**NATIONAL ASSEMBLY**

**WRITTEN REPLY**

**QUESTION 1791**

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**1791. Mr Y Cassim (DA) to ask the Minister of Basic Education:**

Whether, in line with recommendation 10 of the report of the Ministerial Task Team to Investigate Allegations into the Selling of Posts of Educators by Members of Teacher Unions and Departmental Officials in Provincial Education Departments, she is taking steps to ensure that (a) both school- and office-based educators cease to be office bearers of political parties and (b) educators in management posts including school principals are prohibited from occupying leadership positions in teacher unions; if not, what is the position in this regard; if so, what are the relevant details? NW2099E

**ANSWER:**

1. No, the Minister will not interfere with the freedoms of any employee to choose to join or establish any union or political party. South Africa is a signatory to 27 Conventions of the ILO and are categorized as:

* Fundamental Conventions: **8 of 8**;
* Governance Conventions (Priority): **2 of 4**; and
* Technical Conventions: **17 of 177.**

Out of **27** Conventions ratified by South Africa, of which **23** are in force, **2** Conventions have been denounced.

The Freedom of Association (*C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*) is the right to join or leave groups of a person's own choosing, and for the group to take [collective action](https://en.wikipedia.org/wiki/Collective_action) to pursue the interests of members.[[1]](#footnote-1) It is both an [individual right](https://en.wikipedia.org/wiki/Individual_right) and a [collective right](https://en.wikipedia.org/wiki/Collective_right), guaranteed by all modern and democratic legal systems. Article 3 of this Convention specifically prevent public authorities (governments) from any interference which would restrict this right or impede the lawful exercise thereof.

Jeremy McBride[[2]](#footnote-2) argues that respect for the freedom of association by all public authorities and the exercising of this freedom by all sections of society are essential both to establish a "genuine [democracy](https://en.wikipedia.org/wiki/Democracy)" and to ensure that, once achieved, it remains "healthy and flourishing".

The Constitution of South Africa is the supreme [law](https://en.wikipedia.org/wiki/Law) of the country of [South Africa](https://en.wikipedia.org/wiki/South_Africa). It provides the legal foundation for the existence of the [republic](https://en.wikipedia.org/wiki/Republic), sets out the [rights](https://en.wikipedia.org/wiki/Human_rights) and [duties](https://en.wikipedia.org/wiki/Duty) of its citizens, and defines the structure of the [government](https://en.wikipedia.org/wiki/Government_of_South_Africa).

Section 19 of the Constitution provides for the political rights of every citizen to freely make political choices which include to form a political party, to participate in activities of such a political party including recruiting members and campaigning for the political party.

1. Section 23 of the Constitution provides for the following Labour rights which cannot be derogated:
2. Everyone has the right to fair labour practice
3. Every worker has the right –
4. to form and join a trade union
5. to participate in the activities and programmes of the union; and
6. to strike.
7. School-based educators: According to the Education Labour Relations Council’s (ELRC) Collective Agreement 2 of 2007 and Chapter F of the Personnel Administrative Measures (PAM), school-based educators have the right to be nominated by their trade union to be utilised as Shop Stewards in education in order to enhance the labour relations in the public education sector. Only post level one educators who are permanently employed are eligible to be nominated or appointed as Shop Stewards in education. Office-based educatorscan only be site stewards at the workplace and they are not in any way office bearers of the unions.

It is an educator’s Constitutional right including school principals to belong to a trade union. Chapter F of the Personnel Administrative Measures (PAM) further stipulates that unions are entitled to have educators in good standing seconded to Trade unions that are registered with the Education Labour Relations Council (ELRC) to occupy full time positions in the union (see also *(Resolution 8 of 1995).* In addition to this, Collective Agreement 2 of 2007 on Shop Stewards in Education does not prohibit any educator including principals to belong to any trade union.

1. Jeremy McBride, *Freedom of Association, The Essentials of Human Rights* (Hodder Arnold 2005) 18, states it involves coming together with other individuals and collectively express, promote, pursue and defend common interests. [↑](#footnote-ref-1)
2. Jeremy McBride, Freedom of Association, The Essentials of Human Rights, Hodder Arnold, London, 2005 [↑](#footnote-ref-2)