



SAHRC REPORT



**National Investigative Hearing into the Impact of Protest-related
Action on the Right to a Basic Education in South Africa**



Cover image

*A learner walks through the remains of a burnt classroom
(Courtesy of Chester Makana)*



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ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights	NSFAS	National Students Financial Aid Scheme
ACRWC	African Charter on the Rights and Welfare of the Child	NASGB	National Association of School Governing Bodies
BEFA	Basic Education for All	NDP	National Development Plan
CESCR	Committee on Economic, Social and Cultural Rights	PAIA	Promotion of Access to Information Act
CHP	Complaints Handling Procedures	PDE	Provincial Department of Education
CoGTA	Department of Cooperative Governance and Traditional Affairs	PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
CRC	Convention on the Rights of the Child	POP	Public Order Policing
DBE	Department of Basic Education	SAHRC	South African Human Rights Commission
DPME	Department of Planning, Monitoring and Evaluation	SAPS	South African Police Service
DSD	Department of Social Development	SASA	South African Schools Act
ICC	Intelligence Coordinating Committee	SATAWU	South African Transport and Allied Workers' Union
ICCPR	International Covenant on Civil and Political Rights	SGB	School Governing Body
ICESCR	International Covenant on Economic, Social and Cultural Rights	UDHR	Universal Declaration of Human Rights
MDB	Municipal Demarcation Board	UN	United Nations
MEC	Member of Executive Council	UNHRC	United Nations Human Rights Committee
NAPTOSA	National Association of Professional Teachers' Organisation of South Africa		

EXECUTIVE SUMMARY

This report contains findings and recommendations of a national investigative hearing held by the South African Human Rights Commission (SAHRC or Commission) into protest-related action and its impact on the right to a basic education in South Africa. The hearing was held in terms of Sections 13 and 15 of the South African Human Rights Commission Act, 40 of 2013.

The fact that South Africa experiences high rates of public protest that have an impact on the rights of children to enjoy a basic education necessitated the investigation. Monitoring over a period of five years indicates that protest-related action manifests in many forms, including the burning of educational infrastructure, and the barring of learners from accessing school premises and other sites of learning. Recent incidents in the Limpopo Province drew heightened attention to the extent and nature of the impact that protest-related action has on children's right to a basic education.

The Commission is a constitutional body that is empowered to investigate human rights violations, and to make suitable findings and recommendations to the State on measures to be taken in redress. Where violations are widespread and systemic in nature, the Commission is enjoined to institute a national public hearing.

Such a process assists to identify the underlying factors leading to such violations as well as the policy and institutional mechanisms that the State and others may put in place to prevent violations or generally promote human rights of children. The national hearing into the impact of protest-related action on the right to a basic education is part of a wider response by the Commission to promote and protect the right to a basic education.

The following key questions formed the basis of the investigation of the Commission:

- 1 To what extent has protest-related action affected the right to a basic education?
- 2 Whether policy measures at local, provincial and national levels are adequate in detecting and preventing public protests from disrupting schooling?
- 3 Whether early warning mechanisms are in place to ensure that schools are secure and that learning is not disrupted?
- 4 Whether measures are in place to monitor the impact of protest-related action on the right to a basic education?
- 5 Whether measures (codes, guidelines) are in place to ensure that stakeholders such as communities, leaders and school governing bodies fulfil their responsibility in the context of protests.



Panel members (left to right): Dr Chris Madiba, Prof Ann Skelton, Commissioner Lindiwe Mokate (Chair of Panel), Commissioner Danfred Titus and Dr Vasu Gounden

It is worth noting that a crucial question that the Commission has not explored fully in this hearing is the question of why schools are so often the target of protest-related action aimed at expressing frustration over unrelated social discontent. While this question was not a focus, various stakeholders put forward reasons for this phenomenon during their presentations. The Commission has taken note of these reasons and will consider them as a focus for a future investigation.

From the outset the Commission acknowledges the importance of the right to assemble, peacefully and unarmed, and the recognition of the right at the national, regional and international level. The need to protect and respect the right to protest is accepted, but at the same time an acknowledgment of the need to ensure a careful balance when the right to protest is exercised is noted. A brief overview is provided of protest-related actions that affected basic education in South Africa during the last five years, and which have been monitored by the Commission.

The methodology employed during the hearing was inquisitorial in nature. Stakeholders including government departments at both national and provincial levels, trade unions, non-governmental organisations, school principals and community leaders were invited to make submissions.

Arising from its enquiry, the Commission made the following key findings:

1 The extent to which protest-related action has affected the right to a basic education.

- 1.1 The Commission finds that the right to a basic education is affected by protest-related action arising from causes that in most cases may be unrelated to the provision of basic education. Protesters who deny access to education are violating the right to a basic education of the affected learners. No specific measures have been taken to create awareness of the importance of basic education; and
- 1.2 The Commission further finds that learners are disadvantaged by certain protest-related action in that they are consequentially (a) physically barred or intimidated from attending school; and (b) infrastructure on which learners rely to access education is damaged or destroyed.

2 Whether policy mechanisms at national, provincial and local government level are adequate to detect and prevent public protests from adversely affecting children's right to a basic education?

- 2.1 The Commission finds that both the Department of Basic Education (DBE) and the South African Police Service (SAPS) response has, in some cases, been slow, and it appears that no uniform policy or approach in dealing with such incidents is in place; and
- 2.2 The lack of proper and efficient communication between authorities and affected communities has resulted in communities seeking ways to draw attention to their plight and targeting schools even though by targeting schools children's right to a basic education is undermined.

3 Whether early warning mechanisms are in place to ensure that schools are secure and that learning is not disrupted?

- 3.1 The Commission finds that the responsibility to ensure the safety of learners, educators and schools does not rest with one department, and it was unclear which department took the lead in cases where protest-related action targeted schools;
- 3.2 In some instances, the breakdown of leadership at the local government level had a negative effect on efforts to address problems that arise thereby undermining the right to a basic education; and
- 3.3 No evidence of adequate early warning systems could be established.

4 Whether measures are in place to monitor the impact of protest-related action on the right to a basic education?

- 4.1 The Commission finds that no reported action has been taken against persons who deliberately interfere with the right to a basic education; and
- 4.2 The Commission further finds that there is a slow or inadequate response by government departments to incidents that affect schools which in turn affects the recovery process.

5 Whether measures (codes, guidelines) are in place to ensure that stakeholders such as communities, leaders and school governing bodies fulfil their responsibility in the context of protests.

5.1 There is a need for government departments, especially at the local level, to better engage with communities on important community matters. There is also a need to encourage people to find new ways of expressing their concerns so that their actions do not result in a negative impact on other rights, such as the right to a basic education.

From these findings the report makes the following recommendations with a view to addressing the key identified challenges:

- 1 The DBE should constitute an interdepartmental National Public Protest Response Team (National Response Team). This national body should include relevant government departments; particularly, SAPS and the Department of Cooperative Governance and Traditional Affairs (CoGTA) and other relevant stakeholders.
- 2 The National Response Team should develop Guidelines that:
 - (a) set out clearly the roles and responsibilities of the various government departments within the context of school disruptions;
 - (b) establish early warning systems and responses to be taken in the event of school disruptions due to protest action;
 - (c) include information on the relationship between the National Response Team and the SAPS Safety Priority Committees. The Guidelines should also provide for procedures and/or protocols on how public protest information can be shared in order that SAPS receives as much information as possible about planned school disruptions due to public protests;
 - (d) indicate the SAPS will prioritise the investigation and prosecution of actions that result in the disruption of basic education taking place or damage to State property at schools;

- (e) set out the actions, taking into account budgetary considerations, to be taken in circumstances where learners have been deprived of education due to protest action in order that the necessary catch up is achieved;
- (f) set out clearly the responsibilities, including budgetary responsibilities, of the different government departments where school infrastructure and buildings have been damaged or destroyed, in ensuring that the situation is normalised and education can continue;
- (g) include a contribution from CoGTA indicating its role and responsibilities in engaging with traditional leadership structures to create awareness about the impact of public protest action on the right to basic education. CoGTA should encourage traditional leaders to assist in preventing school disruptions from occurring;
- (h) provide for a reporting mechanism in order that information and statistics on all school disruptions due to protest actions are recorded at a national level. This will allow for greater information sharing and analysis of the current phenomenon where protest actions disrupt schools thereby violating the right to basic education;
- (i) provide guidance on awareness raising strategies and programmes that can be implemented amongst government departments that engage with or are affected by public protests that disrupt education. These awareness raising strategies should include information on the right to protest and the role of SAPS and other government departments. SAPS should report back to the National Response Team on measures that it has taken to train its members in the area of conflict prevention in communities.

- 3 The National Response Team should share its reports and information with the National Planning Commission in order that the impact of public protests on the realisation of the right to a basic education can be considered in the ongoing review of the National Development Plan (NDP).

- 4 The National Response Team should consider Section 3 of the South African Schools Act (SASA) and determine whether the criminal provisions, contained therein, are sufficient to be used to prosecute persons, engaged in public protests, who deny learners access to education. Further, make a determination as to whether the statutory criminal sanctions are a sufficient deterrent. Should it be determined by the National Response Team that amendments to SASA are necessary; the DBE should initiate the process to bring about the necessary amendments to the legislation.
- 5 The National Response Team should develop a community awareness programme that can be rolled out at a provincial level. This programme should clearly articulate that the Constitution guarantees the right to protest where this is done lawfully and peacefully. Any protest action that falls outside of this, such as: damaging or destroying schools and denying access to education during public protests is not constitutionally protected. In fact, in many instances, these actions may amount to a criminal offence.
- 6 The structure of the National Response Team should be replicated at the provincial level and, where necessary, the local level. These Provincial and Local Response Teams can tailor the National Guidelines to local conditions. This will ensure that planning and responses take into consideration local factors. It will also allow for a faster reaction by the appropriate authorities when public protests threaten access to basic education. The DBE, SAPS and CoGTA should indicate within a period of three (3) months which recommendations are accepted and which recommendations are rejected. Full written reasons should be provided for those recommendations that are rejected.
- 7 The DBE should provide a report within nine (9) months on the activities of the National Response Team. This Report should include the Guidelines referred to above and set out the progress that has been made in implementing these recommendations at the national and provincial level.
- 8 The DBE should provide a further report on the activities of the National Response Team one (1) year thereafter indicating progress that has been made. This Report should provide information on the implementation of the Guidelines at the national and provincial level. At this stage, the Commission will determine whether further Progress Reports are necessary.

I BACKGROUND

to the hearing



1 INTRODUCTION

- 1.1 This report has been prepared following a national investigative hearing held by the South African Human Rights Commission (SAHRC or Commission) in terms of Sections 13 and 15 of the South African Human Rights Commission Act, 40 of 2013.
- 1.2 The hearing investigated the impact of protest-related action on the right to a basic education in South Africa.
- 1.3 The necessity of the hearing was sparked by an increase in the number of protest-related action that is affecting the right to a basic education. Recognising the right to assemble, peacefully and unarmed¹, (which will be referred to as the “right to protest” herein) the Commission remains concerned about the impact of protest-related action on other rights, particularly the right of children to a basic education.²
- 1.4 Taking into account the Commission’s observation of the growing trend that the right to a basic education is being undermined by protest-related action, the convening of a national hearing was deemed necessary. The purpose of the hearing was to determine the extent of the phenomenon to seek a solution through generating a range of recommendations towards ensuring that in the future protest-related action does not disrupt and thereby deny the right to basic education.

2 CONTEXT OF THE INVESTIGATION

- 2.1 A number of incidents have taken place around the country that illustrate the extent of the challenge of how protest-related action can impact the right to a basic education. The most prominent event occurred in Limpopo.

On 29 April 2016, the Limpopo High Court handed down a judgment confirming the community-contested demarcation by the Municipal Demarcation Board (MDB), that incorporated Vuwani District into the Malamulele Municipality. Dissatisfied with the order of the High Court, some residents found expression through protest action,

1 Sec 17, Constitution of the Republic of South Africa, 1996.

2 Sec 29, Constitution.

which resulted in 29 schools in the area being set on fire allegedly by protesters.³ According to information from the Department of Basic Education (DBE), the burning of 29 schools in Vuwani disadvantaged an estimated 10 233 learners but the total number of schools disrupted was 102 with 52 827 learners unable to attend school.⁴ The devastating impact on learners and the estimated cost for restoring damage to the infrastructure will run into millions of Rand.

- 2.2 Over the years the Commission, through its provincial offices, has noted protest-related action and its impact on the right to a basic education and in some instances has intervened to ensure protection of rights in line with its protection mandate. During the hearing, additional examples were provided. The blocks below provide a number of illustrative examples.

*Overton Primary School,
Eastern Cape*

In January 2016, some parents of children attending Overton Primary School in the Eastern Cape prevented 350 children from attending school whilst staging a protest to demand the construction of a school building. Other protests in the Eastern Cape that obstructed schooling took place in 2013, 2014 and 2015.

*Ekhetlheng Primary School,
Gauteng*

Gauteng has experienced a number of protests since 2014 that have undermined the right to a basic education. In some instances school property was damaged. Recently, in 2016 during a protest against mass evictions in Hammanskraal, a classroom at Ekhetlheng Primary School was damaged.

*Five schools in Malamulele,
Limpopo*

In 2014, protest-related actions in Malamulele, Limpopo resulted in at least five schools being set alight. These schools are yet to be fully rehabilitated. Learners who were preparing to write supplementary examinations could not do so. At least 150 schools could not resume in 2015 and 179 000 learners could not attend school. The school feeding scheme was not able to continue during the disruptions.

*Zeerust,
North West*

In October 2014, protests broke out in Zeerust, North West Province. The protests centred on lack of access to water by communities. During these protests, children were barred from attending school. The protests took place close to the examination period and as a result examination preparations were jeopardised particularly for learners who were matriculating. Other protests in the North West that resulted in school closures, took place in June 2013, February 2015 and June 2016.

*John Taolo Gaetsewe District,
Northern Cape*

In 2014, for three months, a community in the Northern Cape's John Taolo Gaetsewe District, physically and through acts of intimidation, prevented children from attending school. The residents demanded that roads linking their villages be tarred. At least 54 schools were targeted by protesters with thousands of children left unable to attend school. The Northern Cape has also experienced protests in Olifantshoek, in 2012, where 16 000 children were kept out of school by protesters for four months. In Kuruman, in 2014, 16 000 learners were kept out of school whilst parents

3 A summary of the case against the Municipal Demarcation Board: *Masia Traditional Authority and others v Municipal Demarcation Board and others ZALMPPHC (29 April 2016)* is provided as Annexure 1.

4 Media reports stated that the figure was 59 000 affected learners while the Limpopo Provincial Department of Education indicated that 42 000 learners were unable to attend school.

protested for tar roads. A total of 2 583 learners were unable to write their June examinations. In all of these instances, the learners had to repeat the school year. Feeding programmes were interrupted and orphans or child headed households were most affected.

3 RATIONALE FOR THE HEARING

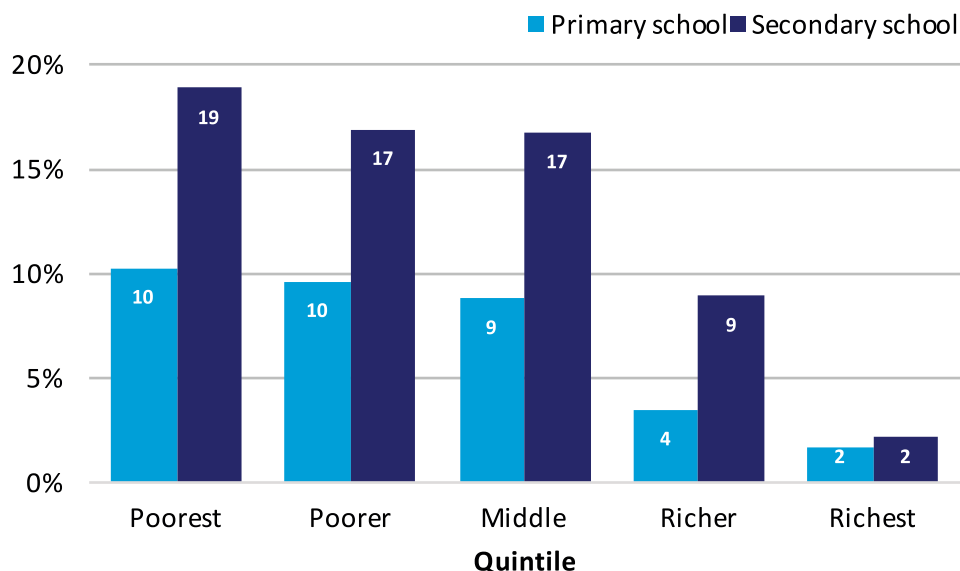
- 3.1 The result of the Commission's monitoring work illustrates the phenomenon of protest-related action that undermines the right to a basic education may be systemic in nature.
- 3.2 There is therefore a need for a coherent response by relevant stakeholders to ensure that school disruptions do not deny children their right to a basic education.
- 3.3 The national hearing into the impact of protest-related action on the right to a basic education is part of a wider response by the Commission to promote and protect the right to a basic education. The Commission has carried out extensive work in the area of child rights and basic education, and over the years it has responded to systemic concerns by recommending legislative, policy and institutional reform. In 2014, the Commission instituted a national hearing on the delivery of primary learning materials to schools. Prior to the hearing, in 2012 the Commission developed and launched the seminal *Charter of Children's Basic Education Rights* (Charter) which is a comprehensive domestic framework through which both monitoring and advocacy of the right to a basic education could be conducted. The Charter identifies a number of factors which may undermine the right to a basic education. Some of these factors relevant to protest-related action referred to in the Charter include inadequate infrastructure.
- 3.4 A key finding derived from the Commission's monitoring work revealed that the actual causes of the protests were largely unrelated to the right to a basic education, yet the protests had far reaching consequences on this right as they left children unable to physically access school premises or resulted in the destruction of school

infrastructure, learning equipment and materials. Consequently, and in line with its constitutional mandate, the Commission sought to establish how the growing trend could be reversed through interventions at national, provincial and local levels.

4 METHODOLOGY OF THE INVESTIGATION

This section sets out the process that was followed for the Commission's "own initiative" national investigative hearing.

- 4.1 The investigative hearing was conducted as an inquisitorial process in which the Commission invited, examined and evaluated submissions and evidence from a range of stakeholders and informants.
- 4.2 The key stakeholders invited to make submissions included relevant national government departments, the SAPS, members of executive councils (MECs) responsible for the Provincial Departments of Education (PDEs), trade unions, community members, civil society bodies and school officials. The invitation included questions that were to be answered, as set out in Annexure "2". Stakeholders were invited to make written submissions prior to the oral submissions.
- 4.3 The stakeholders that participated in the national investigative hearing were:
 - DBE;
 - Department of Cooperative Governance and Traditional Affairs (CoGTA);
 - South African Police Service (SAPS);
 - Member of Executive Council (MEC) for Education in the Eastern Cape;
 - Provincial Departments of Education (PDEs);
 - National Association of School Governing Bodies (NASGB);
 - Basic Education for All (BEFA);
 - National Professional Teachers' Organisation of South Africa (NAPTOSA);
 - Principals of Secondary Schools in Limpopo, Mpumalanga, Gauteng and Eastern Cape;
 - Community leaders from Eastern Cape, Limpopo, Mpumalanga and North West; and
 - Equal Education.



Children in the poorest households are up to 9 times more likely to repeat the same grade compared with children in the richest households (Graph reprinted with permission of UNICEF South Africa)

4.4 The Chairperson of Parliament's Portfolio Committee on Basic Education was invited to observe the hearing and was present for a part of the hearing.

4.5 The Panel was chaired by a Commissioner of the SAHRC. The Panel comprised of the following persons:

Commissioner Lindiwe Mokate (Chair of the Panel and SAHRC Commissioner responsible for child rights and basic education);

Commissioner Danfred Titus (SAHRC Commissioner responsible for prevention of torture and human rights in law enforcement);

Professor Ann Skelton (Professor in law and child rights advocate of more than 20 years);

Dr Vasu Gounden (Expert in conflict resolution with more than 20 years of experience); and

Dr Chris Madiba (Former lecturer at the University of the Witwatersrand and expert in education with extensive experience in the education sector including basic education).

5 CONCEPTUAL AND LEGAL FRAMEWORK UNDERPINNING THE INVESTIGATION

5.1 Historical background to protest action in South Africa

Many of the protests in South Africa have their roots in poverty and inequality. The structural and institutional inequalities that continue in South Africa find form largely in inadequate access to basic services for poorer sections of South African society. In many cases the community, or sections of it, have expressed their frustration at the slow pace of change and the non-provision of basic services, such as water, electricity and sanitation, through protest action. These protests, which are commonly known as "service delivery protests" have, on occasion, degenerated into destructive and obstructive conduct which has undermined other rights, such as that of basic education.

It is estimated that South Africa has more than 13 500 protests every year of which the vast majority are non-violent.⁵

⁵ Information provided by SAPS during the national investigative hearing.

5.2 Historical background to the right to basic education

- 5.2.1 The right to a basic education is key to South Africa's development. South Africa comes from a history of social exclusion of a large section of its population. During apartheid quality education to the majority of the population was systematically denied. Black South Africans did not have access to quality education.
- 5.2.2 The 1976 student uprising drew attention to the unequal educational standards that existed in the country and protesting youth sought to change existing conditions. There was a realisation then, as there is now, of the importance of education in lifting society out of poverty. In post 1994 South Africa, considerable attention has been paid to ensuring that a wide section of society achieves basic education.
- 5.2.3 The right to a basic education is recognised as a constitutionally guaranteed right. Through education, individuals' appreciation and ability to realise their human rights increases. Basic education is the core foundation through which a developing society such as South Africa can take on the challenge of improving the lives of its people and ensuring future growth and sustainability.

“

...the burning of 29 schools in Vuwani disadvantaged an estimated 10233 learners but the total number of schools disrupted was 102 with 52 827 learners unable to attend school.

”

[the Department of Basic Education]

- 5.2.4 Two decades after the end of apartheid, democratic South Africa continues to be plagued by its legacy. While immense progress has been made in minimising the impact of this legacy, much remains to be done. Transformation of the education sector remains an exceptionally challenging responsibility for post-apartheid South Africa. Besides ensuring high quality and equal educational standards, other challenges are centred on improving the professionalism of personnel, quality of infrastructure and accessibility of educational facilities.

5.3 Overview of international, regional and national norms regarding the “right to protest”

- 5.3.1 The right to protest is recognised in all major international and regional human rights instruments and is a key component of democracy.⁶ In its most common expression, protest plays a crucial role in ensuring the realisation of economic, social, cultural, civil and political rights.⁷ Another vital function of the right to a protest is the contribution it makes to ensure the emergence of an informed citizenry as it invariably affords exchange of ideas and provides an opportunity for unification around issues of common interest for a group.⁸ The right to protest therefore is instrumental to societal development as a whole and there are obligations on the state to protect, respect and fulfil the right to protest.

6 Joint Report of Special Rapporteurs *Practical Recommendations for the Proper Management of Assemblies A/HRC/31/66*, 2016 at [5]. See also P de Vos “A problematic limitation on the right to freedom of assembly” available at <http://constitutionallyspeaking.co.za/a-problematic-limitation-on-the-right-to-freedom-of-assembly/> (accessed on 11 July 2016). De Vos notes with reference to South Africa that “The right “peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions” was also enshrined in section 17 of South Africa’s 1996 Constitution. This right is pivotal for the proper functioning of a democracy. If political organisations, civil society groups and members of the public are not free to demonstrate and to take part in protest marches, the participatory aspect of our democracy would be fatally weakened.”

7 Art 19 “The right to protest: Principles on protection of human rights in protest” (2015) available at <https://right-to-protest.org/wp-content/uploads/2015/06/right-to-protest-for-web.pdf>

8 *South African National Defence Union v Minister of Defence and Another* (1997) ZACC 7, 8.

- 5.3.2 In line with accepted international human rights standards, the Constitution guarantees the right to protest.⁹ The Regulation of Gatherings Act, 203 of 1993 further elaborates on how the right should be exercised by providing details on the convening of gatherings, notices, conduct and appeal processes.
- 5.3.3 The State's obligation to respect the right to protest means that it must not unreasonably hinder people from protesting. Regarding the protection mandate of the State, the State must ensure that measures are in place that enable individuals and groups to exercise their right to protest.¹⁰ The fulfilment mandate requires States to ensure that an environment in which the right can be exercised exists.¹¹
- 5.3.4 The exercise of the right to protest can have an impact on other people.¹² This report recognises the right to protest and does not purport to explore the right in any great detail but rather recognises it as an important right which must be exercised in a manner that takes into consideration other rights holders.
- 5.3.5 The Universal Declaration of Human Rights (UDHR) advances the right to protest through Articles 19 (freedom of opinion and expression) and 20 (freedom of assembly). Under the International Covenant on Civil and Political Rights (ICCPR) a number of provisions advance the right to protest such as Article 19(2) (freedom of expression), Article 21 (freedom of assembly) and Article 22 (freedom of association). The United Nations Human Rights Committee (UNHRC) noted the interconnection of freedom of expression, association and assembly as integral to each other. These rights may be restricted for purposes of national security, public safety, public order, protection of public health, morals, rights and freedoms of other persons. At the regional level, the African Charter on Human and Peoples' Rights (ACHPR) recognises the right by way of — Article 9 (freedom of expression), Article 10 (freedom of association) and Article 11 (freedom of assembly). The ACHPR allows

for restrictions to be based on criteria such as “national security, the safety, health, ethics and rights and freedoms of others”.

- 5.3.6 South African jurisprudence has explored the importance of the right within the South African context. The Constitutional Court in *SATAWU and Another v Garvis and Others* emphasised the importance of the right to protest in the following terms:¹³ The right to freedom of assembly is central to our constitutional democracy. It exists primarily to give a voice to the powerless. This includes groups that do not have political or economic power, and other vulnerable persons. It provides an outlet for their frustrations. This right will, in many cases, be the only mechanism available to them to express their legitimate concerns. Indeed, it is one of the principal means by which ordinary people can meaningfully contribute to the constitutional objective of advancing human rights and freedoms. This is only too evident from the brutal denial of this right and all the consequences flowing therefrom under apartheid. In assessing the nature and importance of the right, we cannot therefore ignore its foundational relevance to the exercise and achievement of all other rights.
- 5.3.7 The Constitutional Court noted that ordinary people may use the right to “advance human rights and freedom” and furthermore that it has “foundational relevance to the exercise and achievement of all other rights”.¹⁴ At a fundamental level therefore, the right to protest should ideally not undermine other rights but rather contribute to their realisation.
- 5.3.8 The Constitutional Court in recognising the right to protest noted further that “[t]he fact that every right must be exercised with due regard to the rights of others cannot be overemphasised” and went on to state that organisers of protest actions “must therefore always reflect on and reconcile themselves with the risk of a violation of the rights of innocent bystanders which could result from forging ahead with the gathering”.¹⁵

⁹ Sec 17, 1996. See also para 3 above.

¹⁰ Art 19 “The right to protest: Principles on protection of human rights in protest” (2015) available at <https://right-to-protest.org/wp-content/uploads/2015/06/right-to-protest-for-web.pdf>

¹¹ As above.

¹² As above.

¹³ 2012 (ZACC) 13, 61.

¹⁴ As above.

¹⁵ 2012 (ZACC) 13, 68.

5.3.9 The Constitutional Court has emphasised that the cornerstone to enjoyment of the right to protest is its peaceful exercise, with the Court indicating that “it is important to emphasise that it is the holders of the right who must assemble and demonstrate peacefully. It is only when they have no intention of acting peacefully that they lose their constitutional protection”.¹⁶

5.4 Overview of the international, regional and national standards

5.4.1 The UDHR guarantees “everyone” the right to education.¹⁷ It states that education at the “elementary and fundamental stages” should be free and furthermore that elementary education should be compulsory.¹⁸ The UDHR further indicates that education should “be directed at the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.”¹⁹

5.4.2 The right to education is further recognised in the International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁰ In wording similar to provisions of the UDHR, the ICESCR recognises the “right of everyone to education”.²¹ The ICESCR recognises the importance that education can play in “the full development of the human personal and the sense of its dignity”²² The ICESCR states that primary education should be free and compulsory and that secondary education should be “generally available and accessible to all by every appropriate means.”²³ The Convention on the Rights of the Child (CRC) also recognises the right to education.²⁴

16 2012 (ZACC) 13, 53.

17 Art 26(1) of UDHR.

18 Art 29(2) of UDHR.

19 Art 26(2) of UDHR.

20 Arts 13(1) & (2) & 14. South Africa ratified the ICESCR on 12 January 2015.

21 Art 13(1) of ICESCR.

22 As above.

23 Art 13(2)(b) of ICESCR.

24 Art 28(1) of the CRC. South African ratified the CRC on 16 June 1995.

5.4.3 An understanding of the right to education has been further amplified by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment 13, in which the CESCR noted that:²⁵

Education is both a human right in itself and an indispensable means of realising other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.

Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognised as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.

“

Transformation of the education sector remains an exceptionally challenging responsibility for post-apartheid South Africa.

”

5.4.4 The CESCR further noted that “for millions of people throughout the world, the enjoyment of the right to education remains a distant goal” and that there are “formidable structural and other obstacles” that are hindering the realisation of the right to education.²⁶

25 Adopted at the Twenty-first session of the Committee on Economic, Social and Cultural Rights, on 8 December 1999 (Contained in Document E/C.12/1999/10), para 1.

26 Para 2 of General Comment No 13.

5.4.5 Katarina Tomasevski, former United Nations (UN) Special Rapporteur on the Right to Education, developed the concept of the “4 A’s” as a useful framework to understand the right to education in a tangible manner. Each of the “4 A’s” are required in order to ensure that the right to education is fulfilled. The “4 A’s” refer to the following:

Availability — Programmes and institutions, for example, buildings, teaching materials and sanitation facilities should be in place and available.

Accessibility — Programmes and institutions should be accessible (physically accessible, economically accessible and non-discriminatory).

Acceptability — Curricula and teaching styles should take into consideration issues such as culture and should be acceptable both to learners and parents.

Adaptability — Education should adapt to changing needs of the society it serves.

5.4.6 In order to ensure the realisation of the right to basic education, obligations are placed on States to respect, protect and fulfil human rights. As far as each of these obligations is concerned, the CESCR provided in respect of education that:²⁷

The obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfil (provide) the right to education. As a general rule, States parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. However, the extent of this obligation is always subject to the text of the Covenant.

5.4.7 At the regional level, the African Charter on Human and Peoples’ Rights (ACHPR) recognises in Article 17(1) the right of every individual to education.²⁸ The African Charter on the Rights and Welfare of the Child (ACRWC) places an obligation on the State to provide free and compulsory basic education, The drafters of the South African Constitution followed this example by using the word ‘basic education’ rather than primary education as is found in the major international instruments. Is the first treaty to which South Africa is a party that specifically uses the term “basic education”.²⁹ States are also obliged to encourage the development of secondary education in its different forms and make it free and accessible to all”. ACRWC sets out under Article 11(3) that:

States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realisation of this right and shall in particular:

- (a) provide free and compulsory basic education;
- (b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
- (c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;
- (d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;

5.4.8 Through the ratification of numerous international and regional instruments South Africa has committed itself to uphold the right to basic education.

5.4.9 The right to a basic education requires positive action on the part of the State which is duty bound to ensure that it provides “support, facilities and services” to enable its immediate rather than progressive realisation.³⁰ Regarding the importance of the right to education and the fact that it is subject to immediate rather than progressive realisation, the Constitutional Court in

28 South Africa ratified the ACHPR on 9 June 1996.

29 Art 11(30(a). South Africa ratified the ACRWC on 7 January 2000.

30 JD Van der Vyver “Constitutional protection of the right to education” (2012) 27(2) *SAPL* 326-343 at 331.

27 Para 47 of General Comment No 13.

Governing Body of the Juma Masjid Primary School and others v Essay NO & Others,³¹ held that:

Unlike some of the other socio-economic rights, this right is immediately realisable. There is no internal limitation requiring that the right be “progressively realised” within “available resources” and subject to “reasonable legislative measures.” The right to basic education may be limited only in terms of a law of general application, which is “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”.

5.4.10 As noted by Van der Vyver, “[t]he right to basic education is furthermore a fundamental right that must prevail over other conflicting constitutional rights and freedoms”.³²

Considering that the principle of “best interests of the child” takes precedence in all matters concerning children, it is important that when exercising the right to protest, careful consideration must be taken so as not to interfere with the right to a basic education.³³

This may especially be the case when the right to protest is being exercised for matters that have no bearing on the advancement of basic education. The courts have emphasised the need for the state to ensure the realisation of the right to a basic education. However, there is yet to be an opportunity for the courts to discuss the horizontality of the application of this right within the context of non state actors interfering with the rights of children to access education.³⁴

5.4.11 Section 29(1)(a) of the Constitution guarantees everyone “the right to a basic education, including adult basic education”.³⁵ Within the South African context, children are the main beneficiaries of the right to a basic education and, as such, society as a whole must act in a manner that takes into consideration the best interests of the child.

5.4.12 The South African Schools Act, 84 of 1996 (SASA), recognises the need for a new national system for schools to redress the injustices of the apartheid past in educational provision as part of the broader social transformation agenda. SASA sets out norms and standards for the education of learners at school, alongside the organisation, governance and funding of schools across the country.

5.4.13 Section 3 of SASA confers a duty on all parents or guardians, of children of qualifying age to ensure that children attend school as prescribed by SASA. The wording of Section 3 not only creates a legal duty but goes further to provide for punitive measures for failure to comply with the requirements of SASA. It should be noted that learners with special education needs are also included within the category of learners. There is a further obligation placed on MECs to ensure that there are enough schools for learners to attend.

31 2011(8) BCLR 761 (CC) para 37.

32 As above 30.

33 Van der Vyver at 331. See also A Skelton “The role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law” (2013) 46 (1) *De Jure* 1-23 at 23. See also Sec 28(2) of the Constitution that promotes the principle of “best interest of the child”.

34 A Skelton “The role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law” (2013) 46 (1) *De Jure* 1-23 at 23.

35 Sec 29(1)(a) of the Constitution of the Republic of South Africa.

II APPROACH

to the investigation



1 MANDATE OF THE COMMISSION

- 1.1 The Commission is an independent body established in terms of Chapter 9 of the Constitution. In terms of the Constitution, the Commission has the following mandate as stipulated under Section 184(1):
- (a) promote respect for human rights and a culture of human rights;
 - (b) promote the protection, development and attainment of human rights; and
 - (c) monitor and assess the observance of human rights in the Republic
- 1.2 In terms of Section 184(2), the Constitution empowers the Commission to:
- (a) to investigate and report on the observance of human rights;
 - (b) to take steps to secure appropriate redress where human rights have been violated
 - (c) to carry out research; and
 - (d) to educate.
- 1.3 In addition to the Constitution, other legislation amplifies the powers and work of the Commission. These include the SAHRC Act,³⁶ the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)³⁷ and the Promotion of Access to Information Act (PAIA).³⁸
- 1.4 In terms of Section 13(1)(a) of the SAHRC Act, the SAHRC has the competency and is under an obligation to:
- (a) make recommendations to organs of state at all levels of the government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and the law, as well as appropriate measures for the further observance of such rights
 - (b) undertake such studies for reporting on or relating to human rights as it considers advisable in the performance of its functions or to further the objects of the Constitution; and

³⁶ No 40 of 2013.

³⁷ No 4 of 2000.

³⁸ No 2 of 2000.

- (c) request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to human rights;

1.5 Section 13(4) of the SAHRC Act requires “[a]ll organs of the state” to provide support to the Commission so that it is able to carry out its duties effectively. Support may include provision of information when requested or attendance at hearings when the Commission is investigating an issue of human rights concern.

2 POWERS OF THE COMMISSION

2.1 The SAHRC Act in Section 15(1)(a) further allows the Commission “to conduct or cause to be conducted any investigation that is necessary” for purposes of exercising its powers and carrying out its functions.

2.2 In the course of an investigation, the Commission may:

- (a) Seek information from any person which is relevant for the investigation;
- (b) Require any individual to appear before the Commission and produce any documentation that is required for an investigation;
- (c) Require a person appearing before the Commission during an investigation to take an oath or affirmation and question such person under oath.

2.3 Section 15(2)(a)(1) of the SAHRC Act further states that any person appearing before the Commission and giving evidence under oath is expected to provide truthful answers even if such answers may incriminate the individual.

3 REPORTING OBLIGATIONS OF THE COMMISSION

In terms of reporting, the SAHRC Act under Section 18(2) requires the Commission to report to the National Assembly any findings of a serious nature following an investigation.

4 PROCEDURAL ARRANGEMENTS OF THE COMMISSION

4.1 Investigations and hearings by the Commission are conducted on the basis of procedures which support the responsibilities and powers of the SAHRC conferred through the SAHRC Act. The Commission’s Complaints Handlings Procedures (CHP) as gazetted guided the conduct of this hearing.

4.2 The scope below informed the work of the Panel:

- (a) Receive information and hear evidence from the Respondents and other relevant parties relating to the impact of protest-related actions on the rights to a basic education in South Africa;
- (b) Analyse evidence brought before the Panel;
- (c) Make appropriate findings; and
- (d) Make recommendations.

“

All persons who made submissions to the Panel were requested to swear an oath or take an affirmation at the start of their submissions and were informed on the inquisitorial nature of the hearing.

”

4.3 Nature and Structure of the Proceedings:

- (a) All persons who made submissions to the Panel were requested to swear an oath or take an affirmation at the start of their submissions and were informed on the inquisitorial nature of the hearing.

- (b) Each person or institution that made a presentation was allocated time to make their submission after which the Panel posed questions for clarification if they deemed it necessary.
- (c) In some cases person(s) or institutions that made submissions also provided written submissions, for further clarity on the issues on which they were presented.

5 POWER TO MAKE FINDINGS

5.1 In terms of Article 26(1)(3) of the CHP the Panel must:

- (1)
 - (a) consider the evidence submitted at the hearing in conjunction with all other available information and evidence obtained otherwise;
 - (b) make a finding on the facts and giving full reasons for the decision reached; and
 - (c) make a finding regarding remedial action, if necessary.
- (2) The Chairperson of the Panel must, at the conclusion of the hearing, summarise the evidence contemplated in (1)(a) and state the finding, including any proposed remedial action.
- (3) The finding of the Panel at the hearing is final and is not subject to an appeal as provided for in Chapter 9 of the Procedures.

5.2 The Commission was satisfied that these prescribed formalities were complied with.

5.3 According to Article 26(3) of the CHP, this finding is not subject to appeal.

III SUBMISSIONS

to the Commission



The following reflects a synthesis of the submissions, both written and oral, made to the Panel.³⁹

PART A: National departments, national institutions, civil society, trade unions and representative bodies

1 DEPARTMENT OF BASIC EDUCATION

- 1.1 According to the DBE, protesters may have legitimate grievances but it is important that expression of dissatisfaction should not be carried out at the cost of children's right to a basic education.
- 1.2 Besides the constitutional mandate to facilitate access to basic education for all, the SASA places an obligation on parents to ensure that their children of compulsory school-going age attend school. The law criminalises the act of a parent or any person preventing a learner from attending school and on conviction, a court may impose a fine or period of imprisonment not exceeding six months. The DBE and SAPS rarely initiate the use of these criminal provisions contained in SASA. This provision could be used as a deterrent against those who seek to disrupt the delivery of education.
- 1.3 With respect to the question whether adequate measures were in place to monitor conflict in a manner that limits the impact on learners, the DBE stated that it has undertaken several initiatives in response to the challenges faced in Vuwani including the development of ministerial task teams to, amongst others, arrange special camps for learners who have missed school. This response by the DBE is over and above the Minister of Basic Education and members of the PDE's engagement with community members on how best to resolve the challenges and ensure that children's schooling is not interrupted.
- 1.4 With specific reference to Limpopo, the DBE informed the Panel that it is ready to provide education to affected learners.

³⁹ The views expressed in the submissions by the stakeholders as set out in Parts A and B do not necessarily reflect the views of the Commission.

Measures such as provision of mobile classrooms have been put in place to facilitate learning and to make up for lost time. The DBE has done what it can in terms of its mandate. The challenge is the volatility of the situation in Vuwani. Some officials were exposed to danger and had to be withdrawn for their safety. While mobile classrooms have been provided there is no guarantee that the classrooms or the learners will not be under threat should learning resume.

- 1.5 In assisting the Panel to better understand the measures taken by provincial government in the wake of the protests, the DBE indicated that the problem in Vuwani was a political problem that needed a political solution. As a result, even though mobile classes have been provided, schooling had not resumed as the underlying problems had not been resolved. CoGTA needs to take the lead in finding a solution and should be supported by other government departments.
- 1.6 Responding to whether there were sufficient early warning mechanisms to alert provincial government of impending conflict, the DBE admitted that the situation in Vuwani had come as a surprise. The DBE was overwhelmed by the situation and did not imagine that so many schools would be affected. The DBE is seeking expert assistance from outside the department to help identify alternative solutions and interventions.
- 1.7 Regarding the question of why protesters targeted schools as an outlet of frustration with unrelated social problems, the DBE stated that many of the causes of protest actions have no direct bearing on children and access to education, but are rather related to service delivery inadequacies.

Children, their support structures and environment are regrettably all too often seen as a soft target, leaving them to face the consequences of the actions of adults. It is in this frame that they remain at risk of having their rights violated.

- 1.8 A key recommendation that emerged from the DBE presentation included the need to develop guidelines to strengthen community awareness of the right to a basic education. Greater collaboration with other organisations and government departments

would be necessary to effectively protect the right to education.

- 1.9 As to the question of the role of community, local government authorities and civil society actors in intervening and taking preventative action to secure the protection of rights of learners, the DBE responded that some of these protest actions had shown that an emphasis on the role of the district authorities needed to be brought to the fore. The protest action has also highlighted the importance of engaging closely with community leaders and with community members who are at the forefront of impediments to resolution.
- 1.10 The DBE further submitted that it was aware of the obligations placed on it but without cooperation of broader civil society and other stakeholders, the mandate of the DBE would be difficult to realise. The DBE cannot, for example, be expected to prevent crime as it falls outside of its mandate and it lacks the requisite skills to attend to criminal matters. The DBE is one of many bodies that must collectively be responsible for ensuring access to a basic education. It is thus important to intensify the cooperation with other stakeholders and state departments. The responsibility for responding to the current situation of violent protests impeding the right to a basic education cannot rest solely on the shoulders of the DBE.
- 1.11 Finally, the DBE recommended that a deeper analysis of the phenomenon of destruction of schools as a result of unrelated protest action be undertaken in order to understand the full extent of the problem. This would assist in determining measures to prevent such behaviour. The extent of destruction of schools is unprecedented and the measures taken by DBE were the best it could manage.

2 DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

- 2.1 CoGTA noted that during protests “soft targets” are prone to attack and that recently children have been that target. There are instances of intimidation during which people who do not want to join protest action fear reprisal as they are perceived as not showing support. CoGTA engages with the DBE on

matters of access to basic education and in which CoGTA has a responsibility.

- 2.2 CoGTA in its presentation referred to serious challenges that it confronted when dealing with protest-related action. In the case of Vuwani, CoGTA indicated that the government cannot reverse the decision of the MDB which is at the heart of the conflict. The matter is being taken on appeal to the Constitutional Court.
- 2.3 CoGTA had no visible presence when the protests erupted, as it did not have access to the kind of intelligence information that, for example, SAPS and other agencies were able to gather. CoGTA relies on the SAPS and other intelligence agencies for information on potential hotspots. In the case of Vuwani, the MDB offered some information regarding possible unrest but the burning of schools was not foreseen through any of the information that was received.
- 2.4 With respect to the role of institutional mechanisms in protecting the rights of learners CoGTA indicated in its presentation that various stakeholders, including both school authorities and local authorities, had a role to play in finding solutions to the challenges highlighted in the hearing. Schools as institutions exist within a municipal space.
- 2.5 In addition, CoGTA held the view that a critical trigger of protest action was discontent with the state of service delivery.
- 2.6 With respect to the role of communities in resolving conflicts, CoGTA indicated that traditional leaders could play a crucial role in settling disputes within communities. However, CoGTA also noted that there were instances where traditional leaders may have been undermined, which resulted in communities failing to listen to their advice at critical periods.
- 2.7 In addition, CoGTA was of the view that traditional and local government leadership needed to develop efficient reporting mechanisms on issues of interest to wards in order to prevent conflict.

3 SOUTH AFRICAN POLICE SERVICE

- 3.1 The SAPS provided a broad overview of process and strategy in respect of situations of unrest. In summary the SAPS' response in such situations is informed by four pillars of intervention, namely, (1) community and stakeholder involvement, (2) legal and regulatory framework and intervention, (3) safety and security in a pro-active fashion and reactive measures in some instances, and (4) mass communication.
- 3.2 The SAPS stated that its Public Order Policing (POP) units which manage protests are under-resourced in terms of human resources, which currently consists of 28 units with a strength of 4227 members to police 1200 police stations and manage approximately 13 000 protests per year. There are two POP units in Limpopo with a total number of 444 members. There are 25 720 schools nationwide.
- 3.3 The SAPS noted that critical infrastructure, such as hospitals, have the added responsibility of ensuring that they have additional security in addition to security that the SAPS may provide. The DBE is in the process of trying to get schools declared as national key points. Such a declaration would help in ensuring that there are more personnel to manage the situation, should the need arise. However, such a declaration would increase security costs.
- 3.4 According to SAPS, at a national and provincial level, intelligence is collected by the Intelligence Coordinating Committees (ICCs), which are composed of crime intelligence, the State Security Agency and defence intelligence.⁴⁰ The role of the ICCs is to collect information and relay it to decision-makers within the SAPS. With regards to POP units' early warning system, information on potential unrest is relayed through email which is sent directly to the concerned SAPS station commander.
- 3.5 Addressing the events in Vuwani, the SAPS submitted that it had observed people's dissatisfaction. There was some engagement at a national level by CoGTA

⁴⁰ The State Security Agency was invited to participate in the hearing but were not able to attend.

- and the processes to follow the MDB's decision were also made clear. There was, however, no intelligence to suggest that schools would be targeted. As a result, there were no pre-emptive measures in place to prevent the incidents that unfolded. The intelligence community in Vuwani provided some information but in some cases it was insufficient to be acted upon.
- 3.6 SAPS indicated that police were mobilised after the violence started and concentrated on protecting key points. When the violence flared and schools were targeted, resources were at that stage already stretched. Community members frustrated police reaction and used tactics such as digging up roads or placing obstacles in roads to stop police vehicles from accessing affected areas. When the police got out of their vehicles to remove the obstacles they would be stoned. It was difficult for police to respond effectively. Since the events, intelligence work is paying dividends. Due to the increase in police presence, citizens are complaining about the heavy police deployment in the area.
- 3.7 Some measures had been implemented by SAPS to protect schools and access to basic education in the aftermath of the protests. In this regard the SAPS indicated that schools are each linked to a specific police station and the "adopt-a-cop" programme that allocates a specific officer to a school. A part of the SAPS strategy is realised through participation in some of the community meetings and planning sessions which are held to ensure that protests are managed safely. Members of POP units have been increased where necessary. In situations where unrest escalates SAPS are able to use local POP reserves, but in case these are insufficient to meet the needs then the national reserve unit is relied upon. If the combination of the provincial reserve and national reserve are inadequate then support is sought from other provinces that are not facing challenges needing their own POP at the time.
- 3.8 Three clear learning areas were cited by the SAPS arising from the events in Vuwani:
- (a) That it is important for the various parties to the conflict to engage in discussions in order for the cause/s of the unrest to be solved;
 - (b) That it is important to involve local area police. A high visibility of SAPS creates a safe/r environment for children to attend school; and
 - (c) Protesters are versatile and develop new tactics to respond to police presence. Police must be ready to adapt quickly. In Vuwani, for example, the police did not expect protesters to charge directly at the POP unit who were in full riot gear.
- 3.9 The role of POP is to manage protest. POP is not supposed to suppress the rights of people who protest but rather to ensure that protests do not interfere with the realisation of other people's rights.
- 3.10 The SAPS has adopted a three year plan to increase the number of personnel with the POP service and the number of POP units across the country. The increase in POP units within provinces will mean that reaction times will be reduced. However, even though the decision has been taken to increase the POP strength, the process of recruitment and training takes a long time. Candidates have to be assessed thoroughly. For example, they undergo psychometric examination and are assessed in terms of anger management. These tests are important to ensure that persons with the ideal attributes for managing protests are recruited into the POP units to avoid human rights violations.
- 3.11 The SAPS was of the view that lessons learned from Vuwani are applicable to the country at large. In its presentation SAPS indicated that it was a national imperative to ensure that there is no repeat of the violence and damage caused to schools. In order to address the issues adequately, the underlying causes of dissatisfaction amongst the people must be addressed. According to the SAPS, the MDB could have been more consultative had it had more engagements with the communities before its final decision.

- 3.12 The SAPS made the following recommendations:
- (a) The need to implement the Protocol signed at the Ministerial level between SAPS and the DBE that addresses crime and violence in schools;
 - (b) Schools should be linked to local police stations;
 - (c) Raise awareness on the impact of crime on communities for both communities and learners to feel a greater sense of ownership of their schools so that they can take a leading role in protecting them;
 - (d) Encourage the implementation of a school based crime prevention programme and reporting system;
 - (e) People should be educated about the Bill of Rights and community leaders should speak out against public violence; and
 - (f) The SAPS may need to develop a strategy to effectively communicate the role of POP to the country.

4 NATIONAL ASSOCIATION OF SCHOOL GOVERNING BODIES

- 4.1 In its presentation, the NASGB focussed on legislative provisions dealing with the roles and responsibilities of school governing bodies (SGBs) and issues associated therewith.
- 4.2 The NASGB noted that there was a negative perception and lack of recognition of the purpose and value of the SGBs, which rendered them less effective. In some cases these bodies had been disbanded without following due process, which had resulted in serious challenges. SGBs are generally seen as weak structures that are not adequately resourced. However, leadership and management training would go a long way to raising awareness of the importance of securing schools and access to basic education. SGBs are important stakeholders as they include parents in their structure. Yet it is alleged that some of these parents are also involved in violent protests within their areas. In most cases, however, parents want their children to attend school. Unfortunately in some instances where parents wanted their children to attend school, they were ostracised.

- 4.3 The NASGB raised the issue of the lack of adequate training for SGBs in issues of governance, despite amendments to SASA to accommodate this training. Training is managed at a provincial level with Gauteng being the only province with a training agency. As the other provinces did not have training agencies, NASGB was not in a position to provide an overview of training across the country.
- 4.4 The NASGB identified a need to engage with other structures, including the Commission, in order to find a solution to the problem of schools being targeted during violent protest.

5 BASIC EDUCATION FOR ALL

- 5.1 According to BEFA, the challenge is that in the case of Limpopo the government is not addressing the underlying issues that led to the protests. The matter was left to fester before serious intervention took place.
- 5.2 BEFA indicated that it had been informed by parents that some of the people involved in torching schools had done so in order to advance their political agendas. The organisation submitted that parents want their children to attend school but that they fear for the safety of their children.
- 5.3 In partnership with SECTION27, BEFA has been running workshops for community members to educate them on the right to basic education. BEFA outlined its plan to strengthen its educational campaign on basic education, and that would include creating awareness of the need to protect school property.

6 NATIONAL PROFESSIONAL TEACHERS' ORGANISATION OF SOUTH AFRICA⁴¹

- 6.1 NAPTOSA highlighted the need to respect both the right to a basic education and the right to protest. In recognition of the constitutional rights, however, NAPTOSA noted that the exercise of one right should not be asserted at the expense of others. There is a tendency of some people to

⁴¹ The South African Democratic Teachers' Union (SADTU) was invited to participate in the hearing but were not able to attend.

think that constitutional rights are unique to themselves and as such they have no regard for other rights holders. This is indicative of a lack of understanding of the context in which these rights operate.

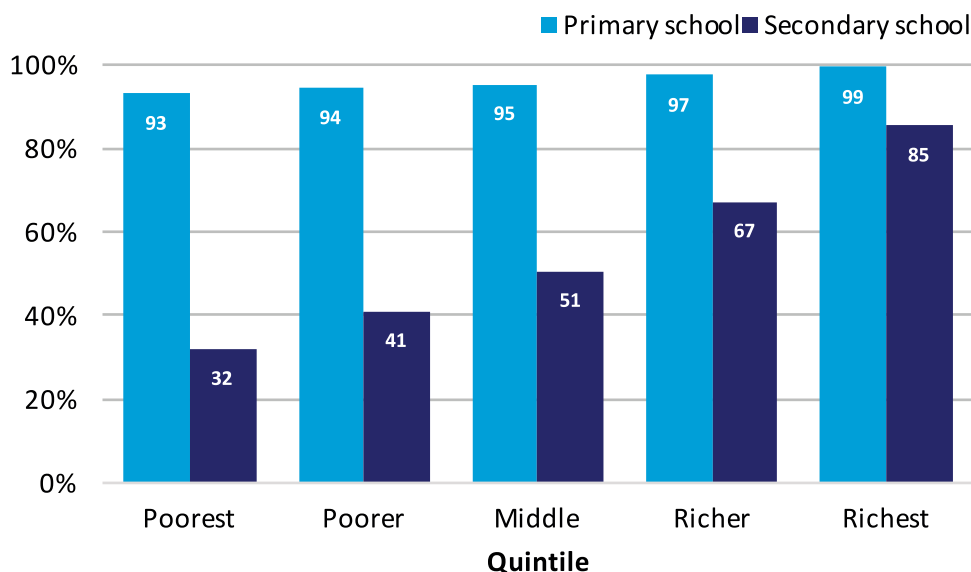
- 6.2 NAPTOSA noted that schools are an integral part of the communities in which they exist. As a result it is not easy for school authorities to act contrary to the community in which the schools are based even though the school authorities may have a different perspectives.
- 6.3 NAPTOSA noted that interference with the right to a basic education is more complex than schools being temporarily closed. When problems arise at schools, it is usually the educators who are blamed. People look to the educators to provide solutions, yet they often lack the support they need to find these solutions. Significantly, the educators themselves come from affected communities.
- 6.4 Reflecting on its role in the Vuwani case, NAPTOSA indicated that it had attempted to seek solutions through consultation with school authorities and traditional leaders. The NAPTOSA delegation that visited Vuwani established that educators themselves were afraid to return to those areas where schools had been burnt and that despite the various interventions that were being attempted, nothing worked.

6.5 NAPTOSA advocated for training communities and for dialogue on the importance of access to basic education and other constitutional rights. It emphasised that tangible action needed to flow from that dialogue. The distress and unhappiness of communities needed to be understood and responded to, so that it did not escalate to the level where it negatively impacted education.

6.6 NAPTOSA stated that while national dialogue and consensus were important, there were issues that were specific to various provinces such as the way they engaged with unions.

7 EQUAL EDUCATION

7.1 Equal Education contextualised the events at Vuwani as reflecting the feelings of young parents in South Africa. The problems of poverty, unemployment and joblessness in South Africa lead to parents being disillusioned and failing to appreciate the value of a basic education. They are concerned that the possibility of their children living a better life is low because their own lives have not necessarily improved. Equal Education distinguished criminal activity from protests against conditions, and indicated that those burning schools were criminal elements and should be treated as such.



Completion of schooling is markedly lower among children in the poorest households (Graph reprinted with permission of UNICEF South Africa)

- 7.2 Equal Education was of the view that there was a need for initiatives to tackle the tendency to use schools as a form of bargaining in the demand for delivery of services. These initiatives should start at the community level. The organisation noted a lack of coordination between government departments and their differing governmental agendas, for example in the provision of school infrastructure.
- 7.3 With specific reference to Vuwani, Equal Education submitted that there was a dynamic of politics at play. People wanted to force change through the destruction of critical institutions.
- 7.4 The organisation tendered further specific recommendations in respect of the SAPS. In order to avoid repetition of the events in Vuwani, or their occurrence elsewhere in the country, it is important to understand POP and the history of policing in South Africa, which despite the advent of democracy has not transformed at a local level. SAPS needs to have thorough planning around how to react and how to manage protests. It must also be understood that protest is a constitutional right, and haphazard protests usually arise because there has been difficulty in engaging with relevant authorities. According to the law, persons seeking to protest are only required to notify the police and not seek permission. Police misunderstand their role and when they refuse to grant permission, they regard the protest as unauthorised.
- 7.5 Equal Education highlighted that the organisation condemns acts of violence. It noted that violence is a result of the history of the country. A space for change needs to be negotiated, a space in which honest action and contestation is welcome and encouraged. The experiences of the majority of people in South Africa should not be forgotten as that reality plays a role in the decisions that people make which, from the outside, may appear unreasonable.
- 7.6 Equal Education was of the view that there is a need for a new movement in the country that teaches people what it means to protest. A new form of consciousness needs to be developed that responds to the demands of the new South Africa. Schools can play an important part in that effort, as can social

movements. There is also a need for a new political order that is not rooted in fear or intimidation, and that shows the way forward without, for example, declaring schools as national key points.

8 DEPARTMENT OF PLANNING, MONITORING AND EVALUATION

- 8.1 The Department of Planning, Monitoring and Evaluation (DPME) in its presentation noted that the issues raised during the hearing were complex. The destruction of the community infrastructure such as schools during protests was a symptom of a far deeper challenge and that the problem was broader than education. The frequency of disruptive acts was on the increase and people's frustrations were palpable.
- 8.2 The DPME noted that policing does not solve problems because the issues that are being contested are not policing issues, but rather are linked to broader social or political issues. In this context South Africa needs to understand what it is about schools that makes them susceptible as targets compared to other institutions. It is gravely concerning that schools seem to be regarded as state assets rather than community assets. Although there are some communities that do make attempts to protect their schools, society in general needs to be made aware of the issue of schools being community assets.
- 8.3 Regarding the relevance of the National Development Plan (NDP) in light of protest-related action and its impact on schools, the DPME was of the view that the NDP is a critical document in the work of the DPME which should take into account changing needs of the country. The NDP was not developed for implementation over a short time period. Therefore, there should not be a departure from its basic principles each time there is social upheaval. The new Commissioners of the National Planning Commission are making an assessment of the current state of the country, and evaluating its progress. The NDP is not off-course and much of it remains relevant especially in terms of its central aim. There is no alternative course of action to follow. The only option is to remain committed to the NDP.

- 8.4 The DPME indicated that the situation in Vuwani has highlighted a need for both detection of challenges and prevention. The DPME further noted that the DBE has made concerted efforts to respond and “normalise” the situation in Vuwani, but that human and other resource constraints would make it difficult to recover in both the short and long term.
- 8.5 The DPME explained that the DBE response has been strong but that there are some issues that are beyond the mandate of DBE. The full impact of the protest action that has caused disruption to the education system will continue to become apparent over the course of the next five to ten years. It is important to develop and support systems to detect potential unrest and to procure the materials needed to recover from the damage that could result from the unrest.
- 8.6 The transformation process that the country embarked upon is not easy and results cannot be expected immediately. There is a need for an information system that operates more as an early warning system than as a spy agency. A system of information that gathers, filters, verifies and analyses information will enable decision makers to form responses and strategies. National Intelligence needs to function with interest of security. A message must be sent that certain acts will not be tolerated or condoned.
- 8.7 Intervention needs to go further than detection of challenges. Early warning systems are not conclusive in and of themselves because, while they may show that certain events are about to unfold, it may be unclear how exactly this will happen. Dialogue and problem solving following the detection of a challenge are equally important, as are building systems for rapid response. Government needs to be more responsive to the needs of communities so they do not feel overlooked. It is important to raise awareness among communities of alternative avenues of expressing discontent.
- 8.8 In terms of early warning, the DPME indicated that it receives information on time, but a careful balance needs to be maintained so that the country does not turn into, or appear to be, a police state. The constitutional

democratic principles of the right to protest must be upheld but people should also take responsibility for how they exercise those rights. The Commission should play a central role in educating people about human rights, alongside with the importance of individual responsibility. Burning of schools should be condemned in the strongest terms.

- 8.9 There is a need to look at developing systems that are more participatory and inclusive. This would allow solutions to be found at a local level, without tensions escalating to a national level or, worse still, to violence.
- 8.10 According to the DPME, there is a need to focus on what people can contribute towards solving the challenges raised by this hearing. There is too much reliance on the State. What is needed is a deeper collaboration between the State and the communities.

PART B: Provincial Departments of Education

In general the following observations emerged from the presentations by the PDEs:

- (a) Most of the protests that arose and that eventually resulted in destruction of school property were as a result of service delivery issues.
- (b) Many of the interventions were reactive rather than proactive. Sometimes simmering tensions are not addressed and interventions only occur when situations become volatile. People resort to violence as a last option after grievances are raised through various channels, and still find no resolution.
- (c) Collaboration across government departments is important in order to find viable solutions to the challenges that arise.
- (d) There is a need to develop solutions that respond to the root cause of protests. Deep-seated problems must be addressed. The genuine concerns that lead to discontent must be articulated, understood and addressed.

Submissions from specific provinces

1 Department of Education: Eastern Cape

- 1.1 The MEC indicated in his presentation that geographical challenges in the Eastern Cape were entrenched during apartheid with the northern parts of the province more developed than the southern parts, and that these disparities have not been overcome and still affect the Eastern Cape.
- 1.2 The MEC explained that while education is an important part of the Eastern Cape government's priorities, accounting for 44% of the provincial budget, educators face challenges and are sometimes not able to respond to the needs of society.
- 1.3 Various protest actions have provided lessons that can be used to prevent the recurrence of past mistakes. These lessons include being honest in communication with people, and the Department ensuring that it settles the liabilities that arise from past mistakes.

2 Department of Education: KwaZulu-Natal

- 2.1 The Department reported that there had been no incidents of entire schools being burnt during protest-related action. In the few incidents when schools were targeted, only administrative blocks were affected. There have been incidents of looting with some people taking advantage of volatile situations to steal equipment from schools. There have also been incidents of burning school furniture, but attempts have been made to ensure that schools are secure.
- 2.2 The Department further noted that in some parts of KwaZulu-Natal, there are functional safety committees for schools. As a result, most schools are secure, but assessments indicate that there are some schools that require further protection.
- 2.3 In the view of the Department, the province had been successful in providing transport for learners, as well as police escorts if needed, in a bid to ensure that teaching and learning was not interrupted during protest actions.

2.4 The Department highlighted that regional councillors are involved in ensuring that there is stability in schools, especially after service delivery protests. The Department's approach is to be prepared for activities that could interrupt teaching and learning. In some areas police have been successful in dispersing protesting crowds, without any disruption being caused to the delivery of basic education.

2.5 Regarding the preparedness of provincial government, the Department stated that precautionary measures were in place to avert any potential future disruption to basic education. Part of these measures include engaging with traditional leaders through the KwaZulu-Natal Education Forum. It has been recognised that there is a need to continuously engage all relevant stakeholders in order to ensure that problems are detected early and dealt with effectively.

2.6 Addressing the Panel on mechanisms for collaboration with communities and civil society, a positive experience has been the development and strengthening of partnerships for the benefit of education. The Department has received support from different sectors in an effort to ensure that teaching and learning progresses without interruption. Educators, for example, have shown a willingness to provide their services when needed. Throughout the entire period of unrest the Department was able to ensure that the feeding scheme for learners continued, particularly in the "no fee schools".

3 Department of Education: Limpopo

3.1 The Limpopo Department of Education focussed solely on events in Vuwani. It explained the efforts that it had made to try and ensure resumption of schooling.

3.2 The Department set out the various challenges it experienced in addressing the situation in Vuwani. A key impediment to its efforts and ability to intervene effectively was its inability to access communities. Timely response during protests was not possible as roads were rendered impassable due to protest action. Protesters had in certain instances dug up roads in an effort to prevent

- police and other authorities from accessing affected areas. Without direct access, intervention in such situations was rendered impossible.
- 3.3 The Department reported that at least 42,000 learners were negatively impacted by the events in the province. As part of its recovery and catch-up efforts, the Department was making efforts to provide resources to affected schools but parents were not allowing their children to attend school. Some parents were concerned about their children's safety and consequently were not allowing their children to return to school. Local intelligence indicated that some protesters had declared that they will "deal with parents who send children to other schools". The security measures in place were inadequate. Schools that could temporarily host learners from affected areas were concerned about being targeted.
- 3.4 The Department's response to disruptions included proposing alternative classes for Grade 12 learners at a university. The university was reluctant to host learners from affected areas as it was concerned that its facilities could be attacked. As an alternative, the Department identified centres in Limpopo that could be used as venues for the Grade 12 classes. The challenge was to ensure that both learners and facilities would be safe.
- 3.5 Mobile classrooms were dispatched and meetings were held with chairpersons of SGBs and school principals who had assumed responsibility for the mobile classes. Private security was arranged for a three month period even though security expense was unforeseen expenditure costing millions of Rand.
- 3.6 The Department considered the possibility of televised or remote learning and a mobile telephone company was willing to provide tablets that learners could share. Televised lessons were a viable option but there had been no budgetary planning for such activity. Provision was made for radio lessons targeting Grade 12 learners. All these extra expenses were not funded through a disaster fund as the incidents were not declared as disasters. The Department was approaching
- donors in order to supplement the available resources.
- 3.7 The situation was considered a crisis. The Department was making all attempts to respond to the challenges in Limpopo. Senior officials relocated near the area but were still unable to solve the issues. The Department responded speedily and provided temporary relief measures. The Department expressed an interest in learning from other provinces that have successfully overcome similar challenges. The Department established through informants that the only solution was to reverse the MDB decision.
- 3.8 The Department cited division among traditional leadership structures as an added challenge to restoring a semblance of order in areas. Some headmen wanted children to resume schooling while others resisted. Similar divisions existed among community members with some determined to deny children access to schools until their grievances were addressed.
- 3.9 The divisions at the leadership level and within communities resulted in non-implementation of what would be agreed upon at meetings. There were different views and interests that were not represented in meetings and as a result there was little progress in finalisation of the matter. The Department stated that at the time of its submission to the Panel the situation remained bleak as many learners were desperate to resume schooling but some disgruntled community members were adamant that unless their demands were met schooling would not resume.
- 4 Department of Education: Mpumalanga**
- 4.1 The Department reported that it had identified a number of protest-related action that affected learners' attendance at school. These included municipal service delivery protests where learners were prohibited from attending school, political party protest and educator strikes also affected learners' attendance at school. School community strikes related to objections to appointments or promotions. Other causes included community protests regarding the awarding of tenders, the awarding of contracts for

scholar transport or delays in payment. Taxi association disputes over routes interfere with learners' attendance at school.

- 4.2 The Department indicated that it has a rapid response unit that is deployed to areas where protests are taking place. A The Department also has a risk manager and Risk Management Committee. In addition the Department has a fulltime security manager who monitors all activities that could have a negative effect on basic education. The security manager liaises with law enforcement.
- 4.3 The Department has a Learner Performance Improvement Plan that identifies risks and advises on mitigation steps to be taken to minimise impact of protests on access to education a recovery programme for learners who miss classes through interruption is also in place. The learners are provided with additional classes, materials and radio lessons.
- 4.4 The Department also holds quarterly meetings with religious leaders and the SGB formations.

5 Department of Education: Northern Cape

- 5.1 In its report, the Department indicated that in the Northern Cape it received reports of classrooms being burned and intimidation against individual instructors. Perpetrators were not prosecuted as community members were concerned for their safety if they divulged information about perpetrators.
- 5.2 Part of the reason for some protests continuing for a long period was a lack of timeous political intervention to resolve problems. In Kuruman, for example, protests persisted for three months before they were brought under control. The Department engaged with various stakeholders when the protests began. During these engagements community members indicated that schools would resume. After the protests ended a programme was introduced to try and ensure that learners were able to catch up. Educators were compelled to provide extra support.

- 5.3 In instances where children were unable to attend school, the Department of Social Development (DSD) had played a central role, through its community development workers, to assist these children.

PART C: Community Stakeholders

Salient points commonly emerging from presentations by community stakeholders were that:

- (a) Children should not be disadvantaged while communities make demands that are unrelated to basic education;
- (b) The nature of protests need to be understood and the leaders of the protests, whether parents, community members or criminal elements, should be identified;
- (c) Young people need to lead the inter-generational conversation that education should not be a trade-off for service delivery; and
- (d) The absence of State authority in some instances allows anarchy to prevail.

“

My plea to the parents and all adults of South Africa - think about the generation of June 1976 and what they were fighting for. It was education remember. So we should not allow what the class of 1976 fought for to be taken away because of demands that are not related to education.

”

[Learner from Jeppe High School for Girls]

Submissions of specific stakeholders

1 Learner from Jeppe Girls High School, Gauteng⁴²

- 1.1 The learner highlighted the need to focus the discussion on the direct impact on the youth. The challenges faced by learners as a result of these protests can be insurmountable. Time is lost from the school year and this, coupled with challenges related to trying to catch up academically, are of particular concern to learners from disadvantaged backgrounds. The material conditions of learners cannot be ignored. Some learners depend on the school feeding programme and protest actions that interfere with schooling have an impact that goes beyond merely the right to a basic education, but extends to the right to food.
- 1.2 The learner stated that the long term effects of protest action on learners is disconcerting. Education is often seen as a means to uplift communities and learners out of poverty. Interruption of education has a direct negative impact on the realisation of this goal and, as

42 The Commission made efforts through its provincial offices to get affected learners to attend the hearing but because the time was nearing mid-term examinations there were concerns about disrupting learners. The learner from Jeppe High Schools for Girls attended the hearing of her own volition.

such, solutions need to be found immediately to prevent interruption of schooling.

- 1.3 The learner explained that there are some interactions between her school's learners and learners in disadvantaged schools. The learner informed the Panel that the circumstances under which these learners in disadvantaged schools access education are often difficult. For example, learners often have to walk long distances, which poses a security threat for girls in particular as they walk through areas of potential danger. There is a need for closer engagement with the learners in order to find a better response to the current crisis of attack on basic education.

2 School principal and community leader: Limpopo

- 2.1 The principal and community leader in their presentation explained that the two circuits most affected by the shutdown of schools in Limpopo are Vhuronga 1 and Vhuronga 2. At least 21 schools in these circuits were burnt. Mobile schools were provided in some areas but records in some of the schools had been burnt and therefore disruption was not limited to infrastructure. Grade 12 learners and others are not sure whether they will write the preparatory or final exams.



A learner from Jeppe High School for Girls presents at the hearing

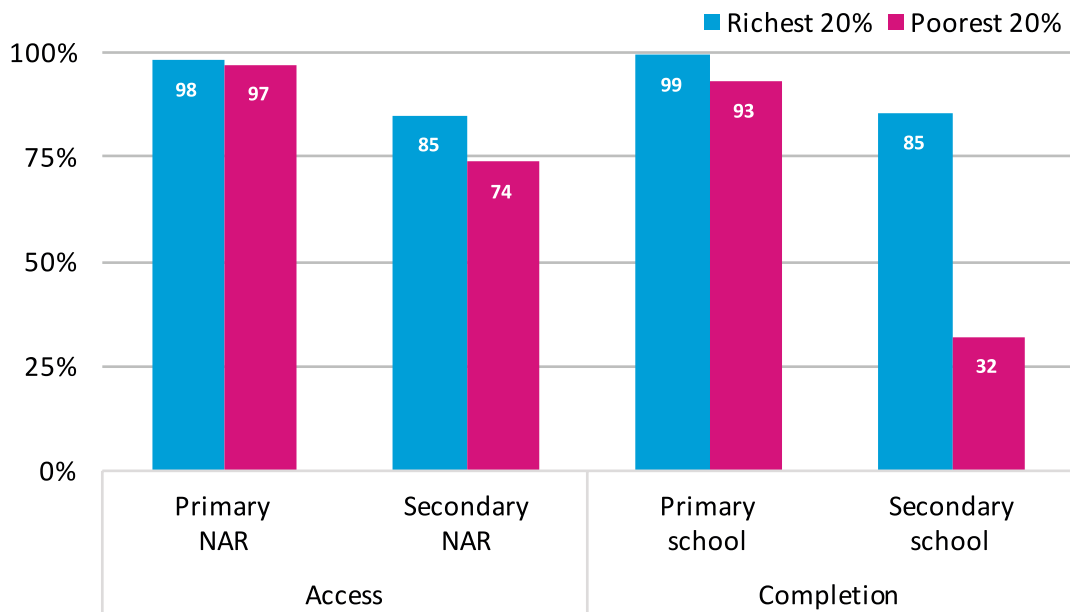
- 2.2 According to the observations of the stakeholders, the SAPS intervened to try and quell the protests. However, the SAPS reaction was slower in comparison to their earlier intervention in the Malamulele protests where police authorities at the highest level intervened quickly. In the case of Vuwani, the neutrality of some of the police officers is in question as some are from these areas.
- 2.3 In the view of these stakeholders, criminal elements have taken advantage of the situation. For instance, at least three schools were apparently burnt by a criminal element as established by an investigation. Some traditional leaders have apparently been identified as active instigators of the violence and were allegedly taking part in the burning of schools. It is important to hold traditional leaders accountable for the message they communicate, especially when they incite unlawful conduct.
- 2.4 Addressing the Panel on the effectiveness of provincial response mechanisms, the stakeholders observed that arrests were made, but that they did not stop the escalation of violence. If anything, they made the situation worse as community members were demanding the release of the arrested individuals in order for the protest actions to end. Communities are still divided, especially at a political level. When viewing the situation from the outside all appears normal, but in reality there is tension in the villages.
- 2.5 The stakeholders submitted that parents were constantly making enquiries about the re-opening of the schools, and learners were frustrated. There are organisations that have tried to assist, but there are also some unethical individuals trying to benefit from the situation. For instance, some private schools are trying to recruit learners from affected schools and have gone to the extent of contacting principals of affected schools and offering incentives to the principals to help recruit learners into these private schools.
- 2.6 The Panel was informed that schools that have resumed teaching face serious challenges. Some learners are not able to attend school and others are discouraged from attending by their parents. Proper learning and teaching is yet to resume. Some

learners only attend school for the food that is offered through the school feeding programme. They leave the school as soon as they have eaten.

- 2.7 It was further submitted that a proposal had been made that secret camps be established so that learners in Grade 12 could be taken away from the communities. DBE could identify facilities where the learners could continue with their studies and funds could be sourced for this purpose. Learners could be grouped according to subjects of specialisation and, if the situation did not stabilise soon, the same venues could serve as examination centres during the final matriculation examinations.
- 2.8 The Commission's intervention was appreciated by these stakeholders as there is a need to address the disruption of education during protest action. Most people outside these areas are focusing on learners returning to school, but the local people remain dissatisfied because their issues are not being addressed. When officials do attend meetings they do not discuss the deep-seated issues, and simply focus all their attention on the schools.

3 School principals and community leaders: Mpumalanga

- 3.1 The school principals and community leaders stated that protests have had an effect on teaching and learning, and annual school activities set out in the school calendars were disrupted. Protests have affected not only teaching and learning, but also other services such as the school feeding programme and learner transportation with people providing these services being unable to access schools. The Department states that it is contractually obliged to continue paying for these services.
- 3.2 According to the community, recreational drugs are a major problem in Mpumalanga. Some schools are working with the SAPS to deal with the scourge of drug abuse, and police have addressed schools on a number of issues including safety. School staff also work as counsellors.



Despite the no fee school policy, children from the poorest households are less likely to complete their education
(Graph reprinted with permission of UNICEF South Africa)

3.3 The Panel learnt that a school was targeted by protesters because its learners perform well academically and the DBE is supportive of the school as a result. There was a view among protesters that if they attacked the school they would draw attention from authorities. Police responded and managed to ward off the impending protest-related action. A Warrant Officer of the SAPS used his own car to transport protesters to the District Officer responsible for the area so that the protest leaders could discuss their concerns with the District Officer rather than attacking the school. The Warrant Officer in the area has been very supportive and works closely with the community. The Warrant Officer worked with the school through the “adopt-a-cop” programme and he came forward and offered his services to try and bring peace in the area. The adopt-a-cop programme is an initiative that was led by an educator within the SGB working in close collaboration with SAPS. The main aim of the programme is to ensure safety in schools.

3.4 One of the school principals indicated that during protest actions related to xenophobia, foreign national children become targets and some of the local children were involved in the protests. It is clear that violent acts committed in protests are caused by a lack of information, anger and frustration. The situation is made worse by leaders who fail to carry out their work. Chiefs and councillors

have reneged on their duties and do not call people for meetings. People do not know where they can present their problems, and this creates fertile ground for anger and frustration that then culminate in protest action. For example, the response at one of the schools affected by protest-related action had to be escalated to the Office of the Premier, but even then all efforts were in vain.

3.5 The submissions revealed that tensions existed between the role of chiefs and councillors. Chiefs are supposed to be leaders. As such they should intervene when there is a dispute. Councillors play a central role in communities as they work with a wide range of issues including housing, economic development, electricity, water and home affairs.

3.6 Local government structural systems and power distribution had resulted in the municipality taking control and thereby sidelining headmen, block men and chiefs who are not as powerful as they were in the past. In some instances, chiefs have been politicised and have allowed external elements to cause division along political lines, whereas chiefs are supposed to be apolitical.

3.7 Some of the successes noted in this submission from the interventions in Mpumalanga are that parents are fully

engaged in offering solutions and that learners too want to be involved in mapping a way forward. It has also been noted that if attention is focused on children, parents will do whatever they can to be supportive. It is important to motivate learners and give them responsibilities because, when that happens, it inspires them and keeps them from participating in unlawful activities. As “words can calm anger”, there is a need to ensure continued dialogue with learners in order to reduce the negative external influence on them.

3.8 An example cited on raising awareness on issues affecting communities, was a school that organises debates on issues with topics such as: “The effect of protests on learners” and “How can the station commander assist schools, as far as crime is concerned”. The same school holds a workshop for parents with speakers that include representatives from the provincial gender desk, disability desk and a parent from the Gauteng Province, all of whom highlight the importance of protecting the right to basic education.

3.9 In essence the submissions presented offered the view that:

- (a) People attack schools because they know that is a space where a large number of people can be galvanised for protest action;
- (b) Children are especially targeted and used as human shields because when children are present, police will not shoot at protesters;
- (c) The leaders of protests easily influence youth and as such there is a need to educate youth about the dangers of participating in such actions;
- (d) There is a need for engagement with the traditional leaders and municipal representatives to ensure that they perform their duties;
- (e) There is a need to pay special attention to the outcomes in Vuwani as the MDB may be planning similar activities in Mpumalanga in the near future. The same challenges as those experienced in Vuwani may unfold in Mpumalanga;
- (f) The Commission may have to intervene in MDB plans to assist in deliberations on the way forward.

4 Matloding Community Task Team: North West

4.1 This community has received media attention because children are not attending school. There is a lot of violence in the community particularly because children from Matloding Village, whose residents are considered poor by those of the neighbouring village, attend school in that neighbouring village. Some of the residents of the neighbouring village do not want children from Matloding to attend the school in their village. As a consequence, there have been a number of violent incidents against learners from Matloding. Parents have protested about the safety of their children and a number of government officials have held discussions with the community members to try and resolve the issues.

4.2 The community tried to reclaim an old school but police stopped them from doing so. Instances of police brutality have also allegedly taken place in the area. The issue of traditional leaders and the powers that they wield in communities was highlighted in this presentation.

5 Principal of a School: Gauteng

5.1 The principal of a school in Gauteng explained that in 2014 there were service delivery protests in central Johannesburg that affected his school. The actual reasons for the protest were unclear, even though they were attributed to service delivery. The principal stated that the issues usually associated with service delivery protests, for example, lack of access to water, electricity and sanitation are not a problem in the area as all these services are available. Before the protests escalated, children were sent home from school for fear of their safety. Protesters barred children from accessing school. Some of the children attending the school are drawn from the surrounding areas. Eventually the situation was brought under control and efforts were made to schedule classes to enable learners to catch up on lost time. However, efforts at providing extra classes were unsuccessful as some of the learners use public transport and could not remain at school beyond the normal hours.

5.2 The principal indicated that in March 2016 there was an attempt at protest action but that police diffused the situation without incident. Protesters threatened to bar children's access to school and demanded that children be sent home or they would burn the school. These matters were reported to the relevant officials at the provincial level and efforts were made by officials to address the challenges facing the school.

6 Principal of a Senior Secondary School: Eastern Cape

6.1 The principal of the school informed the Panel that in 2016 the community near the school was protesting about non-delivery of services such as electricity and water. Protesters stopped learners from accessing the school and learners were forced to participate in the protest actions. There was no prior warning about the protest. Transport for educators and learners was unavailable and, as a result, they had to walk long distances.

6.2 The principal called for police intervention and protesters threatened him when they found he had done this. The police reaction was slow and protesters could easily have caused disruption as they had ample time. According to this submission, it is perceived that SAPS is always siding with protesters. They do not seem to take action. A case of assault was laid and nothing has been done. The police were not willing to help the school.

6.3 In the view of the principal, the protest has had an impact in several respects. There was verbal and physical assaults, closure of roads, deliberate interruption of transport, burning of cars, disconnection of electricity, learners not accessing health services and vandalism of school property. Under the circumstances it was not possible to undertake revision with learners who were writing their June examinations. With respect to Grade 12 learners, these examinations are very important as they form the basis for provisional admission to tertiary institutions. Learners who do not perform well in the June examinations may not access tertiary education thereby affecting their future prospects. In addition, the June examination results play a central role in terms of receiving funding through the National Students Financial Aid Scheme (NSFAS),

and poor performance can again play a role in determining the outcome of an application.

6.4 The principal shared further that on resumption of class some learners had become ill-disciplined as a result of their forced participation in the protests. Morale among learners was low. Motivators had to come and assist with raising the morale of the school. The dignity of the educators had been impaired as learners saw them being badly treated. It is alleged that there were personal vendettas that were being resolved through the protest actions and that there were both criminal and political elements involved in the protest actions. The protests were largely composed of youth who no longer attend school.

6.5 The principal held the view that the traditional authorities had not been helpful. When people threatened to kill the principal, the traditional leader ran away. It seems that those who want development are constantly side-lined in favour of politics and personal agendas.

6.6 The principal suggested that the government should educate people about their rights and responsibilities. Action should have been taken against criminal elements that were involved in the protests. It also became apparent that there was a need for employment of private security for schools. In addition there was a need to ensure that every police station had quick access to public order police.

6.7 The principal further suggested that something needs to be done with respect to intelligence. There were some people with personal vendettas. The principal spoke of a learner who attacked him with an axe during the protest action because of a personal vendetta arising from a previous altercation where the principal had reported the child to the police for selling *dagga*.

6.8 Addressing the Panel on measures taken by the school to assist learners, the principal submitted that since the protest some learners have returned to school. In the aftermath of the protest, educators are required to do all they can to help learners catch up with their academic work.

6.9 With regard to safety of learners, the principal stated that the SAPS have been requested to help guard the school, but that safety still cannot be guaranteed. The principal, in particular, has a real reason to fear for his safety, but for the sake of children and parents he agreed to return to the school. He submitted that the learners have a lot of potential and that inspired him to go back to the school despite his concerns about his safety.

7 Community leader: Eastern Cape

7.1 This community leader submitted that the protests that took place in this community in the northern part of Eastern Cape related to a failure in service delivery, and not to basic education. Protests galvanised community members into two camps - those that wanted their children to attend school and those who did not want children to attend school.

7.2 It was submitted that some principals close schools for their own reasons as they are were seeking leadership positions in local government. One principal in particular has been identified as the leader of the forum trying to close schools in the area.

7.3 In the community leader's assessment, morale is low and fear of school closures persists. A group has been established to monitor the situation. There are also attempts being made to encourage children to return to school.

IV ANALYSIS

of the key evidence



The analysis of the evidence presented, subsequent findings and recommendations are geared towards developing workable solutions to the challenges that have been identified attributable to acts committed during protest-related actions which impact on the right to a basic education. It is imperative to identify workable solutions that will prevent future destruction of schools and school property, and obstruction of learners from attending school or of school personnel from performing their duties.

1 WHY PROTEST-RELATED ACTIONS TARGET THE RIGHT TO A BASIC EDUCATION AS AN OBJECT OF EXPRESSION

- 1.1 The investigative hearing noted that the challenges of unemployment and poverty that face South Africa has created high levels of frustration among young people. The extent of frustration does not appear to be sufficiently recognised by people in all levels of leadership. The Panel identified a growing sense of despair, frustration and discontent that is in part a result of people not being able to experience the changes promised by the democratic transition. Challenges at local government level, such as lack of transparency and consultation serve to exacerbate the situation. Material conditions for many remain dire. For people who have almost lost hope, access to basic education therefore does not hold the promise of lifting their children out of poverty.
- 1.2 The Panel noted that South Africa experiences more than 13 500 protests every year, and that the majority of these protests do not affect the right to a basic education. However, some protest action does affect the right to a basic education particularly when protestors descend into acts of criminality, as witnessed in the arsonist attacks on schools in Vuwani and Malamulele areas. The Vuwani incidents starkly brought to public attention the extent to which the right to a basic education can be affected by protest-related actions that take on a criminal element.
- 1.3 The burning of schools in Vuwani, served to highlight the extent to which protest-related actions can have an impact on the enjoyment of the right to a basic education, particularly

when there are no measures in place to contain situations that spiral out of control. The hearing established that while attention was focussed on protest-related action in Vuwani, similar events were taking place in other provinces, but receiving far less attention. It became apparent to the Commission that in many instances measures had not been adequate to mitigate the potential negative impact of protest-related actions on the right to a basic education. The Commission therefore sought to investigate the impact on the delivery of basic education for learners where the means of providing this education and the environment in which it is offered are disrupted.

1.4 It became apparent during the investigative hearing that some protest actions deliberately target schools with the intention of drawing attention to a cause that may be unrelated to basic education. Undermining basic education through the disruption of schools appears to be an effective mechanism to elicit immediate high-level government reaction. In terms of this reasoning, undermining the right to a basic education is seen as “fair game” and as a result the trend is on the increase.

1.5 It appears that disregard for the right to a basic education may also be based on a view that education is not necessarily a guarantee of a better life. This is a view expressed particularly by some who live in conditions of poverty, unemployment and joblessness. In this view, education is not regarded as a panacea to solving society’s problems and, as a consequence, those who hold this view do not value the right to a basic education. The hearing noted that undermining basic education is not deliberate in all cases. In some instances protests take place near schools or target services such as transportation, which plays a key role in the education sector. The panel heard that the trend of targeting schools is increasing and the reasons for the increase include:

(a) The fact that schools are seen as state property rather than an integral part of the community. The absence of a sense of ownership of schools by the communities in which they are situated makes it easy for schools to become targets;

- (b) A sense of apathy and despair as parents, often frustrated, unemployed and caught in a vicious cycle of poverty, fail to see how education can guarantee a brighter future for their children;
- (c) It has become apparent that when schools are targeted, authorities react faster.

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1.6 The protest-related action affecting schools can in most cases be traced back to dissatisfaction over the provision of basic services in communities. Schools are also at times affected by a lack of proper service delivery as evidenced by the Commission’s investigation over the years, into issues affecting schools such as inadequate infrastructure, lack of running water or poor sanitation facilities. All of these shortcomings impact on the right to a basic education that in most areas is already vulnerable. Yet the duty of the State to carry out its obligations remains. To meet this responsibility the State needs to attend to the attainment of the “4A’s” (availability, accessibility, acceptability and adaptability) including another “A” identified by Skelton which she terms “affordability”.⁴³

1.7 As stated earlier, the right to protest peacefully is recognised in South Africa under the Constitution and its exercise is regulated in terms of the Regulation of Gatherings Act. The destruction of school property and

⁴³ Skelton at 23.

obstructing access to schools goes against the exercise of the right. The increase in protest-related action that undermines the right to a basic education has a profoundly negative impact on South Africa's social and economic development and the goal of attaining the objectives of the NDP. There is a societal obligation to ensure that all persons act responsibly in order for basic education to progress unhindered.

- 1.8 The manner in which the right to protest is exercised needs to take into consideration other rights such as the right to a basic education and the principle of the "best interests of the child". Ensuring that children do attend school should be a priority for communities, public officials and civil society, acting in concert in the interests of the children's right to education.

2 DISADVANTAGING LEARNERS THROUGH PROTEST-RELATED ACTIONS

- 2.1 Protest-related action has both short and long term effects on learners in affected areas. These include the following:
- (a) Learners who already face poor access to quality education as a result of historical legacy, are now faced with the additional barrier that comes with protest-related action and disruption of schools;
 - (b) Learners are unable to prepare adequately for their examinations particularly those in Grade 12 who are preparing for the mid-term and final examinations, both of which are important in applying for admission to tertiary institutions;
 - (c) A significant number of learners rely on the school feeding programme; and
 - (d) As noted by Dr Madiba, protests have had a discouraging effect on the morale of learners, and in some instances have had the effect of breaking down discipline at schools, particularly through influence by ill-intentioned people seeking learners' participation in protest actions. It has also set an example that problems can be resolved through destruction of property.

- 2.2 It was further submitted that educators bear the blame when educational challenges arise, particularly when learners do not perform well in some schools. Protest-related action hinders the work of teachers, and there is a need for adequate support of school personnel to ensure that they are able to undertake their responsibilities. There should be caution in criticising the schools affected by disruptions, and there is a need for a holistic assessment of why some schools do not perform well. Most of the schools targeted in protest-related actions are located in the most marginalised sections of society where conditions at schools and attendance of learners are already precarious. Disruption to education in these areas is a further setback to efforts to build up an effective schooling system.

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The manner in which the right to protest is exercised needs to take into consideration other rights such as the right to a basic education and the principle of "the best interests of the child". Ensuring that children do attend school should be a priority for communities, public officials and society, acting in concert in the interests of the children's right to education.

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3 THE NEED TO ENSURE THE SAFETY OF LEARNERS, EDUCATORS AND SCHOOLS

- 3.1 The Panel noted an alarming number of incidents in which protest-related action results in threats to learners, educators and schools. Some feared for their safety particularly as they did not have confidence

in police reaction times or ability to provide protection if concerns of safety were brought to their attention. In some instances police reacted slowly when schools called for assistance. Communities should be focussed on ensuring continuation of education, but in some cases, the reaction of communities during service delivery protests went against this principle. Protest action should not be directed at the destruction and disruption of schools. The destruction of schools, which should be places of safety, also undermines the country's collective aspiration and respect for the values in the Constitution.

- 3.2 The SAPS has not developed a uniform approach to dealing with protest action that threatens schools. The SAPS' approach in many cases seems haphazard and does not involve other departments. There are no clear mechanisms of how to respond to threats against schools, learners or personnel. The SAPS has developed "safer schools programmes" that links schools with the police but these are not effective in all instances and it is unclear whether there is constant review of the programmes to ensure that they are in line with changing needs of a locality. The safer schools programmes can be useful vehicles for ensuring safety of schools especially in areas that are identified as being prone to protest – areas in which protests are increasingly targeting schools, learners or school personnel.

Furthermore, the early warning system of the police seems inadequate and as a result police are ill-prepared to manage protest-related actions that threaten schooling. A case in point was the Vuwani matter in which police had obtained information that plans for protest action in which protesters would emulate the protest at Malamulele, were brewing. While the police did appear to have sufficient information on the extent that the protest-related actions would target schools in the area, they failed to prepare themselves for such an eventuality. Their focus was rather on protecting national key points. While there have been calls for schools to be declared as national key points, this issue is fraught with challenges. For example, the law governing national key points would require additional security measures be put in place, and providing this level of protection to all the schools in South Africa would have serious fiscal implication. Furthermore, national key points may not be photographed and taking such a stance with respect to schools which are in essence public spaces would create serious legal implications, potentially resulting in many people failing to adhere to this legal requirement. What became clear in the presentation was a failure of crime intelligence in the case of Vuwani as a result of attention being focussed only on protection of national key points. SAPS indicated that they were taken by surprise by the attacks on schools, but when viewed objectively they should have been aware of the imminent attacks.



A burnt out school block (Courtesy of Department of Basic Education)

- 3.3 Despite general poor performance in terms of authorities' reaction to ensure that schools and schooling are not targeted, there are instances of exceptional dedication to duty in which police officers exceeded the call of duty to ensure safety of schools when they were threatened by potential protest-related action. Such dedication illustrates that if there is willingness and commitment on the part of officials to resolve a volatile situation, then the tension is likely to recede.

4 THE NEED TO ESTABLISH RESPONSIBILITY BETWEEN GOVERNMENT DEPARTMENTS

- 4.1 The Panel noted that the causes and consequences of disruption of basic education are multi-faceted, and as a result there is a lack of clarity on where responsibility lies. This ambiguity does not assist in resolving the challenges. Government departments were reluctant to act in some instances because of concerns of interfering in the portfolios of each other. While exceptional measures are required when the right to basic education is denied, government departments have not developed novel approaches to meet the challenge. This meant that adequate measures were not taken. In addition, where measures were taken, they were not taken with the requisite urgency necessary to protect the right to a basic education. There was no indication made to the Panel that novel approaches would be used to intervene in the future should incidents such as the one in Vuwani recur.
- 4.2 The Commission recognises that DBE's area of focus is to ensure that the right to a basic education is realised in South Africa. However, in order to do so there is a responsibility placed on the Department to be at the forefront of ensuring safety and security for learners, personnel, schools and associated property. That responsibility, while resting with the DBE, does not exclude participation of other departments and relevant institutions. It is therefore not unrealistic to expect the Department to take preventative measures or work with other entities in order to safeguard the right to a basic education. The DBE has an obligation to ensure that it actively participates, and takes the lead, in all matters that affect basic

education, particularly as the negative trend of disrupting basic education seems to be taking root in South Africa.

- 4.3 The reality however is that ensuring realisation of the right to a basic education is an obligation on government as a whole and, where necessary, all relevant departments and entities have a role to play to ensure the realisation of the right.

5 THE RESPONSE BY GOVERNMENT DEPARTMENTS WHEN THE RIGHT TO BASIC EDUCATION IS AFFECTED

The SASA provides that any person who interferes with a learner's compulsory attendance of primary school is subject to either a fine or imprisonment. However, the DBE has not taken steps to rely on this legal provision to prosecute persons who hinder children from attending school. While in some instances there are genuine reasons why caregivers may hinder a child's attendance at school, for example, due to lack of water or proper sanitation facilities or for reasons of insecurity and absence of learner transportation, there are instances when it may be appropriate to prosecute individuals who have hindered children from attending school. Such prosecutions may work as a deterrent for persons who, through protest action, deliberately hinder children from attending school.

6 THE URGENT NEED TO TREAT THE DENIAL OF THE RIGHT TO BASIC EDUCATION AS A CRISIS

- 6.1 In instances where schools have been damaged, the response from relevant departments to restore schools and to enable schooling to continue has been slow. One point of view presented to the Panel was that by replacing damaged infrastructure quickly, an incorrect message is conveyed to the public that if property is destroyed it will be replaced. The reality, however, is that failing to attend promptly to damaged schools results in "punishing" children and school personnel for acts for which they are not responsible. The logic that a wrong message is conveyed when temporary classrooms are provided or schools are rebuilt is erroneous.

Both the provision of temporary classrooms and rebuilding of damaged schools are necessary actions. While efforts should continue to be made to ensure that protest-related actions do not interfere with the right to basic education, whether through damage to school property or other activities, the replacement of damaged property on a temporary or permanent basis is a necessity.

6.2 At the level of prevention, protection and enforcement, the SAPS had a shortage of POP units, intelligence was poor, and no clear, focussed strategy for preventing future harm to schools was presented to the Panel. South Africa cannot build a sustainable democracy without ensuring adequate security for public property and the public as whole when the situation so requires. Of course while doing so, care must be exercised so that the country does not descend into a security state. The SAPS has started the process of recruiting and training additional members of POP in order to bolster numbers and improve on reaction times across the country. In expanding POP, SAPS has correctly indicated that individuals recruited should meet criteria that will ensure that they observe human rights while conducting their responsibilities. The concern of the hearing Panel was that the timeframes for expanding POP did not take into account the short term needs of the country, particularly in light of increasing protest action that may undermine other rights, such as basic education.

6.3 In some instances, the SAPS' response to protest-related action that affects schools is not efficient and effective. There are instances where they have reacted speedily, for example in Malamulele, yet in others such as Vuwani the reaction in protecting schools was slow. The SAPS has not provided an indication that it has plans at national and provincial levels on how to react differently in future to minimise harm. For example, there are challenges with gathering or assessing crime intelligence thereby allowing criminal elements sufficient time to use protest-related action to violate rights such as basic education. The hearing Panel noted that the police seem to have been in different geographical areas when schools were set on fire. Furthermore, as the number of schools being burned increased, the police failed to

scale up their presence accordingly in order to deal with the situation effectively. As a result, with each passing day, the number of damaged schools increased. The police were also unable to develop new strategies in responding to the evolving tactics of protesters. The extent of cooperation with other government agencies to address situations where schools are targeted was unclear, other than reference being made to a protocol that has been signed with the DBE.

6.4 There is a lack of preparation on the part of the authorities in those instances where schools have been rendered inaccessible. It is clear that there were no mechanisms in place to deal with cases where school property was damaged. The only measure was the provision of mobile classrooms in a few cases where damage of school property occurred, such as Malamulele.

6.5 Although protesters are increasingly targeting schools as a way of drawing attention to their grievances, it is unclear whether a business continuity plan is in place to support educators when schools are disrupted. Such a business continuity plan would have to cover issues such as support for learners, materials, basic services, infrastructure and safety, and would have to attend to how promptly it could be enacted when needed. There would also be a need for a database of affected schools with the purpose of ensuring that such schools receive special attention in terms of recovery processes. At present it appears that only the most prominent cases receive special attention.

7 THE NEED FOR BETTER ENGAGEMENT WITH COMMUNITIES

7.1 There is a need to engage with the communities on various administrative actions. The need for transparency, consultation and communication between local government leadership and the communities they are responsible for is of critical importance in this regard. Many situations that escalate to the point where schools are targeted by protesters could be avoided. This is illustrated in some cases where officials are able to meet affected groups to discuss their concerns.

7.2 This relates also to the relationship between government, its various representatives, and the communities they seek to serve. There appeared to be a growing level of frustration with certain local authorities, particularly traditional leaders and ward councillors. In some instances these local authorities were reportedly not carrying out their responsibilities or providing sufficient information to their constituents. The lack of proper communication in these instances were cited as a contributing factor to increased tensions in communities. It is in situations such as these that people resort to targeting schools because they know the tactic will draw government attention to their cause.

7.3 The submissions identified traditional authorities especially in rural areas as key actors, impacting on stability within rural communities. Attention needs to be paid to the way in which they exercise their functions and powers, so that exercise of authority is for the benefit of the communities that they serve.

7.4 In addressing tensions that result in schools being targeted, the functions of ward councillors and traditional authorities such as chiefs and headmen were noted as points of concern. One of the issues highlighted was that in areas where there are high levels of unemployment and poverty, people compete for the few paid positions available such as those of ward councillors, and this exacerbates tensions.

8 THE NEED TO DEVELOP A NEW CONSCIOUSNESS TO MEET THE DEMANDS OF AN EVOLVING SOCIETY

8.1 There is an urgent need to encourage the development of new forms of citizenship expression that are less aggressive and in which people's frustrations are not expressed through actions that further exacerbate their dire conditions. The SAHRC, communities and civil society were seen as being able to play a role in this regard.

8.2 There is a general recognition and understanding of the right to protest and there were no indications that the right should in any way be curtailed, even though some of the protest actions have been disruptive and at times affected other rights such as the right to a basic education.

9 THIRD FORCE

In light of the fact that schools have sometimes been targeted in a manner that seems systematic, the possibility of involvement of a third force in such activities may have been of concern in some quarters. It is important to note that no presenter alluded to the existence of a third force as far as the impact of protest action on the right to a basic education is concerned. Three issues instead came to the fore. These were firstly, that a large percentage of those involved in the protest-related actions that affected basic education were unemployed young people; secondly, that political contestation plays a role in the protests; and thirdly, that competition for resources within an area is also contributory factor.

V FINDINGS

The following are the findings of the Commission:

1 THE EXTENT TO WHICH PROTEST-RELATED ACTION HAS AFFECTED THE RIGHT TO A BASIC EDUCATION.

- 1.1 The Commission finds that the right to a basic education is affected by protest-related action arising from causes that in most cases may be unrelated to the provision of basic education. Protesters who deny access to education are violating the right to a basic education of the affected learners. No specific measures have been taken to create awareness of the importance of basic education; and
- 1.2 The Commission further finds that learners are disadvantaged by certain protest-related action in that they are consequentially (a) physically barred or intimidated from attending school; and (b) infrastructure on which learners rely to access education is damaged or destroyed.

2 WHETHER POLICY MECHANISMS AT NATIONAL, PROVINCIAL AND LOCAL GOVERNMENT LEVEL ARE ADEQUATE TO DETECT AND PREVENT PUBLIC PROTESTS FROM ADVERSELY AFFECTING CHILDREN'S RIGHT TO A BASIC EDUCATION?

- 2.1 The Commission finds that both the DBE and the SAPS response has, in some cases, been slow, and it appears that no uniform policy or approach in dealing with such incidents is in place; and
- 2.2 The lack of proper and efficient communication between authorities and affected communities has resulted in communities seeking ways to draw attention to their plight and targeting schools even though by targeting schools children's right to a basic education is undermined.



3 WHETHER EARLY WARNING MECHANISMS ARE IN PLACE TO ENSURE THAT SCHOOLS ARE SECURE AND THAT LEARNING IS NOT DISRUPTED?

- 3.1 The Commission finds that the responsibility to ensure the safety of learners, educators and schools does not rest with one department, and it was unclear which department took the lead in cases where protest-related action targeted schools;
- 3.2 In some instances, the breakdown of leadership at the local government level had a negative effect on efforts to address problems that arise thereby undermining the right to a basic education; and
- 3.3 No evidence of adequate early warning systems could be established.

4 WHETHER MEASURES ARE IN PLACE TO MONITOR THE IMPACT OF PROTEST-RELATED ACTION ON THE RIGHT TO A BASIC EDUCATION?

- 4.1 The Commission finds that no reported action has been taken against persons who deliberately interfere with the right to a basic education; and
- 4.2 The Commission further finds that there is a slow or inadequate response by government departments to incidents that affect schools which in turn affects the recovery process;

5 WHETHER MEASURES (CODES, GUIDELINES) ARE IN PLACE TO ENSURE THAT STAKEHOLDERS SUCH AS COMMUNITIES, LEADERS AND SCHOOL GOVERNING BODIES FULFIL THEIR RESPONSIBILITY IN THE CONTEXT OF PROTESTS.

- 5.1 There is a need for government departments, especially at the local level, to better engage with communities on important community matters. There is also a need to encourage people to find new ways of expressing their concerns so that their actions do not result in a negative impact on other rights, such as the right to a basic education.

VI RECOMMENDATIONS

Section 13(1)(a)(i) of the SAHRC Act provides that, the Commission can:

make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution, as well as other measures for the observance of such rights.

In terms of the above provision the Commission makes the following recommendations:

- 1 The DBE should constitute an interdepartmental National Public Protest Response Team (National Response Team). This national body should include relevant government departments; particularly, SAPS and CoGTA and other relevant stakeholders.
- 2 The National Response Team should develop Guidelines that:
 - (a) set out clearly the roles and responsibilities of the various government departments within the context of school disruptions;
 - (b) establish early warning systems and responses to be taken in the event of school disruptions due to protest action;
 - (c) include information on the relationship between the National Response Team and the SAPS Safety Priority Committees. The Guidelines should also provide for procedures and/or protocols on how public protest information can be shared in order that SAPS receives as much information as possible about planned school disruptions due to public protests;
 - (d) indicate the SAPS will prioritise the investigation and prosecution of actions that result in the disruption of basic education taking place or damage to State property at schools;
 - (e) set out the actions, taking into account budgetary considerations, to be taken in circumstances where learners have been deprived of education due to protest action in order that the necessary catch up is achieved;

- (f) set out clearly the responsibilities, including budgetary responsibilities, of the different government departments where school infrastructure and buildings have been damaged or destroyed, in ensuring that the situation is normalised and education can continue;
- (g) include a contribution from CoGTA indicating its role and responsibilities in engaging with traditional leadership structures to create awareness about the impact of public protest action on the right to basic education. CoGTA should encourage traditional leaders to assist in preventing school disruptions from occurring;
- (h) provide for a reporting mechanism in order that information and statistics on all school disruptions due to protest actions are recorded at a national level. This will allow for greater information sharing and analysis of the current phenomenon where protest actions disrupt schools thereby violating the right to basic education;
- (i) provide guidance on awareness raising strategies and programmes that can be implemented amongst government departments that engage with or are affected by public protests that disrupt education. These awareness raising strategies should include information on the right to protest and the role of SAPS and other government departments. SAPS should report back to the National Response Team on measures that it has taken to train its members in the area of conflict prevention in communities.
- 3 The National Response Team should share its reports and information with the National Planning Commission in order that the impact of public protests on the realisation of the right to a basic education can be considered in the on-going review of the NDP.
- 4 The National Response Team should consider Section 3 of the SASA and determine whether the criminal provisions, contained therein, are sufficient to be used to prosecute persons, engaged in public protests, who deny learners access to education. Further, make a determination as to whether the statutory criminal sanctions are a sufficient deterrent. Should it be determined by the National Response Team that amendments to SASA are necessary; the DBE should initiate the process to bring about the necessary amendments to the legislation.
- 5 The National Response Team should develop a community awareness programme that can be rolled out at a provincial level. This programme should clearly articulate that the Constitution guarantees the right to protest where this is done lawfully and peacefully. Any protest action that falls outside of this, such as: damaging or destroying schools and denying access to education during public protests is not constitutionally protected. In fact, in many instances, these actions may amount to a criminal offence.
- 6 The structure of the National Response Team should be replicated at the provincial level and, where necessary, the local level. These Provincial and Local Response Teams can tailor the National Guidelines to local conditions. This will ensure that planning and responses take into consideration local factors. It will also allow for a faster reaction by the appropriate authorities when public protests threaten access to basic education. The DBE, SAPS and CoGTA should indicate within a period of three (3) months which recommendations are accepted and which recommendations are rejected. Full written reasons should be provided for those recommendations that are rejected.
- 7 The DBE should provide a report within nine (9) months on the activities of the National Response Team. This Report should include the Guidelines referred to above and set out the progress that has been made in implementing these recommendations at the national and provincial level.
- 8 The DBE should provide a further report on the activities of the National Response Team one (1) year thereafter indicating progress that has been made. This Report should provide information on the implementation of the Guidelines at the national and provincial level. At this stage, the Commission will determine whether further Progress Reports are necessary.

VII CONCLUSION

As stated at the beginning of this Report, Article 26(3) of the Commissions Complaints Handling Procedures provides that Panel decisions cannot be appealed. The Commission calls upon the government departments concerned to take ownership of the Recommendations contained in this report in the constitutional spirit of promoting and protecting human rights and ensuring that all learners have access to education on every teaching day of the year.

The Commission will continue to engage on this matter with all parties concerned. Learners, who are mostly children, are vulnerable in that they do not have a voice to speak out and take action to stop their right to a basic education being denied and their futures compromised. According to the Preamble, our Constitution was drafted as the Supreme law of the land in order to “(i) improve the quality of life of all citizens and free the potential of each person.” Section 28 of the Constitution states that: “(a) child’s best interests are of paramount importance in every matter concerning the child”. Within the context of basic education, unlawful acts committed during a public protest cannot be tolerated.

Finally, this report will be tabled in Parliament in order for parliamentary oversight mechanisms to provide the requisite support for implementation of the recommendations set out herein. The Commission will make this report available to the general public.



ANNEXURE 1

Brief note on the *Masia Traditional Authority and others v Municipal Demarcation Board and Others* ZALMPPHC 1 (29 April 2016)

The applicants in the case of *Masia Traditional Authority and others v Municipal Demarcation Board and others* sought an order from the High Court “reviewing, setting aside and referring back” to the MDB a decision that it gazetted in the Limpopo Government Gazette in August 2015. The demarcation decision involved municipalities in the Vhembe District Municipality of Limpopo Province. All applicants save the Vuwani Service Delivery and Development Forum were traditional councils.

The applicants sought the order on the basis that the decision of the MDB be set-aside on both procedural and substantive grounds. The grounds for the application were among others that:

- (a) There was no consultation by the MDB when it decided to excise some traditional areas and that initial demarcation plan differed from the final decision of the MDB;
- (b) Traditional communities and traditional villages were separated through the demarcation decision; and
- (c) The MDB did not adhere to the requirements of the Demarcation Act 28 of 1998.

The MDB in opposing the application indicated that it had followed all the correct procedures and had consulted widely and adhered to the law as stipulated. Furthermore, that it was within its powers to vary any initial decision that it had made after it took into consideration all the objections and submissions it had received. That the MDB took into account the areas of traditional authorities before arriving at its decision but that at the same time the factors that it had to consider when undertaking a demarcation are pre-determined by the law. Furthermore, the MDB indicated that the applicants had not substantiated how their functions as the leadership of traditional authorities would be affected regardless of which municipality they were in. The MDB also indicated that there was nothing in the application that justified it being heard as an urgent matter.

The government had earlier instituted a review of local government and the review had concluded that some local governments suffer from corruption, financial mismanagement and were generally dysfunctional.

There was therefore a need to re-demarcate municipalities that were weak, not sustainable or functional. Limpopo was identified as one of the areas where municipalities needed re-demarcation.

In terms of the demarcation process, the MDB can demarcate an area based on (i) its own initiative; (ii) the Minister of Local Government's request; (iii) an MEC of Local Government's request; or (iv) agreement between local municipalities.

The MDB in its notification of the intended demarcation circulated a notice that identified the factors to be considered when re-demarcating an area and these included: independence of people in the area; communities; economies; the need for cohesion and non-fragmentation; financial viability and administrative ability to ensure efficiency and effectiveness. Notices were to be distributed including to the local governments of the areas that would be demarcated.

A public meeting was held in the area and attended by more than 1000 people and they agreed with the Minister's request for a re-demarcation. Local leaders including traditional leaders were present at the meeting and one of the leaders made a submission at the meeting.

An independent expert study was subsequently commissioned by the MDB, after consultation as stipulated by the law, the MDB considered all the information at its disposal.

The initial decision of the MDB was published in July 2015 and a number of inputs were received by interested parties. The MDB reconsidered its initial decision. The reconsideration resulted in the excision of the Mashau and Masakona areas from Makhado municipality, The final decision was then published in the Provincial Gazette and some parties indicated that this was the first time that they learnt about the excision of Mashau and Masakona areas from Makhado Municipality.

The court held that the *audi alteram partem* rule does not apply strictly when the MDB has to make its final determination because its process is not an adversarial one and that therefore the applicants had no right to be heard in this regard. The MDB is only required to send a notice and allow for comments.

At the public hearing the relevant issues were explained and discussed culminating in two options either to subsume Mutale into existing areas or creation of a new municipality. Participants expressed their views on these matters and the MDB made its decision thereafter.

In objecting to the decision of the MDB, concerns were raised that the establishment of a new municipality would divide some traditional communities.

The court found that the decision of the MDB was neither arbitrary nor irrational and therefore dismissed the application.

ANNEXURE 2



QUESTIONS

Department of Basic Education

- 1 What measures has the Department of Basic Education (DBE) put in place at a national level to ensure non-interference with basic education during protest action;
- 2 To what extent have protest-related actions impacted on basic education in South Africa in the last 5 years (provide data);
- 3 What monitoring mechanisms are in place as far as the impact of protest-related action on the right to a basic education is concerned;
- 4 What measures are in place to ensure community awareness on the need to uphold the right to a basic education in the context of protests;
- 5 What level of training to School Governing Bodies and the School Community is planned, budgeted and implemented with regard to education in the context of protests;
- 6 Are there codes or guidelines that have been provided to schools;
- 7 What are the roles of the district offices are in ensuring access to basic education in the context of protests;
- 8 What early warning measures, or any other measures that are intended to ensure security of schools and protect the right to a basic education in the context of protests, are in place;
- 9 Does the Department partner with institutions to ensure protection of the right to a basic education in the context of protests; and
- 10 Any other relevant information.

Department of Cooperative Governance and Traditional Affairs

- 1 What measures has the Department of Cooperative Governance and Traditional Affairs (CoGTA) adopted to ensure that local governments are better able to protect schools, access to schools and school materials during protests in light of recent protests;
- 2 What is the average response time for the implementation of measures to protect schools and school materials during protests;
- 3 How effective are these measures in light of recent protests and the challenges the Department faces in protecting schools, access to schools and school materials during protests;

- 4 What measures has CoGTA undertaken to create awareness in communities around the issue of the need to respect the right to a basic education, including during service delivery protests;
- 5 What institutions does CoGTA cooperate with, and what is the nature of cooperation in addressing issues related to the right to a basic education, especially when the right to a basic education is threatened by protest-related actions;
- 6 Which municipalities are considered as exemplary in terms of how they have successfully managed protest situations; and
- 7 Any other relevant information.

South Africa Police Service

- 1 Provide copies of the current framework (legal and policy) for the management and facilitation of protests by members of the South African Police Service (SAPS) and highlight any sections in the framework relevant to the facilitation (including respect and protection) of protest while upholding and protecting other rights, including the protection of property;
- 2 Provide information on whether there is a specific policy and/or approach in place with regard to the protection of the right to a basic education (school buildings, access to schools) during protests? If so, please provide copies and an explanation;
- 3 Explain whether any measures have been put in place or instructions have been issued within the SAPS, following the recent protests, to better protect the right to a basic education;
- 4 What planning, precaution or facilitation measures are in place with regard to protest action, especially those protests that may degenerate into infringement of the right to a basic education;
- 5 Provide examples of a policing precinct in South Africa and/or examples of the facilitation of a protest by the SAPS (if any) which may be considered as good practice and can be replicated elsewhere; and
- 6 Any other relevant information.

Equal Education

- 1 During the course of the work of your organisation, have you identified and/or assessed the impact of protest-related action on the right to basic education? If so, what has been your organisation's experience and/or findings in this regard;
- 2 What measures would your organisation recommend should be taken to ensure the right to basic education in the context of protests;
- 3 Has your institution partnered with other organisations in the context of the right to basic education and protest? If so, please provide details of the successes and lessons learned; and
- 4 Any other relevant information.

National Association of Schools Governing Bodies (NASGB)

- 1 What measures have been taken by your association and governing bodies to assist in ensuring the right to a basic education in the context of protests;
- 2 What challenges have been experienced by the members of your association regarding the right to a basic education in the context of protest;
- 3 During the course of the work of your association, have you identified and/or assessed the impact of protest-related action on the right to basic education? If so, what has been your organisation's experience and/or findings in this regard;
- 4 Has your institution partnered with other organisations in the context of the right to basic education and protest? If so, please provide details of the successes and lessons learned; and
- 5 Any other relevant information.

Basic Education for All

- 1 During the course of the work of your organisation, have you identified and/or assessed the impact of protest-related action on the right to basic education? If so, what has been your organisation's experience and/or findings in this regard;
- 2 What measures would your organisation recommend should be taken to ensure the right to basic education in the context of protests;
- 3 Has your institution partnered with other organisations in the context of the right to basic education and protest? If so, please provide details of the successes and lessons learned; and
- 4 Any other relevant information.

National Professional Teachers' Association of South Africa

- 1 What challenges has your trade union experienced during periods of protest that have increased the likelihood of protesters impacting on other rights, for example, the right to a basic education?
- 2 What measures has your trade union put in place to ensure that protest actions do not negatively impact on the right to a basic education;
- 3 To what extent has your trade union educated its members about the need to uphold other rights, including the right to access a basic education, so that protest action does not undermine the right?

Provincial Departments of Education


- 1 What measures has your Provincial Department taken to ensure that protest-related actions do not undermine the right to a basic education. In your answer, please also refer to measures the Department has in place in respect of the unanticipated disruption of learning, including risk identification, mitigation and control;
- 2 Which institutions does your Provincial Department cooperate with, and what is the extent of such cooperation regarding the right to basic education in the context of protests;
- 3 What challenges has your Department experienced when dealing with the right to a basic education in the context of protests and how your Department has responded to these challenges;

- 4 How is the budget of the Department impacted when school infrastructure or learning materials are destroyed or damaged during protest action? Are there measures in place to mitigate any such impact;
- 5 What would your Department do differently in managing situations when protest-related actions have threatened the right to a basic education;
- 6 What information can you share on positive experiences from your Department that can be replicated in other provinces, as far as successful handling of ensuring the right to a basic education in the context of protests; and
- 7 Any other relevant information.


Community stakeholders

- 1 How has protest action affected basic education in your province?
- 2 What is the view of the community/learners with regard to the how protest-related actions impact on basic education?
- 3 In your area why is basic education in particular targeted by protest-related actions?
- 4 Do you have suggestions on how you think attitudes can be changed in your area so that protest-actions do not negatively impact on basic education?
- 5 What types of engagements have been made to ensure that protest-related actions do not interfere with basic education?
- 6 Who are the key stakeholders who have been involved in resolving matters when protest-related actions threatened basic education?
- 7 Are there any success stories that you can share?
- 8 Any other relevant information.

The SAHRC reports below focus on children's rights and are accessible through the SAHRC website: www.sahrc.org.za



Children's Rights and Business Principles Roundtable




Astrotech Conference Centre,
Johannesburg
JUNE 10, 2015

The Children's Rights and Business Principles Roundtable report explores the extent to which business should be accountable for human rights abuses and remedial action needed to address identified deficiencies.

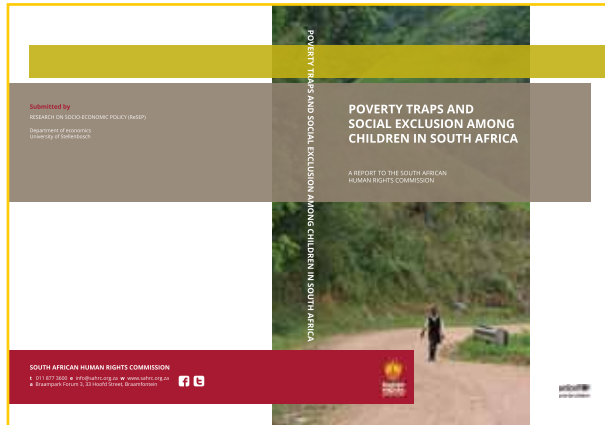
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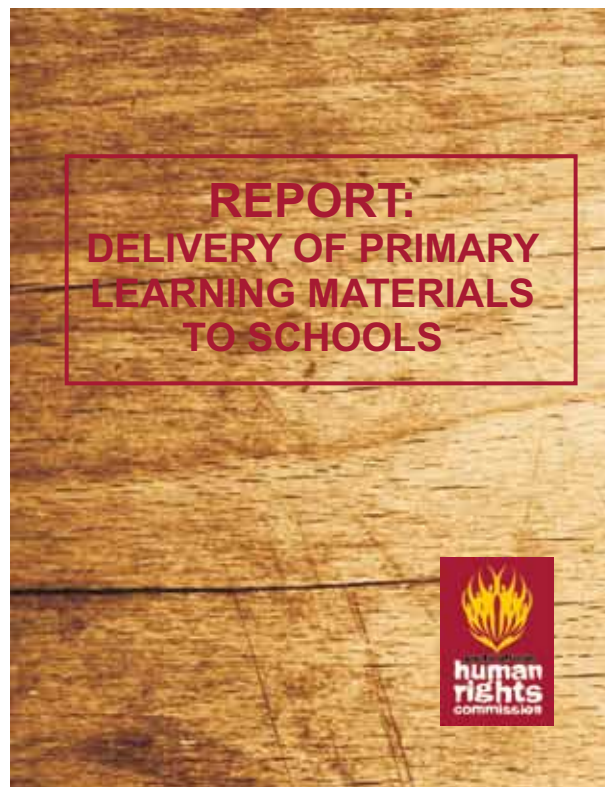
How has South Africa protected its children?



25th Anniversary of the Convention on the Rights of the Child.



The 2014 SAHRC report on Poverty Traps and Social Exclusion Among Children in South Africa examines progress and challenges in eliminating poverty traps and social exclusion among children post 1994. The report is intended to contribute to the implementation of the National Development Plan (NDP). The report offers a number of recommendations for government toward the reduction of poverty, including inherited poverty.



Following on a nationwide investigation during 2014, the SAHRC Report on the Investigation into the Delivery of Primary Learning Materials to Schools records the impact of the non-delivery of primary learning material on school children. The Department of Education was subsequently ordered through court to ensure the delivery of textbooks in the Limpopo province.



The SAHRC Charter of Children's Basic Education Rights (2012) provides a detailed articulation of what the State's obligation to respect, protect, promote and fulfil the right to basic education for children entails.



Contact Tel: 011 877 3600

Website: www.sahrc.org.za

E-mail: info@sahrc.org.za

Twitter: [@SAHRCCommission](https://twitter.com/SAHRCCommission)

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