, while lack of allocation reflects the absence of such commitment. The resources earmarked for a specific right clarify whether that allocation meets the international standard for its realization (Diokno, 1999).

The question is, does the state budget have a rights orientation – does it reflect fiscal policies that aim to realize rights?

One way to find out is to examine the role of the Knesset, the legislative branch, during the process of formulating the budget. The Knesset represents the sovereign authority – the people. As such, the Knesset should mirror the various powers and groups in society, and promote their interests through legislation. The Knesset is also expected to incorporate the international covenants on human and civil rights into Israeli

legislation. Finally, the Knesset should be supervising the activity of the executive branch and scrutinizing it based on universal values, *inter alia*, as expressed by the international covenants on human and civil rights.

The state budget comes to the Knesset as a law submitted by the executive to the legislative branch with a request for ratification. Hence, the Knesset is the body that ostensibly shapes the budget. In practice, however, the state budget is a tool of the executive branch: in Israel, as in most countries, the executive branch not only executes the budget, but in practice is the exclusive drafter; legislative approval, in Israel as elsewhere, is largely a formality.

In other words, the state budget is an instrument that reflects the priorities of the executive arm of government. While those priorities might display a human and civil rights orientation, they are more likely to reflect considerations of national strength, the interests of those holding economic power, or the interests of the dominant ethnic groups. A human and civil rights orientation, as expressed by international covenants, plays an insignificant role, if at all, in the considerations guiding the process of formulating the budget and winning its ratification by the legislative branch.

The Role of the Knesset in Formulating the Budget

In democratic governments, the common separation into three authorities – legislative, executive, and judicial – is intended to prevent a situation of absolute power. For this to be effective, the separation postulates some degree of equality among the three.

In Israel, there is a troubling imbalance, with the legislative branch significantly weaker than the others. The executive branch is distinctly powerful. Even the judicial branch has emerged as one that does not confine itself to adjudication based on legislation, but has begun to subject laws to judicial review according to the Basic Laws (the following passages are based on Swirski and Fraenkel, 2000).

The relative weakness of the Knesset undermines the democratic character of Israel, as the Knesset is the body that is supposed to represent the people and the will of the diverse segments of society. A weak Knesset means that these wills are not reliably and fully expressed in the governing system. A weak Knesset means that it falters in discharging its duty of adopting a rights orientation and ensuring that the executive follows suit. A weak Knesset means that the budget bill, when brought for approval, is not duly examined from the perspective of human and civil rights.

Today the Knesset plays only a marginal role in the process of formulating the state budget. Indeed, the budget is prepared from top to bottom by one department in the executive branch – the Budget Division of the Finance Ministry. The Budget Division has sole responsibility for determining both the prevailing economic principles and the overall level of expenditures. This Division shapes the budget – the resources available to each ministry and governing arm – and exercises sole control over information related to the fiscal policies of Israel. In fact, the Budget Division serves not only to formulate the budget, but is also the main force shaping the economic policies of Israel. Thanks to its special status in the governing system, the Budget Division developed a public image of an objective, professional unit, thereby according itself immunity from transparency and public scrutiny not just of the information it holds, but also the fundamental assumptions on which its recommendations are based.

The unique power of the Finance Ministry's Budget Division is manifested, first of all, in the lack of transparency concerning the budget document. The lack of transparency is the main obstacle preventing the intelligent involvement of the Knesset and civil society in the process of formulating and approving the state budget.

In recent years, criticism has grown about the monopolistic character of the Budget Division, its centrality in the decision-making process regarding economic and social policies, and specifically its consistent support for budget cutbacks of social services and initiatives to

reduce taxes (Dery and Sharon, 1994; Nachmias et al., 1999; Ramon Committee, 2000).

The budget volumes are published in two stages: in late October when the budget bill is presented to the Knesset, and on January 1, the start of the fiscal year, after ratification by the Knesset. The budget bill fills twenty volumes. One is the *Budget Summary*, which contains details about the economic policy targets, data about the proposed total budget, and the budgets of each government ministry and central governmental agency. Each of the remaining volumes is devoted to a particular ministry or agency. Only after the budget law is ratified does the Budget Division publish the detailed allocation of each ministry. Although these detailed budget volumes provide the basis for the ongoing activity of each government ministry, until recent years they were not accessible to Knesset members during budget deliberations. Now they are accessible, but only on the Internet, which makes them difficult to use.

In addition, the budget books are difficult to understand, both because of the bureaucratic language and the difficulty for an average citizen of finding one's way in the labyrinth of governmental units, goals, activities, and expenditures.

The vagueness surrounding everything related to the budget limits the ability of the Knesset to deliberate it in depth, let alone allow for NGOs or ordinary citizens to participate in the democratic process.

On top of all this, the state budget is an obscure and non-transparent document – not just to Knesset members, but also to members of the government. The budget is formulated by Budget Division officials, the Finance Minister, and the Prime Minister. The budget proposal is submitted to the Cabinet plenary only after these three have reached agreement among themselves. The Cabinet members receive the budget proposal a very short time before their deliberation about it. Therefore, discussion among the ministers is generally very superficial; their vote on it is predictable, as members of the Cabinet accept the verdict of the Prime Minister

and Finance Minister if they want to remain in the coalition.

Thus the state budget – the most significant tool of governance – is entirely formulated by the executive branch and brought for Knesset ratification only after that is complete. The Knesset has no involvement whatsoever in determining the main parameters that shape the budget, such as the goals for inflation and deficit size. What’s more, the executive branch has the services of a large professional staff, while the Knesset has no professional staff to assist it, and deliberates this complex and abstruse document without suitable tools.

After the budget bill passes its first reading in the Knesset, it moves on to the Finance Committee. This committee is the most important one in the Knesset, and usually headed by a senior member of the ruling party or a coalition party. Ostensibly, the Finance Committee is the most specialized of the Knesset, and called on to cast a critical eye on the budget bill prepared by the Budget Division of the Ministry. However, only two professional staff serve the Finance Committee – an economic and a legal advisor. Therefore, those who prepare the budget also end up serving as the main consultants to those who evaluate it. The Budget Division officials are invited to Finance Committee deliberations and take an active role. Furthermore, the Finance Committee chair is in ongoing contact with the Finance Minister. In fact, the Prime Minister and Finance Minister rely on the Chair to promote the budget bill in the committee.

The Budget Arrangements Law: Legislation to Bypass the Knesset

The power of the Knesset was further eroded with institutionalization of the “Budget Arrangements Law,” enacted in 1985 as a way to shortcut the many amendments required that year in a large variety of laws for instituting the Emergency Program for Stabilization of the Economy. Since then, the Arrangements Law has turned into a regular mechanism and presented to the Knesset each year in parallel with the Annual Budget Bill. The proposed Budget Arrangements Law, like the proposed Budget Law, is

formulated in the Budget Division of the Finance Ministry and linked to the Budget Law at all stages of legislation.

The Budget Arrangements Law harms the standing of the Knesset because it encompasses not only “technical” changes, but also fundamental legislative issues, without these being previously clarified in the normal legislative process or the appropriate Knesset committee. What’s more, the Arrangements Law has served over the years to delay the implementation of laws that were already enacted on the grounds of insufficient funds. Examples of this are the Long School Day Law and Amendment 2000 to the Law on the Employment of Workers by Manpower Contractors, two laws whose implementation has been delayed year after year. In addition, the government uses the Arrangements Law to introduce changes in laws that were already passed, such as the far-reaching changes introduced in 1997 to the National Health Insurance Law.

The delay and change of laws democratically passed by the Knesset through a mechanism controlled by officials in the Budget Division of the Finance Ministry makes a sham of the legislative process. As noted by Nachmias and Klein, the Arrangements Law serves as a tool to reduce political costs, it diminishes the transparency of the legislative process, and matters of substance and principle are addressed in a technical or marginal way. As a result, they recommend rescinding the law or at least limiting its scope (Nachmias and Klein 1999: 38-39, 47-55).

Changing the Budget-Making Process as a Way to Strengthen Civil Society

Changing the process of formulating and ratifying the budget is vital, not just for creating better balance among the three branches of government, but also for increasing the involvement of civil society. As the principle governing instrument for the development and allocation of resources, the budget is of profound significance with respect to all matters related to equality, social gaps, and social justice.

Enhancing the role of the Knesset in the process of formulating the budget and increasing the transparency of the process are vital to the democratic setting of funding priorities. In a democracy, the legislative branch is the most open and accessible arena for deliberating national priorities. This is especially true for groups that are marginalized. Strengthening the involvement of the Knesset in the process of formulating the budget will reinforce the ability of individual citizens and civil society to influence national priorities. This is in stark contrast with the current situation, in which the public debate about the economic-social agenda in Israel is disconnected from the process of budget ratification.

The Right to Education and Fiscal Policy in Israel

1. The Right to Education as Recognized by the International Community

The International Covenant on Economic, Social and Cultural Rights was adopted in 1966, and Israel is a signatory to this document. The right to education is one of the rights articulated by the Covenant. Article 13 sets out its basic elements:

- Recognition by the member states of the right on principle to an education.
- Education should be directed toward “the full development of the personality and the sense of its dignity, and shall strengthen respect for human rights and fundamental freedoms”, peace, tolerance, and the rejection of discrimination.
- The instruments for realizing the right to education are free, compulsory primary education for all; secondary education accessible to all and gradual progress toward making it free; completion of basic education for those who did not finish primary school; the obligation to develop a system of schools, provide scholarships, and continuously improve the material conditions of the teaching

staff; accessible higher education for all based on ability; and progress toward the goal of free higher education.

- Recognition of the right of parents to choose the school in which their children will study, including the choice of schools that are not public, so long as they conform to the education standards set by the state, to allow parents to ensure that the education of their children is in keeping with their convictions.

In addition, Israel ratified two international conventions that deal with the right to education: the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, which forbids racial discrimination in all matters concerning economic, social and cultural rights; and the Convention on the Rights of the Child of 1989, which mandates specific rights of children to education.

In the International Covenant on Economic, Social and Cultural Rights, the right to education is formulated in a very general manner. This covenant does not define the “minimal education” that the state must provide, beyond defining the number of years of schooling. The covenant also does not set criteria for the quality of the education that the state must provide. It notes that the ratifying states must strive to provide secondary and higher education in a gradual way, but sets no time limit. The covenant does not mention the principle of equality, but merely notes a goal of “education available to all” and the prohibition against discrimination. Interpretation of the covenant is given to a committee established by the covenant, while its implementation is contingent upon the interpretation of each state and its anchoring in internal legislation.

As noted in the introductory chapter, the enactment of two Basic Laws – Freedom of Occupation and Human Dignity and Liberty – eroded the standing of the social rights that had been anchored in ordinary legislation and court decisions. We also noted, however, that in recent years a trend appears in Supreme Court rulings to

recognize on a declaratory level the right to education as a basic right. In the coming pages, we examine the status of the right to education and the extent of its implementation based on an analysis of the laws, education policies, and fiscal policy.

2. The Right to Education: Status and Scope in Israeli Legislation

In Israel, the primary legislation concerning education is limited to a small number of laws. The main ones:

1. **Compulsory Education Law - 1949** establishes that education is compulsory and sets out the procedures for registration at educational facilities.
2. **State Education Law - 1953** defines the goals of public education, divides public education into the state and state-religious streams, and recognizes ultra-Orthodox education as an independent system.
3. **Council for Higher Education Law - 1958** arranges for supervision of the universities and their public funding.
4. **School Inspection Law - 1969** sets criteria for the accreditation of educational institutions and supervision by the Ministry of Education.
5. **Special Education Law - 1988** establishes the right of children with special needs to a special education framework, details the criteria for eligibility and placement procedures. Amendment 7 (2002) discusses the integration of children with special needs into the regular school system, and sets criteria for adding teaching hours and special services to enable this.
6. **Safe Transportation Law for Children with Disabilities - 1994** establishes that children with special needs are eligible for free transportation from their home to their school and back again, financed by the local authority.
7. **Pupils' Rights Law - 2000** establishes the right to education, the prohibition of discrimination and certain forms of punishment, sets procedures for expulsion from school, and confers the right of pupils to organize a Student Council.
8. **Book Lending Law – 2000** states that schools can be included in a national program for lending pupils used school books, if 90% of the parents in the school agree to return schoolbooks at the end of the school year.
9. **Free Education for Sick Children Law – 2001** mandates Ministry of Education funding for sick children, as defined by the law. Educational frameworks for sick children include schools operating within hospitals as well as home learning with the aid of teachers and electronic devices.
10. **Rehabilitative Daycare Law - 2005** entitles children aged 1-3 with physical or mental disabilities to treatment in a rehabilitative day-care center as near as possible to their homes.

Because the legislation is limited, legal matters in the field of education are arranged by regulations and directives issued by the Director General of the Ministry of Education. Dramatic changes in the education system were never anchored in law. These include, for example, the establishment of junior high schools (“the reform”), the policies of integration, and the opening of registration to those who live outside the school district. In the absence of laws, educators guide themselves by their understanding of the directives from headquarters and court decisions in cases where litigation exists. The small number of primary laws and the lack of accessibility to the regulations – spread out in hundreds of directives from the Director General over the years – create a lack of transparency, which makes it difficult for those who want to discuss the actual education policies in Israel.

Beyond the problem of transparency, the lack of legislation also has direct and severe consequences, such as inconsistency in the Supreme Court rulings. Dr. Dan Gibton found such inconsistencies in the Supreme Court's position about school integration policies. Integration was part of the 1968 reform that was carried out without legislation after it won support in the Knesset. The court backed the state in its struggle against parents who refused to send their children to the integrated schools. In the 1990s, however, when political support for integration diminished and the neo-liberal winds began to blow toward decentralizing the education system and granting school autonomy, Supreme Court support for integration also waned – despite the fact that there was no official change in policy. Gibton concluded that because legislation was lacking, the Supreme Court could retreat from integration at a time when government commitment to the program diminished in keeping with the prevailing public opinion (Gibton, 2000). It should be added that the policy of decentralization, which subverted integration efforts, was also implemented without legislation, government decision, or any official declaration by the Ministry of Education.

Because of the paucity of laws and the multiplicity of regulations, education policy is made and implemented by the senior staff of the Ministry of Education and the local authorities in cooperation with other interested parties, the non-state education networks, organizations like ORT, WIZO, Amal, Na'amat, or ultra-Orthodox bodies, and lately, also parent associations (ibid.).

Legislative expressions of the right to education

The right to education is commonly divided into three main aspects: (a) the right to receive an education; (b) the right to influence educational content; and (c) the right to equality in education (Rabin, 2004: 569). Let us examine how each of these is expressed in Israeli law:

a. The right to receive an education is the right of the individual to receive an education and educational services from the state and at state expense. Alongside the right of an individual to

receive an education stands the right of the state to enforce compulsory education – the obligation to be educated (Compulsory Education Law, articles 2-3). The right to a primary and secondary school education from the state is entrenched in two laws: the Compulsory Education Law (1949) and the State Education Law (1953). The High Court of Justice also extended this right to prisoners, the children of illegal immigrants, and others (High Court of Justice 355/79 Katlan v. Prisons Authority PDA 34 (3) 249).

Although Israeli law cites “free” education, exemption from payment refers only to tuition and registration (Compulsory Education Law, para. 6(a), 6(d), 6d(1), 6(f)). Indeed, the law does not prohibit charging the student with other payments, such as the costs of supplementary educational services (extra-curricular activities and programs), school outings, school parties, etc., which are included in the education fee that the local authorities impose upon pupils with the approval of the Education Minister.

Para. 6(a) of the Compulsory Education Law sets the age of sixteen as the cut-off year for compulsory education, but individuals have the right to continue studies until age eighteen. Para. 6(b) of this law authorizes the Education Minister to issue regulations that would provide young people who dropped out of school before completing twelfth grade with free education; such regulations were never written (ibid., 587). Thus, every child is entitled to free education in the official schools from age five to eighteen or the completion of twelfth grade, i.e., thirteen years of free schooling.

The right to free education applies not just to state schools: According to para. 6(c) of the Compulsory Education Law, the state is also allowed to finance and support private schools that are not accredited (unofficial educational institutions), and since a private educational institution that receives state funds is bound by the same laws as an official institution, it, too, is not allowed to charge tuition or registration fees.

The state also provides free education to children with special needs in the framework of the

Special Education Law (1988). However, the funding for special education is low in comparison with other countries such as the United States, Canada, and Britain (Balas, 2006; Khromchenko, 26 January 2006).

b. The right to influence educational content.

Like most countries, Israel has a state curriculum written by the Ministry of Education. Students and parents are not free to choose the content of their education. Nevertheless, the law does provide parents with several choices: the right to choose up to 25% of the curriculum (supplementary studies); the right to choose an accredited school from among the three recognized streams – state, state religious, or independent ultra-Orthodox – or, the kibbutz movement school system, which is not officially a separate stream; the right to establish private schools as an alternative to the public school system; and the right to home-school one's children. It should be noted that all of these choices are given to the parents in their role as guardians; the children themselves are given choices mainly when they reach high school, where they can participate in the choice of their "major."

One problematic aspect of the right to choose educational content relates to the existence of tracks – academic or vocational training – in high schools. Ostensibly, each student has the right to choose the track that he or she prefers, but in practice purely vocational schools have no academic track, while in comprehensive schools, both tracks exist, but acceptance into the academic track is contingent upon high grades. Furthermore, the policy of tracking is deeply embedded in prejudices about ethnicity and class, and generally part of the broader social-economic hierarchy (see Swirski, 1995).

In international covenants, such as UNESCO's Convention Against Discrimination in Education (1960), and the International Covenant on Economic, Social and Cultural Rights, the right to influence the content of one's education is linked to the right of minorities to preserve their cultural autonomy. In Israel, the right of the largest cultural minority, Israel's Arab citizens, to influence the content of their education was

not a subject of public discussion for many years. This was the case despite the near total de facto segregation of Arab and Jewish schools, and despite the fact that studies in Arab schools are conducted in Arabic. The State Education Law of 1953 divides state education into three streams: state (secular), state-religious, and independent (ultra-Orthodox), but does not recognize Arab education as a separate stream. In practice, this law places the Arab population under the aegis of the state secular stream, whose curriculum is based on the values of Zionism. Article 2 of this law, for example, notes that the mission of the school system is "to teach the history of the Land of Israel and the State of Israel; to teach the Torah of Israel, the history of the Jewish people, Jewish heritage and tradition, to instill awareness of the memory of the Holocaust and the bravery...."

Recognizing Arab education as a separate stream of schooling was never seriously considered. Committees that dealt with the goals of public school education in the Arab sector in Israel acknowledged the cultural distinctiveness of Israel's Arab citizens, but still felt the need to emphasize the interests that were common to Arabs and Jews, and the need to foster loyalty to the state (Yona, 2005: 62-63).

Only in 2000 was an amendment passed to the State Education Law that recognized the teaching of curriculum relevant to the Arab population and other minority groups as within the framework of state education goals: "To recognize the unique language, culture, history, heritage, and tradition of the Arab population and other population groups in Israel, and to recognize the equal rights of all citizens of Israel" (Amendment 2000, para. 2.11). Arab parents can demand that these goals be reflected in a maximum 25% of the required courses.

The Dovrat Commission, appointed in 2003 to propose reform of the educational system, also deliberated the status of Arab education. Arab members of the Dovrat Commission recommended that the Arab sector be defined as a separate education sector, state-funded but independent, like the ultra-Orthodox schools, and that a separate Arab pedagogical council be

appointed, but this demand for autonomy was rejected.

The Ethiopian immigration to Israel also reveals the limitations on the right to influence the curriculum. Following two waves of immigration to Israel of Ethiopian Jews (1984 and 1994), the Ministry of Education forced the new immigrants into the state-religious stream and compelled 12 to 17-year-olds to attend boarding schools (Swirski, S. and Swirski, B., 2002). This was done without consulting the students or their parents, and was rooted in the policymakers' assumptions about the culture of the immigrants and their ability to adjust to modern society. This policy is in complete violation of the principle of preserving culture, and undermines relations between the parents and their children.

c. The right to equality in education. Equality in education is derived from the general principle of equality, although it is not mentioned in the context of education in the International Covenant on Economic, Social and Cultural Rights.

In Israeli legislation regarding education, the principle of equality appears in several locations: para. 5(a) of the Pupils' Rights Law 2000; para. 3(b) of the Compulsory Education Law 1949; para. 9 of the principles of the Council for Higher Education (Accreditation of Institutions) 1964; and para. 6 of the Women's Equal Rights Law 1951, which mandates equality for women in education as well. The Special Education Law of 1988 does not specifically mention the principle of equality in education, but its general aim is to promote equality of education for children with special needs. The principle of equality in budgets appears in para. 3(a) of the Foundations of the Budget Law 1985, which cites the principle of equality in allocating state funds to educational institutions.

Although the principle of equality in education is anchored in legislation, and the Ministry of Education has instituted programs to achieve equality – such as the five-year plan to promote education in the Arab sector – there is significant inequality between sectors in the Israeli school system.

Particularly glaring is the ongoing discrimination in funding and school development in the entire Arab sector – Christian, Muslim, Bedouin, and Druze. The issue of discrimination against the Arab sector came up recently in a ruling by the High Court of Justice in February 2006 about “national priority regions.” This referred to Government Decision 2288, which established “national priority regions in education.” Localities included in Priority Region A enjoyed state support to cover the costs of matriculation exams, teacher benefits, additional teaching hours, subsidies for pre-school programs, tuition for higher education, priority in development plans such as the hot lunch program, extending the school day, and more. Government Decision 2288 awarded this special status to 500 Jewish and only 4 Arab localities. As a result, the Arab Monitoring Committee on Education and Adalah – The Legal Center for the Rights of the Arab Minority in Israel - appealed to the High Court of Justice, requesting that it instruct the government to rescind its decision on the grounds that it is “tainted by suspected differentiation based on nationality and race.” Justice Salim Jubran, who wrote the court decision, noted the importance of education in promoting equality and invalidated the program for two reasons: first, for discriminating between Jews and Arabs and undermining the principle of equality; and second, because the government lacks authority to create a preliminary arrangement of this kind, which should fall to the Knesset. The government decision was deferred for 12 months until an alternative arrangement could be found and legislation passed (High Court of Justice 11163/03 High Monitoring Committee for Arab Affairs et al. v. Prime Minister of Israel from 27 February 2006). Following this decision, a committee was formed to prepare legislation about national priority regions.

The Rotlevi Committee proposed that the principle of equality in education be enshrined in law. This “Committee to Examine Fundamental Legal Principles about Children and their Implementation in Legislation,” was established in 1997 by then Justice Minister Tzahi Hanegbi following an initiative by the National Council for the Child. Tel-Aviv District Court Judge

Saviona Rotlevi chaired the committee, whose mandate was to conduct a comprehensive examination of Israeli law concerning children's rights – their status and welfare – in light of the principles of the UN Convention on the Rights of the Child, passed in 1990 and ratified by Israel one year later. The committee findings were submitted to the Justice Minister in late 2003. As part of its work, the committee formulated an Equality in Education bill, addressing key aspects of systemic inequality, and submitted it to the Education Minister.

Article 1 of the bill asserts the basic principle that “Every pupil has the right to education and Israel's obligation to equality is based on recognition of the principle of equality and the desire to promote quality education that conforms to the criteria of accessibility, appropriateness, appropriateness, and availability.” Additional principles contained in this bill:

- The responsibility of the institution of education and the school to teach basic skills to the pupils;
- The right of the pupil to take matriculation exams in a way that will enable him or her to be accepted to accredited institutions of higher education;
- Prohibition of discrimination, sanctions (a fine or imprisonment) on those who discriminate, and a policy of affirmative action by the Education Minister;
- Prohibition on the tracking of children aged 3-16, and positive steps to ensure the diversity of students in primary and secondary schools with respect to their socio-economic status;
- Establishment of equitable principles for funding the education system and their publication in the Official Gazette, while setting a limit on independent fundraising by educational institutions;
- Prohibition on excluding pupils from any educational activity funded by parental

payments because of their inability to pay;

- Granting of structural autonomy to Arab schools in the framework of state education, and the obligation of the Minister to consult with the Council for State Arab Education to be established by law. Amendment of the State Education Law as required.

The law based on the recommendations of the Rotlevi Committee was not adopted by the government.

In summary, it can be said that education is not a basic right in Israel. Although the International Covenant on Economic, Social and Cultural Rights was ratified by Israel, it was not entrenched in internal legislation. Elements in the covenant, however, do appear in existing laws and Supreme Court decisions. These elements testify to the recognition on principle of the right to education based on interpretation of the covenant and the Declaration of Independence, though court rulings on this are inconsistent.

As noted, the International Covenant on Economic, Social and Cultural Rights defines very broadly the right to education, and fails to provide criteria to define what constitutes a “suitable level of education.” Hence, this right is open to interpretation. While consensus does exist in Israel about the importance of providing education for all, public and academic controversy revolves around the character of that education. Indeed, public debate concerns specific policies related to education such as the opening of registration in school districts, establishment of specialized schools, provisions for funding schools, extending the school day, new curricula, funding to reduce inequality, and so on. Under these circumstances, it is not clear that entrenching education as a basic constitutional right will facilitate policymaking or lead to greater judicial clarity and consistency regarding education. Rather than invest efforts to entrench the right to education, perhaps it is preferable to expand the existing laws that already deal with it.

2. The Right to Education and Education Policy

In 1991, when Israel ratified the Covenant on Economic, Social and Cultural Rights, the education system was already in the midst of fundamental change that threatened to undermine any attempt to translate these recommendations into practical policy.

Since the late 1980s, Israel has expedited a process of reducing state involvement in education, a process that aims to transform the state from the main supplier of education to the supervisor of the supply of education. State investment in education is diminishing, while schools are becoming autonomous units that fundraise in the free market and compete with each other to attract clients (students). The state education system is engaged in a process of decentralization, transferring its authority and role to private bodies – either education networks that operate schools or private bodies that offer supplementary courses funded by the parents. This transformation includes the introduction of quasi-market models to the management of schools, transition to a self-management model, and the gradual opening of school districts to registration of children from other areas. Private funding – whether by parents for special programs or donations from commercial firms – have become an integral part of the school system. The neo-liberal ideology that took hold of economic discourse in Israel also found its way to the field of education. It now seeks to foster competition by introducing free market concepts and facilitating the retreat of the state from the role it had once played via the Ministry of Education.

These new trends are reflected in two state programs. The first, in 1989, was developed in the Ministry of Education under Dr. Shimshon Shoshani, then Director General; the second, in 2005, emerged from a commission headed by Shlomo Dovrat, a businessman.

The “Shoshani Plan” was based on four principles: excellence, school autonomy, pluralism of values in education, and choice of schools by the parents. The plan was first

submitted to Education Minister Yitzhak Navon, who rejected it on the grounds that it would harm equal opportunity in education. Although Shoshani resigned, he was re-appointed Director General of the Ministry of Education several years later, this time by Education Minister Shulamit Aloni. Shoshani established two bodies: a “Committee for Self-Managed Schools”, headed by Ami Volansky, a Ministry official, which adopted the principles of the Shoshani Plan that had been rejected by Navon; and a committee to formulate principles for private fundraising in schools, headed by Arnon Gafni, former Governor of the Bank of Israel.

Out of these plans, the model arose of an autonomous school that would be managed by an executive committee composed of the school principal, teachers, representatives of the local council, and parent representatives. This executive committee would be responsible for the overall management of the school, development of its unique character, goal setting, and raising additional funds. The aim was to manage the school as an economic unit with responsibility for raising and allocating some of its own funding. The Gafni Report even recommended that the executive committees set up their own not-for-profit associations for fundraising. The thrust of the policy underlying these plans was structural decentralization, reduced financial responsibility of the state for education, and competition between schools for clients (pupils and their parents), who would choose their school based on its achievements and distinctive character (Yona, 2005: 93-94).

In October 2003, the Sharon government appointed a “national task force” headed by businessman Shlomo Dovrat; the recommendations of this task force were submitted in January 2005. The Dovrat Report continued the approach of the two Shoshani committees, Volansky and Gafni, with an emphasis on organizational restructuring, primarily decentralization. The Dovrat Report frequently cites the principles of equality and reducing gaps, and it states that the parents can choose their school while the school will not be allowed to choose its students, but the guidelines are insufficient to ensure this.

The Dovrat Report also adopts the model of a self-managed school, but in place of an executive committee, it recommends a less open, democratic model, in which all management authority lies with the school principal. In addition, the Dovrat Report recommends moving a significant portion of responsibility for state education from the state to local leaders. In light of the huge economic differences between municipalities, and the fact that most are having a hard time providing even basic services, it is a reasonable assumption that most municipalities would not be able to carry the burden. In addition, a problem already exists of school allocations transferred from the Ministry of Education to the local authorities, which are swallowed up by municipal deficits and do not reach the schools. This problem led to amendment of the Local Authorities Law - 2000 to protect allocations to education (Local Authorities Law [Designation of Allocations for Education Purposes] 2000 and amendment from 2004).

The Dovrat Commission also recommended the institution of uniform measures and standards to evaluate the achievements of each school in scholarship and values. However, it's hard to see what use will be made of this information when the government denies responsibility for the huge gaps expected in scholastic achievement and learning conditions between the schools.

The Dovrat Commission also recommended measures that are unrelated to organizational reform – an extended school day, better salaries and working conditions for teachers, greater resources for preschool education, and budget priority to schools with pupils having a lower socio-economic status. These recommendations are not controversial, and most had been policy in the past, but their implementation would cost billions of shekels; a government that has committed itself to gradually reducing the state budget cannot be expected to undertake such allocations. Indeed, Dovrat himself declared that implementation of his task force's recommendations would be made in the framework of the existing education budget. As a result, the Dovrat Report has become a plan without funding (National Task Force to Promote

Education in Israel, 2004; Yona, 2005; Swirski, S., 2004; Dahan, 2004).

Even if the Dovrat Plan is not realized, the trend toward decentralization is now at its peak. Between 1999 and March 2005, 673 schools became self-managed (Ministry of Education website, Planning Division, "List of Self-Managed Schools"). The predominant model resembles the Dovrat Report's recommendations more than the Shoshani Plan, with most of the powers transferred to the school principals; only in a few schools was there implementation of the communal approach of an executive committee mentioned in the Shoshani and the Volansky Reports.

In addition to the growing number of self-managed schools, specialized schools are also increasing. In 2004, 531 non-regional specialized schools were operating (not including schools in the independent stream): 410 belonged to the national-religious Noam network, 14 to the Chabad movement, 14 to the democratic schools network, 11 agricultural schools, 5 science schools, 4 anthroposophic schools, and 2 bilingual Jewish-Arab schools. Specialized schools accept pupils selectively, circumventing the policy of integration. In addition to the selective process of admissions, class issues also emerge as specialized schools charge supplementary fees from the parents – NIS 800-1,300 per month per child.

4. Education Budgets

The upheavals in allocations for education reflect the change in policy from a situation in which the state defines itself as the sole provider of its children's education to one in which the state seeks to shift this responsibility to private bodies or local authorities.

In the first three decades of the state, the education budget generally increased, whether because of the huge growth in the school population or the reforms of 1968, which made secondary school education practically universal – requiring the massive construction of schools. In the 1970s, the education budget increased at a rate of 10% a year in the first half of the decade

and 7% a year in the second. In 1980, this trend was reversed, and a period of belt-tightening began. Cutbacks were temporarily halted with the immigration waves from the former Soviet Union and Ethiopia, but starting in 1996, as immigration eased, the education budget was again reduced. During the second Intifada (2001-2006), when the state budget underwent unprecedented slashing, the education budget was also hurt: teaching hours were cut by 19% per pupil in this period (Adva Center, 2006: 9).

The corollary to budget cutbacks is the increased expenditure on education by households. Between 1986/87 and 2001, the proportion spent on education by the average household increased from 3.8% to 6.1% of the total family consumption. This increase reflected the large burden on the household, now asked to finance more and more activities that in the past had been funded by the state. The magnitude of the school system's reliance on the private pocket can be grasped from the increase in household spending on education, in comparison with the general increase in household spending: Between 1986/87 and 2001, average consumer spending increased in real terms by 11% per household, while spending on education increased 78% per household (Swirski, S., 2000).

Clearly, the greater reliance on private funding leads to deepening gaps in education. In well-to-do towns, pupils enjoy private funding, which supplements the dwindling public funds. In low-income neighborhoods and towns, parents cannot afford to pay for supplementary education from their own pockets, and schools have to make do with the state budget.

5. Inequality in Primary and Secondary Schools

The right to education as formulated in the International Covenant on Economic, Social and Cultural Rights distinguishes between stages of schooling: primary, secondary, and higher education. In all matters concerning primary and secondary education, the situation in Israel is good in that the principle is anchored in Israeli law (with the provisos mentioned above, such as the charging of fees). The primary and secondary

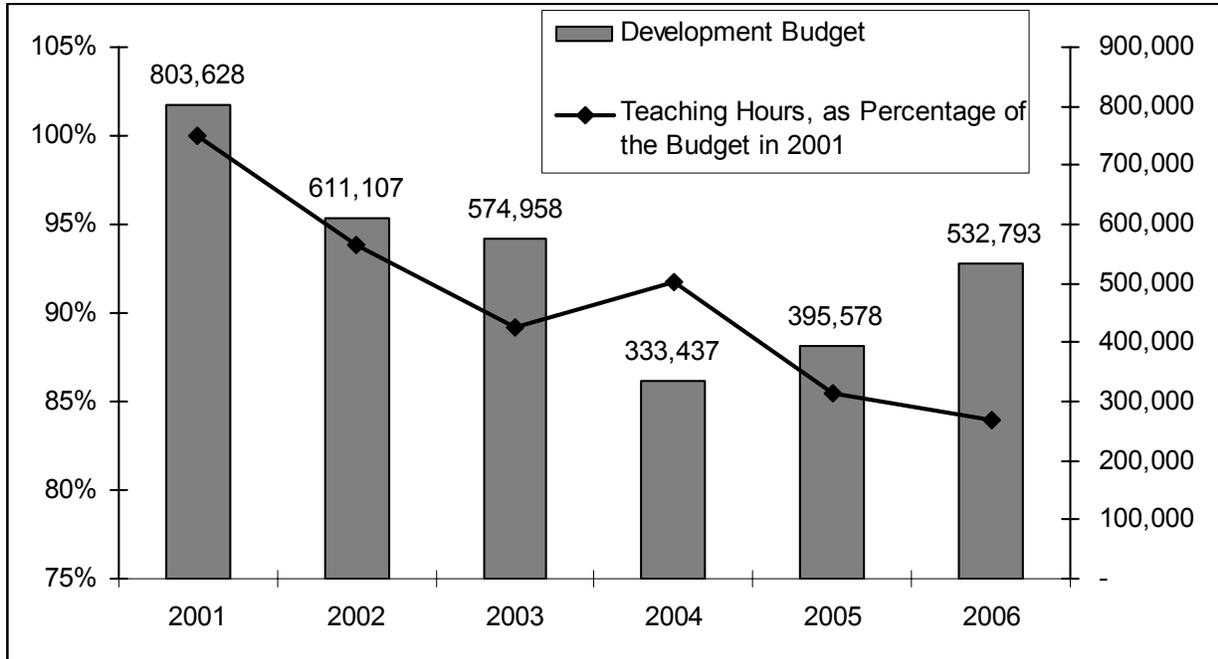
school system provides education for all, except those in the unrecognized Bedouin villages of the Negev, where the state does not even implement the compulsory education law. Besides this, the core problem of the Israeli school system is the large gap in scholastic achievement between population groups in Israel: Jews and Arabs; Mizrahi and Ashkenazi Jews; immigrants from Europe and those from the third world; etc.

The discrepancies are glaring in the rate of those who graduated high school with matriculation certificates. In 2005, 44.9% of all the 17-year-olds in Israel graduated with a matriculation certificate. Among Jews, the rate was 50.1%, while among Arabs, 32.2%. Among those from well-to-do locales, the rate was 67.4%, compared with 46.0% in development towns; among Bedouin in the Negev, the rate was 26.6% (Swirski and Schurtz, 2005). The following table shows the increase in matriculation rates among population groups, but also reveals that the gaps between the groups have remained constant.

In addition to the association between matriculation success and ethnic origin, there is also a clear link between matriculation and economic status. The data on page 24 reveal a very high association between the matriculation rates and the average level of income in various localities in Israel.

Ministry of Education Budget for Teaching Hours, Per Capita, and Development Budget, 2001-2006

Teaching Hours, as Percentage of the Budget in 2001;
Development Budget in NIS Thousands In 2005 Prices



Note: The figures for 2006 are from the Budget; other figures are actual expenditures.

Source: Ministry of Finance, CFO, *Financial Report*, various years; Ministry of Finance, *Proposed Budget for 2006*. Population estimates are from the Central Bureau of Statistics, *Statistical Abstract 2005*.

Gaps in the Israeli school system are also significant in the rate of those who continue on to higher education. A follow-up study conducted by the Central Bureau of Statistics among high school graduates reveals that only 30% of those who completed twelfth grade in 1996 had embarked upon university or academic college studies by 2004. The proportion from European or American origin was 31.1% while those from Asian or African was 22.4%. From the highest socio-economic bracket, 45.4% had enrolled while only 10% enrolled from the lowest bracket.

About thirty-eight percent of those from a high school academic track had enrolled, compared with only 12.9% of those from vocational tracks (Swirski and Konor-Attias, 2005). In the main chapter of this paper, we discuss the right to higher education.

Success Rates of 17-Year-Olds in the Matriculation Exams, by Social Group, 1995-2005

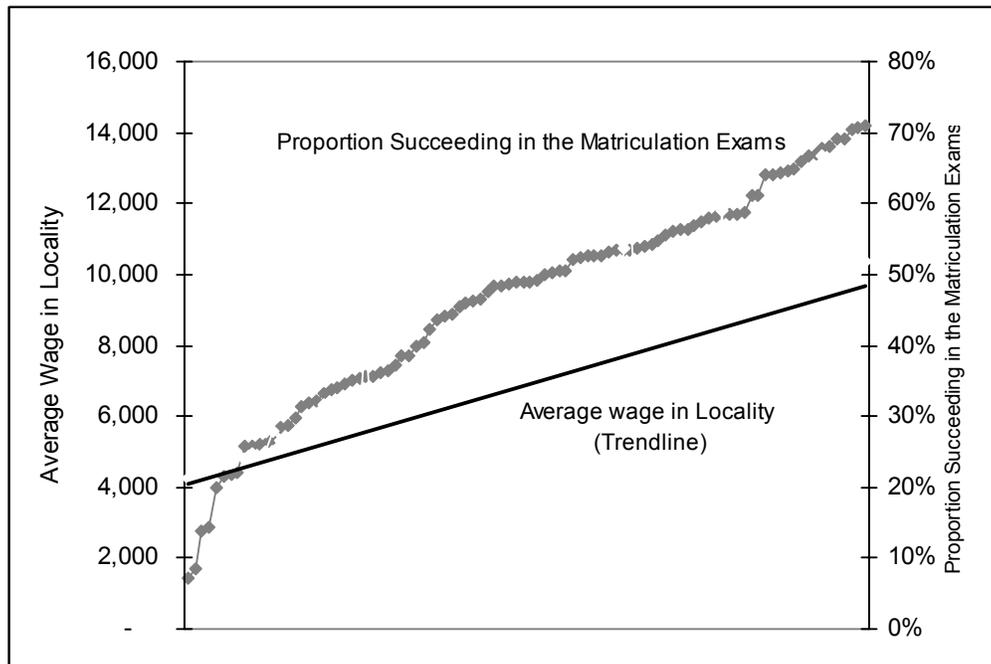
Percentages

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total	75.3	79.8	78.2	78.0	79.9	77.9	75.4	79.8	79.3	82.3	82.0
Jews	83.8	89.5	87.5	84.2	85.4	83.0	80.6	84.9	84.1	86.4	86.8
Jews (without the ultra-orthodox)	n.a.		93.9	90.4	92.2	90.2	87.7	92.5	92.9	96.4	98.9
Affluent Localities	n.a.		93.3	91.4	91.1	91.5	91.6	92.3	92.0	97.6	100.5 ¹
Development Towns	n.a.		78.8	86.1	87.2	85.4	85.2	88.0	89.2	90.9	90.0
Druze Arabs	64.8	70.6	69.3	76.0	83.7	79.8	79.6	81.1	84.8	81.2	82.8
Moslem and Christian Arabs	56.8	58.2	57.9	67.3	73.4	71.2	66.1	74.0	75.2	82.9	79.3
Negev Bedouin Arabs	33.2	41.4	43.0	49.7	57.4	62.8	63.0	60.0	64.4	69.0	71.5

Sources: Adva Center analysis of Ministry of Education, *Matriculation Exam Figures*, various years; Central Bureau of Statistics, *Local Authorities in Israel, Physical Characteristics*, various years.

Proportion of 17-Year-Olds Succeeding in the Matriculation Exams, by Locality, 2005 & Average Wage, by Locality, 2003

In NIS



Sources: Shlomo Swirski and Itai Schurtz, *Success Rates in Matriculation Exams by Locality, 2003-2004*, Adva Center, August 2006; average wages by locality are from National Insurance Institute figures.

6. Summary: The Right to Education in Israel

In Israel, education does not enjoy the status of a basic constitutional right, although it has a superior legal status by virtue of appearing in the Declaration of Independence, the constitutive document that reflects the basic values of governance in Israel. As a result, the right to education has won declaratory recognition in Supreme Court rulings, based on the Declaration of Independence and the interpretive standing of the International Covenant on Economic, Social and Cultural Rights, ratified by Israel.

In the international covenant, the right to education is defined in the broadest possible manner and leaves itself open to interpretation, primarily because it lacks a binding definition of what constitutes a proper level of education. As a result, and in light of the declaratory recognition of education as a right, it is not clear if entrenching education as a basic constitutional right without a more precise definition of its content and scope would broaden implementation of this right or lead to more significant judicial review of the matter. On the other hand, we have seen that legislation on education in Israel is minimal and that key changes in education policy have not been enshrined in law. In these circumstances, the mechanisms of education in Israel can operate without transparency and without being subject to proper judicial review.

In discussing the right to education, one should keep in mind that since its founding, Israel has abided by the core demand of the international covenant – affording primary school education for all. This has been part of the corpus of legislation since the Compulsory Education Law of 1949. Only one population group exists for which the state has not fulfilled its commitment – residents of the unrecognized Bedouin villages in the Negev, where a large proportion of young people are not in school.

Concerning the principle of free education, pupils are not required to pay tuition or registration. However, cutbacks in the education

budget have forced families to pay more and more supplementary school expenses.

With reference to the right to influence educational content, Israel took a step forward with the amendment to the State Education Law of 2000 by granting the possibility of expression to the culture of minorities as part of their curricula.

The international covenant does not place equality in education as a goal, but makes do with demanding that education be accessible to all and prohibiting discrimination. However, in Israel as in most states, equality is considered a basic principle and cited in several education laws. We have seen that in the Israeli school system, there are marked gaps between pupils from well-to-do and low-income communities, as well as gaps between pupils from various ethnic groups.

The situation differs with regard to the right to higher education. Here, the international covenant defines its goal as creation of a system of higher education that is accessible to all, based on learning ability. In the past decade, the Israeli system of higher education underwent a dramatic expansion: Public and private colleges were established and the number of students almost tripled. Nevertheless, there is no consensus in Israel about the goal of free higher education, as cited in the covenant, and the principle of accessibility based on capability is only partially fulfilled.

For these reasons, and because of the ongoing public debate about tuition in public institutions, we have decided to examine in greater depth implementation of the right to higher education in Israel.

The Right to Higher Education and Fiscal Policy

1. Introduction

In this chapter, we examine the status and implementation of the right to higher education, which is one aspect of the right to education as defined in the International Covenant on Economic, Social and Cultural Rights.

In addressing the subject of higher education, the international covenant gives paramount importance to the principle of equal access. This principle expresses the obligation of the state to create and maintain a system of higher education with admission predicated solely on scholastic ability, not membership in any economic, cultural, or ethnic group.

Defining higher education as a right recognized by the international community reflects the importance attributed to it today. In society and the economy, higher education upgrades the “human capital” of a population and plays a vital role in development and growth. For the individual, higher education is key to entering the workforce, social mobility, and participation in the democratic process. Defining higher education as part of the right to education also reflects the enormous increase in the number of those who attend academic institutions in developed countries, now that primary and secondary school education have become available to all, even a large part of the lower classes.

In Israel, the system of higher education has significantly expanded in recent years, both in terms of the number of institutions and the number of students. Therefore, it is particularly important to examine the system from the point of view of the right to education and higher education. Does this growth indicate progress in realizing the right to higher education as defined by the international community? Has this growth reduced the socio-economic homogeneity that marked Israel’s higher education system until the 1990s?

In an effort to address these questions, we examined the following:

- a. The composition of the Council for Higher Education, its Planning and Budgeting Committee, and their activity;
- b. The budget allocated to higher education and its distribution among the schools;
- c. The access of higher education to various groups – at the stages of admission and studies;
- d. Financial aid to students and programs as a way to increase access to higher education; and
- e. Types of institutions for higher learning and the gaps between them.

2. The Right to Higher Education in the International Covenant on Economic, Social and Cultural Rights and in Israeli Law

Article 13(2) of the International Covenant on Economic, Social and Cultural Rights lists the measures that must be taken by ratifying states to implement the right to education. With respect to higher education, para. 2(c) states: “*Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means and in particular by the progressive introduction of free education.*”

According to the covenant, the state must provide equal access to higher education for all parts of the population. The covenant does not call for the ratifying states to employ specific measures to ensure equal access, but recommends *free* higher education as key to attaining this goal.

The principle of equal access to higher education appears earlier in a document by UNESCO (the United Nations Educational, Scientific and Cultural Organization) – the Convention against Discrimination in Education (1960). Article 4 of this convention obligates the ratifying states “*to*

make higher education equally accessible to all on the basis of individual capacity.”

Israel ratified the UNESCO convention in 1961 and the International Covenant on Economic, Social and Cultural Rights in 1991, but it did not anchor these documents in internal Israeli law. As noted in the previous chapter, for an international covenant to be legally binding within Israel, its content must be adopted by internal legislation (High Court of Justice 802/79 Samara v. West Bank Regional Commander, PDA 34(2) 169). Lacking such legislation, these documents have interpretative value only.

While Israel did not anchor these covenants in its own laws, some of their principles, especially that of non-discrimination, appear in the Council for Higher Education Law with respect to the accreditation of institutions. This law notes that one criterion for accrediting an institution is the absence of discrimination in its admission by race, gender, religion, or nationality.

It is important to note that the principle of non-discriminatory admission to an institution for higher education has the status of ordinary legislation and is not a constitutional right. Furthermore, Israeli law does not mention non-discrimination based on economic means nor does it advocate free higher education as a way to achieve equal access.

The Council for Higher Education Law contains additional assertions related to access: Para. 17(a) promotes equality by noting that the funding of institutions of higher learning shall be carried out according to egalitarian criteria (to be discussed below with reference to the budget allocations for higher education). On the other hand, para. 25(a)(b), which deals with financial aid to students, does mention criteria for preferential treatment (to be discussed below in the section about financial aid).

3. Institutions of Higher Learning

Until the 1990s, the system of higher education in Israel was composed of a small number of institutions, almost all universities. The criteria for admission were more or less identical, and

the value of the degrees they awarded, comparable. In the 1990s, a second layer of institutions of higher education emerged, not universities, most of them less selective in their entrance requirements. This happened through the academization of teacher training institutes, the opening of regional public colleges, the conferring of academic accreditation on private colleges, and the establishment and licensing of extensions of foreign institutions of higher learning. This expansion and diversity came in response to increasing demand – due either to the greater number of those holding matriculation certificates or to the immigration wave from the former Soviet Union. The universities responded to the growth by tightening their admissions criteria (Shavit and Shwed, 2006: 3) and referring many applicants to the new, non-university institutions.

In 1995, the new system was legally recognized by Amendment 10 to the Council for Higher Education Law. This amendment recognized four types of academic institutions in the system: (1) universities; (2) public academic colleges (state-funded); and (3) private academic colleges (not state-funded) – all authorized to award academic degrees recognized by the Council for Higher Education. The fourth category, extensions of foreign institutions of higher learning, are licensed by the Council for Higher Education, but able to award only foreign degrees.

In the 2003-04 school year, a mapping of higher education showed 7 universities, 1 open university, 16 state-funded colleges, 7 colleges not funded by the state, and 27 academic teacher-training colleges (Central Bureau of Statistics, 8 May 2006; Central Bureau of Statistics, 2005: 27-29). In addition, there were 28 branches of foreign universities operating in Israel.

A description of these four categories:

Universities: The universities are institutions of research and learning that award bachelor's, master's, and doctorate degrees in a wide variety of subjects. This category also includes the Weizmann Institute of Science, which engages in science research and study and awards only advanced degrees. The universities enjoy a status

of “primacy” with the Council for Higher Education and its Planning and Budgeting Committee, and receive the lion’s share of state funding earmarked for higher education.

Some also include in this list the Open University, which engages in teaching but not research, and awards bachelor’s degrees (and since 2004 also a master’s degree in a limited number of disciplines (computer sciences, democracy programs, biological thought and business administration). The Open University differs from the other universities in that there are no admissions requirements, it is intended for working people, and it allows for a flexible schedule. Most of its students are not studying for a degree, but attend specific courses for which they receive credit in public sector jobs as in-service training courses.

Public academic colleges: These colleges are funded by the state via the Planning and Budgeting Committee. They are teaching institutions only, and authorized to award a bachelor’s degree, and since 2005, a master’s degree in a few disciplines. These can be divided into regional and professional colleges:

The regional colleges operated in the past, since the 1970s, under the auspices of the universities as post-secondary school institutions distant from the center of the country. They offered academic courses and those attending were considered full-fledged students of the parent universities and awarded degrees from that university. For about a decade, these regional colleges have been in a process of accreditation as independent colleges offering full academic courses of study and awarding their own bachelor’s degrees.

The professional colleges offer professional courses in fields like technology, arts, and administration. They also do not engage in research and are authorized to award only a bachelor’s degree in the field of study.

In considering a public college for accreditation, the Council for Higher Education examines a set of academic and administrative criteria, including market demand and the needs of society. In the 2003-04 school year, 16 public

colleges operated in Israel, six of these in outlying areas.

Private academic colleges: The private colleges resemble the public academic colleges in that they ordinarily award only a bachelor’s degree and do not engage in research (some award master’s degrees in specific disciplines); the main difference is that the private colleges are not funded by the state. In this sense they constitute a new and growing phenomenon in the landscape of higher education in Israel. The Council for Higher Education grants accreditation to these colleges based on academic and administrative criteria and their ability to be financially independent, but it does not consider market demand or society’s needs. The private colleges generally offer courses that parallel those in the universities, especially in popular and well-paying fields such as law, business administration, economics, and bookkeeping. Unlike the state-funded schools, however, the Council does not limit the cost of tuition that can be charged by private colleges; indeed, their tuition is up to three times higher than tuition for public colleges and universities. In the 2003-04 school year, seven private colleges operated in Israel, six of these in the greater Tel Aviv region and one in Jerusalem.

Extensions of foreign universities: Such extensions have operated in Israel since the 1990s. In 1998, Amendment 11 was enacted to the Council for Higher Education Law stipulating that foreign extensions must be licensed by the Council for Higher Education and subject to limited regulation to ensure that they are affiliated with recognized foreign universities. This amendment was enacted following concerns raised by Israeli universities in light of the rapid spread of foreign extensions and contentions about their low academic level. Para. 25(d) of the Council for Higher Education Law lists the minimum requirements for extensions of foreign universities, which include accreditation of the parent institution in the country of origin; recognition by the Council for Higher Education of the authority of the parent institution to award degrees; similarity between the courses given in the Israeli extension and the parent institution; the scope of studies must be

identical to Israeli requirements for an academic degree; the lecturers must hold appointments in the parent institution; admission based on having an Israeli matriculation certificate or the equivalent, and on a bachelor's degree in the case of extensions awarding a graduate degree.

The foreign extensions offer varied courses for bachelor's, master's, and doctorate degrees. Although licensed by the Council for Higher Education, the extensions are not funded by the state nor accredited as Israeli institutions for higher learning. The degrees they award are considered degrees from the parent institution. Following a 2005 decision taken in the Budget Law, degrees awarded by foreign extensions are no longer recognized for the purpose of upgrading salaries in the public sector. The decision prompted a number of foreign extensions to petition the Council for Higher Education for recognition as "Israeli" private colleges granting Israeli degrees. The first such approval was granted to the Peres Academic Center in 2006; the Peres Academic Center formerly operated as an extension of the New York Polytechnic. It may now grant a master's degree in business administration.

The rapid growth of the foreign extensions seemed to stem from the increasing demand upon public sector employees to hold academic degrees as a factor in setting their salary. However, the 1998 amendment, which obligates the expansion to be licensed by the Council for Higher Education, has led to a sharp drop in their student population: from 18,635 in the 1998-99 school year to only 5,596 in 2003-04.

Teacher Training Colleges: Currently in Israel there are 27 academic teacher-training colleges. In addition, there are 29 non-academic colleges that certify teachers, of which 27 are ultra-Orthodox (Central Bureau of Statistics, 2005: 27-29).

The academic teacher training colleges award a B.Ed. degree, which is a limited academic degree that entitles a student to continue graduate studies only in education. Beginning in 2005, five teacher-training colleges were permitted to award a non-thesis master's degree.

The academic teacher training colleges are accredited and licensed by the Council for Higher Education, and even have representation on the Council. However, their administration and funding is under the Ministry of Education and not the Council. A Council for Higher Education decision from November 2, 2004 determined that the number of academic teacher-training colleges would be reduced to twelve and would thereafter be budgeted by the Council itself (rather than the Ministry of Education) (Council for Higher Education, 2006, Chapter 2). However, these decisions have yet to be implemented.

Non-academic Post-Secondary School Institutions: In addition to the academic institutions, Israel also has post-secondary schools that do not award an academic degree and are not accredited or regulated by the Council for Higher Education. These schools offer courses that confer professional certification. Most were founded in the 1960s and 70s for purposes of providing a profession to students who did not matriculate, in the belief that this would contribute to the economic development of the periphery (Yogev et al., 2005).

Some of these institutions are public, such as the institutes for training engineering technicians and other technicians, which are accredited and regulated by the Government Institute for Technology and Science Education, established in 1970 by the Ministry of Labor in cooperation with the Ministry of Education and the Engineering Technicians Union. After passage of Amendment 10 to the Council for Higher Education Law, some of these schools were accredited as full academic institutions and are now considered professional colleges, as noted above.

Unlike the situation in Europe, the post-secondary-school sector in Israel is not considered part of the system of higher education and no effort is made to incorporate it, which would allow it to upgrade degrees and enhance the mobility of students from professional schools to full academic institutions (ibid.).

The post-secondary schools provide a substitute for higher education for young men and women who do not have access to the academic system of higher education. Their numbers are constantly growing: In the 2003-04 school year, 45,194 students studied in these schools – equivalent to 22% of those enrolled for bachelor's degrees in the academic institutions of higher education.

4. The Administration of Higher Education in Israel

The system of higher education in Israel is regulated by the Council for Higher Education Law (1958) and secondary legislation derived from it. This law defines an institution for higher education and sets criteria for licensing and funding. The law also defines the role of the state arm that oversees higher education in Israel – the Council for Higher Education.

The Council for Higher Education was created in 1958 to regulate higher education in Israel without direct government involvement. Although the Council enjoys considerable freedom of activity, its two main powers – accrediting new institutions and funding the schools – are contingent upon government approval. Because the main funding source of higher education in Israel is the state budget, and allocations are decided by the government and approved by the Knesset, government policies and Knesset decisions have a very significant impact on the functioning and development of higher education in Israel.

The main tasks of the Council are as follows: setting criteria for accrediting and licensing institutions based on the principles of the Council for Higher Education Law; accrediting or licensing new institutions of higher education; withdrawing accreditation; examining new curricula that the institutions submit for approval; formulating proposals for cooperation among the research and teaching schools; and opening new institutions.

The main executive arm of the Council is the Planning and Budgeting Committee. This committee is in charge of preparing the Council

budget, submitting it for government approval, and disbursing the allocations among the schools.

A. Appointment to the Council for Higher Education

Council members are appointed for a term of five years. The 19-25 members are headed by the Education Minister, who serves as chair. At least two thirds of the Council members are intended to be individuals “of stature in the field of higher education,” and appointed by recommendation of the Education Minister after consulting with the accredited institutions for higher learning. The remaining third are public representatives and the chair of the National Student Association. The large proportion of academics is intended to ensure the independence of the Council from government interference; however, one potential by-product is conflict between those protecting the interests of academic institutions and those with the interests of the general public at heart – when the two differ.

Appointments to the Council require government approval, and the government acts in accordance with the recommendations of the Education Minister, after consulting with the institutions for higher learning. The principle of fair representation obligates the Education Minister to seek the advice of all types of accredited institutions, but in practice there is no standard protocol for such consultation and the accredited institutions have generally not all been consulted (Har-Zahav and Medina, 1999: 57). This violates the principle of fair representation for all types of schools as well as the principle of the Council's independence from government bodies, as the Government and/or Minister of Education could choose not to act on the recommendations of the academic institutions, but rather, appoint members to the Council based on selective consultation, promoting candidates that it or the Education Minister prefers for various reasons. Indeed, this is what happened in the appointment of the tenth Council, when Education Minister Limor Livnat changed the composition of the

Council by replacing most of its members, as will be discussed below.

B. Representation in the Council for Higher Education

The question of fair representation in the Council for Higher Education has dogged the system for some time. In the early years, when the Hebrew University enjoyed a monopoly, Bar Ilan and Tel-Aviv Universities were the ones demanding that their representatives be included in the Council.

With the amendment in 1995 that established these colleges as institutions of higher learning, the question arose of the representation of non-university institutions that specialize in teaching and are not engaged in research. In 1995, para. 4(a) was also amended to read, “Fair representation shall be given in the Council to all types of institutions for higher learning that were accredited by the Council.” A temporary order appended to the amendment asserts that three representatives from the academic colleges shall be added to the Council for Higher Education. Since this amendment and temporary order, the universities continue to command a majority in the Council, a fact that perpetuates their standing as the leading academic institutions – at the core of higher education – and therefore their representatives are considered the most worthy to influence the character of the entire system.

Rhanan Har-Zahav and Barak Medina, who researched the system of higher education in Israel, wrote that in the ninth Council, from 1997 to 2002, there were 24 members, 17 of whom were representatives of universities, one from the Academy for Music and Dance, and one from the College of Administration, which is a private college (Har-Zahav and Medina, 1999: 56). This Council had no representative at all from the regional colleges. The foreign extensions have no representation as they are licensed but not accredited by the Council.

In 2001 prior to the appointment of the tenth Council, Limor Livnat, then Education Minister, published an article in *Ha'aretz* in which she attacked the dominance of the universities in the

Council for Higher Education. Livnat argued that the universities had become a cartel disconnected from the public, and she called for enlarging the number of representatives from the colleges and the public. The article touched off a stormy debate; those opposed expressed concern that the political echelons were taking over the Council and its budget. They were also concerned about harm to the future of research and development in Israel, arguing that the principle of representation based on institutions is inappropriate for the tasks of the Council, which must exercise quality control over the system of higher education. Candidates for membership in the Council, they said, must be judged for their academic suitability, not their institutional affiliation (for more, see Volansky, 2005: 338-357).

Following the public debate and the intervention of the Education Minister, the composition of the tenth Council differed from that of its predecessors: Only two members of the ninth Council were reappointed. To the tenth Council were appointed (in addition to the Education Minister and the chair of the Planning and Budgeting Committee) 5 public representatives, 11 representatives from universities and research institutions, a student representative, and 4 representatives of colleges. Among the representatives of the public is one from the periphery; indeed, 10 of the 25 Council members are women and two are Arab. Amendment 13 of the Council for Higher Education Law from 2006 asserts that an additional representative of students should be added who will represent the state-funded colleges. Despite all this, the colleges are still under-represented in the Council.

C. The Planning and Budgeting Committee

The Planning and Budgeting Committee (PBC) is the most important committee of the Council for Higher Education as it controls allocations to the institutions for higher learning. Despite this, its power and roles are not defined by law, but by government decision (666) from 1977. In addition, while the Council is accountable to the government – for example the government must approve Council decisions to accredit new

institutions – the PBC is free of all government scrutiny and enjoys virtually exclusive authority in all matters related to funding policies (Har-Zahav and Medina, 1999: 231).

Until establishment of the PBC, the budget for higher education was part of the budget of the Ministry of Education; since its establishment, these are two separate budgets. The budget for higher education is a special section in the Budget Law; in this sense, the status of the Council for Higher Education resembles that of a government ministry.

The PBC prepares the bill for allocations to higher education and submits it for approval to the Cabinet and the Knesset in the framework of the State Budget bill. Upon approval of the state budget, most of the funds earmarked for higher education are then transferred to the exclusive control of the PBC, which disburses them to the institutions. The PBC is also responsible for developing the system of higher education in coordination with the institutions, monitoring the use of allocations, and submitting professional opinions to the Council concerning the opening and funding of new institutions.

Just as the composition of the Council for Higher Education is controversial, so too is the composition of the PBC. The chair is appointed by the Minister of Education, but this appointment requires the approval of the Council. In the Council, as noted, university representatives have an absolute majority. The PBC itself is composed of four professors who represent the universities and two public representatives. What's more, the chair of the PBC is a full professor in a university, appointed by university representatives, and returns to the university system afterwards. This raises questions about potential conflicts of interest, as the PBC chair and members are perceived as representing university interests, and not necessarily the public at large, in their decision making about budget allocations (Har-Zahav, 2000: 70-73).

Concerning the conflict of interest, Har-Zahav suggests two alternatives: either giving suitable representation to all the sectors on the Council

and PBC, or alternatively populating this decision-making body with individuals who have no connection at all to the institutions of higher learning (ibid: 73).

In Summary, the composition of the Council for Higher Education and the Planning and Budgeting Committee reflects and replicates the preeminence of the universities in the system of higher education. This status was legitimate in the past, when the universities were the only academic institutions in Israel. Today, when the system has grown and become so diversified, and when more than 50% of the students attend non-university institutions, the composition of these bodies should be reconsidered so that they represent the diversity of needs and goals of higher education in Israel.

5. The Budget for Higher Education

The state budget embodies the social and economic order of priorities of the state. As such, it can also be seen as an expression of the degree of commitment of the state and society to human and civil rights. The amount of resources allocated to realizing a particular right makes possible an examination of whether the allocations are meeting the standards set in the international covenants for social, economic, and cultural rights (Diokno, 1999). In Israel, the main funding for the system of higher education comes from the state. Hence, an analysis of the state budget earmarked for higher education can be used to determine the commitment of the state to the values in the international covenants.

The Council for Higher Education asserts that it is committed to increasing access to the institutions for higher learning. In this section, we will consider the extent to which the fiscal policies reflect this commitment. In this context, we examine three main trends:

First, the financial bias in favor of the universities; this bias is particularly pronounced in comparing the budgets of universities and public colleges.

Second, the increased number of private institutions that do not enjoy state funding. This

increase suggests that the role played by government funding in the Israeli system of higher education, both private and public, is shrinking.

Third, the trend of reduced funding for higher education.

A. Non-egalitarian Funding Policies

The laws that govern fiscal policy for higher education in Israel call for egalitarian treatment of all the institutions. According to the Council for Higher Education Law, “State funding for institutions of higher education and academic colleges in which the state shares funding shall be based on egalitarian criteria to be set in consideration inter alia of the types of institutions and the development, teaching and research plans approved by the Council, one of its committees authorized to do so, or the Ministry of Education, Culture and Sport, as relevant” (para. 17a). The Foundations of the Budget Law, which applies to the Council as a public body acting in trusteeship for public funds, affirms that “The amount set in the budget for one category of public institution shall be divided among the public institutions in that category based on egalitarian standards” (Foundations of the Budget Law 1985, para. 3a(d)).

Despite these injunctions, the fiscal policy is not egalitarian in practice. This can be seen with regard to some of the criteria for allocations:

1. The main component in government funding for higher education is what is called “direct allocation,” which constitutes 70% of the total. The amount of direct allocation received by every institution is set by the PBC based on the teaching and research outputs of that institution. In 2005, the allocation for teaching constituted 54% of the total allocation and that for research 46% (CHE, 2006:147).

The teaching component is based on the anticipated number of students who graduate from the institution that year, as each graduate is worth a subsidy in accordance with his or her field of study and the degree acquired. This

system motivates the schools to tighten their entrance requirements to ensure that the highest proportion of those admitted will actually complete their studies with a degree; students who do not complete their degrees constitute an economic burden on the institution (Har-Zahav and Medina, 1999: 244). Hence, the system undermines the principle of equal access: high risk candidates are more likely to be rejected by the schools.

To this can be added the “efficiency factor,” which reflects the proportion of students who graduate in the standard time allotted – generally three years for a bachelor’s and two years for a master’s degree (CHE, 2005: 123).

These two funding principles harm the public colleges in the periphery, in particular, who accept a large number of students from low socio-economic levels, many of whom drop out during their studies or complete their degrees in more time than allocated for it.

2. Each of the state-funded institutions is allotted a quota of students who are eligible for funding. Exceeding this quota forces the institution to identify other sources of funding for the students who exceed the quota (Har-Zahav and Medina, 1999: 244).

This system of funding exacerbates inequality: It pressures the public colleges in the periphery to reduce the number of students to the quota set by the PBC, while private colleges not funded by the state – whose target audience are the children of wealthier families – operate under the incentive of *increasing* the number of students.

3. As seen above, between 42% and 46% of the university budget is earmarked for research. This component is determined by output: the number of scientific publications of the institution’s scholars, the number of students studying for a doctorate in that institution, grants received from competitive research foundations, and research funding from other sources (CHE, 2005: 123). State-funded academic colleges have no access to research funds, which creates a significant funding gap between them and the universities.

4. Another component in the Council's funding that benefits the universities is "parallel allocations." These serve to encourage the establishment of endowments, the interest from which is added to the school's ongoing budget: the Council awards grants equal to the interest generated by the endowment, according to the principle of matching funds. In the 2005-06 school year, a total of NIS 188 million was transferred to the institutions from parallel allocations: 99.4% of this reached the universities and the Weizmann Institute, while 0.6% went to the non-university institutions (CHE, 2006: 139-140).

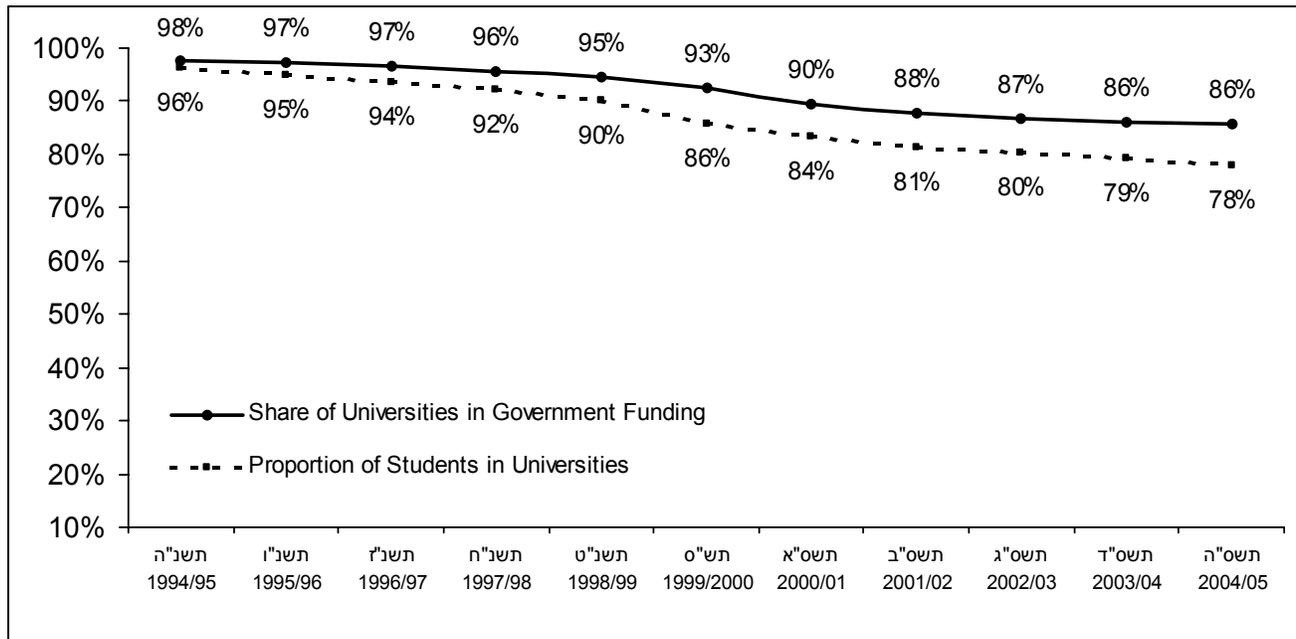
5. The Council for Higher Education Law and the government decision that define the powers of the PBC do not define the funding criteria of institutions. Furthermore, the PBC is not legally bound to publish the criteria or demonstrate transparency. This bestows great power on the PBC. It also conflicts with para. 3a(g) of the Foundations of the Budget Law, which states that tests and procedures for the allocation of public funds among public institutions shall be published in the Official Gazette. It also conflicts with the Supreme Court judgment concerning the obligation of an administrative authority to set criteria for discharging its authority and priorities for the disbursement of public funds (Har-Zahav, 2000: 75-76). Although the PBC reports contain the general and permanent criteria for funding, some of these are worded quite broadly and render it impossible to determine the specific factors that guide the Council with respect to a particular program. An example of this is the criterion of "market and economic considerations" that are weighed for purposes of opening new courses and programs.

In light of the above, the aforementioned criteria for funding institutions of higher learning only strengthen the primacy of the universities and weaken the standing and potential growth of the schools in which low-income students study, such as the public colleges in the periphery. In parallel, these criteria provide incentive for the schools whose student body is composed of wealthier individuals from the center of the country.

As a result, although the allocation to the universities from the higher education budget has dropped in the last decade, it has not dropped proportionately to its share of the student population: an examination of the regular budget of the institutions of higher learning (which does not include development budgets and revenues from tuition and contributions) shows that in 1994-95, just over a decade ago, the universities were given 98% of the regular budget for higher education; this correlated more or less with its 96% share of the student population; the non-university institutions, which had 4% of the student population, were awarded 2% of the budget. In 2004-05, the proportion of students in non-university settings was 22%, but their share of the regular budget was only 14%. On the other hand, the universities were given 86% of the regular budget, though they taught only 78% of the students.

University Students as a Percentage of all Students in Universities and Public Colleges With Academic Standing, and the Share of Universities in Total Government Funding for These Institutions, 1994/95 – 2004/05

Percentages



Notes: Students includes first and second degree students.

1. Government funding includes direct, dedicated allocations made by the Planning and Allocations Committee of the Council for Higher Education from Government funds.
2. Does not include students enrolled in the Open University.

Sources: Adva Center analysis of Council for Higher Education, *Annual Reports of the Planning and Allocations Committee*, various years.

C. Private Higher Education

Until the late 1980s, all the institutions for higher education in Israel were funded by the state. In 1988, the first exception was made when the Council awarded accreditation to an academic track of the College of Management; this was the first case of a non-state-funded college. In 1990, Amendment 17 was enacted to the Bar Association Law (1961) that allowed for the opening of law colleges that were not accredited by the Council, but recognized by the Bar Association. In 1995, Amendment 10 to the Council for Higher Education Law was enacted that enabled the establishment of colleges, both private and public, in addition to the existing universities. A Council for Higher Education decision of December 16, 2003 resolves that

institutes of higher learning are not to be for profit (CHE, 2006); thus private colleges are established as non-profit associations.

The immediate incentive for opening private colleges for the study of law was the large demand among young people of means who were not accepted to the university law faculties, either because of the high standards or the limited number of places; for these young people, the only alternative in those years was to study abroad. Thus, the option of colleges not funded by the state seemed like a convenient solution for all: These colleges offered the children of well-to-do families the opportunity to study a prestigious profession in an accredited school for less money than studying abroad;

what's more, this could be accomplished without increasing the budget of the Council for Higher Education or having to divide the same budget among more schools.

However, the opening of colleges not funded by the state deepened the separation between students from well-to-do families, who could now acquire prestigious higher education with their own money, and students from families without means, who were forced to choose between highly selective universities and public colleges with limited budgets.

In addition to this, the Council does not weigh the good of society or market factors when deliberating the accreditation of private colleges. As a result, the opening of law schools in private colleges has created a huge surplus of lawyers and led to the concomitant lowering of wages, unemployment, demands for professional retraining, and a large number of graduates who do not work in the field.

In retrospect, it can be said that giving in to the pressure of the wealthy to establish private academic schools for them has undermined the system of higher education in Israel. Rather than the Council and the government developing a plan for expanding the public system of higher education – one that takes into consideration the needs of the entire economy and everyone's right to higher education, while increasing public funding – a process began of splitting the system into a private and public track. Ostensibly, this allowed for expanding higher education opportunities without any financial investment by the state. However, recent research (Shavit and Shwed, 2006; Lavie, 2002, Tamir, 2002) reveals that the access to higher education increased only for students from better off socio-economic strata, who were able to pay the high tuition. The opening of private colleges did not increase the higher education opportunities for students of little means. In other words, these schools, opened with the encouragement and approval of the state, did not promote equal access to higher education based ability, as set by the International Covenant on Economic, Social and Cultural Rights.

In Summary, fiscal policy regarding the system of higher education still rests on principles formulated in the first decades of the state, when the system consisted of a small number of elitist universities that integrated research and teaching. The changes of the last two decades have not yet been reflected in fiscal policy.

The main funding change is the authorization of the establishment of private colleges that operate on free market principles and are funded by high tuition. The conjunction of elitist policies that benefit the universities and the opening of private schools together created an underclass of public institutions – the public colleges. Because the public colleges are funded by the Council, they are not allowed to charge high tuition as do the private colleges, but they are also not the beneficiaries of research funds, which constitute some 42% of the university budget. The budgets of public colleges also suffer from the fact that their target audience finds it hard to meet the criteria of the PBC – to complete their studies in a set period and have a low dropout rate. The social reality with which these colleges are struggling is not addressed by the fiscal policy, with the exception of the recommendation in the Council for Higher Education Law to give priority to students and institutions from national priority regions (para. 25b of the Council for Higher Education Law introduced into Amendment 10 in 1995).

It should also be noted that similar problems have beset the primary and secondary schools in the periphery for many years: In these regions, it is difficult to survive on the small budget of the Ministry of Education, while schools in the well-to-do urban neighborhoods of central Israel can raise additional money – from their municipalities, donations, parents, and the leasing of buildings and classrooms. The Dovrat Commission, in trying to reform the education system, recommended differential

funding that would benefit schools in the periphery (National Task Force to Promote Education in Israel (Dovrat Report), 2004: 78-79). The socio-economic profile of the students would be taken into consideration in setting the allocation for schools. This recommendation, although not implemented, should be considered not just for primary and secondary schools, but also as a guideline for funding institutions of higher learning.

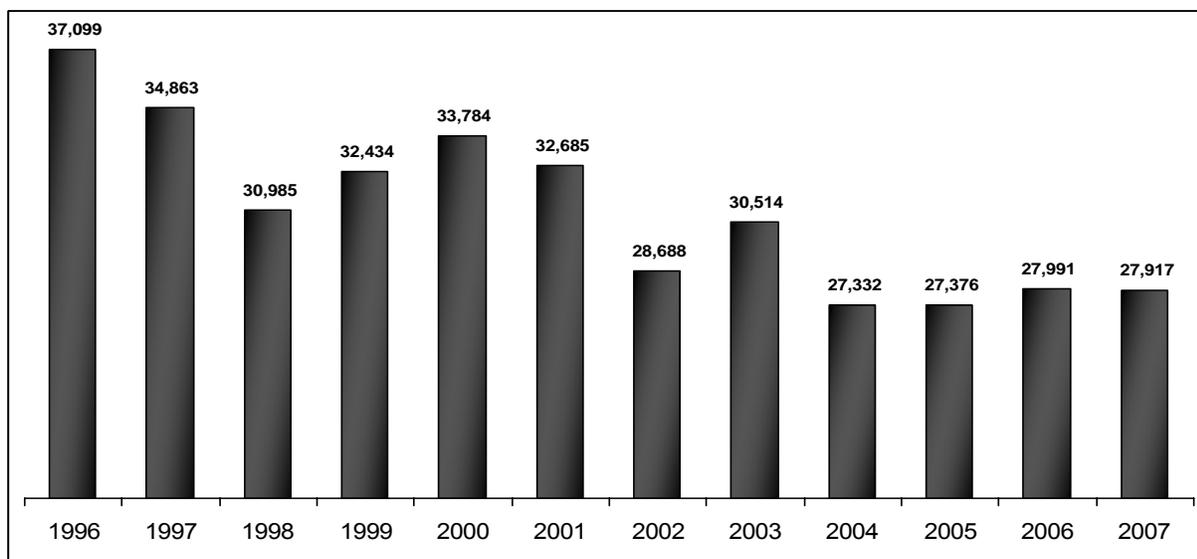
The budget for higher education and for most state services underwent two major cuts, the first in 2002 and the second in 2004. Because the student population continued to grow in these years, the budget per student declined. As evident in the following table, in the second half of the 1990s, the budget per student ranged between NIS 31,000-37,000, while in 2003 it dropped to NIS 30,500. Since 2004, it has ranged between NIS 27,000 and NIS 28,000.

Cuts in the Funding of Higher Education

Class differences, deepened by the opening of private colleges funded by high tuition, increased in the years 2001-2004 when the economic crisis engendered by the second Intifada led to slashes in the state budget. These cuts hurt the public institutions for higher education – the universities and colleges.

Government Funding of Institutions of Higher Learning (Universities and Public Colleges With Academic Standing), Per Student, 1996 to 2007

In Shekels, In 2005 Prices



Source: Adva Center, November 14, 2006, *The Lost Decade: Social Implications of the 2007 Budget Proposal*, Powerpoint presentation.

6. Access to the System of Higher Education in Israel

The principle of equal access is ultimately measured according to the admissions policies of the institutions of higher learning, and these are anchored in Council policies. The rules of the Council for Higher Education (Accreditation of Institutions – 1964; and License to Open and Operate an Institution for Higher Education – 1972) list the criteria for accreditation. Two of these relate to the admissions policy: one asserts that students shall be accepted based on their Israeli matriculation certificate or the equivalent, and the other states that there shall be no discrimination in the acceptance of students based on race, gender, religion, or nationality.

The rule prohibiting discrimination conforms with the principle of equal access set in the International Covenant on Economic, Social and Cultural Rights, although it is more limited and does not relate to the economic and cultural selection of candidates.

It should be added that the Council is authorized to set rules for accrediting institutions and demand that they maintain an adequate scientific level, as long as these rules do not constrain the freedom of opinion and conscience (para. 9 of the Council for Higher Education Law).

Admissions Criteria for Institutions of Higher Education: Equal Access?

Formally there is no discrimination in the entrance criteria set by the Israeli academic institutions: Candidates must meet two criteria – an Israeli matriculation certificate that meets specific requirements and a passing grade in the psychometric exam (this second condition is valid in the universities and some colleges).

In practice, several factors are responsible for the fact that peripheral communities – Mizrahi Jews, Arabs, Bedouin, and Ethiopian immigrants – find it hard to meet these requirements, which leads to the lower representation of these groups in the institutions for higher learning. The two main obstacles are the quality of the matriculation certificate and the psychometric exam.

Quality of the matriculation certificate. The secondary school system is characterized by considerable inequality between different schools: academic and vocational schools, Jewish and Arab schools, and schools in wealthy and low-income neighborhoods. This inequality impacts the chances of earning a matriculation certificate and the chance that this certificate will meet the university's entrance requirements. Data about the rates of earning a matriculation certificate and the proportion who meet the university requirements appear in the previous chapter that dealt with the right to education.

Thus, the main obstacle to accessing higher education is in the secondary school system. There is a high correlation between the location of the secondary school and its demographic makeup (class/national/ethnic origin) and the proportion of those who earn a matriculation certificate. As evident in the table on page 23, the correlation between the level of income of the locality and the rate of matriculation in that town is very high (ibid: 12). Hence, the most important factor in broadening access to higher education is creating a more egalitarian structure of opportunities in secondary schools.

The psychometric exam: Earning a matriculation certificate and its quality are not the only obstacles to higher education; so is the psychometric exam. This exam, which is an entrance requirement of the universities and most colleges, is culturally biased in favor of westerners and English-speakers. These exams, even when given in Arabic and Amharic, are translated from Hebrew. Thus, even when they are tested in their own language, these students are at a disadvantage (Har-Zahav and Medina, 1999; Volansky, 2005). A report prepared by a PBC subcommittee for promoting higher education among the Arab population notes that the content of the psychometric exam should be adapted to Arabs and Mizrahi Jews (Al-Haj, 2001: 7-9). In the psychometric exams given in 2003, those testing in Arabic scored on average 123-126 points less (out of 800) than those testing in Hebrew (abu-Asba, 2005). For Jews who immigrated from Ethiopia, these exams are also an obstacle to entering the more prestigious

fields in the universities and colleges (Swirski, S. and Swirski, B., 2002; Bareket, 25 April 2005).

In addition to all this, there are questions about the validity of the psychometric exam as a predictor of success in higher education (Volansky, 2005: 246-247). It is possible that this selection tool serves to discriminate between candidates from different social and cultural backgrounds.

Thus, the gaps in earning a matriculation certificate and scoring well on the psychometric exam lead to large gaps in university admissions. In 2004, 38,317 young people applied to the universities: 76.4% were accepted and 23.6% rejected. Among Jews, the proportion of rejections was 18.8%, while among Arabs, it was 46.5% (Abu-Saad, 2006).

7. Who Goes on to Higher Education?

Inequality in the secondary school system and the admissions requirements set by academic institutions create a situation in which just over one third of those educated in Israel acquire higher education.

The most significant data for examining the access to higher education of those who grow up in Israel is the follow-up study of high school graduates conducted since 1992 by the Central Bureau of Statistics (CBS). The CBS examines how many of those who graduated secondary schools began studies in a university or academic college within six years or more of graduation. The most recent data were collected in 2005 for the 1997 graduating class, i.e., eight years after completing high school. Only 30% of this class

had begun academic studies. This low number reflects the fact, first and foremost, that in 1997, only 38.8% of 17 year-olds completed their matriculation (Swirski, S., Swirski, B., 1997: 8), and not everyone with a matriculation certificate met the entrance requirements of the academic institutions.

Once we know the proportion of secondary school graduates who enter institutions of higher learning, we can examine the internal composition of this group. The tables that follow reveal that in 2005, the rate of women was higher than the rate of men attending institutions of higher learning in Israel; the rate of attendance was higher among those of European or American origin than those of Asian, African, or native born origin; and higher among those with academic than vocational school backgrounds. The rate of those from well-to-do communities – with a socio-economic ranking of 9-10 – was three times higher than those from communities ranked 1-2.

The CBS study also allows for comparison between secondary school graduates who attended university with those who attended academic colleges, both private and public. The data indicate that among those who attended colleges, the gap between men and women was smaller than those who went to universities, a fact that may be explained by the tendency of women to study the humanities, which are less developed in the colleges. Among those who attended colleges, the proportion of students from Asian and African origin was higher than from European and American origin, while this was reversed for the universities.

**High School Graduates in 1997 Who Began Studies in Universities or Colleges With
Academic Standing by 2005, by Selected Characteristics**

In Percentages of Total Graduates in Each Row

Gender	University	College	Total
Men	16.5	9.9	26.4
Women	22.4	10.1	32.5

Ethnic Group	University	College	Total
Jews	21.0	11.4	32.4
Arabs	12.2	2.7	14.9

Country of Origin	University	College	Total
Israel	22.6	13.0	35.6
Asia/Africa	15.5	10.2	25.7
Europe/America	25.5	10.9	36.4

Socio-Economic Level of Locality of Residence	University	College	Total
1–2	12.5	2.6	15.1
3–4	12.4	4.8	17.2
5– 6	17.6	8.8	26.4
7–8	23.8	13.7	37.5
9– 10	29.5	18.1	47.6

High School Track	University	College	Total
Academic	25.2	11.9	37.1
Vocational	7.4	6.2	13.6

Notes:

1. Origin Asia/Africa: Persons born in Asia or Africa and persons whose fathers were born in Asia or Africa.
2. Origin Europe/America: Persons born in Europe or America and persons whose fathers were born in Europe or America.

Source: Shlomo Swirski and Ety Konor-Attias, *Israel: A Social Report – 2006*, Adva Center, December 2006.

A. The General Student Population

The general student population includes not just graduates of Israeli high schools, but also new immigrants and Israelis who attended schools in other countries. An examination of the composition of the general student population also reveals significant differences between groups in the Israeli population.

The following table shows the breakdown of bachelor degree candidates in 1999-2000 and 2003-04. In 2000, women comprised more than half of those studying for a bachelor's degree in the universities, almost half of those studying for a bachelor's in the private colleges, but fewer than 40% of the bachelor's candidates in public colleges. The female majority in universities slightly diminished in 2004, while their proportion in public colleges increased somewhat.

In 2004, Arab students comprised 9.8% of those studying for a bachelor's degree in the universities (compared to 9% in 2000), but only 5.5% in the public colleges and 4.7% in the private colleges. These numbers are surprising in light of the frequently heard claim that the colleges are intended to increase higher education opportunities in the periphery. The proportion of Christian Arabs is higher in private than public colleges, while this is reversed among Muslim Arabs. These data reflect the better economic situation of Christian Arabs.

The proportion of students of Mizrahi origin – Jews from Asia or Africa or born in Israel to parents from Asia or Africa – is higher in the public and private colleges than the universities. In parallel, the proportion of Ashkenazi students – those born in Europe or America or born in Israel to parents from Europe or America – is higher in the universities. The differences between public and private colleges is negligible. Clearly, access to universities is low for Mizrahim, even those without financial constraints. For the latter, private colleges seem to have expanded their access to higher education.

Data published by the CBS for the 2003-04 school year provide insight into the differences between the private and public colleges: Students from low-income communities (socio-economic bracket 1-6) constituted 26.5% of all the students in the private colleges and 55.6% of the public colleges (CBS Press Release, 5 August 2006). These findings underscore the class implications of having developed a private track in the system of higher education: Private colleges appeal primarily to the more affluent population.

B. Immigrant Students

The student population in Israel includes a large number of new immigrants. These students are supported by the Student Authority in the Absorption Ministry. According to Student Authority data, of all the immigrant students at institutions of higher learning in 2003-04, just under half were at universities and the others studied elsewhere. These data reveal significant differences even among immigrant students, particularly between immigrants from countries that sociologists refer to as in the “center” and immigrants from “peripheral” countries. Immigrants from Russia, a so-called center country, study primarily in universities; while immigrants from peripheral countries – Bukharia, the Caucasus, and Ethiopia – are mostly in colleges, especially public colleges. This conforms to the general picture described in this report that students from peripheral groups are concentrated in public colleges.

**Bachelor Degree Students in Universities and Academic Colleges,
by Gender, Religion, Ethnic Origin, and Funding Source (1999/2000 and 2003/04)**

Absolute Numbers and Percentages

Gender, Religion and Ethnic Origin	1999/00				2003/04			
	Universities	Academic Colleges			Universities	Academic Colleges		
		Funding Source				Funding Source		
		Total	Public	Private		Total	Public	Private
Total – absolute numbers	74,194	33,250	17,422	15,828	78,561	51,086	32,233	18,853
Percentages	100	100	100	100	100	100	100	100
Gender								
Men	43.5	56.2	60.4	51.6	44.1	55.2	57.2	51.8
Women	56.5	43.8	39.6	48.4	55.9	44.8	42.8	48.2
Religion – Total absolute numbers	74,210	33,250	17,422	15,828	78,561	51,086	32,233	18,853
Percentages	100	100	100	100	100	100	100	100
Jews and Others	91.0	93.9	93.8	94.7	90.2	94.8	94.6	95.3
Therein: Jews	n.a	n.a	n.a	n.a	87.0	92.3	91.2	94.4
Arabs	9.0	6.1	6.2	5.3	9.8	5.2	5.5	4.7
Therein: Moslems	5.4	4.3	4.6	3.4	6.3	3.5	3.8	2.9
Christians	2.3	1.3	1.1	1.4	2.3	1.2	1.2	1.3
Druze	1.1	0.5	0.5	0.5	1.2	0.5	0.5	0.5
Origin (Jews and Others)	100	100	100	100	100	100	100	100
Israel	36.1	37.1	33.5	40.9	41.6	39.3	36.5	45
Asia/Africa - Total	24.9	30.2	30.4	30.0	22.4	28.6	28.6	28.5
Israeli-born	23.0	28.6	28.6	28.7	20.7	26.7	26.5	26.9
Foreign-born	2.0	1.6	1.8	1.4	1.7	1.9	2.1	1.6
Europe/American Total	38.9	32.7	36.1	29.1	36	32.1	35.2	26.6
Israeli-born	22.2	22.0	21.2	22.8	19.2	17.4	16.8	18.7
Foreign-born	16.8	10.7	14.9	6.3	16.9	14.7	18	7.9

Source: Central Bureau of Statistics, *Academic Colleges*, various years.

**Students from the Former Soviet Union and Ethiopia,
by Type of Institute of Higher Learning, 2003/2004**

Absolute Numbers and Percentages

	Total	Universities	Regional Colleges and Branches of Universities	Private Colleges	Teacher-Training Colleges, Academic and Non-academic	Technological Institutes	Others (Nursing Schools, Art Institutes, etc)
Origin Former Soviet Union	5,843	46.7%	16.1%	6.5%	3.1%	23.7%	3.7%
Origin Caucasus	626	27.3%	25.9%	9.7%	5.1%	27%	5%
Origin Bukhara	457	28.7%	14.9%	23%	4.6%	25.2%	8.3%
Origin Ethiopia	1,706	29.2%	40%	11.1%	7.4%	9.7%	2.6%

Source: Student Authority, Ministry of Absorption, 2005, *Summary of Activities and Figures, 2003/2004*.

8. Financial Aid Programs for Students

One way to broaden access to higher education is to provide needy students with financial aid – scholarships, loans, housing, etc. An examination of the financial aid policies could disclose the extent to which the system attributes importance to access and implementing the right to higher education.

This examination is not simple, though. First, a great variety of public and private sources provide student aid. Second, no one collects and publishes data about them. Third, even the public foundations do not make public ongoing and comprehensive information about their activity. As a result, it is hard to estimate the scope of the assistance or its impact. In the following discussion, we focus primarily on public sources of assistance.

According to one estimate, Israel has over 600 private and public foundations, some 60% of them drawing from public funds. The amount disbursed annually is estimated to be more than NIS 300 million. A scholarship ranges from NIS 500 to NIS 10,000. The Education Ministry

reports that approximately 25% of the students apply for a scholarship annually, and 20% of these are accepted (www.yoram.co.il).

The Education Ministry has responsibility for the field of scholarships and enforcing the Scholarship Registry Law (1976). A Foundations Registrar operates within the Education Ministry and maintains a list of foundations on its website. By law, a foundation whose budget is partially or entirely funded by the state or a local authority and that enjoys tax benefits in Israel is obliged to register with the Foundations Registrar. The foundation is required to inform the Registrar of its address, application guidelines, deadline for submissions, the purpose of the scholarships, and award criteria. However, as noted in this website, the information is incomplete (<http://cms.education.gov.il/EducationCMS/UNITS/kranot>).

We examine here some of the main sources of financial aid. First we look at scholarships and then loans.

A. Scholarships from Government Funds

Public foundations that award scholarships to students are funded from two sources: the PBC and various government ministries. The PBC allocation is transferred to the institutions and disbursed by each dean of students at his or her discretion. The PBC publishes data on the amount of this allocation, but it does not publish, and apparently does not collect, data that enable analysis of the policies of distribution (www.che.org.il).

Concerning the government ministries, there are three primary sources: the Student Authority in the Absorption Ministry; the Education Ministry in cooperation with the Council for Higher Education; and the Defense Ministry (www.che.org.il). The Jewish Agency can also be added to this list.

The criteria by which these government sources award assistance reflect a bias in favor of the Jewish population: The Absorption Ministry supports new immigrants, who are Jewish by definition; the Defense Ministry supports discharged soldiers – and most Arab young men and women do not serve in the IDF; and the fund co-sponsored by the Education Ministry and the Council for Higher Education focuses on aid to students from areas defined as national priority or Project Renewal neighborhoods, and graduates of the National Service or the military. As a result, Arab students, including Bedouins, are off the list of those eligible to apply. As noted, decentralization of the system does not allow for monitoring the policies by which support is granted. Nevertheless, the report of the Council subcommittee headed by Professor Majid al-Haj (Majid al-Haj, 2001) and a suit against Haifa University on discrimination in allocating student dormitory rooms, yield a clear picture of discrimination (H.P. 000217/05 Hanin Na'amana et al. v. Haifa University, 17 August 2006, unpublished).

Of these three government sources, only the Absorption Ministry makes public annually the extent of its assistance and how it is distributed. The Student Authority, founded in 1990 under the joint aegis of the Absorption Ministry and the

Jewish Agency, provides assistance to immigrant students from the two sponsoring bodies. The aid includes tuition scholarships to the pre-academic preparatory programs [*mekhinot*] and regular studies; monthly living stipends for students from Ethiopia, the Caucasus, and Bukharia; tutoring; academic guidance and advice; loans; housing in the student dormitories of the Jewish Agency; and welfare services and psychological counseling. Since its founding, the Authority has provided assistance to 9,753 immigrant students, 5,843 of them from the former Soviet Union and 1,706 from Ethiopia, with the remainder from Africa, North and South America, Australia, South Africa, and New Zealand. Slightly over 60% of those receiving assistance that year were women (Absorption Ministry, 2005: 4,12). The Student Authority operates a Social and Communal Service, and students who receive support from the Authority must participate as a condition for receiving 50% of the tuition in their third year of studies.

The **Defense Ministry** operates a financial assistance program for discharged soldiers who seek higher education. This is funded by two sources:

1. The Impact Fund, established in 2002 by Friends of the Israel Defense Forces in the United States, is operated by Friends of the Israel Defense Forces in Israel. This fund provides scholarships to discharged soldiers based on financial need to study in Israeli institutions of higher learning. At \$4,000 a year, the scholarships are higher than those given by other government programs. In exchange, recipients are required to do 4 hours a week of volunteer service and maintain contact with the donor www.israelsoldiers.org/impact.htm.
2. The State Lottery Foundation provides scholarships to soldiers who completed their conscription in the military, police, or border police. In 2006, this fund will provide 1,000 scholarships of NIS 10,000 each to candidates who have been accepted to bachelor's degree studies in an accredited institution for

higher learning in Israel within five years of their discharge.

The Education Ministry maintains a joint fund together with the Council for Higher Education. This fund awards scholarships for one-third of the tuition and loans at easy terms based on socio-economic status, geographic criteria (areas of national priority and Project Renewal neighborhoods), military or national service, and other. Neither the Education Ministry nor the Council publishes data about the size of the grants or how they are distributed.

Another program funded by the Education Ministry (20-25%) in cooperation with the Council (67-70%) and donors is the PERAH Tutoring Program. Each student receives an annual scholarship of NIS 4,500 and is required to do 4 hours a week of tutoring. In the 2004-05 school year, 29,510 students and 580 coordinators participated in this program and the Council allocation was NIS 109 million. In addition, the PBC transferred NIS 11 million to the Education Ministry and approximately NIS 7 million to the Labor and Welfare Ministry for PERAH scholarships to students in the teaching seminaries and technological colleges (CHE, 2006, Chapter 6).

B. Student Loans

The PBC also provides financial assistance through a loan fund with easy terms and no interest. Originally this program used bank funding, but since 1986, it is funded and managed by the PBC. These loans are approved according to geographic, socio-economic, and other criteria. A study of eligibility was carried out by an external consultant for the Student Division of the Education Ministry. Loans are also now made available to students in non-state funded institutions. The maximum loan is NIS 12,000, but one can take several loans during the course of studies. In 2002-03, 21,124 students were eligible for a grant or loan within this fund; some 75% took loans. In 2003-04 16,092 were eligible and approximately 85% took loans.

The State Controller Report for 2005 reveals that tens of millions of shekels remained in the loan fund as only 35% of it was utilized the previous year. According to a survey conducted by the Council for Higher Education, the low utilization derives from the fact that needy students prefer grants to loans since loans require guarantors; in addition, students feel that they cannot predict their income after completing their studies. Responses to the State Controller from the PBC suggest that despite the low utilization and the results of the Council survey, a decision was made to increase the budget for loans at the expense of grants (State Controller, 2006:56b: 973).

C. Additional Sources of Financial Aid

Students can also apply for funding from other sources, governmental and not, including:

- (1) Scholarships given by the institutions in which they are studying from their own sources or donations, allocated on the basis of scholastic achievement and in exchange for teaching assistance;
- (2) Scholarships from external foundations based on personal data including ethnic origin, military service, economic situation, and field of study. These include the Atidim program co-sponsored by the IDF and Hebrew University, whose goal is to integrate exceptional high school graduates from the periphery into the IDF's Academic Reserves program [*atuda*]; and ISEF, which provides assistance to low-income students, particularly Mizrahim.

Summary

As noted at the beginning of this section, data do not exist about the overall extent of financial aid, the criteria for its distribution, or the characteristics of those who receive it. Because of the lack of coordination among the foundations and institutions, no data are available about the total amount of scholarships awarded annually. In 2006, the State Controller

noted the following problems around the issue of scholarships:

- Inaccessible data: Hundreds of foundations exist to support students. The Education Ministry is enjoined to create a database with detailed information about all the scholarships and post it on the Internet. Currently, the website carries partial information, and the ministry does not make an effort to identify the funds that did not submit information.
- Lack of coordination among the financial aid organizations: Some students benefit from the support of several foundations, while others receive nothing.
- Many foundations that give scholarships are not registered as a public charity: In investigating Haifa University and the Hebrew University, the State Controller found that in the absence of registration, it is hard to prevent exploitation of the foundation funds. He also found that the universities set scholarship amounts without an in-depth examination of need. These two universities often award small scholarships of NIS 1,000-2,000 to many students, without studying the effectiveness of this kind of distribution.
- In Haifa University, cases were found of the illegal use of scholarship funds to pay for the tuition of students employed by the Dean's office. In other cases, students who received scholarships from several foundations that were conditional upon social activity reported on the same activity to all; this was done with the knowledge of the foundations and without the students having to engage in additional activity (State Controller, 2006: 56b: 965-975).

In the budget proposal for higher education in 2006, "improvement of the financial aid system to students" is noted as something to be stressed this year. Nevertheless, the allocation for the

Student Aid Center was decreased. The budget proposed for 2006 was NIS 237,116,000 in comparison with NIS 283,736 in 2005 (Finance Ministry, 2005: 6-7).

9. Programs to Enhance Access

The government and the Council for Higher Education could claim that the admissions policies for higher education are egalitarian, and the reason the number of students differs from group to group is the result of factors beyond the control and responsibility of the Council. The government and the Council are well aware of the gaping disparities in inequality of access, as well as the political and public repercussions of the low representation of peripheral groups in the institutions of higher education. The clearest evidence of their awareness is the large number of programs conducted by the Council to increase the proportion of students from these groups.

Some of these programs are surveyed below. It is patently clear from these results that greater representation is possible – every program designed to increase the participation of students from the periphery has succeeded. The obvious conclusion is that the government and the Council can do much more than they are now doing to increase access to higher education.

A. The Rise and Fall of the "Aggregate" System

In May 2002, a recommendation was made by the joint task force of the Education Ministry, the Council, and the universities to change the system of admissions to the universities. A decision was made that from the 2002-03 school year and for three years thereafter, candidates would be able to choose between admissions based on a psychometric exam (the existing system) or an "aggregate" system – using a weighted grade of matriculation exams taken externally in the student's mother tongue/English/mathematics or mother tongue/English/history. This change was made following a bill tabled by Knesset Members Yossi Sarid and Ilan Galon that was designed to eliminate the psychometric exam and increase

the access of lower income candidates to higher education.

In November 2003, only a few months after the first admissions process was complete under the new aggregate system, the media began to carry stories about discontinuing the new system. According to data of the National Institute for Testing and Evaluation, the main beneficiaries of the aggregate system turned out to be Arab students, while the admissions rate of Jewish Mizrahi students had not improved. Based on these data, a decision was made to rescind the aggregate method and reinstate the old system (Volansky, 2005: 249-250; Mansour, 12 January 2003; Sa'ar, 27 November 2003). A spokesperson of the Education Ministry announced that the reason for canceling the new system was that only a small number of candidates from the periphery made use of it, while most chose to apply using the psychometric exam. Before these data were published in the media, however, 35% of the Arab candidates chose to apply based on the new system, and 71% of these were accepted. Among candidates from development towns, the parallel numbers were 28% and 46% respectively.

In January 2004, the Association for Civil Rights in Israel submitted a petition to the High Court of Justice in the name of a coalition of organizations against suspension of the aggregate method. The petitioners presented data from Tel Aviv University that differed from those in the media showing that the number of Jewish students from development towns who were accepted to this university increased by 46%, while the number of Arab students increased by 25%. These data reveal that the aggregate system does expand access of the peripheral populations to higher education.

The hasty termination of the aggregate option – instituted after year-long deliberations and discontinued after only one year out of the three planned in the experimental period – raises questions that the new system, intended to significantly improve access to higher education and diversify the student body in Israel, may have been discontinued for improper motives. Paradoxically, the decision to cancel the

aggregate system was taken only one year after the Council for Higher Education announced that it intended to work towards increasing access of the Arab population to higher education.

B. Program to Improve the Access of Arab Students

In January 2002, the Council for Higher Education approved recommendations of a subcommittee headed by Professor Majid al-Haj from Haifa University:

1. To include Arab students in “population groups worthy of advancing” so that they too can benefit from assistance for tuition, housing, and support in their studies. Until then, such support was extended only to residents of poor neighborhoods and development towns, immigrants, military reservists, those with learning disabilities, and the physically disabled.
2. To improve the access of Arabs to the pre-academic preparatory programs (*mekhinot*) and ease their admission requirements.
3. To increase access to the universities by conducting tours of them and establishing information and support centers in Arab localities.
4. To eliminate the required interview for admission to some departments such as social work; to increase scholarships to outstanding Arab students; to improve their cultural adjustment on campus by having signage in Arabic; to take Muslim and Christian holidays into consideration when setting dates for exams; etc.
5. To introduce changes to the structure of the psychometric exam –adapting it to Arab culture, reducing its weight in the overall entrance requirements – and to find a replacement exam to increase the access of candidates to prestigious departments.

In 2003, the Council budgeted NIS 2.9 million to act upon these recommendations, and established a standing committee to recommend allocations to the PBC. These funds would be earmarked for the following areas of activity: establishing two Information and Support Centers – in Haifa University and Ben-Gurion University; hiring Arab academic consultants at institutions of higher learning; creating a system of mentors and personal tutors; funding preparatory pre-academic programs; and financing a fellowship program for outstanding Arab doctoral candidates. (CHE, 2005, Chapter 6). In 2004-05, the allocation increased to NIS 4.2 million for the operation of the program in 17 institutes of higher learning (CHE, 2006, Chapter 6).

C. Pre-academic Programs

One of the largest and oldest programs for expanding access to higher education is the pre-academic preparatory programs [*mekhinot*]. These programs were used in the past to promote higher education among mainstream groups, including kibbutz members. Today, the preparatory programs serve to assist young men and women with inadequate high school preparation to make up the difference and be accepted to academic studies. The preparatory programs are managed by the Israel Association for Promotion of Education, which is funded primarily by the Education Ministry. The programs operate in three frameworks: those affiliated with and sponsored by the universities; those affiliated with the teacher training institutes; and those affiliated with the colleges. In the 2002-03 school year, 47 academic preparatory programs operated with 14,477 students. In the 2004-04 school year, the number of programs was reduced to 39, with 12, 217 students participating. Students of these programs defined as “eligible for support” receive a full tuition scholarship. The Education Ministry funds living stipends for those eligible. The PBC also helps fund these programs – approximately NIS 40.5 million in 2002-03 and NIS 34.8 million in 2004-05 (ibid).

D. Affirmative Action in the Colleges

Some colleges do not base admissions on the psychometric exam, and even provide financial aid to students for tuition and/or other expenses. In these colleges, the peripheral communities are better represented in the student body than in the universities and private colleges. The Kiryat Ono Academic College, in cooperation with the Jewish Agency, opened the departments of law and business administration to students from Ethiopian immigrant families and placed a range of tuition scholarships at their disposal. According to Doron Haran, deputy chair of the college, 120 students of Ethiopian origin studied in these two departments in 2005, and the program exceeded all expectations. “We discovered,” he noted, “that the level of the students who completed the program was not below that of the veteran Israelis” (Barkat, 3 June 2005).

E. Local Programs to Increase Access

Outstanding High School Graduates from the Periphery to Tel Aviv law school

During the 2004/2005 academic year, the Tel Aviv University Law School in cooperation with the Secondary Schools Division of the Education Ministry, launched an experimental program to accept high school students from the periphery who excelled in their studies. To be accepted to the program, excellence was measured by comparing matriculation exam scores with others in their own high schools, and not the national scores. The assumption was that a psychometric exam score weighted with matriculation scores is not necessarily the best predictor of success in law school, and that there are students who could have succeeded, but were not accepted to law school because of their inability to invest in courses preparing them for the psychometric exam.

Students accepted to the program enjoy scholarships for tuition, living expenses, and housing in the student dormitories. A group of 10 students entered the first year of the program. According to preliminary evaluations, these students completed the first year of studies with

grades that were higher than the average (Tel Aviv University, 2005).

In light of the success of the program, other faculties in Tel Aviv University – life sciences, social sciences, and engineering – declared their intent to conduct similar programs. Bar Ilan University is also considering a program.

The success of this program is evidence that normal admissions requirements harm candidates from the periphery, even outstanding students.

Increasing Access to Higher Education in the Periphery

This program operates in development towns in the south and north, and includes tours of institutions of higher learning, coverage of admissions fees, and preparation for the psychometric exam. In 2003-04, the PBC allocated approximately NIS 1.1 million to this program.

Additional Programs to Increase Access

In addition to the four programs reviewed above, the Council for Higher Education has initiated several others in recent years with the goal of increasing – in a controlled way, it should be noted – access to higher education among residents of the periphery. Some of the main programs:

- In January 2001, the Council decided that everyone aged 30 or more who has a matriculation certificate can be accepted to an institution for higher education if s/he graduated from the pre-academic preparatory program according to the standards set by the Council. This option also existed in the past, but had been limited to the admission of up to 2% of the candidates per year per institution.
- As of the 1999-2000 school year, Information and Support Centers were established in 15 southern towns through the “Knowledge South Fund” [*mad’arom*] (supported by the Sacta-Rashi Foundation).

- In January 2003, the “Achievements” [*hesegim*] program was launched in collaboration with Project Renewal of the Housing Ministry. This program operates in 31 Jewish and Arab towns in the periphery. In each of these locations, Information and Support Centers were established and a Higher Education Coordinator was appointed, who provides ongoing help to the students until they complete their bachelor’s degree. According to the PBC report, the program enabled the entry of 2,300 young people into institutions of higher learning from small towns in the north and south (CHE, 2005: 12). In 2004-05, the Budgeting and Planning Committee allocated about NIS 1.9 million for this program (CHE, 2006, Chapter 6).
- “Transfer Route” [*afikei ma’avar*] – This program facilitates the transfer of first year students at the Open University into universities or academic colleges.
- Establishment of a pre-academic preparatory program for the ultra-Orthodox and new academic tracks for higher education in ultra-Orthodox frameworks were sponsored by the institutions (CHE, 2005, chapter 2.1.1.3). In 2004-05, the Budgeting and Planning Committee budgeted NIS 7 million (ibid).

10. Obstacles to Access to Higher Education

Acceptance to an academic institution is only the first step toward an academic degree. For many students, particularly Arabs, Bedouin, immigrants, and Mizrahim, advancing in an academic institution is fraught with difficulties above and beyond those related to their studies.

The main obstacle is coping with gaps created by the primary and secondary school system: many begin with pre-academic programs to make up

for their high school studies, and then embark upon their degree studies only a year or two later. This naturally extends the time required and makes it more expensive.

Another high hurdle is the cost of tuition. In state-funded universities and colleges, the tuition is currently set at NIS 8,500 a year. In the private colleges and extensions of foreign colleges, tuition is NIS 15,000-30,000 a year.

At the turn of the century, during the Ehud Barak administration, a trend began of lowering tuition fees in universities and public colleges. In August 2000, a committee chaired by retired justice Dr. Eliahu Vinograd was appointed to find the best way to reduce tuition fees. In January 2001, the committee recommended gradually reducing fees by 50%, over a period of five years. This reduction was to be financed by the national budget and by the institutes of higher learning. Although the Vinograd Committee recommendations were approved by the Cabinet, in subsequent years, Cabinets passed a number of resolutions that obviated the recommendations of the committee (Swirski and Konor-Attias, 2003: 32-34). In effect, tuition fees were reduced, but by a lower percentage than recommended. In the 2001/02 academic year, tuition fees for bachelor degree students were decreased by 14%, in comparison with the previous year. During the next three academic years (2002/03, 2003/04, 2004/05), tuition fees were reduced by 3% each year, so that the total reduction amounted to 26% (Ministry of Finance, 2005: 16).

The erosion in the implementation of the Vinograd Committee recommendations is indicative of the implications of the budget slashes of 2002 and 2004 for the higher education budget. The cuts lowered the budget and, in effect, reversed the trend. At present (2006) the Ministry of Finance favors increasing the higher education budget by raising tuition fees to the point where they reflect real costs. It also favors the payment of differential tuition fees, whereby students enrolled in prestigious departments pay more than those in other departments. In December 2006, a new committee, chaired by past Minister of Finance

Abraham Shohat, was appointed to examine, among others, the issue of tuition fees.

In addition to tuition, students' expenses include the price of textbooks, photocopies, lab fees, housing, and living expenses. Many students from low-income families who pass the entrance hurdles thus have no choice but to divide their time between work and study. As a result, they have to extend the period of their studies, and sometimes cannot carry the burden and drop out before completing their degree. The problem of drop-outs and extended studies is particularly acute among low-income Arab students, as there are few programs to assist them. The report of the PBC Subcommittee on Promoting Higher Education in the Arab Sector revealed that in the entering class of 1988-89, only 54.3% of Arab students complete their studies within five years, compared with 72% of Jewish students. In that same class, 16.6% of the Arab students dropped out during the first two years, compared with 12% of Jewish students (al-Haj, 2001). One outcome of the lack of financial aid is that many Arab students study abroad, in countries where there is no charge for tuition (Abu-Saad, 2006: 15).

Additional difficulties for students from the periphery:

1. **Language barrier:** Students from the social periphery arrive at the universities and colleges with a poorer command of Hebrew and English than students from more prosperous communities. For Arab and Ethiopian students, these are second and third languages after their native tongue, while for most of the Jewish students who are not immigrants, English is a second language.
2. **Social alienation and a sense of foreignness.** These arise from the difference between their home community and the dominant academic culture – Israeli-Ashkenazi with a strong western orientation.
3. **Choosing and changing fields:** Difficulties arise because of studying in

a prestigious and popular field for which the entrance requirements are stringent; unfamiliarity with the diverse fields of study; and lack of knowledge of the job market. According to 'Atef Mu'adi, deputy director of the Follow-Up Committee on Arab Education in Israel, some 40% of the Arab students transfer to a different field after their first year. Arab students tend to study medicine, pharmacology, law, engineering, and education, leading to a glut in these professions, while there is a severe shortage of paramedics and educational advisors (interview, 22 March 2006). The lack of direction and switching of fields are also characteristic of Bedouin students; as a result, most Bedouin students still study teaching, social work, or the medical professions (interview with Dr. Awad Abu-Freih, 26 March 2006; Abu-Saad, 2006).

In addition, many students, especially Arabs and those of Ethiopian origin, are aware that many professions will be hard for them to enter. An academic degree bestows many advantages, but these are not identical for all groups. Thus, the employment opportunities for Arab and Bedouin college graduates are limited; many studies show that among Arabs, employment is not necessarily commensurate with education (Abu-Asba, 2005; Halihal, 2000; Friedlander and Eisenbach, 2000). According to Dr. Abu-Asba, 5,000 Arabs with a master's degree or higher are currently not absorbed in the job market in Israel (Abu-Asba, position paper, The Follow-Up Committee on Arab Education in Israel). This is also a major problem for college graduates of Ethiopian origin, who often encounter prejudice among employers and find it hard to get a job at all, let alone in their field of study (Swirski, B. and Yosef, 2005: 21-22; Barkat, 5 September 2006; interview with Leah Batvivo and Yaron Menashe, 12 March 2006).

4. **Lack of familiarity with how institutions of higher learning function:** Students from peripheral

communities find it hard to adjust to the ways of universities and colleges – that they must arrange their own courses and schedules and will have no homeroom. They also find it hard to adjust to learning based on independent study, sitting in libraries, reading articles, and writing papers; the learning environment of high schools in the periphery is usually frontal, based on a list of textbooks, with exams the main form of evaluation.

5. **Social isolation:** Students from peripheral communities may feel isolated as they cope with the differences, the culture gap, and their need to prove themselves and deal with the prejudices of their schoolmates and teachers.
6. **Difficulties of transportation, housing, and jobs:** Arab students must also cope with discrimination in the assignment of student housing, the unwillingness of many Jews to rent rooms to Arabs, and the great difficulty of finding work that can be integrated with studies (interview with Ameer Makhoul, 22 March 2006; Haifa District Court, HP 000217/05 Hanin Na'amana et al. v. Haifa University, unpublished). Bedouin students in the south also have to cope with the lack of public transportation in their localities.

11. The Pyramid Structure of Higher Education

After examining the structure of the system of higher education – the bodies that control it, institutions, budgets, accessibility, admissions policies, and the demographic composition of the student population, we can now sum up that this system has assumed the non-egalitarian shape of a pyramid over the last two decades.

At the head of the pyramid are the universities – currently the only institutions that enjoy public research funds, maintain a diverse program of studies with many fields of specialization, and

are authorized to award the full range of academic degrees, including the doctorate.

In the middle of the pyramid are the private colleges, which offer bachelor's degree courses in prestigious and popular professions such as business administration, psychology, and law, and some of which are now authorized to award a master's degree.

At the base of the pyramid are the public colleges and foreign extensions, which award bachelor's degrees in less prestigious fields, including the humanities, social sciences, teacher training, and technological professions. Each college and extension tends to base itself on a small number of fields of study.

Beneath the pyramid, are the unaccredited institutions for higher education, which confer professional certification. These are not perceived as part of the higher education system and are not overseen by the Council for Higher Education.

The pyramidal structure is also reflected in the economic and social criteria for admitting students. The universities charge a lower tuition than the private colleges, but they have the strictest entrance requirements; the private colleges have more relaxed requirements for admission, but charge the highest tuition; while the public colleges and foreign extensions are the least selective in terms of admission and charge the least tuition.

The gaps between the institutions are reflected in the courses they offer, the prestige of the schools, and the criteria for student admissions. Beyond these, however, there are also gaps in the earnings levels for graduates of the different institutions.

A study in the late 1990s of the selectivity of various institutions based on the minimum score required for admission found that the weighted score required for entrance to the university is highest among the institutions of higher learning (particularly Tel Aviv University, Hebrew University, and the Technion, and lower

at the other universities). In second place were the private colleges, in which selectivity resembled that of the universities, while in last place were the public colleges. The study found that expansion of the higher education system and the concomitant growth in the student population enabled the private colleges to become more selective. Noted Eran Tamir, who carried out this research, "The policy of expansion did change, improve, and even enhance the status of the private institutions, which gradually began to appeal to better achieving students than in the past. Their unique ability (sanctioned by the Council for Higher Education) to offer attractive fields of study at a high level combined with the permission and ability to charge high tuition triggered a process of increased selectivity, which in turn allowed the private institutions to appeal to populations with relatively more financial means... Therefore it is correct to say that those who gained the most from the reform are actually the private colleges, which appeal to a relatively small population segment, but one with privileged financial resources" (Tamir, 2002: 42).

These findings are corroborated by data that show the concentration of students from lower socio-economic locales in the public colleges: In the 2003-04 school year, 39.1% of the students in public colleges came from the periphery, compared with only 15.8% in private colleges; 55.6% of the students in public colleges came from low-income communities, compared with 26.5% of those in private colleges (CHE, 8 May 2006).

Another study demonstrates that the differences between the schools are expressed not just in prestige, but also in the employment opportunities for their graduates. Yossi Shavit and Uri Shwed examined this for graduates of universities, private colleges, and public colleges. The most notable findings:

- University graduates are employed in more desirable positions than graduates of the other institutions;
- The salaries of university and private college graduates are significantly higher

than those of public college graduates. The salaries of public college graduates are the lowest among those with higher education, including graduates of non-academic technological institutes, and comparable to the salaries of high school graduates without advanced schooling.

Shavit and Shwed point out that the difference in salaries is not explained by academic achievement. They ascribe critical importance to the subject that was studied – more prestigious subjects are studied in universities and private colleges than in public colleges – and to social selectivity, which channels students from a low socio-economic background to public colleges and students from a wealthier background to private colleges and universities.

The research by Shavit and Shwed reinforce the claim that expansion of the system of higher education created a hierarchy of institutions and a differential structure of opportunities for various population groups. Nevertheless, they point out that despite the stratification of the system of higher education, the expansion still provides opportunities to young people who previously would not have acquired higher education to earn an academic degree and improve their position in the job market (Shavit and Shwed, 2006).

12. Summary and Conclusions

The right to higher education as defined in the International Covenant on Economic, Social and Cultural Rights has two objectives: first, to ensure equal access for everyone to higher education based on ability; and, second, gradual progress toward the goal of providing higher education without tuition.

Expansion of the higher education system, which began in the 1990s in Israel, saw a proliferation of institutions and a marked increase in the number of students. This did not, however, contribute to greater equality in access to higher education. Although the private and public colleges lowered the academic hurdles (especially the psychometric exam) for admission to these schools, which reduced

cultural screening and ostensibly increased the admission of Arab, Bedouin, Mizrahi, and immigrant candidates, the link between financial means and access to higher education was ultimately preserved and even strengthened. In other words, in addition to cultural screening, albeit weakened, there is now very powerful economic screening (see also Lavie, 2002; Tamir, 2002). Because of the high correlation between ethnicity and economic status, economic screening reinforces the cultural screening and subverts the chances of young people from peripheral areas to obtain higher education at all, let alone enter the more prestigious fields of study.

The state, seeking to broaden the opportunities for higher education, turned primarily to two channels: the opening of a private system of higher education and the full academization of the regional public colleges. These measures created an internal stratification among the institutions that in turn became a differential structure of opportunities: stratification of scholastic excellence between universities and colleges, and economic stratification between private and public colleges. The private colleges significantly increased access to prestigious fields such as business administration, public administration, economics, and law; while the foreign extensions increased access to teaching, social sciences, and the humanities. In both cases, these were accessible mainly to students with financial means who in the past would not have been accepted to universities because of the academic screening and limited number of places. For young people of few resources, on the other hand, the window of opportunity is narrow, limited primarily to public colleges. Although financial aid and affirmative action provide some with more opportunities, these programs are inadequate to overcome the gaps created at the point of origin and the secondary school system.

The state budget for higher education was slashed in the years 2001-2004, and the allocation per student is declining. The recommendations of the Winograd Committee to reduce tuition were only partially implemented,

and the goal of free higher education for everyone in Israel is still a subject of contention.

As a result, the expansion of the higher education system virtually replicates the differential structure of opportunities that has long existed in the primary and secondary schools of Israel. Moreover, the developments noted above suggest some shirking of responsibility by the state from creating a system of higher education that is public, funded, and egalitarian.

Increasing access to higher education is contingent upon the integration of policies in several areas:

First, measures to transform primary and secondary schooling into a more egalitarian system that provides equal opportunity to everyone regardless of class, religion, gender, ethnicity, or place of residence. So long as deep gaps exist in the state school system, the chances of equal access to higher education based on ability are low.

Second, an increased, multi-year investment by the state to the public institutions of higher learning. Strengthening these public colleges could be accomplished by putting their budgets on par with those of the universities.

Third, measures to lower the tuition while establishing admissions criteria to the institutions of higher learning that reflect academic aptitude and not class, culture, or other biases.

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