

THE EMPLOYMENT LAW RESPONSE TO THE PRINCIPLE OF MAJORITARIANISM AND ITS IMPACT ON MINORITY TRADE UNIONS: A SOUTH AFRICAN PERSPECTIVE



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Presentation layout

- Introduction
- Problem statement
- Aims and objectives
- Legal framework on the right to freedom of association
- Perspectives and issues relating to majoritarianism
- International perspectives on the issue of 'majoritarianism'
- Concluding remarks

Framework on the right to freedom of association in South Africa

- General remarks
- Constitutional and statutory context
- The historical overview of Collective Bargaining in South Africa
- Levels of Collective Bargaining
- Statutory definition of workplace
- Chamber of Mines/AMCU Litigation
- Striking to secure organisational rights: from Bader Bop to AMCU/Chamber of Mines and so forth

A foothold in the workplace: the perils of majoritarianism; The litmus test of representivity and extension of collective agreements to non-parties

- Introduction - Getting a foothold in the workplace
- Sources of organisational rights & analysis of the phrase 'sufficiently representative'
- Perils of majoritarianism
- Shifting thresholds: Minority unions' perennial problem
- Compulsory participation in statutory councils
- Agency shop agreement
- Closed shop agreement
- Discussion of selected case law on the scope and nature of section 18 of the LRA
- Freedom of association and trade union security arrangements
- Section 18 of the LRA and recognition agreements in the mining sector
- Litmus test of representivity and extension of collective agreements to non-parties
- Thresholds
- Extension of collective agreements to non-parties

International instruments on freedom of association

- State regulation
- Right to freedom of association pre and post the Constitution, 1996
- Explaining the content and nature of the right to freedom of association viewed in the context of human rights
- Right to fair labour practices
- Interplay between collective bargaining and the right to freedom of association
- International instruments on the right to freedom of association
 - Universal Declaration of Human Rights
 - Freedom of Association and Protection of the Right to Organise Convention, 1948
 - Right to Organise and Collective Bargaining Convention, 1949
- South Africa's compliance with the ILO's Conventions on Freedom of Association and the Right to Organise and Collective Bargaining Convention
- Union rivalry, strike violence and Marikana: Retrospect and prospects
- Changing dynamics of the collective bargaining environment

An international and comparative analysis on the right to freedom of association

- Introduction
- Rationale for embarking on international and comparative analysis
- African jurisdiction in comparative analysis
- Guidelines on Freedom of Association and Assembly in Africa and the impact of African Charter on Human and People's Rights
- International law position on freedom of association
- Legal framework on international comparative perspective on the right to freedom of association
- ILO's Constitution 1919
- Universal Declaration of Human Rights 1948
- ILO's Declaration on Fundamental Principles and Rights at Work 1998

Comparative analysis of freedom of association in United States of America, India and South Africa

- Freedom of association in the United States of America
- Railway Labour Act of 1926
- American Convention on Human Rights (ACHR)
- Freedom of association in India
- Summary

Concluding remarks

- Principle of majoritarianism versus minoritarianism in the interpretation of the right to freedom of association.
- Recommendations
 - The Labour Relations Act 66 of 1995 should be repealed
 - Approaching the International Labour Organisation (ILO)
 - Misalignment between the LRA and ILO's Recommendation



thank you