

# Roadblocks to Education: The Toll of the Taxi Strikes

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## Abstract

This article examines the impact of a recent protest by the South African National Taxi Council in the Western Cape, which escalated into violence and disrupted various aspects of daily life, including school attendance. Focusing on the constitutional right to education enshrined in section 29 of the Constitution of the Republic of South Africa, 1996 (the Constitution), and the interrelated concept of a child's best interests in section 28 of the Constitution, the article delves into the intricate interplay between the rights to strike and education. The protest's repercussions on the right to education, especially in the context of a society still grappling with the historical injustices of the past, highlights the complexity of striking a balance between these rights.

**Keywords:** freedom of assembly; best interests of the child; education law; limitation of constitutional rights; taxi protests; right to education



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## Introduction

On 3 August 2023, the South African National Taxi Council (SANTACO) embarked on a week-long protest in the Western Cape in response to the perceived unfair impoundment of minibus taxis. The action quickly escalated into violence and caused widespread disruption, including preventing schoolchildren from attending school.<sup>1</sup> As such, competing rights—namely the right to education and the right to assembly—were brought into the spotlight. A pertinent question arises: How can these constitutional rights be balanced to ensure that no party suffers unduly from any limitations imposed on them?

According to news reports, 92 schools had to close due to the taxi strikes, resulting in about 71 per cent of the learners being unable to attend school.<sup>2</sup> This brought teaching and learning to a halt, prompting the consideration of catch-up plans to compensate for the lost instructional time.<sup>3</sup> Given the general lack of transport to schools, the protest had a largely negative impact on learners in the Western Cape, as will be discussed below.

In this regard, the National Household Travel Survey (NHTS), conducted by Statistics South Africa (Stats SA) in 2020, should be taken into account. Among other things, the survey considered the mode of travel to educational institutions. The findings were that ‘travelling to educational institutions (36.8 per cent) was the main purpose for undertaking a trip by household members.’<sup>4</sup> It was found that about 17.4 million South Africans walked all the way to their destination, followed by 10.7 million individuals who used taxis.<sup>5</sup> In stating this, two things are apparent: first, there is a general lack of transport dedicated to ensuring access to education is exercised fully; second, taxis serve a vital purpose in ensuring that learners arrive at school and thus have access to education. In 2021, Stats SA neatly summarised the NHTS and again reiterated that ‘walking all the way’ remained the most used mode of travel to school. However, as

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- 1 C Nontsele and SJ Marks, ‘Taxi Strike Impact—Matric Learners Threatened at Rank, Almost Half a Million Blocked From Western Cape Schools’ *Daily Maverick* (7 August 2023) <<https://www.dailymaverick.co.za/article/2023-08-07-taxi-strike-impact-matric-learners-threatened-at-rank-almost-half-a-million-blocked-from-western-cape-schools/>> accessed 16 June 2025.
  - 2 S Thebus, ‘Cape Learners and Teachers Badly Affected by Santaco Strike’ *Cape Argus* (8 August 2023) <<https://iol.co.za/capeargus/news/2023-08-10-cape-learners-and-teachers-badly-affected-by-santaco-strike/>> accessed 16 June 2025.
  - 3 *ibid.* Considering the impact of COVID-19, this would in actual fact be a challenge and a great deal of pressure was placed not only on learners, but on the teacher workforce—for more on how COVID impacted teaching and learning access, consider N Kona, ‘The Impact of the COVID-19 Pandemic on Children’s Rights to Education in South Africa’ (2022) 23(2) ESR Review 16–21.
  - 4 Statistics South Africa, National Household Travel Survey 2020: Presentation (1 March 2021) <[https://www.statssa.gov.za/publications/P0320/NHTS\\_2020\\_presentation%2001\\_03\\_21.pdf](https://www.statssa.gov.za/publications/P0320/NHTS_2020_presentation%2001_03_21.pdf)> accessed 16 June 2025.
  - 5 *ibid.*

previously noted, where public transport was used, it was most often in the form of minibus taxis.<sup>6</sup>

Although this article does not address the general lack of transport for learners to educational institutions, it does investigate the ambit of the constitutional right to education as entrenched in section 29 of the Constitution of the Republic of South Africa, 1996 (the Constitution) and the impact of the protests on this right. In line with section 29, section 28 of the Constitution stipulates that a ‘child’s best interests are of paramount importance in every matter concerning the child.’

The article introduces the topic and then provides a brief history of the taxi industry in South Africa to contextualise the strikes in August 2023. It further explores the historical background of protest action as it relates to the taxi industry and outlines the development of the constitutional right to assembly, demonstration, picketing and petition, as protected under section 17 of the Constitution. The article then examines how competing rights, particularly the rights to education and to protest, may be balanced with reference to the Constitution and relevant case law. For comparative insight, the 2016 Vuwani protests are analysed. A discussion of international law follows, focusing on the right to protest and to basic education. The article also considers how current legislation can be implemented to safeguard these rights and draws lessons for future policy. Finally, it evaluates the balance between section 17 and sections 28 and 29 of the Constitution, dealing with the best interests of the child and the right to education, before concluding.

### **Access to Education and the Importance of the Taxi Industry in Achieving This Right**

In *Governing Body of the Juma Musjid Primary School v Essay N.O. (Juma Musjid)*,<sup>7</sup> the court held that basic education is an essential right aimed at promoting and developing a child’s personality, talents, and mental and physical abilities.<sup>8</sup> It was further held that basic education provides an essential foundation for the child’s future in terms of learning and work opportunities.<sup>9</sup> On this basis, it was confirmed that access to school is an important component of the right to basic education.<sup>10</sup> The effects of apartheid cannot be overlooked when considering the significance of basic education. The formal institution of apartheid entrenched a system of severely segregated, underfunded and unequal education for Black learners.<sup>11</sup> The lasting effects of unequal access to education are patent in systemic problems of inadequate facilities and the

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6 Statistics South Africa, ‘10,1 Million SA Learners Walk All the Way to Their Education Institution’ (4 March 2021) <<https://www.statssa.gov.za/?p=14054>> accessed 16 June 2025.

7 2011 (8) BCLR 761.

8 *ibid* para 43.

9 *ibid*.

10 *ibid*.

11 *ibid* para 42.

discrepancy in the level of basic education for a large group of learners.<sup>12</sup> For instance, it has been determined that state-subsidised learner transport is often the only way a learner can get to school.<sup>13</sup> However, the demand for transport in this regard exceeds the budget allocated to this service.<sup>14</sup> As a result, many learners need to make alternative arrangements to get to school. In the NHTS, it was determined that learners who attended an educational institution and used public transport primarily relied on using taxis (72.4 per cent).<sup>15</sup> In many places, the inadequacy of certain facilities, such as learner transport, remains a result of apartheid's discriminatory legacy.<sup>16</sup> Places were inaccessible and did not receive the required financial support or resources to cover transportation costs, which many white schools and areas received.<sup>17</sup> These places still face severe challenges due to inadequate infrastructure, such as bad roads, inadequate facilities, poverty and poor service delivery.<sup>18</sup>

This is testament to the vital role of the taxi industry in not only supporting the realisation of the right to basic education, but also in sustaining the broader economy enabling people to travel to and from work, among other essential activities.<sup>19</sup>

### **Driven Through time: The Journey of Taxis in South Africa**

Like people across the globe, South Africans rely on public transport. As such, the taxi industry in South Africa plays a central role in daily mobility and access to essential services.<sup>20</sup> The taxi industry was borne out of the apartheid regime. As a result of the apartheid government's spatial planning, many Black working-class people were

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12    *ibid.*

13    D Petherbridge, 'Chapter 17: Scholar Transport' in *Basic Education Rights Handbook 2022* (SECTION27, 2nd edn, 2022) 356 <<https://section27.org.za/basic-education-rights/Basic%20Education%20Handbook%20-%20Chapter%2017.pdf>> accessed 16 June 2025. In March 2021, the Minister of Basic Education indicated that 751 318 learners required learner transport. However, of these learners, only 616 126 were transported with the remaining learners not being able to benefit from this service due to insufficient funding.

14    *ibid* 356.

15    Statistics South Africa, National Household Travel Survey 2020. (Statistical release P0320, revised March 2022) <<https://www.statssa.gov.za/publications/P0320/P03202020.pdf>> accessed 16 June 2025, 24.

16    Petherbridge, 'Scholar Transport' (n 13) 356.

17    *ibid.*

18    *ibid.*

19    T Mathabathe, 'The Economic Significance of the Taxi Rank Business: A Narrative of East Rand Mall Taxi Rank Business' (2020) 4(1) *Educator Multidisciplinary Journal* 122–140, 123.

20    Refer to Statistics South Africa, '10,1 Million SA Learners' (n 6). Learners who attended an educational institution and who used public transport were most likely to use a taxi (72.4%) as their mode of transport. For work-related travel, the use of public transport was important across all geographic locations. However, urban workers were more likely to use a taxi than a bus as their main mode of transport. Taxis accounted for most public transport users, with 80.2% of workers using taxis, which is more than the proportion reported in 2013 (67.6%). Also see pages 49–50 of NHTS report. Nationally, the main mode of transport that carries the largest share of workers is private cars, with the workers being the driver (36%), and taxis, which account for 28.1%.

relegated to remote areas, far away from employment opportunities. This set-up largely dictated the modes of transport available to township residents.<sup>21</sup> In 1944, the government tried to introduce a temporary scheme to subsidise bus fares for workers living in the townships.<sup>22</sup> This scheme was met with resistance, leading to several ‘bus boycotts.’<sup>23</sup> When the National Party came into power in 1948, the planning of peri-urban townships grew in scale, along with the lack of transport. This became a frequent focus of resistance against apartheid.<sup>24</sup> The Group Areas Act 41 of 1950, which came into effect that same year, led to the forced removal of Black South Africans from cities and their relocation to townships. As a result, these South Africans were forced to live on the peripheries of cities with limited access to the social and economic benefits associated with the right to the city.

The rise of the taxi industry started around the time of the 1976 Soweto Uprising.<sup>25</sup> During this period, restrictions on self-employment and township-based businesses were lifted. This regulatory shift paved the way for the growth of the taxi industry, as private operators began using minibuses to provide transport between townships and key destinations such as workplaces and educational institutions.<sup>26</sup> In light of this historical overview and South Africa’s past, many vulnerable groups continue to live in an unjust society that creates immense adversity in accessing the workplace, schools, and public spaces essential for their daily needs.<sup>27</sup> The taxi industry offered an affordable alternative to buses and trains, which failed to cater to the marginalised people adequately.<sup>28</sup>

Around the same time, the Road Transportation Act 74 of 1977 came into effect. The Act defined a bus as a ‘motor vehicle designed or adapted for the conveyance of more than nine persons,’ which required the possession of a permit.<sup>29</sup> In terms of the Road Transportation Act, the commission or board may not have issued a permit if the vehicle was not roadworthy.<sup>30</sup> Section 35 of the Act states that any person convicted of an offence under the Act would be liable either for a fine or imprisonment or both.<sup>31</sup> The government was under pressure from bus and rail companies not to issue permits to

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21 I Vegter, ‘South Africa’s Minibus Taxi Industry: Resistance to Formalisation and Innovation’ (2020) South African Institute of Race Relations 4.

22 *ibid.*

23 *ibid* 5.

24 *ibid.*

25 *ibid.*

26 *ibid.*

27 K Henrard, ‘The Internally Displaced in South Africa: The Strategy of Forced Removals and Apartheid’ (1996) 32(4) *Jura Falconis* 491–522, 492–493.

28 I Vegter, ‘South Africa’s Minibus’ 2.

29 Road Transportation Act 74 of 1977, s 1.

30 *ibid* s 21.

31 *ibid* ss 31–35.

Black taxi operators.<sup>32</sup> Therefore, drivers of taxis inevitably often transported people without a permit. Legal and illegal operators were continuously fined, and their vehicles were regularly confiscated.<sup>33</sup> This led to protests that often turned violent.<sup>34</sup>

The August 2023 taxi protest is thus reminiscent of the past. During this period, the Western Cape government impounded several taxis for a range of violations. SANTACO embarked on the strike partly because they believed that drivers who violated the National Land Transport Act 5 of 2009 (NLTA) should have been issued with fines rather than having their vehicles impounded.<sup>35</sup> According to JP Smith, a council representative of the City of Cape Town, the taxis were impounded for serious offences such as vehicles operating without a valid licence or operating a vehicle that was not roadworthy. Smith said the taxis were only impounded due to ‘major offences,’ and taxis with less serious offences were merely fined.<sup>36</sup> In any event, the NLTA provides that if a motor vehicle is operating without the necessary operating licence or permit, an authorised official may impound it.<sup>37</sup> Furthermore, the Act states that a person shall be guilty of an offence if that person ‘operates a public transport service in contravention of section 50’ and if that person ‘operates a public transport service contrary to the terms and conditions of an operating licence or permit.’<sup>38</sup> If a person is convicted of one of the abovementioned offences, a term of imprisonment not exceeding two years or a fine not exceeding R100 000 may be imposed.<sup>39</sup>

According to the NLTA, the offence of operating without a valid licence or permit and operating an unroadworthy vehicle would fall within the category of actions that validate the impoundment of the vehicle, with specific regard to section 50 of the NLTA.<sup>40</sup> However, as mentioned above, the protest action is more layered than simply

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32 SA Taxi, ‘Heritage Month: The History of the Taxi Industry in South Africa’ SA Taxi (7 September 2022) <<https://sataxi.co.za/heritage-month-history-taxi-industry/>> accessed 18 December 2023.

33 *ibid.*

34 *ibid.*

35 V Ludidi, ‘Why Santaco Views Taxi Strike as More Than Just a Fight Against a New City of Cape Town By-Law’ *Daily Maverick* (8 August 2023) <<https://www.dailymaverick.co.za/article/2023-08-08-santaco-taxi-strike-new-city-of-cape-town-bylaw/>> accessed 16 June 2025.

36 E Bronkhorst, ‘Taxi Chaos: Cape Town Commuters Scramble for Transport’ *eNCA* (10 August 2023) <<https://www.enca.com/news/taxi-chaos-cape-town-commuters-scramble-transport>> accessed 18 December 2023.

37 National Land Transport Act 5 of 2009, s 87.

38 *ibid* s 90.

39 *ibid.*

40 Section 50(1) of the National Land Transport Act 5 of 2009 states that ‘no person may operate a road-based public transport service, unless he or she is the holder of an operating licence or a permit, subject to sections 47, 48 and 49, issues for the vehicle concerned in terms of this Act’. Read with s 87(1) of the Act, which states that an authorised officer who is satisfied on reasonable grounds that a motor vehicle is being used by any person for the operation of public transport without the necessary operating licence or permit or contrary to the conditions thereof, may impound the vehicle pending the investigation and prosecution of that person for any offence mentioned in section 90(1)(a) or (b). The aforementioned sections must also be read with s 90(1)(a) and (b) which states that ‘(1) a person

being illegal. Nevertheless, this article focuses on the disruptions caused by the protests, particularly in relation to the right to education.

### The Right to Protest

The implementation of the right to freedom of assembly was borne out of repressive apartheid-era laws that severely restricted this right. The repealed Public Safety Act 3 of 1953 imposed severe restrictions on assembly. Sections 3 and 4 of the Act allowed the governor-general broad powers in declaring the existence of a state of emergency in any area. Section 3 allowed the governor-general to employ regulations that may appear necessary and expedient, affording them very broad discretion. The same section allowed the governor-general to apply this provision retrospectively.<sup>41</sup> Section 4 similarly afforded this exercise of power to the minister and state president.<sup>42</sup>

The Riotous Assemblies Act 17 of 1956 further restricted the right to assembly. Section 1 defined public gatherings and public places very broadly, severely limiting anyone's ability to assemble.<sup>43</sup> Section 4(a) imposes serious consequences for participating in a prohibited act. It states that any person who contravenes a notice prohibiting the assembly of a public gathering would be liable upon conviction to imprisonment. The prohibited acts include issuing written or oral invitations to the public regarding an assembly, actively participating in it, making arrangements for it, organising or preparing it and publishing or distributing related notices.<sup>44</sup>

Subsequently, the Gatherings and Demonstrations Act 52 of 1973 and the Riotous Assemblies Amendment Act 30 of 1974 were brought into force. The Amendment Act amended the definition of a 'gathering' and tightened its meaning to include any gathering of any number of persons who have a common purpose, regardless of whether such purpose was lawful or unlawful.<sup>45</sup> Under the circumstances, it was virtually impossible to gather, and the right to freedom of assembly was virtually non-existent.<sup>46</sup>

Now, section 17 of the Constitution provides that '[e]veryone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.' In response to section 17, the Regulation of Gatherings Act (RGA) 205 of 1993 was enacted to regulate such gatherings.<sup>47</sup> The preamble of this Act specifically states that

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is guilty of an offence – (a) if that person operates a public transport service in contravention of section 50; (b) if the person operated a public transport service contrary to the terms and conditions of an operating licence or permit'.

41 Public Safety Act 86 of 1953, s 3.

42 *ibid* s 4.

43 Riotous Assemblies Act 17 of 1956, s 1.

44 *ibid* s 2(4)(c).

45 Riotous Assemblies Amendment Act 30 of 1974, s 1.

46 For further reading on the limitation to the freedom of assembly during the apartheid era, read EL Hanekom, 'Freedom of Assembly and Democracy in South Africa' (LLM thesis, Stellenbosch University 2019).

47 Regulation of Gatherings Act 205 of 1993, preamble.

the exercise of such right shall take place ‘peacefully and with due regard to the rights of others.’<sup>48</sup> The right to freedom of assembly is central to constitutional democracy and pertinent in giving a voice to the voiceless. This is owing to the brutal denial of this right and the consequences flowing therefrom under apartheid. Therefore, the foundational history leading up to this right cannot be ignored when exploring the importance of the right along with its limitations.

As was held in the case of *South African Transport and Allied Workers Union v Garvas and Others* 2013 (1) SA 83 (CC) (*SATAWU*), numerous and rigorous steps were taken to strictly regulate and eventually ban public assembly and protest action.<sup>49</sup> This was a total disregard for the right to freedom of expression. Protest action is a means to achieve freedom of expression, which was especially necessary for those oppressed under the apartheid government. As held in the *SATAWU* case, organised protest and demonstration ‘was part and parcel of the fabric of the participatory democracy.’<sup>50</sup> History cannot be ignored and should inform the constitutional right entrenched in section 17. South Africa’s past reminds us of the importance and necessity of such a right as a catalyst for much-needed social transformation.

Although the right to assembly is no doubt very important in any democratic society, every right must be exercised with due regard to others.<sup>51</sup> The court in *SATAWU* held that ‘the purpose sought to be achieved through the limitation [of this right] must be sufficiently important to warrant the limitation.’<sup>52</sup> The court further held that organisers of a protest or strike must reflect and reconcile themselves with the ‘risk of a violation of the rights of innocent by-standers which could result from forging ahead with the gathering.’<sup>53</sup> It is argued that sections 28 and 29 of the Constitution needed to be considered in the Western Cape taxi protests. It is not contended that SANTACO should abstain from protest action; rather, the argument posits that prior to initiating such action, and when it is reasonably known that such action would result in the infringement of competing rights of others, special regard should be shown for those of vulnerable groups, such as children. In other words, consideration should be given to the potential ramifications of constitutional provisions, specifically with respect to sections 28 and 29 of the Constitution.

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48    *ibid.*

49    *South African Transport and Allied Workers Union v Garvas and Others* 2013 (1) SA 83 (CC) para 62.

50    *ibid* para 62.

51    *ibid* para 68.

52    *ibid* para 66.

53    *ibid* para 68.



Section 17 of the Constitution protects the right to assembly only if such assembly is conducted peacefully and without arms.<sup>54</sup> Furthermore, section 11(1) of the RGA mitigates the potential violence that may ensue from assemblies by stating that:

‘(1) If any riot damage occurs as a result of

(a) a gathering, every organization on behalf of or under the auspices of which that gathering was held, or, if not so held, the convener;

(b) a demonstration, every person participating in such demonstration, shall, subject to subsection (2), be jointly and severally liable for that riot damage as a joint wrongdoer contemplated in Chapter II of the Apportionment of Damages Act, 1956 (Act 34 of 1956), together with any other person who unlawfully caused or contributed to such riot damage and any other organization or person who is liable therefor in terms of this subsection.’<sup>55</sup>

Section 11(2) was implemented to alleviate the impact of imposing such a liability on the organisers by providing a viable, although somewhat onerous, defence.<sup>56</sup> According to the court in *SATAWU*, the purpose of section 11(2) is to provide for the statutory liability of organisations so as to avoid the common law difficulties associated with proving the existence of a legal duty on the organisation to avoid harm and to afford the organiser a tighter defence.<sup>57</sup> Thus, the court held that organisers must ensure that continuous steps are taken to ensure that the act or omission that becomes reasonably foreseeable is prevented.<sup>58</sup> The purpose of the Act is not to negate the right to freedom of assembly but rather to subject the exercise of the right to conditions such as exercising it peacefully and unarmed,<sup>59</sup> which aims to prevent damage to property or injury to people.<sup>60</sup>

Several reports have documented the violence and intimidation that ensued because of the protests. According to reporter Melanie Verwoerd, the taxi strikes were violent and

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54 The Constitution, s 17.

55 Regulation of Gatherings Act, s 11(1).

56 *ibid* s 11(2) provides that: ‘It shall be a defence to a claim against a person or organization contemplated in subsection (1) if such a person or organization proves (a) that he or it did not permit or connive at the act or omission which caused the damage in question; and (b) that the act or omission in question did not fall within the scope of the objectives of the gathering or demonstration in question and was not reasonably foreseeable; and (c) that he or it took all reasonable steps within his or its power to prevent the act or omission in question: Provided that proof that he or it forbade an act of the kind in question shall not by itself be regarded as sufficient proof that he or it took all reasonable steps to prevent the act in question.’

57 *SATAWU* (n 49) para 39.

58 *ibid* para 44.

59 *ibid* para 18.

60 *ibid* para 69.

left several people ‘bruised and traumatised,’ and there were at least five deaths.<sup>61</sup> The most well-known reported death was that of a British doctor who was shot in front of his wife and 3-year-old son.<sup>62</sup> However, it is not clear whether the violence was inflicted by the organisers or the bystanders. Verwoerd reports that the taxi associations claimed they were innocent.<sup>63</sup> In a report in *The Citizen*, Molefe Seeletsa writes that four buses and two municipal trucks were torched as a result of the strike.<sup>64</sup> He further reported that the taxi-related violence affected schools and health services across Cape Town due to road closures and blockages.<sup>65</sup> Mayor Geordin Hill-Lewis stated that the City would not negotiate with a ‘literal’ gun to their heads.<sup>66</sup> Western Cape Premier Alan Winde said they could not negotiate with SANTACO while buses were being burned. He correctly stated that any person had the right to strike and protest, but one could not resort to crime and violence.<sup>67</sup>

Although it cannot be said with certainty that the violent actions discussed above were the actions of the organisers or the bystanders, as was held in the *SATAWU* case, organisers must be satisfied that an act or omission that could cause damage is not reasonably foreseeable and further,<sup>68</sup> that reasonable steps are continuously taken to ensure that such acts that are reasonably foreseeable are prevented.<sup>69</sup> In such a case, the requirement of taking reasonable steps is not met by ‘simply guarding against the occurrence of the damage-causing act or omission.’<sup>70</sup> The court emphasised that every right, including the right to assembly, must be exercised with due regard to the rights of others.<sup>71</sup> The organisation, in this instance, SANTACO, always has a choice between exercising the right to assemble and cancelling the gathering in light of the reasonably foreseeable damage. According to the court in *SATAWU*, the right to assembly must be exercised with due regard for the foreseeable damage or harm it may cause to others.<sup>72</sup>

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61 M Verwoerd, ‘Five Deaths, Millions Lost, Tourism Dented: Was the Taxi Strike Worth It?’ *News 24* (16 August 2023) <<https://www.news24.com/melanie-verwoerd-five-deaths-millions-lost-tourism-dented-was-the-taxi-strike-worth-it-20230816>> accessed 16 June 2025.

62 *ibid.*

63 *ibid.*

64 M Seeletsa, ‘We Will Not Negotiate With “Taxi Thugs” Holding “Gun To Our Heads”— Cape Town Mayor’ *The Citizen* (7 August 2023) <<https://www.citizen.co.za/news/cape-town-taxi-violence-santaco-august-2023/>> accessed 16 June 2025.

65 *ibid.*

66 *ibid.*

67 South African government, ‘Premier Winde Appalled at Impact of Taxi Strike on WC Government Services’ South African government media statement (7 August 2023) <<https://www.gov.za/news/media-statements/premier-alan-winde-expresses-concern-impact-taxi-strike-western-cape>> accessed 18 December 2023.

68 *SATAWU* (n 49) para 41.

69 *SATAWU* (n 49) para 44.

70 *ibid.*

71 *SATAWU* (n 49) para 68.

72 *ibid.*

The purpose of the limitations in the RGA is thus to achieve a balance between the right to assemble on the one hand and the safety of people on the other hand. The court in *SATAWU* held that this balance had been struck with the limitations that had been imposed.<sup>73</sup>

### Navigating the Right to Education Through Protests

The right to basic education is paramount to the development of South Africans. South Africa's history is rooted in social exclusion under apartheid, which systematically denied the majority of the population access to quality education.<sup>74</sup> This legacy prevails. One can thus safely assume that the subjects of this right, namely children, fall within the category of vulnerable groups. As the Committee on Economic, Social and Cultural Rights (CESCR) noted, 'for millions of people throughout the world, the enjoyment of the right to education remains a distant goal' and there are 'formidable structural and other obstacles' that hinder its realisation.<sup>75</sup> It can therefore be argued that the realisation of this right is essential to the enjoyment of other rights, including the protection of the best interests of the child.<sup>76</sup>

On Friday, 4 August 2023, the Western Cape Minister of Education David Maynier revealed that 287 420 learners were unable to get to school.<sup>77</sup> Furthermore, 9 508 teachers could not fulfil their task of teaching learners because absenteeism, violence and threats of violence prevented them from doing so.<sup>78</sup> These numbers skyrocketed by Monday, 7 August 2023, when 456 020 learners could not get to school, and 27 schools closed due to the ongoing protest action.<sup>79</sup> Despite the Minister declaring that schools would remain open, the extreme violence made this nearly impossible.<sup>80</sup> The lives of learners, teachers and parents who wanted to send their children to school were being threatened.<sup>81</sup> Equal Education correctly identified that schoolchildren are not only being denied their right to education but also lack access to schools, which resulted in their inability to benefit from crucial school-based programmes like the National School Nutrition Programme.<sup>82</sup> This is a government programme that provides one nutritious

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73 *ibid* paras 80–81.

74 Human Rights Commission 'SAHRC Report: National Investigative Hearing into the Impact of Protest-Related Action on the Right to Basic Education in South Africa' (2016) South African Human Rights Commission 1–50 1 (The Vuwani Report) para 5.2.1.

75 CESCR General Comment No 13: The Right to Education (Art 13) para 2.

76 The Vuwani Report (n 74) para 5.4.3.

77 South African government, 'MEC David Maynier on Impact of Taxi Strike on Learners' South African government media statement (4 August 2023) <<https://www.gov.za/news/media-statements/premier-alan-winde-expresses-concern-impact-taxi-strike-western-cape>> accessed 18 December 2023.

78 *ibid*.

79 C Nontsele 'Taxi Strike Impact' (n 1).

80 *ibid*.

81 *ibid*.

82 *ibid*.

meal to all learners in primary and secondary schools.<sup>83</sup> Although protest action holds significant value as a key instrument in politics, it cannot and should not trump a child's right to education, especially when the protest has nothing to do with the education sector. One may see these tactics, disrupting children's access to education, as a way to gain immediate attention and achieve a faster resolution to SANTACO's grievances.

Asisiwe, a Grade 12 learner affected by the taxi strikes, stated:

[t]he taxi strike is really affecting me in so many ways. I am being left behind in my schoolwork while others (learners) are continuing while I have to stay home. This means that there is a possibility that I will fail my trial exams. It is really hard for us because it is affecting our studies.<sup>84</sup>

It was also reported that some matrics were told to stay home and other learners were threatened at the taxi ranks.<sup>85</sup> Due to the high level of importance education provides to the full development of an individual, something needs to be done to ensure that this right is protected and not interfered with, especially if protests do not relate to the very right that is being negatively affected. Recommendations on how to achieve this are set out below.

As was held in the *SATAWU* case, the right to freedom of assembly, like all other rights, is not absolute and must be exercised with due regard for other rights.<sup>86</sup> The underlying principle of protest action should, therefore, aim to enhance the realisation of other rights rather than undermine them.<sup>87</sup> Furthermore, it is worth emphasising that the right to assemble must be conducted peacefully. Threats of intimidation, especially intimidation of vulnerable groups such as children, counter the very purpose of protest-related action. Once a protest becomes riddled with threats, intimidation and violence, it loses its constitutional protection.

The right to education is a perfect example of how one can balance constitutional rights. Legal scholars Ann Skelton and Martin Nsibirwa stress the significance of the right to education, asserting that 'education is central to the full development of the individual,

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83 C Nontsele 'Taxi Strike Impact' (n 1). Also see Department of Basic Education 'National School Nutrition Programme' The Department of Basic Education (2021) <<https://www.education.gov.za/Programmes/NationalSchoolNutritionProgramme.aspx>> accessed 18 December 2023.

84 Equal Education, 'Media Statement: Western Cape Government and SANTACO Should Take Immediate Action to Resolve the Taxi Strike to Protect Vulnerable Learners and School Communities' (7 August 2023) Equal Education <<https://equaleducation.org.za/2023/08/07/media-statement-western-cape-government-and-santaco-should-take-immediate-action-to-resolve-the-taxi-strike-to-protect-vulnerable-learners-and-school-communities/>> accessed 19 December 2023.

85 C Nontsele 'Taxi Strike Impact' (n 1).

86 *SATAWU* (n 49) para 68.

87 A Skelton and M Nsibirwa, '#Schools on Fire: Criminal Justice Responses to Protests That Impede the Right to Basic Education' (2017) 62 SA Crime Quarterly 39–50, 42.

and as such is a crucially important right.’<sup>88</sup> Section 39(1)(b) of the Constitution makes it obligatory for courts, tribunals and other forums to consider international law in the interpretation of the Bill of Rights. In line with this provision, South Africa ratified the International Covenant of Economic, Social, and Cultural Rights (ICESCR) on 12 January 2015 when it became the 163rd State Party to the ICESCR.<sup>89</sup> The ICESCR subsequently came into force on 12 April 2015. The right to education is further reinforced in the General Comment 13 of the CESCR, in which education is explained as an ‘empowerment right’ and the ‘primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty.’<sup>90</sup> The CESCR requires the State to protect the enjoyment of this right by ensuring that third parties do not interfere with this right. Article 13(2) requires that education be available, accessible, accepted and adaptable.<sup>91</sup> Regarding availability and accessibility, it can be argued that both were restricted during the Western Cape taxi strikes, specifically the aspect of physical accessibility. According to the CESCR, accessibility includes, among other things, physical accessibility<sup>92</sup> meaning that education must be within safe physical reach.<sup>93</sup> With respect to accessibility, State Parties have an obligation to respect, protect, and fulfil these essential features.<sup>94</sup> In this regard, the State must ensure that third parties do not prevent learners from attending school. Failure to do so compromises learners’ access to education. During the taxi strikes, learners were exposed to threats of violence and were physically unable to attend school due to their reliance on public transport, which had been halted.

South Africa made a formal declaration regarding its implementation of the right to education. The government stated that it will give progressive effect to the right to education, as provided for in Article 13(2) (a) and Article 14, within the framework of its National Education Policy and available resources.<sup>95</sup> However, as elaborated on below, courts have recognised that the right to education is unlike other rights as contained in the Bill of Rights in the sense that it is immediately realisable. As was held in the *Juma Musjid* case, ‘unlike some of the other socio-economic rights, this right is immediately realisable.’<sup>96</sup> This means that the State is not only required to progressively

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88 *ibid* 5.

89 UN Treaty Body Database, ‘Ratification status for CESCR—International Covenant on Economic, Social and Cultural Rights’ United Nations Human Rights Treaty Bodies <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=162&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=162&Lang=EN)> accessed 19 December 2023.

90 CESCR General Comment No 13: The Right to Education (Art 13), para 1.

91 *ibid* art 13(2), para 6.

92 *ibid* art 13(2)(b)(ii).

93 CESCR General Comment No 13: The Right to Education (Art 13), para 1.

94 *ibid* para 46.

95 ESCR-Net, ‘The Government of South Africa Ratifies the ICESCR’ (20 January 2015) <<https://www.escr-net.org/news/2015/government-south-africa-ratifies-icescr>> accessed 19 December 2023.

96 *Governing Body of the Juma Musjid Primary School v Essay N.O.* 2011 (8) BCLR 761 (CC) para 37.

realise the right to education but, importantly, this right is not internally limited to qualifiers such as ‘within available resources’ or ‘reasonable legislative measures.’<sup>97</sup>

Christo Van der Vyver views education as a ‘fundamental right that must prevail over other conflicting constitutional rights and freedoms.’<sup>98</sup> In *S v M*, the Constitutional Court found that the paramountcy principle, as contained in section 28(2) of the Constitution, is not a trump, but it endorsed the best interests principle as a powerful consideration in weighing competing interests.<sup>99</sup> However, it appears that there is more onerous scrutiny when children’s rights are involved.

The actual implications of protest action on education can be drawn from the South African Human Rights Commission (SAHRC) Report on National Investigative Hearing into the Impact of Protest Action on Right to Basic Education. The report notes that the impact relates to the learner’s inability to attend school, prepare for and write examinations, and access school feeding programmes, a measure intended to relieve poverty.<sup>100</sup> Any interruptions of this nature have a particularly adverse effect on poor and marginalised learners.<sup>101</sup>

### A Study of the Vuwani Protests in 2016

In 2016, the SAHRC issued a report following a national investigative hearing, which assessed the impact of protest-related action on the right to education in South Africa. This report flows from the incidents that occurred in 2016, when residents of the Vuwani District embarked on protest action, which resulted in 29 schools in the area being set alight.<sup>102</sup> The Department of Basic Education stated that the burning of schools disadvantaged an estimated 10 233 learners and prevented 52 827 learners from attending school.<sup>103</sup> Although no schools were damaged in the matter under discussion, learners were disrupted from attending school.

Similarly, the SAHRC revealed that the actual causes of the protests were unrelated to the right to education.<sup>104</sup> It nevertheless has a massive impact on vulnerable children as they were unable to physically access schools. The report further stated that protests

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97 *ibid* para 37.

98 A Skelton and M Nsibirwa, ‘#Schools on Fire’ (n 87) 6.

99 *S v M* 2008 (3) SA 232 CC par 26.

100 Parliamentary Monitoring Group, ‘Basic Education Budget Review and Recommendations Report: DBE, Umalusi, SACE’ (10 October 2017) <<https://pmg.org.za/committee-meeting/24374/>> accessed 16 June 2025, 1–2.

101 *ibid* 1.

102 SAHRC, ‘The Impact of Protest Action on the Right to a Basic Education in South Africa’ (2015) <<https://www.sahrc.org.za/home/21/files/WEBSITE%20Impact%20of%20protest%20on%20edu.pdf>> accessed 16 June 2025, paras 1–2.

103 *ibid* para 5.2.3.

104 *ibid* para 3.4.

have, on occasion, ‘degenerated into destructive and obstructive conduct which has undermined other rights, such as the right to education.’<sup>105</sup>

The purpose of the hearing was to seek solutions and provide recommendations aimed at ensuring that future protest-related action does not disrupt or deny the right to basic education. The findings in this report can thus be used to inform the actions that should have been taken in the recent taxi protests in the Western Cape as well as the measures that can be implemented in similar future circumstances. The SAHRC’s report on the Vuwani protests support these findings, which will be detailed in the last part of this article.

### **International Perspectives on the Right to Protest and the Right to Basic Education**

While the issue of balancing the two competing rights is relevant globally, the specific context of protest action, specifically about taxi strikes and their impact on disrupting school attendance, appears to be unique to the South African landscape. Despite a review of comparative jurisdictions, limited case law directly addresses the intersection between protest action, particularly concerning transport, and its impact on children’s right to basic education. Nevertheless, international law may provide guidance on how to balance the two competing rights under discussion. The right to protest is guaranteed in several international instruments to which South Africa is a State Party. These instruments include the Universal Declaration of Human Rights,<sup>106</sup> the International Covenant on Civil and Political Rights,<sup>107</sup> and the African Charter on Human and Peoples’ Rights (ACHPR).<sup>108</sup>

On the other hand, the right to basic education must also comply with international standards. Article 17 of the ACHPR provides that every person shall have the right to education.<sup>109</sup> Article 26 of the Universal Declaration of Human Rights provides that everyone has the right to education. It further states that elementary education shall be compulsory.<sup>110</sup> In ensuring that the right to basic education is protected in the context of protest action, it must be remembered that Article 11 of the ACHPR provides that the right to assemble freely may be restricted if it impedes the rights and freedoms of others. Similar limitations are reiterated in Article 21 of the International Covenant on Civil and Political Rights. It too allows for the limitation of the right to peaceful assembly when such limitation is imposed in accordance with the law and when it is necessary to do so in a democratic society in the interests of national security or public safety and

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105 *ibid* para 5.1.

106 Article 20 of the UDHR states that everyone has the right to peaceful assembly and association.

107 Article 21 of the ICCPR recognises the right of peaceful assembly.

108 Article 11 of the ACHPR provides that everyone shall have the right to assemble freely with others. This right shall only be subject to necessary restrictions provided for by the law, specifically those enacted in the interest of national security, safety, health, ethics and rights and freedoms of others.

109 Article 17 of the ACHPR.

110 Article 26 of the UDHR.

the protection of the rights and freedoms of others.<sup>111</sup> The limitation clause of the Constitution (section 36) can thus give effect to this if the limitation of the right to assemble is reasonable and justifiable. It could be argued that the national law is in line with the international laws mentioned above in that the right may be limited,<sup>112</sup> keeping in mind that the right is already limited in that the right to assemble must be done peacefully and unarmed.<sup>113</sup>

In determining when and how to limit the right to assemble, a Joint Report of Special Rapporteurs provides practical recommendations for the proper management of assemblies.<sup>114</sup> The report states that restrictions may only be imposed on the right to assemble if it is prescribed by law, pursues a legitimate aim and is necessary and proportionate in pursuance of the legitimate aim.<sup>115</sup> In the context of this paper, it is argued that first, there is prescribed law (mentioned above) that reasonably limits the right to assembly. Second, it is argued that the suggested restrictions have a genuine purpose and demonstrable effect of protecting a legitimate aim, which is to ensure that the right to basic education is not compromised. The purpose of restricting the right to assemble in this context is thus to protect the rights and freedoms of others, specifically a more vulnerable group, namely, children. Third, it is argued that the limitation in the context of this paper is necessary because there is a clear pressing social need, which is to ensure that children have access to the right to basic education and that they can access it free from harm and violence. In this regard, it is noted that the report recommends that the authorities strike a proper balance when restricting protests on the basis of protecting the rights of others, including those who live, work or carry out business in the affected locality.<sup>116</sup> The question remains as to how this can be achieved in order to align with international principles with specific regard to the importance of the right to basic education.<sup>117</sup> This question will be addressed in more detail below, but for the purposes of this discussion, the Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies outlines how any restriction imposed on the right must satisfy the requirement of lawfulness.<sup>118</sup> It states that any imposed restrictions must have a formal and legitimate basis in law, which must be sufficiently precise. It further states that to

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111 Article 21 of the ICCPR.

112 Constitution of the Republic of South Africa, 1996, s 17; Regulation of Gatherings Act 205 of 1993.

113 Constitution, s 17.

114 UN Human Rights Council, 'Joint Report of the Special Rapporteurs on the Rights to Freedom of Peaceful Assembly and of Association and on Extrajudicial, Summary or Arbitrary Executions' UN Doc A/HRC/31/66 (4 February 2016) <<https://www.ohchr.org/en/documents/thematic-reports/ahrc3166-joint-report-special-rapporteur-rights-freedom-peaceful>> accessed 16 June 2025.

115 *ibid* para 120, nn 14–15.

116 *ibid* para 120, n 15.

117 In this regard, General Comment 13 of the CESCR explains the importance of the right to basic education in that it is seen as 'an empowerment right' which has the potential to lift people out of poverty and to obtain the means to fully participate in society.

118 UN Human Rights Council, 'Joint Report on Peaceful Assembly' (n 114) para 30.



‘conform to the principle of proportionality, any restriction must be appropriate to achieve its protective function.’<sup>119</sup>

The report further states that a certain level of disruption to ordinary life caused by assemblies must be tolerated. However, in the context of this paper, it is argued that in the Western Cape protests, there was more than a mere disruption of ordinary life, especially if one considers the presence of violence during the protest action and its limiting effect on the right to basic education, with specific regard to its accessibility. When an assembly ceases to be peaceful and infringes on other fundamental rights, particularly of vulnerable groups such as schoolchildren, it no longer merits the same level of tolerance as suggested in the report.

### **Lessons Learnt and the Way Forward**

Several provisions in the South African Schools Act 84 of 1996 (SASA) were amended by the Basic Education Laws Amendment Act 32 of 2024 (BELA). One such provision, section 3(1) of the SASA, which requires every parent of a learner to ensure their child attends school,<sup>120</sup> was amended to include even stricter requirements under the BELA. Section 2 of the BELA amends section 3 of the SASA and states that every parent of a learner must ensure that the learner attends school from Grade R until the year in which the learner reaches the age of 15 or completes Grade 9.<sup>121</sup> Failure to do so may result in the parent being guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or both.<sup>122</sup> Alternatively, the court may impose a sentence within its discretion.<sup>123</sup> Section 3(6)(b), as amended by the BELA, states that any other person who, without just cause, prevents a learner subject to compulsory attendance from attending school is guilty of an offence and is liable to the same sanctions mentioned above.<sup>124</sup> The BELA also makes it an offence to interrupt, disrupt or hinder school activities. The BELA adds subsection (7), which states:

Any person who, unlawfully and intentionally interrupts, disturbs or hinders any official educational activity of a school, or hinders or obstructs any school in the performance of the school’s official educational activities, is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.<sup>125</sup>

The liability becomes more onerous. It is therefore important to consider whether the organisers of protests can be held accountable under the abovementioned provisions if

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119 UN Human Rights Council, ‘Joint Report on Peaceful Assembly’ (n 114) para 30.

120 South African Schools Act 84 of 1996, s 3(1).

121 Basic Education Laws Amendment Act 32 of 2024, s 2.

122 *ibid* read with s 3(6) of the South African Schools Act 84 of 1996.

123 South African Schools Act 84 of 1996, s 3(6).

124 South African Schools Act 84 of 1996, s 3(6)(b) read with s 2 of the Basic Education Laws Amendment Act 32 of 2024.

125 South African Schools Act 84 of 1996 s 3(7) read with s 2 of the Basic Education Laws Amendment Act 32 of 2024.

they are found liable for such offences. The SAHRC report on the Vuwani District shows that these sanctions are rarely implemented or initiated.<sup>126</sup> However, it indicates that this provision could be used as a deterrent against those who disrupt the right to education.<sup>127</sup> As indicated by Skelton and Nsibirwa, protest action, even when schools have not been damaged, may also attract liability if it is targeted at keeping schools closed or in the event that teachers or learners are prevented from attending school through threats or intimidation.<sup>128</sup> They further argue that limiting the right to protest so that it does not undermine the right to education would be considered a justifiable limitation.<sup>129</sup>

A further consideration of the SAHRC's report was the suggestion made by the Department of Basic Education to declare schools national key points in South Africa.<sup>130</sup> The National Key Points Act 102 of 1980 empowers the Minister of Safety and Security to declare a place or area a national key point if its loss, damage, disruption, or immobilisation is likely to prejudice the national interest.<sup>131</sup> Such a place or area may be declared a national key point if the Minister considers it necessary or expedient for the safety of the country or in the public interest.<sup>132</sup> Currently, schools are not designated as national key points in South Africa. However, proposing such a designation could enhance the protection of the right to education as it would align with section 28 of the Constitution, which requires that the best interests of the child be paramount.

Section 7 of the RGA can also be considered. It prohibits demonstrations and gatherings in the vicinity of courts, the buildings of Parliament and the Union Buildings unless permission has been granted in accordance with section 7(2). One could argue that the purpose of this limitation lies in the intention to protect the courts and democratic institutions by ensuring that they can perform their functions unobstructed. The same principle can be applied to schools. In other words, legislators could consider imposing a similar prohibition of demonstrations and gatherings in the vicinity of schools. This is not a novel idea. In fact, it is proposed in the Regulation of Gatherings Amendment Bill, which states that section 7A will be inserted into the RGA. Section 7A will have the effect of prohibiting demonstrations and gatherings in the vicinity of schools, places that provide early childhood development programmes and child youth care centres, unless permission has been granted in accordance with section 7A(3)–(4). The purpose of the Bill is to protect minor children from the effects of protests, especially when such protests turn violent, considering the vulnerable nature of children.<sup>133</sup>

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126 The Vuwani Report (n 74) 13.

127 The Vuwani Report (n 74) 34.

128 Ann Skelton and Martin Nsibirwa, '#Schools on fire' (n 87) at 45.

129 Ann Skelton and Martin Nsibirwa, '#Schools on fire' (n 87) at 45.

130 The Vuwani Report (n 74) at 19.

131 Section 2 of the National Key Points Act 102 of 1980.

132 Section 2 of the National Key Points Act 102 of 1980.

133 Regulation of Gatherings Amendment Bill B47–2018.

## Balancing Competing Rights: A Contextual and Legislative Analysis

Taking into account the relevant constitutional rights and the broader socio-political context, the following section explores how these rights may be balanced through legal, institutional and policy mechanisms. It is evident that there are at least two parties at stake here. The first is the taxi industry and the second is school learners. Both parties have suffered injustices in the past, and the struggles from the past, under the apartheid regime, are still evident today. There are, thus, two opposing interests at play. The first is the right to strike (in terms of section 17 of the Constitution), and the second is the right to education (in respect of section 29 of the Constitution). The third right at play is section 28 of the Constitution, which protects the best interests of the child.

It appears that these rights can be balanced with relative ease. Section 17 of the Constitution protects the right of assembly insofar as it is peaceful and has due regard for the rights of others.<sup>134</sup> Once a gathering becomes violent and fraught with threats of violence, this right can no longer be protected, and action needs to be taken, especially where the best interests of the child are at stake. As discussed above, the right to education differs from other constitutional rights in that it is immediately realisable, as confirmed in the *Juma Musjid* case.

As per the lessons learnt from the Vuwani incident, it is crucial for the South African Police Service to have thorough planning around how to react to and manage protests, keeping in mind that the right to strike is a constitutional right. However, appropriate action must be taken when such strikes become violent. The Department of Basic Education should implement the Learner Performance Improvement Plan to identify risks and advise on how such risks can be mitigated when protest action takes place, and access to education is being compromised, as suggested in the Vuwani Report.<sup>135</sup> This interruption should not have an impact on schoolchildren, and its risks should be mitigated to the best extent possible by, for instance, providing affordable transport alternatives for learners and police escorts if needed. If that is not feasible, provision could be made for radio-based lessons.

However, as stated in the SACHR's report, these extra expenses are generally not covered by a disaster fund, as such incidents are not formally declared disasters.<sup>136</sup> While this may be considered a drastic measure, prolonged protest action disrupting education may not traditionally fall within the standard definition of a 'disaster' under the Disaster Management Act 57 of 2002 (DMA). If the law is interpreted broadly and purposively, one could argue that such protest action may qualify as a disaster and thus fall within the scope of the Act. The DMA defines a disaster as a 'progressive or sudden, widespread or localised, natural or human-caused occurrence which causes or threatens

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134 Constitution, s 17.

135 The Vuwani Report (n 74) 23.

136 The Vuwani Report (n 74) 22–23.

to cause ... damage to property, infrastructure or the environment; or disruption of the life of a community.’<sup>137</sup> In terms of the DMA, disaster management involves the:

continuous and integrated multi-sectoral, multi-disciplinary process of planning and implementation of measures aimed at (a) preventing or reducing the risk of disasters; (b) mitigating the severity or consequences of disasters; (c) emergency preparedness; (d) a rapid and effective response to disasters; and (e) post-disaster recovery and rehabilitation.<sup>138</sup>

The SAHRC sought to implement a similar procedure in this regard, despite the protest action not being classified as a national disaster at the local level. Nonetheless, it was treated as such because it was a human-caused event that resulted in property damage and disrupted life in the Vuwani community. To address this ‘disaster,’ the SAHRC made recommendations akin to those outlined in the DMA. In terms of section 42 of the DMA, each metropolitan and district municipality must establish and implement a framework for disaster management.<sup>139</sup> As an example of implementing this strategy, the South African Police Service has the duty and responsibility to provide additional security for critical infrastructure, such as hospitals, beyond the standard protection it already offers.

Similarly, the Department of Basic Education is in the process of trying to get schools declared national key points in South Africa. However, such a declaration would entail additional security costs. This approach is in line with the fact that courts have recognised the right to education as an immediately realisable right, unlike other rights in the Bill of Rights that are progressively realisable. The DMA provides that regardless of whether a local state of disaster has been declared in terms of section 55 of the DMA, the council of a metropolitan municipality is primarily responsible for co-ordinating and managing local disasters within its jurisdiction.<sup>140</sup>

A further point to consider is the implementation of section 3(6)(b) of the SASA as amended by the BELA, which imposes strict penalties on any person, other than the learner’s parent, who prevents a learner from school attendance without a just cause.<sup>141</sup> This has not been used in the past insofar as it relates to persons other than the parents or guardians of a child because, as noted by Skelton and Nsibirwa, this may prove difficult in practice.<sup>142</sup> While it may be challenging to prove that a call by a protest leader to stay away from school was the cause for a child’s non-attendance, section 3(7) of the SASA (as amended by the BELA) now imposes penalties on any person who

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137 Disaster Management Act 57 of 2002, s 1.

138 *ibid.*

139 *ibid.*, s 42.

140 *Ibid.*, s 54(3).

141 SASA, section 3(6)(b) read with s 2 of BELA.

142 A Skelton and M Nsibirwa, ‘#Schools on Fire’ (n 87) 46.

unlawfully and intentionally interrupts, disrupts, hinders or obstructs a school and its educational activities.<sup>143</sup>

This amendment has far-reaching implications, especially in the given context. The Western Cape taxi strikes disrupted transport routes to schools and created unsafe conditions through roadblocks and violence.<sup>144</sup> It could be argued that the actions of those involved in the taxi strikes, which resulted in the hindrance of educational activities through blockading routes to school and removing the primary mode of transport to schools,<sup>145</sup> should face the penalties provided in the abovementioned provision. The amendment signals stronger legal protection of a learner's right to education and reinforces the idea that education is not only a right but also a protected activity in line with section 29 of the Constitution.

The challenge of this provision in the given context is the potential harm it may cause in limiting the right to freedom of assembly, especially against the historically disadvantaged protest collectives, such as taxi associations, having long mobilised in response to systemic exclusion under apartheid. The *SAWATU* case, however, clearly outlines that the right in section 17 of the Constitution must be exercised peacefully in order to receive protection<sup>146</sup> and that such limitation is constitutionally justifiable with regard to section 36 of the Constitution.<sup>147</sup> It is essential that every right must be exercised with due regard to others.<sup>148</sup>

It could also be challenging to prove that the interruption, disruption, hindrance or obstruction of official school activities was not intentional and could merely constitute a secondary effect of the protest action. Alternatively, protesters may argue that protests are often disruptive by nature. In this regard, it is important to reiterate the holding in the *SATAWU* case. The court emphasised that protest organisers must remain aware of the possibility of damage and cater for it accordingly ensuring that reasonable steps are taken to avoid any damage-causing act or omission.<sup>149</sup> Notably, the court held that section 11(2) of the RGA is rational and thus remains in place.<sup>150</sup>

Additionally, there appear to be other avenues as recommended by the SAHRC. For example, 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

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143 South African Schools Act 84 of 1996, s 3(7) read with s 2 of Basic Education Laws Amendment Act 32 of 2024.

144 C Nontsele 'Taxi Strike Impact' (n 1).

145 C Nontsele 'Taxi Strike Impact' (n 1).

146 *SATAWU* 2013 (1) SA 83 (CC) para 53.

147 *ibid* paras 60, 81 and 84.

148 *ibid* para 67.

149 *ibid* para 44.

150 *ibid* para 50. Also see ss 11(1)–(2) of the Regulation of Gatherings Act 205 of 1993.

fundamental rights within the framework of the law and the Constitution, as well as other measures for the observance of such rights.<sup>151</sup>

The Department of Basic Education should constitute an interdepartmental National Public Protest Response Team that includes all relevant government departments. Section 3 of the SASA should be considered to determine whether the criminal provisions are sufficient to prosecute persons engaged in public protests who deny learners access to education. Furthermore, they should determine whether the statutory criminal sanctions are a sufficient deterrent.

## Conclusion

The complex interplay between the constitutional rights to strike, education, and the best interests of the child presents a significant challenge in a society still grappling with the legacy of past injustices, as seen under the apartheid regime. Ultimately, balancing these competing rights demands thoughtful consideration and a multidisciplinary approach. The experiences and lessons from cases like the Vuwani protests underline the need for proactive, coordinated, and inclusive responses that protect both the right to strike and the right to education. By engaging in this complex endeavour, South Africa can advance towards a future where these rights harmoniously coexist and contribute to a more equitable society.

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