**NATIONAL ASS EMBLY

WRITTEN REPLY

QUESTION 533

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533. Mr AG Whitfield (DA) to ask the Minister of Basic Education:**What is the current status of the proposal to declare teaching as an essential service in order to prevent teachers from striking?
 NW639E
 **ANSWER:**The right to strike is a constitutional right afforded to all employees in terms of Section 23(2)( c) of the Constitution of the Republic of South Africa, 108 of 1996 ("the Constitution"). However, Section 65 of the Labour Relations Act (LRA) does contemplate restrictions on the right to strike in respect of those employees who are engaged in essential services. Furthermore, Section 213 of the LRA defines an essential service and this mirrors the international understanding of essential services. This definition excludes education as an essential service.

South Africa is a member of the International Labour Organisation (ILO) and has signed Conventions No 87 and 98 of the ILO that upholds the principles of freedom of association ~nd the right to organise and bargain collectively. In terms of this, the ILO recognises strike action as a principled right by which workers and their associations may legitimately promote and defend their economic and social interests. The case for education to be declared an essential service has been considered by the ILO, through submissions made to it by various member states from different regions of the world and in respect of a wide range of different circumstances. However, the ILO has repeatedly ru led that essential services refers RESPONSE TO NATIONAL ASSEMBLY QUESTION NA 533

only to those services that endanger the life, personal safety or health of the whole or part of the population and therefore education stands outside of this definition.

All member states, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership to the ILO, to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which include freedom of association. The right to freedom of association allows employees to participate in strike action, once the trade unions have followed due process in terms of the LRA and given the employer notice of a strike.

There is therefore no proposal that is currently being considered to declare education as an essential service since the education sector does not satisfy the definition of an essential service as defined by the ILO internationally and South African legislation through the LRA.