



General Assembly

Distr.
GENERAL

A/HRC/10/11/Add.1
5 March 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL

Tenth session
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the independent expert on minority issues,
Gay McDougall***

Addendum

**RECOMMENDATIONS OF THE FORUM ON MINORITY ISSUES
(15 and 16 December 2008)**

* Late submission.

I. EDUCATION

1. Education is an inalienable human right, and is more than a mere commodity or a service. Furthermore, education is a human right that is crucial to the realization of a wide array of other human rights, and an indispensable agency for the expansion of human capabilities and the enhancement of human dignity. Education plays a formative role in socialization for democratic citizenship and represents an essential support for community identity. It is also a primary means by which individuals and communities can sustainably lift themselves out of poverty and a means of helping minorities to overcome the legacies of historical injustice or discrimination committed against them.

2. The right to education is not in practice enjoyed equally by all. Minorities¹ in various regions of the world suffer disproportionately from unequal or restricted access to quality education and inappropriate education strategies. Lack of education leads to denial of civil and political rights, including rights to freedom of movement and freedom of expression, and limits participation in the cultural, social and economic life of the State and in public affairs, such as in the exercise of voting rights. Lack of education also limits the enjoyment of economic, social and cultural rights, including rights to employment, health, housing and an adequate standard of living. Lack of education results in reticence to engage with law enforcement authorities, inhibiting access to remedies when human rights are violated.

3. Women and girl members of minority communities suffer disproportionately from lack of access to education and from high illiteracy levels. Lack of education represents an absolute barrier to their progress and empowerment.

4. Bad education strategies can violate human rights as much as good strategies enhance rights and freedoms. Unwanted assimilation imposed through the medium of education, or enforced social segregation generated through educational processes, are harmful to the rights and interests of minority communities and to the wider social interest.

5. In the context of rights and obligations recognized at the level of the United Nations and regionally, education should serve the dual function of supporting the efforts of communities to self-development in economic, social and cultural terms while opening pathways by which they can function in the wider society and promote social harmony.

¹ The term “minorities” as used in the present recommendation should be understood as it is used in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution 47/135), the commentary of the Working Group on Minorities to the Declaration (E/CN.4/Sub.2/AC.5/2005/2) and the first annual report of the independent expert on minority issues (E/CN.4/2006/74). It encompasses the persons and groups protected under the International Convention on the Elimination of All Forms of Racial Discrimination from discrimination based on race, colour, descent (caste), national or ethnic origin, citizen or non-citizen (General Assembly resolution 2106 (XX)).

6. The present recommendations, while framed as recommendations for Government action, are intended for a wider readership of not only Governments but, in the terms of the Universal Declaration of Human Rights, “every individual and every organ of society”, including international organizations and agencies, civil society in the widest sense, all educators and those who learn from them.

7. The range of issues included in the recommendations is not exhaustive. They represent only minimum requirements for an effective education strategy for minorities, without prejudice to further efforts made by individual States to address the needs of individuals and groups concerned. The recommendations should be interpreted in a generous spirit in cooperation with the communities concerned, in the light of the demand that human rights instruments be interpreted and standards applied to be effective in practice, so that they can make a real difference to the lives of human beings. In the event of doubt or contestation with regard to their potential application, the principles should be interpreted in favour of members of minorities as bearers of rights but also as potential victims of educational deprivation.

8. The recommendations are phrased in broad terms and can be implemented in countries with diverse historical, cultural and religious backgrounds, with full respect for universal human rights.

II. CORE PRINCIPLES

9. Every person is entitled to accessible, free and high-quality primary level education. States should take reasonable legislative and other measures to achieve the progressive realization of this right with respect to secondary education and for higher education on the basis of capacity. The right to education for all is grounded in universal and regional human rights instruments, including instruments on minority rights. The core principles of international human rights are fully applicable to the right to education and should be faithfully implemented by States. These include the principles of equality and non-discrimination, as well as the principle of equality of women and men in the enjoyment of all human rights and fundamental freedoms. The principle of non-discrimination includes all persons of school age residing in the territory of a State, including non-nationals, and irrespective of their legal status.

10. School policies or practices that, de jure or de facto, segregate students into different groups based on minority status violate the rights of minorities and also rob the entire society of its best opportunity to foster social cohesion and respect for a diversity of views and experiences. Students and societies gain the greatest educational advantage when classrooms have a diversity of students, ethnically, culturally and economically.

11. The principle of equality does not imply uniform treatment in the field of education regardless of circumstances, but rather that differential treatment of individuals and groups is justified when specified circumstances warrant it, so that the right to equal treatment is also violated when States, without permissible justification, fail to treat differently persons whose situations are significantly different. The principle of non-discrimination implies that persons belonging to minorities should not be treated differently in the field of education solely on the basis of their particular ethnic, religious or cultural characteristics, unless there are permissible

criteria to justify such distinctions, including criteria set out in specific instruments on minority rights. National and local contexts are important in the detailed application of educational responsibilities and Governments enjoy a margin of appreciation in applying the principles to particular contexts.

12. Principles of equality and non-discrimination permit the taking of special temporary measures. Such measures are mandatory when the conditions for their application are satisfied. Special measures or affirmative action should be used, for instance, as a means for Governments to recognize the existence of structural discrimination and to combat it. The case of special measures or affirmative action should not be confused with minority or indigenous rights to existence and identity that subsist as long as the individuals and communities concerned desire the continued application of these rights. Measures taken in the field of education for minorities should not constitute a programme of coerced or artificial assimilation.

13. Education for all students should have an intercultural approach that recognizes and values cultural diversity. There must be a development of intercultural and anti-racist capacity within educational institutions at every level and informing all policies.

14. Minorities have a right to participate in the life of the State and in decisions affecting them and their children's future. In the field of education, this right implies input by minorities into the design, implementation, monitoring and evaluation of education programmes and the administration of educational institutions. It also means that an alternative to mainstream curricula may be considered in order to meet the needs, aspirations and priorities of minorities.

15. The responsibilities of the State to fulfil the rights to education and to non-discrimination are not diluted on account of the complexities of political structures: the responsibilities extend in principle to the whole of the State territory. Governments must make strenuous efforts to ensure that national policies are not subverted or defied by local authorities in States with domestic constitutional arrangements, such as decentralized authority or devolution of powers.

16. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. These measures are most critical in preschool and primary schools, but may extend to subsequent stages of education. School curricula must encourage knowledge among all students of the history, traditions, language and culture of the minorities existing within their territory and also ensure minorities adequate opportunities to gain knowledge of the society as a whole.

17. In the field of education and minorities, there is a compelling need for accurate data that are qualitative and quantitative, disaggregated by sex, race, ethnicity and disability status in order to assess the necessary requirements in the development, institutionalization, implementation and monitoring of targeted education policies. Data should also be gathered on poverty status and on the access to education and progress of children who do not speak the dominant language. Indicators and benchmarks are necessary for the accurate appraisal of education policies, including assessments of the extent of discrimination against minorities and the success or failure of policies to eliminate discrimination. Such data should include research

into causes of poor school enrolment and drop-out rates where applicable. Disaggregation of the data according to sex will expose the barriers that prevent girls and women from accessing education and learning. All data should be made accessible to the public on a regular basis.

18. Data-gathering exercises concerning minorities should take place in a culturally sensitive manner, on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned, and on the basis of their self-identification as members of groups concerned.

III. ESSENTIAL REQUIREMENTS FOR AN EFFECTIVE EDUCATION STRATEGY

19. States should approach the education of minorities in a positive spirit. Measures should be taken by States to implement education rights actively to the maximum of their available resources, individually and through international assistance and cooperation.

20. States should review, enact and amend their legislation where necessary to affirm the right to education for all, eliminate discrimination and guarantee quality education for all members of minorities.

21. States should create conditions enabling institutions that are representative of minorities to participate in a meaningful way in the development and implementation of policies and programmes relating to education for minorities.

22. Budgetary policies are crucial to a State's implementation of its obligations to respect, protect and fulfil the educational rights of minorities. In the drafting of budgets for education in the case of minorities, clear criteria that are tailored to the special needs of the minority group are required. The costing and financing of education policies should be based on a holistic appraisal of minority needs and on the basis of the State's immediate and non-derogable obligation to guarantee that the right to education will be exercised without discrimination and on the basis of the principle of equal treatment. The principle of equal treatment entails the allocation of extra resources and efforts to advance the right to education among minority groups that have been victims of historical injustices or discrimination in realizing their right to education.

23. Budgetary allocations for education should be transparent and amenable to external scrutiny. Budgets should be presented in a form that allows assessment of the allocations disaggregated according to minority status and sex, rendering transparent the targeting of special measures for minority girls and minority boys.

24. Programmes for the education of minorities, as well as teachers and appropriate teaching and reading materials, including books, must be made available in the mother tongues of the minorities.

25. Educational services should be arranged in order that they reach minority communities throughout the national territory, and should be adequate to address the needs of such communities. States must ensure that educational services for minorities are delivered at a quality that is comparable with national standards.

26. States should recognize that the adequate recruitment, training and incentivization of teachers to work in areas inhabited predominantly by members of minorities are factors of utmost importance in the delivery of adequate educational services, and should arrange teacher training programmes accordingly.

27. State or local policies or practices that, de jure or de facto, result in separate classes or schools for minority pupils, or schools or classes with grossly disproportionately high numbers of minority pupils, on a discriminatory basis, are prohibited, except in limited and exceptional circumstances. In particular, the misuse of psychological or learning ability tests for enrolment of children in primary schools must be subjected to close scrutiny with respect to their potential to engender discriminatory outcomes. The creation and development of classes and schools providing education in minority languages should not be considered impermissible segregation, if the assignment to such classes and schools is of a voluntary nature. However, where separate educational institutions are established for minorities for linguistic, religious or cultural reasons, no barriers should be erected to prevent members of minority groups from studying at general educational institutions, should they or their families so wish.

28. Education should be available at all levels for minorities, from preschool to tertiary education, as should technical and vocational education, on a basis of equality with other learners.

IV. EQUAL ACCESS TO QUALITY EDUCATION FOR MINORITIES

29. The principle of non-discrimination is a key to securing equal access to education, and ensuring ongoing participation and completion of quality education for members of disadvantaged and minority groups.

30. Members of minorities must have realistic and effective access to quality educational services, without discrimination, within the jurisdiction of the State. Accessibility has three overlapping dimensions: non-discrimination on prohibited grounds; physical accessibility; and economic accessibility.

31. Barriers to accessibility may be the result of single or multiple factors, whether physical or social, financial or pedagogical. States should address all such factors in order to promote effective access, especially in cases where barriers to access are compounded, as in the case of girl pupils, resulting in a vicious circle leading to severe educational exclusion. The existence of local customs that restrict the free movement of girls and women does not relieve the State of its responsibility to guarantee access to education for minority girls.

32. Special attention to education is called for in the context of emergencies, armed conflicts and natural disasters when children of minorities or vulnerable populations do not have access to social protection and essential services, including education. Measures should be taken to avoid discrimination and favouritism during these periods and during periods of recovery and rehabilitation.

33. Authorities should remove direct and indirect institutional barriers to education for minorities, and address cultural, gender and linguistic barriers that may have equivalent access-denying effects.

34. In order to ensure effective access to education for members of minority communities, authorities should take immediate and positive steps to remove impediments resulting from poverty and child labour, homelessness, low nutrition levels, poor health and sanitation among the communities, as well as impediments that result from a policy of historical discrimination or injustice in realizing the right to education.
35. Difficulties in school enrolment and retention for displaced persons, members of nomadic or semi-nomadic groups, migrant workers and their children, both girls and boys, should be addressed in a proactive and constructive manner. Lack of documentation should not prevent pupils from enrolling in schools.
36. Enrolment and registration formalities and cost burdens should be eased to facilitate the admission of minority pupils into schools; such inhibiting factors may be a matter of deepened concern in relation to the admission of girl pupils.
37. Resources should be sufficient to guarantee that the education of their children is a financially viable proposition for minority families.
38. The impact of residential patterns on school enrolments should be carefully assessed and addressed to avoid disparate social and educational outcomes. Authorities should pay attention to the location of schools so that minority pupils are not disadvantaged with respect to physical access to school buildings or the quality of educational outcomes.
39. States should carefully monitor and take positive and effective steps to reduce high rates of exclusion and dropouts among minority students and to, de minimis, align them with rates of the majority population, in cooperation with parents, associations and communities. States should take effective steps to bring down any barriers to education, be they cultural, social, economic or of any other nature, that lead to high drop-out rates.
40. States should ensure equal access to education for women and girls from minority groups, upon whom poverty and family responsibilities may have a disproportionate impact, and who may be subject also to aggravated discrimination, including in extreme cases violence, on the basis of culture, gender or caste.
41. Affirmative action in education for members of minorities that have been subject to a policy of historical discrimination or injustices in realizing the right to education should extend to higher education, where the cumulative impact of discrimination at the lower levels of education often results in low levels of representation of members of minority groups in the later stages of education, whether as pupils or education professionals.
42. Programmes of adult education or “second chance” schools should be encouraged and increased for members of minorities who have not completed primary education levels.

V. LEARNING ENVIRONMENT

43. Education should work actively towards the elimination of prejudices among population groups and the promotion of mutual respect, understanding and tolerance among all persons residing in the State, whatever their ethnic, religious or cultural background or sex.

44. Human rights education for all should be made an integral part of the national educational experience.
45. Teaching staff should be provided with initial and ongoing training preparing them to respond to the needs of pupils from a variety of backgrounds.
46. Teacher training, including training of teachers from minority communities, should include anti-discrimination, gender sensitive and intercultural training.
47. States should strive to ensure that the school learning environment for members of minorities is welcoming and receptive to their needs and concerns.
48. Systems of recording racist or similar incidents targeting minorities and policies to eliminate such incidents should be developed in school systems.
49. Disciplinary actions taken against students should be proportionate, fair and immune from any perception of bias against minority students. Positive disciplinary practices that do not conflict with the primary goals of student retention and educational outcomes should be employed. Disciplinary actions must respect the rights of parents to be fully informed, to participate in the decision-making process and to seek outside mediation.
50. States should act to remedy situations where there is a lack of trained teachers who speak minority languages.
51. States should actively strive to recruit and train teachers from minority communities, both men and women, at all levels of education as a key aspect of a strategy to develop a multicultural ethos in schools.
52. School management and administration should actively involve representatives from minority communities.
53. States should promote and systematize active consultation and cooperation between parents of children of minorities and the school authorities, including, where appropriate, through the employment of mediators to improve parent-school communication, and interpreters where parents do not speak the language of the school administration.

VI. CONTENT AND DELIVERY OF THE CURRICULUM

54. The form and substance of education, including curricula and teaching methods, must be acceptable to parents and children as relevant, culturally appropriate and of a quality equal to national standards.
55. The liberty of parents or legal guardians to choose educational institutions for their children other than those established by the authorities of the State and to ensure the religious and moral education of their children in conformity with their own convictions must be recognized. Such alternative institutions must comply, however, with the “minimum education

standards as may be laid down or approved by the State”.² Any State financing of non-State schools must be provided to all such schools on an equal basis. States should ensure that all parents are informed about the right to choose alternative educational institutions.

56. With regard to the right to manifest religion in schools or educational institutions, forums for continuous dialogue should be developed where necessary between members of religious minorities and educational institutions that serve them with the view to better understanding and accommodating their religious needs within schools.

57. In cases where members of minorities establish their own educational institutions, their right to do so should not be exercised in a manner that prevents them from understanding the culture and language of the national community as a whole and from participating in its activities.

58. States should provide adequate opportunities to persons belonging to minorities to learn their mother tongue or to learn through the medium of the mother tongue, alternatives which should not be understood as mutually exclusive. Specific forms of such opportunities should be chosen in consultation with persons belonging to minorities and taking into account their freely expressed wishes.

59. School language regimes for the initial stages of education in State schools should ideally employ the language of the child as the predominant medium of instruction, with a gradual introduction of the State language or dominant local language, if different from that of the child, at a later stage, where possible by bilingual teachers sensitive to the cultural backgrounds of minority children.

60. Education should be able to adapt to the situation of changing societies and communities and be responsive to the needs of students in diverse social and cultural settings. A diversity of learning systems should be considered so that quality formal and non-formal education that is contextualized, culture specific and relevant within an integrated system of education may be delivered.

61. Curricula should adequately reflect the diversity and plurality of society and the contribution of minorities to society.

62. Curricula should promote the preservation and defence of minority languages, and identify and equip members of minorities with the educational tools necessary for their full participation in the society concerned.

63. Curricula relating to minorities should be developed in cooperation with bodies representative of minorities, and members of minority groups should, ideally, be in positions of influence in education ministries or other authorities deciding upon curricula.

² International Covenant on Economic, Social and Cultural Rights, art. 13., para 3.

64. State education authorities should ensure that the general compulsory curriculum for all in the State includes teaching of the history, culture and traditions of the minorities from the perspective of the minorities themselves. States should take measures to teach the community narratives of minorities to other groups.

65. The promotion of the cultural rights of minorities is necessary to further the fulfilment of their educational rights. These rights include access to written, audio and visual media materials in their own language in order to enrich the cultural lives of minorities. There must also be the free exchange of books and other educational materials and access to universities run by members of their national group in other States.³

66. Educational curricula should not include materials that stereotype or demean minorities, including compounded stereotyping of minority girls and women on the basis of both their national or ethnic belonging and their sex. Teachers and other education personnel should avoid the use of offensive names for an individual or a community or names not freely chosen by the individual or community concerned. Educational curricula taught to non-minority groups within the State should include materials designed to reduce stereotypes and racist attitudes towards minorities.

67. Members of the general population should have the opportunity to learn minority languages and thereby contribute to the strengthening of tolerance and cultural interchange within the State.

³ This provision is in accordance with article 2, paragraph 5, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.