The “bite” of a minimum wage: enforcement of and compliance with the sectoral determination for farm workers

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Lebogeng Manganeng***

Abstract
The research on which this paper is based reveals the complex and differentiated outcomes of a statutory minimum wage. The primary objective of this research was to determine the extent to which the Sectoral Determination for Farm Workers is implemented on selected farms in the Eastern Cape. The experiences of farm workers are largely absent from existing studies of minimum employment conditions in the agricultural sector. Following a brief overview of the provisions in the sectoral determination, this article outlines some of the problems associated with the enforcement of statutory minimum wages, considers the impact of statutory minimum wages on remuneration and labour relations, and tracks changes in wage levels before and after the introduction of the sectoral determination. The most salient findings of the research include the following: First, farmers are complying with the provisions of the sectoral determination on a selective basis.

Second, although wages have increased, a significant portion of the workers interviewed still did not receive the minimum wage.

Third, the sectoral determination has not fundamentally altered the working, living and tenure conditions of farm workers. Finally, farmers seem able to absorb rising wage costs through selective compliance, work intensification, increased deductions and a strategic use of female and casual labour.

1 Introduction
For most working people, wages are the most important aspect of their employment relationship. Pay determines an employee’s standard of living, dominates collective bargaining agendas, and is the primary cause of industrial action, a significant component of a firm’s costs and an important factor in the overall performance of an economy. Campaigns for a “living wage” are a recurring theme in the evolution of labour relations in many developing countries, including South Africa. The International Labour Organisation (ILO) has long recognised the deleterious effects of excessively low wages on social and individual well-being. Conventions 26 (1928), 99 (1951) and 131 (1970) of the ILO deal...
with the implementation of mechanisms for the determination of minimum wages. The *Minimum Wage Fixing Convention* (131 of 1970) requires that a mechanism, which should include tripartite consultation, be established for setting minimum wages, “covering all groups of wage-earners whose terms of employment are such that coverage would be appropriate”. These mechanisms do not stipulate the extent of coverage or mandate the level of a minimum wage, but rather set out the procedures for establishing acceptable levels of remuneration and determining which workers are to be covered. The national laws on minimum wages that were prompted by these conventions justify statutory intervention in wage determination on the grounds of “market failures” and “socially unacceptable” distributive outcomes in some regions, industries and/or occupations.

Mechanisms for the determination of minimum wages are typically established by the state in industries where wages are not regulated by voluntary collective bargaining and where market forces push wages to unacceptably low levels. The implicit assumption is that, in the absence of satisfactory methods of wage determination, statutory intervention becomes a necessary (albeit temporary) substitute for collective bargaining. That is, the statutory regulation of wages is reserved for special cases only. When a minimum wage is set, Convention 131 requires that two elements be taken into account: (a) the needs of workers and their families, having regard to the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; and (b) economic factors such as developmental objectives, levels of productivity and the desirability of attaining and maintaining a high level of employment (Starr 1981; Shaheed 1994). The level and ambit of a minimum wage will therefore tend to reflect specific trade-offs between the demands for social justice and the dictates of economic efficiency. As such, the role of the minimum wage in wage setting differs between regions and over time. In post-apartheid South Africa, the Labour Market Commission (1996) recommended that minimum wages should be set at a “realistic” level; should not attempt to regulate the conditions of too large a percentage of the workforce; should not be seen as the ultimate solution to poverty; and should not be used as a substitute for collective bargaining.

This article highlights the complex and differentiated outcomes of the statutory minimum wage in the agricultural sector. Following a brief overview of the provisions of Sectoral Determination 8 (SD 8), some of the problems associated with the enforcement of statutory minimum wages are outlined and it is suggested that aggrieved workers should be granted a more effective and speedier statutory remedy to enforce their right to a minimum wage. Next, the impact of statutory minimum wages on remuneration and labour relations is considered. Finally, changes in wage levels before and after the introduction of the sectoral determination are tracked, the impact of the minimum wage on different categories of farm workers and geographical areas is outlined, and the various types of deductions made from the wages of farm workers are considered.

2 **Research design**

The research on which this article is based examines the implementation of SD 8 in the Makana, Ndlambe and Sunday’s River municipalities in the Eastern Cape from the perspective of farm workers. The experiences of farm workers are largely absent from existing studies of minimum employment conditions in the agricultural sector. In general, studies of minimum wages tend to rely almost exclusively on managerial perspectives and focus almost solely on the implications for the enterprise (Adam-Smith, Norris & Williams 2003:31). By highlighting workers’ experiences of the minimum wage, the research sheds
new light on the efficacy of statutory intervention as a means of regulating the employment conditions of farm workers.

Studies of the industrial and commercial sectors of the economy have access to detailed information from which to construct a sample frame. Such information is generally not available for the agricultural sector, and research has to rely on inductive methods. For example, there are no statistics on the number of farms or farm workers in the above-mentioned municipalities. In addition, there are significant obstacles to gaining access to farms for detailed case studies. Even if it had been possible to identify a sampling matrix, there is bound to be a selection bias in favour of those farms that were willing to participate in the research. For these reasons, cases were chosen in an incremental fashion based on the prior knowledge of the research team. Initial contacts were made with farms known from previous research. Other farms were then added so that the impact of varying market positions, occupational dynamics and labour relations practices could be identified.

An overriding concern with typicality must assume that there is such a thing as a “typical farm”. Even if one could choose typicality in all major dimensions that seem relevant, it is nevertheless true that “there would be enough idiosyncrasy in any particular situation so that one could not transfer findings in an unthinking way from one typical situation to another” (Schofield in Edwards, Ram & Black 2003:19). The approach adopted here was to take a range of situations and to show how responses vary among them. In other words, the study did not attempt to seek typical or average cases but to identify cases that illustrate different conditions and circumstances. Hence, cases were chosen systematically from three municipalities and various subsectors on the basis of their ability to shed light on the impact of the minimum wage in a range of geographical, production and market contexts. Nothing in the general literature on agriculture or in case studies on the impact of minimum wages points to clear analytical criteria for the selection of farms. The best approach, therefore, is to identify some reasonably clearly defined subsectors. The subsectors that were chosen include dairy farming, game farming, stock enterprises, mohair, vegetables, pineapples and mixed farming. These subsectors reflect different market conditions and different pay structures and working conditions.

Having identified the relevant subsectors, the researchers proceeded to select farms within each subsector and a varying number of farm workers from each selected farm, depending on its size, location and the composition of its workforce. Between April 2003 and December 2005, 608 workers were interviewed; these workers made up the chosen sample. The research was conducted in two stages: 313 workers were interviewed between April 2003 and February 2004 and 295 workers were interviewed between April 2004 and December 2005. The sample was stratified in terms of gender, employment status, job category, subsector and geographical area. Three hundred and seventy-three men were interviewed, 195 of whom were employed on farms in Area A and 178 were from Area B. The total number of women interviewed was 235. Of this total, 99 were from Area A and 136 were from Area B. Of the 608 workers interviewed, 585 were monthly paid and 23 were paid on an hourly or daily basis. The job categories that workers represented were general work, driving, field work (harvesting, planting, weeding, spraying), domestic work, shearing and wool sorting, game guarding, tracking on game farms, livestock tending, milking on dairy farms, and slaughtering, cleaning chickens and grading eggs.

While a survey can reveal the patterns of response to the minimum wage, it is not suited to a detailed examination of the processes through which respondents interpret such an external intervention. Qualitative research complements statistical generalisation with
analytical generalisation (Edwards et al. 2003:19), in this case the reasoning behind the processes that link the external intervention to concrete experiences. To this end, focus group interviews were conducted with 40 farm workers (selected from different subsectors, occupations and geographical areas) between September and November 2004. The research also includes recorded proceedings of the Public Hearings on the Sectoral Determination for Agriculture conducted by the Department of Labour in the Eastern Cape in 2005.

3 The sectoral determination for agriculture

During the apartheid era, the agricultural sector was excluded from the legislation that regulated labour relations and employment conditions in other economic sectors. From the mid-1990s, labour laws were extended to agriculture in an attempt to bring the sector in line with the socio-political changes that were unfolding. Farm workers are now covered by the Labour Relations Act (1995), the Basic Conditions of Employment Act (1997), the Unemployment Insurance Act (2001) and health and safety legislation. This statutory framework governs employment standards and institutionalises consultative labour relations. However, it does not deal with the setting of wages, nor does it address the extremely low wages in agriculture. The absence of trade unions and collective bargaining means that wage determination is arbitrary, individualistic and almost entirely within the discretion of the farmer. This renders statutory minimum standards much more important than in sectors where terms and conditions of employment are subject to joint regulation by employers and trade unions. The justification for separate regulatory mechanisms for work in the primary sector of the economy has long been recognised. This issue was dealt with in the ILO Convention 99 on Minimum Wage Fixing in Agriculture (1951) and Convention 101 on Holidays with Pay in Agriculture (1952). As Table 1 indicates, the agricultural sector in the later apartheid years was characterised by declining employment levels, rising yet extremely low wages, significant (albeit declining) numbers of casual employees and rising income levels.

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Number of farm workers*</td>
<td>1 218 688</td>
<td>1 068 831</td>
<td>921 651</td>
</tr>
<tr>
<td>Average monthly wage**</td>
<td>R141.92</td>
<td>R222.25</td>
<td>R322.91</td>
</tr>
<tr>
<td>Casual workers (%)</td>
<td>43.3</td>
<td>37.5</td>
<td>32.7</td>
</tr>
<tr>
<td>Farming units</td>
<td>62 428</td>
<td>61 564</td>
<td>60 901</td>
</tr>
<tr>
<td>Average size (hectares)</td>
<td>1 356</td>
<td>1 319</td>
<td>1 344</td>
</tr>
<tr>
<td>Gross income (R1 million)</td>
<td>14 148</td>
<td>17 859</td>
<td>27 014</td>
</tr>
</tbody>
</table>

* Excludes the former homelands.

** Includes payment in kind.

Section 50 of the Basic Conditions of Employment Act empowers the Minister of Labour to make sectoral determinations for workers in a range of particularly vulnerable sectors. Workers are deemed to be vulnerable for various reasons: high levels of worker exploitation within the sector; low levels of worker organisation or the absence of trade unions within the sector; and the exclusion of workers from wage regulating mechanisms. A sectoral determination can deal with a wide range of minimum terms and conditions of employment, but probably the most important is the introduction of minimum wages for the relevant sector and area. The range of conditions that a sectoral determination can cover.

gives wide scope for the variation of provisions in the Basic Conditions of Employment Act in accordance with the circumstances of a particular sector and area. In line with the commitment to the principles of "regulated flexibility", however, chapter 7 of the Act specifies a number of conditions that a sectoral determination may not vary. Once the sectoral determination has legal effect, its provisions prevail over an equivalent provision in the Act.

Before making a sectoral determination for a particular sector, the Minister must direct the Director-General of the Department of Labour to conduct the necessary investigation into that sector to enable the Employment Conditions Commission to carry out its duties. In advising the Minister, the Commission is required to consider certain criteria, which include the following: the ability of employers to carry out their business successfully; the alleviation of poverty; the cost of living; the likely impact of any proposed condition of employment or minimum wage on current employment or the creation of employment; the operation of small, medium or micro-enterprises and new enterprises; wage differentials and inequality; and the possible impact of any proposed conditions of employment on the health, safety and welfare of workers in the sector concerned. In September 2001, an investigation into the working conditions and living standards of farm workers commissioned by the Department of Labour found that, of all workers in the formal economy, farm workers were the lowest paid (Department of Labour 2001). Despite their low levels, agricultural wages remained vitally important to the welfare of rural households.

SD 8 was set for a three-year cycle that ended on 28 February 2006. This determination applied to the employment of all workers in farming sectors “including primary and secondary agriculture, mixed farming, horticulture, aqua farming and the farming of animal products or field crops” (s1(2)). Domestic workers and security guards working on farms were also included in the definition of a farm worker. SD 8 made it compulsory for every farm worker to have written particulars of employment. This included a job description as well as terms and conditions of service. Ordinary hours of work were 45 hours a week, and any additional work was overtime and had to be remunerated at one-and-a-half times the ordinary rate. Overtime plus the ordinary hours of work could not exceed 60 hours a week or 12 hours a day. The maximum overtime allowed in a week was 15 hours. Farm workers were entitled to 21 days’ annual leave, 36 days’ sick leave for a cycle of three years, four months’ maternity leave, and three days’ family responsibility leave per annum. Sectoral Determination No13, which replaced SD 8 on 1 March 2006, retains all these provisions.

An econometric simulation by the Employment Conditions Commission indicated that a minimum wage of R1 000 per month would destroy 17.6% or 158 000 of the existing jobs in the agricultural sector. Consequently, the Commission proposed a sliding scale of minimum wages based on a four-way classification of farms. The proposals ranged from a minimum wage of R400 in the poorest areas to a minimum of R750 in the wealthier areas. It also proposed that the minimum wages should not apply to farms that employ five or less workers. Where payments in kind are made, it was recommended that a reduced cash wage of not more than 20% below the minimum wage might be paid, subject to certain conditions, including the standard of accommodation.

When SD 8 was finally promulgated in March 2003, it departed in some respects from the recommendations made by the Employment Conditions Commission. Minimum wages were set according to municipalities, with some classified as Area A and others as Area B.

Area A covers municipalities in which the average household income was more than R24 000 per annum in Census ‘96, whereas Area B is made up of those municipalities
where the average household income was less than R24 000 (Department of Labour, 2001).

Minimum wages for farms falling under Area A municipalities are higher than those for Area B. As Table 2 indicates, minimum wages are set annually between the beginning of March and the end of February the following year. An hourly rate was set for workers working 27 hours or less a week, while a monthly rate was set for workers working 28 hours or more.

Table 2
Minimum wages for farm workers in sectoral determination No. 8

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Hourly rate</td>
<td>R4.10</td>
<td>Hourly rate</td>
<td>R4.47</td>
</tr>
<tr>
<td>Monthly rate</td>
<td>R800</td>
<td>Monthly rate</td>
<td>R871.58</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>AREA B</th>
<th>Hourly rate</th>
<th>Monthly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hourly rate</td>
<td>R3.33</td>
<td>R3.68</td>
</tr>
<tr>
<td>Monthly rate</td>
<td>R650</td>
<td>Monthly rate</td>
</tr>
</tbody>
</table>

(Source: Department of Labour 2003-6)

In terms of SD 8 farm workers had to agree in writing to any deductions made from their wages. Ten per cent of a worker’s wage could be deducted for accommodation and rations. However, the house had to be at least be 30 m², have a durable and waterproof roof, electricity, a toilet and windows; a tap had to be available inside or close to the house. With respect to the provision of rations, food had to be provided on a regular basis and be worth the amount deducted or more. Deductions for protective clothing, equipment and tools were prohibited.

4 The enforcement of minimum wage laws

There is considerable variation in the coverage, level, mechanisms and enforcement of minimum wages between and within countries (see Starr, 1981; Bazen & Benhayoun, 1982; Shafeed, 1994; Saget, 2001; Feldmann, 2003). The proportion of the workforce directly affected by the minimum wage depends in part on the basic role which government assigns to minimum wage fixing. Most critics of minimum wages do not differentiate between these different roles and their associated economic consequences. The kind of role that minimum wages play depends on whether the mechanism seeks to cover particular industries or occupations, or apply more broadly to all workers in general or all those within broadly defined sectors (Shafeed 1994:54-5). The more selective the coverage, the more difficult it is to explain why some are covered and others not. The more comprehensive and detailed the occupational distinctions, the greater the administrative burdens. With industry-based minimum wages, the role of minimum wages is to protect a relatively small number of workers in low-wage industries who occupy an especially vulnerable position in the labour market.

An important aspect of minimum wages in developing countries is the degree of compliance, given that regulatory mechanisms are generally less developed than those in developed countries. While non-compliance tends to be minimal in the developed world, it constitutes a serious problem in the developing world. For instance: in 1988, in Mexico 66% of females in various sectors were being paid below the minimum wage, while more
than 50% of firms in Morocco paid their unskilled workers less than the minimum wage (Bell in Strobl & Walsh 2003:427). In addition, high levels of noncompliance are a product of the large informal sector in most developing countries. A survey of informal sector firms conducted by Morrison found that 98% in Nigeria and 83% in Swaziland did not comply with minimum wage legislation (Strobl & Walsh 2003:428). In a survey of developing countries, Saget (2001:12) notes that “most governments appear not to enforce strict compliance with minimum wages”. Apart from these studies, detailed empirical analyses of levels of compliance with minimum wages in developing countries are remarkably scarce.

In addition to its relative level, the following factors determine the “bite” of a minimum wage: (a) the levels of enforcement, which are highly unequal, with low levels of compliance among smaller, informal enterprises; (b) the extent of legal coverage, which varies significantly across space, sector, size of establishment and type of employment contract; and (c) the potential offsets to the minimum through the reduction of other costs. Firms facing a minimum wage may, for example, reduce the fringe benefits and/or training they offer workers (Freeman 1994:12). In general, an important determinant of compliance with a minimum wage is the cost involved. The bite of a minimum wage would therefore be reduced appreciably in situations where the costs of compliance are high and the probability of detection and the penalties associated with noncompliance are low.

Provisions governing exemption may also significantly shape the coverage of minimum wages. In terms of section 50 of the Basic Conditions of Employment Act, any employer may apply for a determination by the Minister to replace or exclude certain basic conditions of employment provided for in the Act, in respect of any category of employee. In the 2003/4 period, 1 801 applications were received, of which 297 (16%) were granted, 1 464 (81%) were not finalised, and eight were refused (Godfrey, Maree & Theron 2005:61). According to the Department of Labour, there are a large number of pending applications related to exemptions from SD 8. There were 1 151 applications received during this period, of which 767 (67%) were granted. The vast majority of the applications were in respect of wages, but a significant number of applications (15%) were also in respect of restrictions on deductions from wages (Godfrey et al. 2005:61). A complex set of exceptions unnecessarily complicates the application and enforcement of minimum wages. The social objective of establishing a floor for the pay of all workers, according to Simpson (1999:10), is “most likely to be achieved by a [minimum wage] regime which combines simplicity with universality”. Given the sheer scale of deprivation that its relatively modest provisions attempt to address, exemptions from SD 8 should be limited to exceptional cases. As Sachdev and Wilkinson (1998:39-40) point out, any exemptions which mean that workers can be employed at wages below the legal minimum risk undermining its integrity and effectiveness by providing opportunities for substituting cheaper labour for workers who are legally protected. Even attempts to meet other policy objectives – such as small firm development – by allowing for exemptions to a minimum wage can become counterproductive in the long term. Low pay and the associated high rates of labour turnover are a major obstacle to effective training, increased productivity, product innovation and the like.

The inspectorate of the Department of Labour is responsible for the enforcement of all determinations issued in terms of the Basic Conditions of Employment Act. Effective enforcement is vitally dependent on adequate staff and sufficient resources. The Department of Labour employs 706 inspectors to monitor and enforce compliance with the provisions of labour legislation, only 64 of whom are responsible for the Eastern Cape. According to the Department, the inspectors carried out 184 070 inspections in the period April to December 2004. Extrapolating from these data, Godfrey et al. (2005) postulate that
245 000 inspections take place per year, with each inspector doing on average about 347 inspections annually. According to these authors, the Department of Labour estimates that just over one million employers are covered by the various sectoral determinations. It must be concluded that a relatively small proportion of all the employers covered are ever inspected. Agriculture, in particular, scores very low in terms of the number of inspections carried out in each economic sector. Most of the problems regarding wages and deductions experienced by farm workers are now regulated through legislation, a fact which highlights the lack of implementation and enforcement in agriculture. In addition, low levels of compliance tend to undermine the social values and legitimacy of labour law among farm workers.

Like the Labour Relations Act, the Basic Conditions of Employment Act has decriminalised noncompliance. In an attempt to address the shortcomings of criminal proceedings, the Basic Conditions of Employment Act introduced a new enforcement procedure (see Figure 1). This procedure is elaborate, time consuming and relies heavily on the labour inspectors.
Godfrey et al. (2005) note that there is no reliable information on the levels of compliance with sectoral determinations. They do suggest that it is probable that there are low levels of compliance owing to the limited enforcement capacity of the Department of Labour. In fact, the Employment Conditions Commission noted that the conventional mechanisms in labour legislation to enforce minimum conditions were very difficult to apply (Department of Labour 2001). Hence, it called for consideration to be given to other initiatives to assist in implementation, such as rewards to farmers, industry agreements and voluntary codes of conduct. In practice, however, a reliance on voluntary cooperation or “soft” law as an excuse or justification for not providing binding sanctions in the case of non-compliance ... is at best naive and at worst abject surrender to those whose only motive is profit ... [in attempts] to achieve change by cooperation of management, workers and their representatives, and state regulators ... soft law can express flexible standards. However, the success of such approaches requires long-term commitment, adequate resources and ultimate sanctions. While such an approach may work well where there are common interests ..., it is unlikely to be appropriate in cases of conflict of interests (Hepple 2002: 256-7).

The inadequacies in enforcement suggest a likelihood of low levels of compliance. To some extent, this is contradicted by the low number of compliance orders issued by inspectors in 2003 and 2004, which tends to make a case for a high level of compliance. However, the low number of compliance orders is more likely to be the result of a relatively low number of inspections compared with the number of employers covered by sectoral determinations. A total of 2 008 compliance orders were issued by the inspectors in 2003; the number was 2 241 in 2004. The Department of Labour was not able to provide data regarding the number of objections to the above orders that were lodged by employers, but in 2004 the Director-General brought 447 applications to have compliance orders made an order of the Labour Court. The Department maintains that during 2004 it achieved a compliance level of 79% of cases within 60 days of their being reported (Godfrey et al. 2005). Since more employees are covered by sectoral determinations than by bargaining councils (see Table 3), Godfrey et al. (2005) rightly conclude that much more research needs to be done on the coverage and impact of these measures.

<table>
<thead>
<tr>
<th>Sectoral determination</th>
<th>Number of employers</th>
<th>Number of employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>65 000</td>
<td>850 000</td>
</tr>
<tr>
<td>Domestic</td>
<td>850 000</td>
<td>1 000 000</td>
</tr>
<tr>
<td>Private security</td>
<td>15 000</td>
<td>175 000</td>
</tr>
<tr>
<td>Contract cleaning</td>
<td>10 000</td>
<td>65 000</td>
</tr>
<tr>
<td>Civil engineering</td>
<td>1 500</td>
<td>147 913</td>
</tr>
<tr>
<td>Learnerships</td>
<td></td>
<td>86 205</td>
</tr>
<tr>
<td>Wholesale and retail</td>
<td>65 000</td>
<td>979 608</td>
</tr>
<tr>
<td>Taxi</td>
<td></td>
<td>130 000</td>
</tr>
<tr>
<td>Children in performance activities</td>
<td></td>
<td>12 000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1 006 500</strong></td>
<td><strong>3 445 726</strong></td>
</tr>
</tbody>
</table>

(Source: Godfrey et al. 2005: 59).

There is a widespread assumption that a minimum wage is administratively simple: compliance is easy to determine, it is self-enforcing in that workers who are paid less than the minimum can report violations, and it is easily targeted since it directly affects only low-wage workers in the designated sectors and areas. In practice, however, the low paid are
invariably also the most vulnerable workers and compliance with statutory minimum wages in certain sectors and/or regions is patchy at best. In the light of problems associated with the enforcement of statutory minimum wages, labour inspection becomes a key supportive mechanism. In the National Minimum Wage Act that was passed in England in 1997, criminal sanctions underpin both the obligation to pay workers at the stipulated rate and the related administrative obligations together with the inspectors’ powers to enforce them. While the Act makes no provision for any collective dimension, it does provide for administrative inspection and enforcement, and individual workers are granted enforcement rights that contribute to the stated goal of the minimum wage as a “self-enforcing” right (Simpson 1999:20).

In England, the mechanisms for directly enforcing the right to be paid the minimum wage are bolstered by a procedural provision that reverses the burden of proof. Since the employer is in possession of all the relevant information, he or she has to show whether the worker qualified for the minimum wage and the amount the worker was paid. All workers who are entitled to the minimum wage are granted a contractual right to the difference between actual remuneration received and their minimum wage entitlement. Enforcement is likely to take place in the ordinary civil courts given the six-year limitation period applicable to contract claims. All eligible workers are also entitled to a minimum wage statement each time they are paid and are given a right not to suffer detriment by way of acts or omissions by their employer on the ground that the worker had taken action to enforce his/her right to the minimum wage (Simpson 1999:20-4).

These rights recognise the fact that many low-paid workers either feel vulnerable to reprisals from their employers, should they seek to enforce their rights, or lack the advice and support necessary for the initiation of legal proceedings to enforce them (Simpson 2004:35-9). The Basic Conditions of Employment Act revised the victimisation provision of the old Act to a discrimination provision enforceable through mediation and arbitration proceedings under the auspices of the Commission for Conciliation, Mediation and Arbitration. In terms of the Act, no person may discriminate against an employee for exercising a right conferred by the Act. Nor may any person favour, or promise to favour, an employee in exchange for not exercising such a right. However, social and labour rights have to be translated into enforceable rights if they are to be instruments of effective labour market reform. Given the limitations of inspections and enforcement in South Africa, workers who are covered by sectoral determinations would benefit greatly from a speedy and administratively simple statutory remedy explicitly designed to make the minimum wage a self-enforcing right.

5 Implementation of the sectoral determination for agriculture in the Eastern Cape

5.1 Wage levels in the agricultural sector

Wages in rural areas are generally low and this plays an important role in rural poverty. While the real average hourly wages in agriculture increased from R2.49 in 1995 to R3.92 in 1999, these rates are considerably lower than the average hourly wages of R11.98 in 1995 and R14.89 in 1999 in the non-agricultural sectors (Statistics South Africa 2002:162). The types of businesses renowned for low pay, low trade union density and the absence of collective bargaining constitute a significant proportion of economic activity in the rural areas. According to the Labour Market Review, only 69 000 workers in agriculture, hunting, forestry and fishing are members of a trade union, while the overwhelming majority (795 000) do not belong to a union (Department of Labour 2004:7). Rural labour markets
are also characterised by a host of factors – such as limited job choice, few training opportunities, poor public transport and difficulties in accessing affordable housing – that restrict job mobility and grant rural employers greater discretion over wage setting. According to the competitive model of orthodox economics, statutory minimum wages will price less productive rural workers out of the job market (Lotriet 1999). However, since labour markets are imperfect, the link between wages and labour productivity is complex and dynamic. In particular, employers have some power over wage levels where employees are less than perfectly mobile or where jobs differ in their non-wage characteristics (Sachdev & Wilkinson, 1998; Defraja 1999). Even so, the higher the proportion of earnings below the minimum in any occupation and the more heavily such earnings are concentrated in the lowest occupations, as they tend to be in much of the agricultural sector, the greater the direct labour cost effect of a minimum wage. While a minimum wage will raise labour costs, its impact on employment levels cannot be determined, with any precision, in isolation from broader changes in product and labour market conditions.

While the statistics may be unreliable in detail, it is safe to say that earnings in agriculture are generally extremely low. This generalisation holds true despite sectoral differences – between the low paying maize sector and the higher paying fruit sector – and despite variations according to farm size. For black farm workers, 67% of men and 92% of women earned less than R250 (including payments in kind) a month in 1991 (FRRP 1996). Average wages for permanent black workers were R248.45 per month in 1992, while the average annual income for casual/seasonal black workers was R722.06 in the same year. The October Household Survey in 1993 found that 73% of the regular, formal sector agricultural workforce earned less than R590 per month (expressed in 1995 prices). The gross monthly cash wages of the median male worker, expressed in 1995 prices, were just R303, while women received just R223 per month. Furthermore, 20 000 farm workers received no cash payment at all (Labour Market Commission, 1996). In 1994, black men earned an average of R461.62 per month and black women an average of R345.75 per month. Aggregation, however, hides important variations in the wages of different categories of farm workers. As Table 4 indicates, white, organised and urban agricultural workers earn considerably higher hourly wages than their black, unorganised and rural counterparts.

<table>
<thead>
<tr>
<th>Category of employee</th>
<th>Mean hourly wages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skilled</td>
<td>R3.95</td>
</tr>
<tr>
<td>Unskilled</td>
<td>R2.54</td>
</tr>
<tr>
<td>Male</td>
<td>R3.85</td>
</tr>
<tr>
<td>Female</td>
<td>R2.85</td>
</tr>
<tr>
<td>Black</td>
<td>R3.94</td>
</tr>
<tr>
<td>White</td>
<td>R17.48</td>
</tr>
<tr>
<td>15-30 years</td>
<td>R2.94</td>
</tr>
<tr>
<td>31+ years</td>
<td>R3.93</td>
</tr>
<tr>
<td>Non-unionised</td>
<td>R3.18</td>
</tr>
<tr>
<td>Unionised</td>
<td>R6.76</td>
</tr>
<tr>
<td>Urban</td>
<td>R7.80</td>
</tr>
<tr>
<td>Rural</td>
<td>R2.83</td>
</tr>
</tbody>
</table>

(Source: Statistics South Africa and Department of Labour 2000).
Most farm workers in South Africa live in conditions of absolute and relative poverty. Labour laws passed since 1994 appear to have had little tangible impact on the agricultural sector. A report by the Employment Conditions Commission in 2001 on minimum wages for farm workers found that the average farm worker earns R544 per month. It also found that farm workers generally do not receive any compensation for working overtime; some do not get annual leave; there is widespread employment of children of 14 years and younger; pregnant female workers do not get paid maternity leave since few are members of the Unemployment Insurance Fund; only one in four children on commercial farms has a secure source of food, and almost a third are at risk of hunger; farm workers have the lowest rates of literacy in the country; there are stark gender differences in the allocation of employment benefits; and there is a cycle of debt, together with high interest rates, either to farm shops or directly to the farmer (Department of Labour 2001).

Many farm workers also receive payment in kind, and some get limited grazing rights, both of which are not always easy to measure in monetary terms. Permanent black workers received just over 30.5% of their wages in kind in 1992. Casual/seasonal workers received a slightly lower proportion of their wages in kind than permanent workers. In 1994, both black and coloured female farm workers received virtually their entire wages in cash. Black male workers received only 3% of their wages in kind, while coloured men received a significant, though declining, portion of their wages in kind, at around 14% (FRRP 1996). Payment in kind is often a valuable resource for workers. For instance, a guaranteed bag of maize provides an inflation-proof form of income and on-premises accommodation may be useful, given the country’s housing shortage. However, payment in kind tends to perpetuate paternalistic relations and binds the employee to the employer. The loss of a job, for example, frequently means the loss of accommodation too. There is strong support for the gradual phasing out of payments in kind in favour of relationships based solely on monetary remuneration (Labour Market Commission 1996). A distinction should, however, be made between less problematic aspects such as a worker receiving some rations (often a part of the farm’s produce), and items such as housing and access to land, where broader structural solutions need to be found.

5.2 The sectoral determination and labour relations

The introduction of SD 8 brought some improvement in working conditions and wages for some farm workers. While wages did increase, there was still widespread noncompliance with the wage rates set in SD 8. The research shows that SD 8 was not being complied with in its entirety. Farmers disregarded important provisions of the determination, such as the issuing of proper payslips to workers, payment for overtime and Sunday or public holiday work, and deductions from wages. The level of compliance varied between and within farms in relation to the type of work, subsectors, gender, type of employment relationship (ie permanent, seasonal or temporary), and the geographical area. The lack of complete compliance with minimum wage stipulations is not unique to South Africa or to the agricultural sector. It is an issue that has dogged other countries and other economic sectors (Starr 1981; Saget 2001). This lack of full compliance with SD 8 is attributable to a number of interrelated factors. These include the paternalistic relationship between farmers and workers, the lack of a history of institutionalised labour relations in the agricultural sector, the dependence of farm workers on farmers for a job as well as for other services, and the absence of consistent labour inspections and law enforcement on commercial farms.

Inadequate levels of inspection and ineffective monitoring mechanisms, resulting in widespread transgression of the provisions of SD 8, were a common theme in the
responses of the workers that were interviewed. On the one hand, poor enforcement by the Department of Labour resulted in farm workers losing faith in the ability of the Department and other organs of state to address their grievances. On the other hand, farmers were encouraged to disregard the rights of their employees, knowing that the chances of being reported and sanctioned were generally extremely low.

In 2005, the Employment Conditions Commission conducted public hearings around the country to obtain input from different stakeholders on SD 8. The testimony given at these hearings underscored the conflicting interests of farmers and farm workers. While farmers and their organisations focused on wages and issues linked to the actual policy and provisions of SD 8; the main issues and concerns raised by farm workers were around inadequate enforcement and compliance, and poor labour relations. Testimonies from farm workers revealed that a lot still needed to be done to improve living and working conditions on farms. When considering levels of compliance, the hostility of farmers towards the new labour dispensation cannot be overlooked. Farm workers and councillors at the Fort Brown public hearing testified that farmers still tell them to “go to Mandela or Mbeki” when they approach them to implement labour and social rights. The interviews with workers confirmed this testimony: “[t]he farmer told us if we want change, we must talk to Thabo Mbeki” (farm worker, November 2004). These attitudes among farmers contribute to the politicisation of labour and tenure law enforcement on commercial farms and reinforce the need for parallel statutory remedies for workers. Selective and incomplete compliance with SD 8 has had adverse effects on the already strained relationship between workers and farmers on most farms. Consultative and cooperative relationships between the parties remain the exception to the rule.

When the sectoral determination was introduced, many farm workers were of the view that the relationship with their employer had deteriorated. During group interviews, workers testified to the adverse changes in the employment relationship as a direct result of SD 8. For example: “[the farmer] says: ‘your government says you must get more money, but you do not want to work’” (farm worker, November 2004). Another worker noted that “the work is more intense as the farmers are arguing that they give us more money” (farm worker, November 2004). Not only has the work intensified, but the workers are also expected to work longer hours. As one of the respondents put it: “we are supposed to knock off at five o’clock, [but whenever] there is a load that needs to go out, then we would go home at about six o’clock ... We do not get paid for working that overtime” (farm worker, November 2004). The pressure on farmers to intensify work and extend working hours stems largely from the conjunction of increasingly deregulated product markets and increasingly regulated labour markets.

5.3 The Impact of the sectoral determination on farm workers’ wages

Although compliance with the minimum wage rate is not a generalised phenomenon across the agricultural sector, there has been a higher level of compliance with this aspect of SD 8 than with other provisions. The research shows that prior to the introduction of SD 8, wages in the agricultural sector in the Eastern Cape were considerably lower than the national average. Figure 2 tracks changes in farm workers’ wages before the minimum wage came into effect in March 2003, after it was implemented in March 2003, and after the first increase in March 2004.
Figure 2
Changes in farm workers' wages

* "Other" refers to workers who are paid on an hourly or daily basis, as well as to workers who were employed after March 2003.

Almost 27% of the workers in the sample earned less than R400 a month before the minimum wage was introduced. This figure declined to about 10% after the minimum wage was introduced in 2003. Almost 60% of the workers interviewed earned less than R600 per month before the introduction of the minimum wage. The number of workers earning R650 and above increased from 17.5% before March 2003 to 52.6% after March 2003. The number of workers earning R800 and above increased from only 5.9% before March 2003 to 22.1% after March 2003. The minimum wage has therefore led to a significant rise in gross monthly wages. This aggregation, however, hides important variations in subsectoral wage levels. Table 5 indicates the (often significant) variation in wage rates across four subsectors.

Table 5
Farm workers' wages before and after the sectoral determination in selected subsectors in the Eastern Cape

<table>
<thead>
<tr>
<th></th>
<th>DAIRY (Number of workers)</th>
<th>GAME (Number of workers)</th>
<th>PINEAPPLE (Number of workers)</th>
<th>MOHAIR (Number of Workers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than R400</td>
<td>25</td>
<td>13</td>
<td>19</td>
<td>9</td>
</tr>
<tr>
<td>R400 – 600</td>
<td>30</td>
<td>16</td>
<td>17</td>
<td>7</td>
</tr>
<tr>
<td>R601 – 640</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>R650</td>
<td>6</td>
<td>15</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>R651 – 799</td>
<td>9</td>
<td>13</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>R800</td>
<td>9</td>
<td>12</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>R801 – 1000</td>
<td>5</td>
<td>14</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>More than R1000</td>
<td>4</td>
<td>6</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Not sure</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Not applicable*</td>
<td>24</td>
<td>18</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td>Totals</td>
<td>113</td>
<td>111</td>
<td>66</td>
<td>66</td>
</tr>
</tbody>
</table>

* Refers to workers who commenced employment after the periods indicated above.
Those who earned less than R400 per month before the introduction of the minimum wage were largely concentrated in the pineapple and mohair subsectors. The number of workers in these two subsectors who earned between R850 and R799 per month rose to 42 for the pineapple sector and 25 for mohair. Prior to the introduction of the minimum wage, just four workers on the pineapples farms and seven workers in mohair were in this wage category. Despite being the most labour-intensive, the pineapple sector has undergone the most changes in that this subsector had the smallest number of workers who earned less than R400 a month after March 2003. No worker in the mohair subsector earned more than R1,000 per month, while only one worker in the pineapple subsector earned that amount. The higher paying subsectors were dairy and game farms. Wage increases came into effect only after the introduction of a minimum wage. The dairy subsector saw an increase in the number of workers who were paid between R801 and R1,000 per month and those who earned more than R1,000 per month. In game farming, there was a reduction in the number of workers who earned between R801 and R1,000 per month, while the number of workers who earned more than R1,000 per month increased after the introduction of the minimum wage. Significantly, 28.7% of the monthly paid workers in all four sectors were still earning below the minimum wage rates even for Area B after March 2003.

5.4 **Wages for Area A and Area B**

The research shows that there are higher levels of compliance in Area B than in Area A. One reason for this may be that the minimum wage rate for Area B is lower. In addition, the research reveals that many farmers in Area A were paying the wage rate for Area B. The figure below compares wages in Area A with those in Area B before and after the determination was introduced.

![Figure 3](image)

**Figure 3**

Wages in Area A and Area B before and after the sectoral determination in 2003

Improvements in wages are noticeable in both areas. In particular, the number of workers earning below R400 has decreased drastically—from 34% to 12.2% in Area A, and from 19.7% to 7.3% in area B. A major difference between the two areas lies in the changes within the category of workers earning R800 and above. In Area A, this changed from 8.2% before March 2003 to 31% after March 2003 as R800 became the minimum wage for Area A. The number of workers earning R800 and above increased from 7.6% before March
2003 to 14.1% after March 2003 in Area B. While the difference between the number of workers earning more than R800 in both areas was insignificant before March 2003, the introduction of the minimum wage widened the gap in this wage category between areas A and B. The most significant change in Area B was within the category of workers earning R650, which was the minimum wage in 2003. This changed from 2.5% before the minimum wage was introduced to 18.8% after its introduction in March 2003; while in Area A the number of workers earning R650 increased from 0.3% before the minimum to 13.6% after the introduction of the minimum wage. The 13.3% increase within this category in Area A shows that some farmers in this Area chose to "comply" with Area B rates.

Compliance rates for Area A in 2003, in terms of gross minimum wages, were therefore lower than those for Area B. In Area B, 46.9% of workers received the minimum wage (R650) and above after March 2003, while in Area A only 31% received the minimum wage (R800) and above in the same period. There was widespread noncompliance with SD 8 and the minimum wage rate in its first year. A second round of interviews with 465 workers revealed that levels of compliance improved after the minimum wage was increased in March 2004. In Area A, 60% of the sample received the stipulated minimum wage of R871.58 and above; while in Area B 71% of the sample received the minimum wage of R713.65 and above. During the second round, some farmers in Area A started paying the relevant minimum wage instead of paying Area B rates. A calculation of average wages reveals that full-time workers earned R528.32 per month before March 2003, R582.86 after March 2003 and R741.13 after March 2004.

The two-tier wage system, as it relates to the wage demarcation based on geographical area, was criticised by both farmers and farm workers. Workers in Area B were understandably dissatisfied about being paid at a lower rate than workers in Area A. Farm workers objected to the two-tier system on the grounds that they have to pay the same prices for consumer goods as their counterparts in Area A. At the public hearings on SD 8 in the Eastern Cape in 2005, farmers raised concerns about the differences in the economic performance of the various subsectors. A fundamental weakness of the two-tier system is that it is far too narrow and does not take into account the depth of variation within the agricultural sector. Framing the distinction between Area A and Area B in terms of household income does not tell us anything about the farmers’ ability to pay. When one looks at wages that were paid before SD 8 was introduced, the logic behind the two-tier wage system begins to break down. There is nothing to suggest that wages in areas classified as A were higher than those classified as B. The rationale of the two-tier system can be further questioned in the light of the fact that a number of farm workers in Area B are being paid more than the minimum wage set for Area A. The research shows that 16% of workers in Area B earned over R1 000 in 2004, while only nine per cent in Area A earned more than this figure.

Analysis has shown that wage differentials between farms are often more the result of the nature of the production process than of any other factor (Labour Market Commission, 1996). The sectoral configuration of agriculture has a profound impact on factors like farm size, rate of return on investment, levels of capitalisation and employment, the nature and intensity of work, and the composition and skills of the workforce. Each subsector within agriculture faces largely distinct constraints and opportunities for growth. Hence, there are varying degrees of profitability and product market stability across the various subsectors. Moreover, while there may be a dominant form of farming in a particular geographical locality or magisterial district, most areas in the Eastern Cape are not restricted to a single type of farming. Despite some regional differences, the same subsectors are found in Area A and Area B. For example, in both areas of the sample dairy farms exist alongside game
farms, vegetable farms, fruit farms, and livestock farms. The present minimum wage system is therefore not sensitive to the fact that large, profitable enterprises such as game farms coexist with small livestock or vegetable farms that survive on small profit margins. In a submission made before the introduction of the minimum wage, the South African Agriculture, Plantation and Allied Workers Union recognised that minima would need to be varied by subsector (Klerck & Naidoo 2003).

The Department of Labour was of the view that it is not possible to develop a minimum wage system according to commodity markets. According to officials in the Department, the difficulties of administering such a system are compounded by subsectors that have mixed farming. Instead, the Department of Labour was considering a uniform wage system that does away with the current two-tier system. The distinction between Area A and Area B will be eliminated from 1 March 2008 and all farms, irrespective of their locality, will be governed by a single wage system. The wage rate for all areas will be that of Area A. While a single wage system will eliminate wage differentials based on municipal boundaries, it will ride roughshod over significant variations in productivity and cost structures in the various agricultural subsectors.

Workers are divided about the single wage system. Workers in Area B prefer a single wage system, while those employed on farms in Area A question the fairness of this system in the light of variations in labour processes within and between farms and subsectors. As a worker at the public hearing put it: "[i]s it fair to have a single wage when workers are employed at different levels with different workloads? The problem with the single wage system is that it does not take into account that some people work longer hours than others and some people have heavier workloads than others" (farm worker, April 2005). This view is mirrored in the following: "There are different types of farms. A person on a beef farm does not work the same as a person on a dairy farm. The one on the dairy farm works harder than the one on the beef farm" (farm worker, April 2005). The single wage system for agriculture proposed by the Department of Labour does not cater for differences in workload, working hours and so forth. However, it will reduce the significant discrepancies between the wages of different categories of farm workers and reduce opportunities for noncompliance.

The setting of minimum wages requires more debate on and investigation into alternative forms of wage determination (Le Roux, 2002). As noted above, both a differentiated and a uniform system of minimum wages have inherent shortcomings. A system differentiated in terms of geographical area or subsector will complicate enforcement, reinforce the significant variation in wage rates across the agricultural sector and lead to dissatisfaction among workers in the lower paying sectors. Conversely, while a single minimum wage system will simplify enforcement and achieve universality, it disregards variations in geographical standards of living and subsectoral performance. As such, both systems are likely to generate distinct sets of winners and losers. Further research is required to develop a viable alternative that addresses these implications of a minimum wage.

5.5 Gender and the sectoral determination

The changes induced by SD 8, particularly in wages, have not been uniform with respect to gender. While all workers in the agricultural sector can generally be regarded as vulnerable, the marginalisation of women in this sector is particularly stark. For example, the highest paid farm workers from the survey are male workers, in core occupations, who earned between R1 300 and R1 600 per month. The highest paid female workers were concentrated in peripheral occupations and earned between R800 and R1 000 per month.
Substantial wages differentials based on gender are common across all agricultural subsectors. Farmers justified these discrepancies in terms of the different roles and responsibilities of male and female workers. However, the gender-based division of labour is not the only factor that determines the low pay for female workers. For instance, in the dairy subsector, both men and women are involved in the milking process. Yet the monthly wages of females (+/-R600) are far lower than those of males (R1 000 and above).

![Chart showing wages distribution](image)

**Figure 4**  
Male and female wages before and after the sectoral determination in 2003

The figure above reveals a significant increase in the wages of women. However, the gender disparity with respect to wages has remained largely unchanged. Before March 2003, 39.6% of women received a salary below R400 a month. This figure declined to 20% after March 2003. Only three per cent of women earned R800 and above before March 2003. This improved to 10.7% after March 2003. These figures are in stark contrast to the changes witnessed in men’s wages. Before March 2003, 18.5% of men earned less than R400. After March 2003, this figure was reduced to just over three per cent. The number of male workers earning above R800 increased from 10% to 29.6% over the same period. Just over 57% of women did not receive the minimum wage in 2003. In 2004, 42% of women workers still earned below the minimum wage rate. Most of the noncompliance was in Area A where, in 2003, noncompliance in respect of women’s gross monthly wages stood at 88%. In the 2004 sample, non-compliance in Area A dropped to 46%. In Area B, 69% and 36% of female workers did not receive the minimum wage in 2003 and 2004, respectively.

Employees who are paid on daily or hourly rates tend to be mainly women who are employed to perform jobs that are seasonal in nature. The subsectors that make the most use of female seasonal labour are crop farms, where females are employed during the planting and ploughing season, and angora goat farms, where they are employed to sort wool twice a year. The introduction of SD 8 has led to more women being paid per hour worked or on a daily basis. For some of these women, SD 8 has had a negative impact.
The scrapping of piece-rates by SD 8 has resulted in their being underemployed: “In the past, piece jobs were easier and more frequent. Now they are quite rare” (female farm worker, September 2004). For example: a farmer in Area B employed about 14 female seasonal workers on the chicory fields three times a year, with each “season” lasting approximately three weeks. These workers were paid piece-rates. The farmer was fully aware that this constituted a violation of SD 8. However, some female seasonal workers were able to make more than R40 a day on piece-rates, which amounted to more than they would get in terms of the hourly rates set for Area B. Consequently, the hourly rate in SD 8 would be unfair to more productive workers since they would receive lower wages if they were paid at this rate as opposed to a piece-rate.

There is a significant difference between workers who are paid on a monthly basis (predominantly male) and those who receive an hourly or daily rate (predominantly female) in terms of job security and employment benefits. Of the 23 workers from the survey who were paid hourly or daily rates, only three received payslips, only two were registered with the Unemployment Insurance Fund, and none of them was a member of a provident fund. Despite labour legislation and policies that promote gender equity in the workplace, female workers in agriculture continue to be discriminated against.

5.6 Deductions

As noted above, SD 8 allows farmers to make a deduction of 10% from workers’ wages for accommodation, provided that the housing meets certain requirements. From the research findings, it is clear that farm workers live under extremely poor conditions. Of the total number of workers interviewed, almost 50% have no toilets, 48% have no electricity and 33% have no access to clean and reliable sources of water.

Only 11% of the workers in the sample had accommodation that met the requirements for lawful deductions (presuming the houses are at least 30 m² in size). Deductions of more than 10% were made from the wages of 34% of the respondents for accommodation. Of these, only nine per cent have electricity, water, toilets and a window that can open. Farmers were deducting between 11 and 29 per cent from workers’ wages for accommodation. The guidelines on deductions for accommodation in SD 8 have therefore not discouraged farmers from making other (unlawful) deductions from workers’ wages. In addition, 75% of workers interviewed did not have a contract of employment and 33% did not receive payslips. Even those who received payslips complained about incomplete information on deductions. In the absence of employment contracts and detailed payslips, it is exceedingly difficult for workers to monitor and enforce the provisions on lawful deductions.

At the public hearing on SD 8 held in the Eastern Cape in April 2005, officials from the Employment Conditions Commission noted that unlawful deductions for accommodation are a widespread practice. In line with the research findings, the Commission noted that farmers were making 10% deductions where houses do not meet the required standards. Farmers were also deducting 10% from each family member sharing a house. Workers at the public hearing pointed out that farmers were making deductions for electricity, water and so on per person sharing a house. According to the Department of Labour, farmers are proposing that 30% of workers’ wages be deducted for accommodation. The research identified four categories of deductions: (a) deductions, ranging from R30 to R100 per month, were made for electricity; (b) 10% deductions were made for firewood and water; (c) deductions of between R10 and R50 per head were made for grazing livestock; and (d) 10% deductions were made for accommodation in cases where workers use pre-paid electricity. What constituted a lawful deduction in terms of SD 8 became a contentious
issue. The determination provided that farmers may make deductions for electricity, water or other services if they have not already made a deduction for accommodation. This not only unnecessarily complicates enforcement, but also raises questions about the fairness of deductions for water collected from a dam and for wood that has little or no monetary value.

6 Conclusion

Low levels of compliance with the minimum wage are in large measure a product of poor enforcement by the labour inspectorate, a convoluted enforcement procedure and a lack of organisation among farm workers. Nevertheless, SD 8 has brought about some positive changes with respect to wage levels in the agricultural sector. Permanent, male farm workers in “core” occupations have generally experienced an increase in their wages. Female, casual and seasonal workers, however, continue to constitute a “peripheral” workforce with little job security, few prospects of promotion or training, and generally poor terms and conditions of employment. The absence of collective bargaining, combined with unilateral management styles and an increasing bifurcation of the workforce, has allowed farmers to offset any rise in wage costs through a process of work intensification, “flexible” employment policies, selective compliance, adjusting non-wage variables such as hours of work or fringe benefits and increased deductions for rent and amenities. Edwards and Gilman (1999) argue that, since wages are set “within a range of indeterminacy”, particularly in low paying sectors of the economy (such as agriculture) where pay arrangements are typically informal and the management prerogative is more significant, firms have considerable scope to adjust to the statutory minimum wage, without it necessarily coming as a regulatory “shock”. One would therefore expect that minimum wages in agriculture would not so much challenge existing employment arrangements and practices as reinforce them.

Unless it is effectively underpinned by policies aimed at expanding collective bargaining, strengthening the unions and eliminating discrimination, the impact of a minimum wage will be limited. As Bain (1999:22) notes, a minimum wage “is a wage floor not a wage policy. It can and should be built on.” A minimum wage can never be the sole policy to eradicate poverty linked with low pay. Minimum wages are simply one, relatively modest, instrument in any comprehensive multi-pronged attack on poverty. The aim of setting minima should be to prevent extremes of exploitation and to assist workers who may otherwise be at the mercy of their employer. Concentrating purely on the wage levels of farm workers, however, will not automatically address their poor living conditions. The farmers' control over both the employment and living conditions of farm workers permeates all aspects of their employment relationship. The plight of farm workers is not rooted exclusively in their employment conditions, but also stems from their want of tenure security, their position at the fringes of national priorities, and the chronic lack of adequate infrastructure and services in the rural areas. This raises questions about the ability of the minimum wage to enable farm workers to access proper housing and improve their standards of living. For sectoral determinations to work effectively in addressing the living conditions of farm workers, they have to be linked to a broader agrarian transformation strategy. The failure to develop a synergy between the minimum wage and other socioeconomic rights has resulted in very few fundamental changes being made to the standards of living for farm workers.
List of references


