UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

NATIONAL MINIMUM WAGE RESEARCH INITIATIVE

CSID – School of Economic and Business Sciences

POLICY BRIEF #3

EXCLUSIONS AND EXEMPTIONS FROM A NATIONAL MINIMUM WAGE SYSTEM

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This Policy Brief addresses the question of possible exclusions and exemptions from a potential national minimum wage (NMW) in South Africa. It distinguishes between exclusions and exemptions; explains existing relevant procedures in South Africa; summarises and evaluates major international approaches; and provides policy options for South Africa.

Summary of Findings:

- Exemptions and exclusions reflect the economic, financial, and developmental context of each country, and therefore vary across the world. Exemptions and exclusions can play an important role within a national minimum wage policy but are also open to abuse and could defeat the purpose of the national minimum wage.
- A single statutory minimum wage covering all workers ensures maximum possible coverage and is a key element of a successful national minimum wage. However, in countries with high inequality, attempting to set a national minimum wage low enough to cover every worker also undermines the goals of a national minimum wage.
- If it is not possible to introduce a single national minimum wage at the outset, low-wage and/or labour-intensive sectors should not be completely excluded. Doing so would undermine the national minimum wage, and lead to the widening of wage gaps and inadequate social protection for workers.
- In such cases, as an interim measure, a "tiered" system could be introduced allowing for minimum wages in certain sectors to be a proportion (e.g. 80%) of the overall national minimum wage. These tiers should be gradually phased out over time.
- A tiered system should not seek to set multiple minimum wages within a particular sector using occupational or other criteria. This should rather occur through collective bargaining.
- The Employment Equity Act forbids setting lower minimum wages for young employees or employees with disabilities.
- There is no economic justification for excluding public service employees from the national minimum wage. However, participants of very low-wage public works schemes may need to be incorporated at a lower ratio of the national minimum wage.
- Business-specific exemptions, applied for on a case-by-case basis within tightly defined rules, allow the policy to be responsive to the circumstances of individual businesses.
- Simpler national minimum wage systems with few exemptions and exclusions (and potential loopholes) enjoy higher compliance rates. It is preferable to "design a simple system that is well understood by all, rather than trying to fully address the heterogeneous needs of the labour force" (Cunningham 2007).

About the NMW-RI

The National Minimum Wage Research Initiative is an independent academic research initiative run by CSID in the School of Economic and Business Sciences (SEBS) at the University of the Witwatersrand. It is undertaken in the context of a national dialogue on wage inequality and the potential institution of a national minimum wage (NMW) in South Africa.

The views presented are the views of the National Minimum Wage Research Initiative.

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DEFINITIONS

Exclusions and exemptions are two different ways of limiting the extent and scope of a minimum wage policy.

Exemptions allow specific employers to be released (or partly released) from the obligation to pay the minimum wage – for a set period of time.

Exclusions allow wages in certain sectors or industries, or for certain categories of workers to differ from the national minimum wage, either for a stipulated period of time or permanently. In certain instances "excluded sectors" are not excluded entirely but rather have a differentiated minimum wage pegged to a certain percentage of the national minimum wage as part of a tiered national minimum wage system.

Differentiating between exclusions and exemptions, while sometimes complex, is crucial. This is because they need to be handled differently in the legislation. Exclusions should be agreed to in advance and any sectoral or other exclusions should be codified within minimum wage legislation or regulations, including provision for their gradual phasing out if desired. Exemptions are undertaken on a case-by-case basis and therefore the procedure and criteria for such exemptions needs to be set out in the legislation.

"In order for the minimum wage to be an effective policy of social development, the number of exemptions and exclusions should be as few as possible (ILO, 2014)."

Internationally there are no specific rules determining who should be covered by minimum wages. However, the International Labour Organisation (ILO) states that the national minimum wage should be a social protection and poverty reduction mechanism (ILO Conventions No.131and No.135) and therefore highly recommends the ***widest possible coverage of a national minimum wage***. The ILO (2014) also warns that in order for the minimum wage to be an effective policy of social development, the number of exemptions and exclusions should be as few as possible.

Minimum wage systems can benefit from some exclusions and exemptions, particularly if they allow the national minimum wage to be set at a level high enough to cover workers' basic needs whilst allowing for carefully planned, and limited, differentiation between employees. However, some exclusions and exemptions are advanced on the basis of false and unproven assumptions and essentially constitute discrimination against certain workers. For instance, introducing a lower minimum wage for youth irrespective of youth experience and productivity is not substantiated by empirical evidence and equates to unfair discrimination (Schulten 2014).

"In the last years the world has seen a number of countries phasing out their exclusions and sub-minimum tiers completely and providing social protection to all workers."

Therefore, despite the many examples of exclusions listed in the following sections, universal coverage is preferable, as it allows for adequate social protection for all workers in the country. In recent years the world has seen a number of countries phasing out their exclusions and sub-minimum tiers completely and providing social protection to all workers, most recently the government of Chile that abolished sub-minimum wages for domestic workers over five years. However, attempting to avoid all exemptions and exceptions by introducing an extremely low minimum wage is a practice that undermines the goals of a national minimum wage. As stated by the ILO, the level of a national minimum wage should create a "decent wage floor", i.e. "the level of a minimum wage should be set high enough to be considered as decent but low enough to remain a wage floor" (ILO 2008).

THE INTERNATIONAL EXPERIENCE

The international experience regarding exclusions and exemptions varies greatly according to country-specific factors. There are however four main approaches:

1. **No exclusions**: a universal statutory minimum wage across all sectors, regions, and occupations.

2. **Exclusions or tiers** of sectors and categories of workers:
   a. Key sectors considered: agriculture workers, domestic workers, public service workers.
   b. Key categories of workers considered: elderly workers, intermittent workers, part-time workers and the self-employed, youth, workers with disabilities, trainee[1] participants of government employment/work/study schemes.
   c. Phasing-out exclusions.

3. **Exceptions for some employers** from the national minimum wage:
   a. Key employers considered: family businesses, small enterprises (exclusions or exemptions), charitable organisations.
   b. Other: given certain "special economic reasons" or exemptions on a case-by-case basis.

4. **A combination** of exclusions, exemptions, and differentiated minimum wages.

[1] See Policy Brief 4 in this series (Castel-Branco 2016) for a discussion of trainees and apprentices within a national minimum wage system.

A UNIVERSAL MINIMUM WAGE

According to the ILO Minimum Wage Systems Report (2014), the majority of countries with a national minimum wage policy design them without any exclusions For instance, just under a third of OECD countries –namely Slovenia, Ukraine, Albania, Armenia, Estonia, Slovakia, Russia, Poland and Serbia – each have a national minimum wage without any exclusions or exemptions. Some Sub-Saharan African countries like Benin and Gabon also have no exceptions to their respective national minimum wages.

"According to the ILO Minimum Wage Systems Report (2014), out of the countries with a national minimum wage policy, 61% design them without any exclusions."

A single national minimum wage is simple and easily understood, is more enforceable with higher levels of compliance (Rani 2013), truly serves as a floor for all workers, and can be set to take account of workers basic needs and the aggregate economic impact. However, universality should not be used as an excuse to create an ultra-low national minimum wage in order to fully include current low-wage sectors. The fact that wages and productivity in various sectors differ dramatically prompts some countries to either create tiers and sub-minimums of the national minimum wage, or set certain exclusions.

SOUTH AFRICAN EXEMPTION PRACTICES

In South Africa there are currently two mechanisms for setting minimum wages covering multiple employers in a sector or sub-sector: through the collective bargaining agreements of bargaining councils, or via ministerial and sectoral determinations (see Castel-Branco, 2015, Policy Brief 1 of this series for more information). Because minimum wages are currently specified by sector, the exclusion of particular sectors is not applicable and would only come into play on the institution of a national minimum wage – although 2.35 million workers are currently uncovered by any form of minimum wage determination (DPRU 2015). There are limited examples of bargaining council agreements excluding categories of businesses, for instance, certain sub-sectors, SMEs or new businesses defined according to the bargaining agreement. South Africa currently offers exemption procedures for individual businesses from both collective bargaining agreements and ministerial/sectoral determinations.

The legal grounds for minimum wage setting and all related procedures, including exemption mechanisms, can be found in the Labour Relations Act of 1995 (LRA) and the Basic Conditions of Employment Act of 1997 (BCEA), as amended.

The general exemption mechanism is as follows. In a case of "inability" to adhere to minimum wage regulations an employer must apply to the relevant body: the relevant bargaining council for collective bargaining agreements; or the Department of Labour for sectoral determinations. They then motivate their "inability" to pay the determined wage and provide supporting documentation. They are supposed to receive a response within 30 days of acceptance of the application: the exemption application can be granted in full or in part; more documents can be requested; or the application can be denied. In the latter case, the employer has the right to appeal. Exemptions can be requested with respect to the minimum wage, hours of work, or other conditions of employment. Exemptions granted by the Department of Labour last no more than one year. The duration of bargaining council exemptions are specified by each bargaining council.

With respect to exemptions from bargaining council agreements, the Labour Relations Act states that bargaining councils should be responsible for granting exemptions and establishing an independent appeal body. The Department of Labour should provide clear exemption policy guidelines for sectors under ministerial determinations (Godfrey et al. 2010). In reality, however, both the Department of Labour and bargaining councils have only very general criteria for exemptions and have no specific indicators or weights for each of the exemption criteria[2].

According to the research done by Godfrey et al. (2010), some bargaining councils have failed to establish independent exemption appeal boards, have not developed clear criteria for exemptions, or have not granted exemption appeal boards the required independence[3]. Their research also states that over 80% of exemption applications come from Small and Medium-Sized Enterprises. The success rate of exemption applications varies from year to year and sector to sector, but are quite high.

For instance, bargaining councils nationally received 7 373 exemption applications in 2003, of which 77% were granted, and 5 719 in 2004 of which 81% were granted (Godfrey et al 2010).

Similar procedures exist for sectoral determinations, outlining provisions, criteria and procedures required in terms of exemption applications. There is limited data on exemptions submitted and granted by the Department of Labour and the number of applications varies greatly by year. For instance in the first quarter of 2013 the Department received 918 exemption applications from farmers, affecting over 74 000 workers (Department of Labour 2013). A year later, the Department received only 192 applications in the agricultural sector for the whole 2014/15 year, of which 112 (58%) were granted. This spike in exemption applications in 2013 may be due to the significant increase (52%) in agricultural minimum wages following strikes in the sector.

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2 In certain bargaining council agreements some sub-categories of businesses are exempt by default. For instance, the Civil Engineering Bargaining Council agreement excludes some employers (defined as Grade 1-3 employers of CIDB) from wage determinations (Government Gazette No. 37749).

3 Given the time that has passed since Godfrey et al.'s (2010) research, the current situation regarding the independence of bargaining council exemption bodies might have improved.

Most of the applications were for wage exemptions, where a successful application would allow employers to pay the previous year's minimum wage for another year, while a few were asking for exemptions from other conditions of employment.

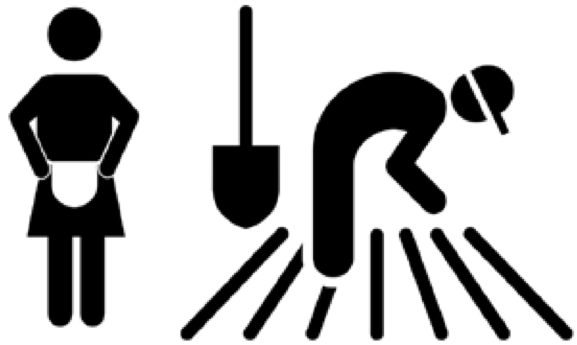
South Africa's current exemption practice has both advantages and disadvantages. On the one hand, the system gives bargaining councils autonomy to decide on exemption policies and applications, taking into account industry-specific factors. On the other hand, the criteria for exemption are vague; there is little transparency regarding why some exemptions are granted and not others; and public reporting on exemptions is poor. If the current South African exemption mechanism is to be scaled-up these concerns must be addressed. In particular legislation should clearly define: the criteria for exemptions; the body responsible for granting an exemption; the minimum levels of pay for exempt companies; and the duration of an exemption. The criteria should be tightly defined so that those qualifying must be able to prove genuinely exceptional circumstances. This is to avoid large scale exemptions that undermine the system. This must take place as part of a broader evaluation of monitoring and enforcement and the role of labour inspectors (see Murahwa, forthcoming).

INCLUDING SECTORS THROUGH TIERS, AND EXCLUSION OF CATEGORIES OF EMPLOYEES

As mentioned, exclusions refer to not extending the national minimum wage to certain sectors and/or groups of workers; creating a tiered system refers to setting different levels of a national minimum wage for certain sectors and/or groups of workers. It is important to note that a tiered system is different to a system of setting minimum wages sectorally or by region. Tiered systems are still national minimum wage systems that simply allow for more than one minimum wage determination. This provides the benefits of a national system while allowing some flexibility. It is also important to note that collective bargaining or other agreements can still set wages that are higher than the national wage floor, and this is the approach preferred by the ILO.

The analysis of international experience shows some commonalities, and some differences, among tiered systems, as well as various exclusions. Most countries have had to decide: how best to accommodate low-wage sectors of economy (usually domestic and agricultural employees); how to treat various categories of employees such as youths, disabled workers, self-employed, and part-time employees; and how best to accommodate different types of businesses, particularly small businesses. The analysis below will present a summary of international experience along with the main advantages and disadvantages.

LOW-WAGE SECTOR NATIONAL MINIMUM WAGE POLICIES



Domestic and agricultural employees receive the lowest wages in many economies, including South Africa where these two groups of employees form 13% of the labour market (QLFS 2015). There are several difficulties in including these sectors in a national minimum wage. These include: stay-in/living arrangement of some employees which might complicate national minimum wage calculations; significantly lower wages in these sectors than the average in the economy; and enforcement difficulties in these sectors due to the site of employment. As such, some countries choose to either exclude some low-wage employees from the national minimum wage, or alternatively choose to create a special wage-tier for them that is lower than the national minimum wage for other workers.

"Allowing for the exclusion of high numbers of low-paid workers and other vulnerable sectors has proven to be ineffective in terms of reducing poverty and limiting inequality (Rani et al. 2013)"

Domestic workers are the category of employees most often excluded from national minimum wages. Close to 12.5% of countries with a national minimum wage have completely excluded domestic workers from national minimum wage coverage. Domestic workers are excluded in Japan, Korea, Egypt, Nepal, China (HK), Thailand, and Lebanon (ILO 2014). Other countries, such as the United Kingdom, exclude only those helpers that live with employers and receive accommodation and food allowances and participate in family activities – such as au pairs (National Minimum Wage Act of 1998). According to the most recent UK Low Pay Commission Report (2015) such an arrangement is not beneficial to stay-in au pairs, and these workers are exploited and substantially underpaid. The Report recommended the UK Government review its exception policy for people who work and live as part of the family.

Rather than exempting domestic workers completely, a government may set a lower minimum wage for them. This may occur through setting sector-specific minimum wages separate from the national minimum wage. In Argentina, for example, five different determinations for domestic workers have been set depending on live-in/live-out condition and occupation (maid, butler, cook, etc.) (ILO 2013). Similar provisions have existed in Uruguay since 2006 where various categories of domestic workers get different salaries (Goldsmith 2013). Paraguay is an example of tiering indexed to the national minimum wage: it implemented a provision that domestic workers must receive no less than 60% of the general national minimum wage.

With respect to the agricultural sector, again roughly 12% of countries have excluded the sector completely. The whole agricultural sector is excluded from the national minimum wage systems in Argentina, Nigeria, Thailand, Pakistan, Bolivia, Syria, and Lebanon; particular types of farm workers are excluded in the USA, Canada, and Yemen (ILO 2014); and a tiered-system has been created in Burkina Faso, Togo, Chad, and Morocco (see Table 1) (ILO Travail database 2011). From available data, agricultural workers' statutory minimum wages are benchmarked at approximately 75-80% of the national minimum wage.

Low-wage sectors in some countries can also include workers in public employment schemes and workers in special economic zones. It is however highly uncommon to exclude these employees from a general national minimum wage. The only examples found in the literature are workers in special economic zones in Ghana and Guatemala, and workers in public employment schemes in Trinidad and Tobago and the UK (ILO Travail 2011).

As can be seen from the international experience, completely excluding low-wage sectors is not a common practice: roughly an eighth of all the statutory national minimum wage countries have excluded either domestic workers or agricultural employees. Excluding high numbers of low-paid workers and other vulnerable sectors has proven to be ineffective at reducing poverty and limiting inequality (Rani et al. 2013). Agriculture and domestic work are labour-intensive sectors and have millions of employees (around 2 million in South Africa), and therefore if they were excluded then a sizable share of the labour force would not benefit from the "safety net" provided by a national minimum wage. Furthermore, salaries in excluded sectors have been shown to grow significantly slower than salaries in national-minimum-wage-covered sectors (based on examples of Pakistan, Thailand, Vietnam, and Philippines) (ODI 2014). As such income differences and sectoral wage gaps grow, and the national minimum wage fails as a poverty reduction policy.

Vulnerable workers in countries with a tiered system in place tend to have higher average wages than vulnerable workers in countries that exclude these sectors entirely (Herr and Kazandziska 2011, Wiggins 2014). As such, a differentiated system is preferable to excluding sectors entirely from the national minimum wage, but a universal minimum wage is preferable overall, providing this is feasible and it is not set at too low a level.

Table 1: Agricultural and non-agricultural minimum wages in selected countries

	General wage (local currency)	Agricultural wage (local currency)	Agriculture as % of NMW
Burkina Faso (hourly)	176.83	129.896	73.5%
Chad (hourly)	355	302.8	85.3%
Morocco (hourly)	97	63.69	65.7%

Data Source: ILO Travail Database, 2011-2013

Considerations for a national minimum wage In South Africa: agricultural and domestic workers

There are currently 869 000 agricultural employees in South Africa and over 1.2 million domestic workers in private households (QLFS 2015). Together these low-wage earners comprise over 2.1 million of employees, or 13% of total employed workers in South Africa. In 2014 the average wage for a full-time agricultural worker was R3 381, with 50% of agricultural workers earning at or below R2 253. The average wage for a full-time domestic worker was R2 210 with 50% of domestic workers earning at or below R1 577 (Finn 2015). 82% of full-time agricultural workers and 87% of full-time domestic workers earn below R3 000. This illustrates both the low level of wages in these sectors and the high proportion of low-wage earners. The government-run Expanded Public Works Programme (EPWP) also employs over a million temporary workers per year at a daily wage of R75.10 a day (equivalent to a monthly wage of around R1 720) (EPWP 2013/14). Comparing these salaries with the formal sector's average and median wages, R9 809 and R4 368 respectively for those working full-time (Finn 2015), we can see that these are the most vulnerable and low-paid workers.

If it is not possible to include these sectors at the full level of the general national minimum wage at the outset, then the approach that would best preserve the poverty-and inequality-reducing objectives of the national minimum wage is to introduce tiers. Any lower minimum wages are best pegged at a percentage of the national minimum wage so that these wages rise in tandem and these workers are not "left behind".

Standard international practice is that a tiered minimum in agricultural sectors is approximately 80% of the national minimum wage. While there is less data on proportional wage pegging for domestic work, it would be counter-productive for it to be pegged at any lower than 80% of the national minimum wage.

These tiers can also be phased out over several years, gradually bringing minimum wages in these sectors up to the level of the general national minimum wage. Policy design should not strictly adhere to the objective of having only one national minimum wage if this is an excuse to keep the national minimum wage low. This could trap not only farm and domestic workers, but also other low-paid employees, into ultra-low-wage work, thus frustrating the objective of the national minimum wage to create a "decent wage floor".

While there is no need to adhere to only one unified national minimum wage, there is equally no need to create a complex system of various national minimum wage levels that specify wages for every sector or group of employees. Given that South Africa already has 124 sectoral minima (Bhorat et al. 2015), it is advisable to have one general minimum wage and perhaps one additional tier for a low-wage sector.

PUBLIC SERVICE AND STATE SECURITY EMPLOYEES

Public service employees belong to another commonly excluded sector, albeit for different reasons than agriculture and domestic workers. The fact that public service employees are excluded does not mean that they are paid below the national minimum wage, as according to Rani's research (2013) they are often paid more than this. Usually, public service employees are excluded due to pre-existing administrative arrangements that govern wages and other labour-related procedures regarding those employees (ILO 2013). It is unclear why these pre-existing arrangements should necessarily result in the workers' exclusion.

The definition of what constitutes a "public service employee" differs slightly from country to country. It usually refers to all employees of state and local governments, along with police, military and national defence workers. Countries that have excluded public service employees include Chile, Lebanon, Japan, China, Spain, Algeria, Thailand, and Guatemala (ILO 2014). Algeria, Seychelles, Laos, Vietnam, the United Arab Emirates, and Ghana have a special provision that all state defence, security and national intelligence personnel (civil and military) are also excluded from minimum wage legislation along with all other public service employees. In these countries such employees are covered by special administrative provisions. Lebanon excludes only temporary or casual public service employees, while Thailand excludes both employees of the state and of state-owned enterprises from minimum wage coverage (ILO 2014). However countries that exclude public service employees are still the minority of national minimum wage countries. Based on international experience one can conclude that there are no economic reasons to exclude public service employees and/or national defence and military personnel from the national minimum wage. It is likely that where these exclusions take place they are for political and administrative reasons.

Considerations for a NMW in South Africa:
Public Service Employees

There are over 2.4 million employees in the public service sector (defined as employees in government or government-owned businesses) in South Africa, or 20.4% of the total labour force (Finn 2015). The average wage in the public service sector in South Africa is R12 582 (compared to the full-time formal sector average of R9 809), and 50% of those employees earn at or below is R7 385 (compared to R4 368 in the full-time formal sector) (Finn 2015).

As the national minimum wage aims to provide a social protection and a decent wage floor to the maximum number of employees, excluding the public service sector - 20.4% of the labour force - seems imprudent.

EXCLUDING OTHER TYPES OF EMPLOYEES

In addition to sectoral exclusions, several countries exclude from their national minimum wages categories of employees such as the youth, apprentices, people with disabilities, older employees, employees on probation, or part-time employees. Countries rarely exclude such employees completely from the national minimum wage, more commonly instituting a lower tier of minimum wages for certain categories, or allowing employers to apply for individual exemptions. The grounds for this differentiated treatment is generally based on the claim, often unsubstantiated, that these employees achieve lower levels of productivity and possess fewer skills. However, most of these exclusions are discriminatory as they are applied across the board regardless of individual productivity and experience.

EMPLOYEES WITH DISABILITIES

Paraguay is the only known country to completely exclude people with disabilities from the national minimum wage (ILO 2013). A number of other countries provide a lower minimum wage for this category. For example, in the Philippines, employees with disabilities are entitled to 75% of the national minimum wage. In the Czech Republic the amount is 50% to 75% of the national minimum wage depending on whether the employee is on a partial or full disability grant. Chile, Cuba and Latvia also have lower minimum wages for employees with disabilities (ILO 2014). This approach is problematic because all people with disabilities, irrespective of the nature of their disability and its impact on their productivity, are subject to lower wages. Furthermore, there is no formula for setting a lower minimum wage and no proven and calculated productivity wage gap for people with disabilities. Finally, receiving disability grants does not logically mean one should earn a lower wage: disability grants assist people with disabilities to meet their often costly special needs, and are not a substitute for wage income.

To avoid exclusion and unfair setting of wages, other countries have developed a more nuanced approach involving various classifications of disabilities and productivity impairments. France, for instance, has three grades for disability according to the severity of the disability, in which people are entitled to 100%, 90% and 80% of the national minimum wage, respectively (ILO Travail Database 2011).

Most countries, however, allow for individual case-by-case exemptions from the national minimum wage for people with disabilities upon employers' application to the relevant authorities and subsequent case review. This could constitute a form of exemption, not a sectoral exclusion. This approach is used in Japan, Korea, New Zealand, Solomon Islands, Portugal, the USA, Luxembourg, and the Netherlands. In these countries, in order for an exemption to be granted, the employer has to prove that an employee with a disability has lower productivity and work efficiency than their colleagues. A relevant body then determines a wage depending on the employee's productivity. In Portugal, if the productivity gap between an employee with a disability and an able-bodied worker is judged to be at least 10%, the minimum wage can be reduced proportionally but cannot be lower than 50% of the national minimum wage (ILO 2014).

Some countries, however, are strongly opposed to treating employees with disabilities any differently to other employees. Malaysia, a country that has recently implemented a national minimum wage, looked into the possibility of setting a lower minimum wage for workers with disabilities but concluded that, without proof of lower productivity, creating a special wage tier would be discriminatory. As such the national minimum wage in Malaysia applies to all workers regardless of disability. Similarly the Employment Equity Act 1998 of South Africa prohibits any type of discrimination, including discrimination based on disability. As such, despite the international evidence of various exclusions or exemptions for employees with disabilities, the existing legislation in South Africa may prohibit this.

YOUNG WORKERS

The youth is another category of employees that very often suffers from discriminatory exclusions or differentiated treatment. Confusingly, "youth" is defined differently by each country: in some countries it refers to people younger than 18, in other countries younger than 21 or even 23. In South Africa there is also confusion regarding the definition of "youth". Some policy documents, namely the National Youth Policy (2009-2014), define the youth as "South Africans aged 14 to 35". At the same time, the recently introduced youth wage subsidy (or Employment Tax Incentive) is applicable to young South Africans aged 18 to 25.

Regardless, three approaches prevail:

- One approach is to entirely exclude "youth" from national minimum wage coverage. For instance Lebanon's Labour Code states: "The minimum wage applies to all workers, both salary and wage-earners, of at least 20 years of age in both the public and private sector other than those specifically excluded "(Art. 7, Decree No.500 of 14 October 2008).
- Alternatively, the national minimum wage can include young people without any discrimination. Peruvian legislation reads: "All workers in the private sector are covered by minimum wage legislation. There is one general minimum wage rate applicable to all workers in the private sector. Remuneration for youth cannot be lower than the minimum wage. If youth work less than a full working day, their remuneration should be set on a pro-rata basis." (Supreme Decree no. 011-2010-TR on and No. 002-97 TR).
- Finally, some countries create a lower minimum wage tier for the youth. This "sub-minimum tier" can be expressed either as a percentage of a general minimum wage, or can be set as a stand-alone lower nominal amount.

Most countries, predominantly developing countries and middle-income economies, includes youths on the same basis as adults. The second-largest group of countries, a mix of developed and developing countries, create a special tier for youths. The approaches adopted vary greatly, as shown in Table 2.

The smallest group of countries are those that exclude youths completely from the national minimum wage. These countries are Argentina, Bahamas, Germany, and Lebanon (ILO 2014). German economist Thorsten Schulten, along with many other economists, considers youth *exclusion from the national minimum wage to be a mistake* (Social Platform 2015).

Table 2: Youth Sub-minimum wages by Country

Country	Tiered Wage for Youth	
Belgium	19-20 years old	94% of the general NMW
	18 years old	88% of the general NMW
	17 years old	82% of the general NMW
	16 years old	76% of the general NMW
	Up to 16 years old	70% of the general NMW
Chad	14-18 years old	80% of the general NMW
Costa Rica	13-18 years old	50% of general NMW during the first year of employment; no less than 75% during the second year of employment; and 100% during the third year of employment
Czech Republic	18-21years old	90% of the general NMW
	15-18 years old	80% of the general NMW
France	17-18 years old	90% of the general NMW
	Up to 17 years old	80% of the general NMW
Guinea-Bissau	16-18 years old	80% of the general NMW
	Up to16 years old	60% of the general NMW
Ireland	18 years old	80% of the general NMW
	Up to 18 years old	70% of the general NMW during the first year of employment and no less than 90% during the second year of employment.
Luxembourg	17-18 years old	80% of the general NMW
	15-16years old	75% of the general NMW
Netherlands	21-22 years old	85% of the general NMW
	20 years old	72.5% of the general NMW
	19 years	61.5% of the general NMW
	18 years old	52.5% of the general NMW
	17 years old	45.5% of the general NMW
	16 years old	39.5% of the general NMW
	15 years old	34.5% of the general NMW
	Up to 15 years old	30% of the general NMW
New Zealand	16-17 years old	80% of the general NMW provided they have not been employed for 200 hours before, are not trainees, and are not supervising other workers
Paraguay	Up to 18 years old	60% of the general NMW (however, if productivity is judged to be the same then a young worker shall be entitled to the full NMW)
São Tomé and Príncipe	16-18 years old	60% of the general NMW
	Up to 16 years old	50% of the general NMW
UK	18-20 years old	£5. 30 (~79% of general NMW)
	Up to 18 years old	£3.87 (~57.7% of general NMW)
USA	Up to 20 years old	$4.25 (~58.6% of the general NMW) for the first 90 days of initial employment, and 100% of the general NMW thereafter.

Data Source: ILO Travail Database 2011-2013

The (full or partial) exclusion of the youth is based on notions of minimum wages distorting perfect markets and causing unemployment; the assumption that youths, due to their age, are less productive, have fewer skills, and require more on-the-job training than adults; or that lower youth wages will "lure" employers into hiring them. None of these are substantiated by the available evidence. There is also no clear rationale for what percentage of the national minimum wage youths should be entitled to, as no studies have quantified this supposed "productivity gap". Youth are also often employed in jobs that do not require a very high level of skill, for example, packing bags in supermarkets, and therefore they operate at least as efficiently as adult employees. A lower minimum wage for young workers is also discriminatory in that it is applied without consideration of individual skill, experience, and productivity levels. Essentially, a youth sub-minimum wage is not compliant with the principle of "equal work for equal pay".

The assumption that lower minimum wages for young workers will lure employers to hire them has not been proven by research (Eyraud and Saget 2005). In fact, recent research shows that the youth share of the working population is decreasing despite a growing youth-adult wage gap and the introduction of sub-minimum wages for young workers (Grimshaw 2014). Further, increasing sub-minimum wages for young people, for example in New Zealand and the USA, has not resulted in the anticipated disemployment effects (Hyslop and Stillman 2007, Eyraud and Saget 2005). Finally, according to Grimshaw (2014), lower minimum wages for young workers decrease the purchasing power of the youth.

Given this, a number of countries, namely Korea, Spain, and Papua New Guinea, have abolished age differentiation in minimum wage coverage in the last few years and have not seen any disemployment effects (ILO 2014). **Trainees and apprentices** are also very often differentiated in national minimum wage systems. This is the subject of its own Policy Brief in this series (see Castel-Branco, forthcoming). Upon examining the international experience the brief proposes the following: Given the fragmented nature of the minimum wage-setting system for workers in vocational training, a two-tiered approach would safeguard labour protections for apprentices while ensuring the incorporation of learners through a lower-national minimum wage that progressively increases with work experience and skills development.

OTHER

In addition to these main categories, some countries have **various other exclusions**. For instance, Belgium allows employers to pay less than the national minimum wage to employees working for less than a month; Korea and Yemen exclude intermittent (casual) workers; Nigeria completely excludes workers on commission and part-time employees (ILO 2014); Japan excludes mariners; New Zealand excludes film production employees; Thailand excludes those who run private schools; and Germany excludes volunteers, seasonal workers, and the long-term unemployed during the first six months of their first employment (Spielberg and Shilling 2015).

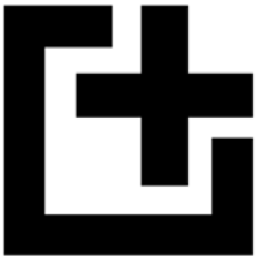
When it comes to part-time workers it is necessary to state that those are commonly included as part of the national minimum wage and that the Nigerian example is an unusual one. If the national minimum wage is set on an hourly as well as a monthly basis then there is little reason to exclude part-time or casual workers as their wages would already be lower than the monthly full-time national minimum wage (for a discussion of commission and piece workers see Castel-Branco, 2015). The German exemption of the long-term unemployed is in effect only until 1 June 2016, eighteen months after the implementation of the national minimum wage, after which the German government plans to evaluate if this provision has helped with the reintegration of the long-term unemployed into the labour market (Spielberg and Shilling 2015).

The UK has excluded prisoners and participants of government employment schemes and public works (a highly uncommon practice), and volunteers (volunteers are those who do not received stipends or any other remuneration for the work done). Korea also allows the exclusion of employees for whom "it is deemed inappropriate to apply a minimum wage" but does not provide any information on criteria for application of this clause or how often it has been used in the past (ILO 2014).

Some countries exclude employees of charitable organisations from the minimum wage determination, for instance in New Zealand and Thailand. Volunteers working for registered charities are excluded in Trinidad and Tobago. There is, however, no particular need or economic justification to exclude those types of employees. In the South African context, the issue of welfare workers who receive extremely low Department of Social Development subsidies should be further investigated.

Despite this laundry list of possible exclusions it is important to recall the purpose of a national minimum wage – to provide a national wage floor that ensures all workers' basic needs can be met. Any exclusions therefore must be carefully selected and well justified.

"Any exclusions therefore must be carefully selected and well justified."



Considerations for a South African national minimum wage: Worker Exclusions

There is little evidence that excluding certain categories of employees confers any benefit to them or to the economy. There is also evidence that this undermines the object of a national minimum wage. In addition, labour market interventions aimed at certain categories of workers, for example youth wage subsidies, have been ineffective in South Africa (Ranchhod and Finn 2014, 2015).

The Employment Equity Act's (1998) prohibition of discrimination (including based on disability and age) may prohibit different treatment under a national minimum wage in South Africa for these groups. Excluding these workers could also undermine the main goal of a national minimum wage: providing a decent wage floor and social protection to the maximum number of workers in the country.

The experiences of countries that allow employers to apply for individual exemptions, such as Luxembourg or Japan, may be most suitable for South Africa.

PHASING-OUT EXCLUSION POLICIES

The international trend is increasingly to include sectors previously excluded from the national minimum wage. Some countries start with differentiated treatment for vulnerable sectors but then gradually phase it out over time. For instance, in 2008 the Chilean government announced the phasing-out of differentiated treatment for domestic workers over three years, by gradually increasing the minimum wage for domestic workers from 75% of the national minimum wage to 100% (ILO 2013). Since 2011, Chile has successfully equalised the general and domestic workers' national minimum wage.

An older but still useful example comes from Portugal. Portugal excluded the agriculture and domestic sectors during the first years after the national minimum wage was introduced in 1974. Three years later, agricultural workers were included in the national minimum wage albeit at a lower wage, and in 1978 domestic workers also became part of the national minimum wage with their wages being yet lower than in the agricultural sector. It took Portugal until 1991 to phase out the differentiation of the agricultural sector by *continuously raising the agricultural minimum wage at a higher rate than the general one, so that eventually the two numbers converged* (Portugal and Cardoso 2002). By 2004 Portugal had also phased out differentiated treatment of domestic workers (ILO 2013).

Guatemala, Bolivia, and Paraguay have also phased out differentiated treatment. The government of Pakistan is currently planning to extend national minimum wage coverage to excluded sectors over the next years (ILO 2014). The International Labour Organisation continuously requests that countries increase national minimum wage coverage and to provide the necessary protection to workers.

Germany, upon introducing its minimum wage in 2015, made provision for a lower tier for newspaper-delivery workers that should be phased out over 5 years. Wages for these workers must constitute 75% of the national minimum wage in 2015 (the first year of the national minimum wage), 85% in 2016, and will be €8.50 per hour (the current national minimum wage in Germany) by 2017-18 (Spielberger and Shilling 2014).

Considerations for a South African national minimum wage: Phasing Out and a Tiered System?

As noted above there is reason to consider implementing sectoral tiers in South Africa with particular reference to domestic work, agricultural and the Expanded Public Works Programme. The international evidence suggests that if sectors are to be differentiated then it is best to peg these to a proportion of the national minimum wage. Standard international practice is that a tiered minimum in agriculture be pegged at approximately 80% of the national minimum wage. While there is less data on proportional pegging for domestic work, it would be counter-productive for this proportion to be too low.

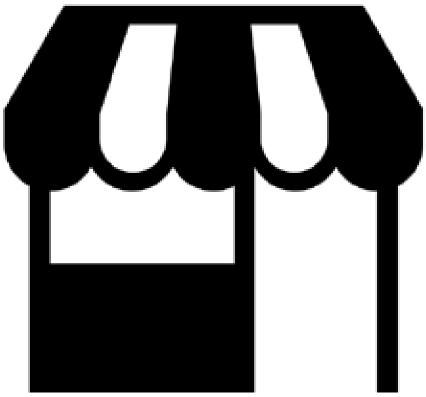
International best practice suggests that exclusions should be gradually phased out. Legislation in South Africa should consider over what period excluded sectors would be brought to the same level as the national minimum wage.

BUSINESS-RELATED EXEMPTIONS AND EXCLUSIONS

As noted in the beginning of the brief, for legislative purposes there is a need to differentiate between exemptions and exclusions. In this section, exclusions refers to across-the-board exclusion of certain categories of businesses, and exemptions to certain criteria that would allow companies to not pay the full national minimum wage upon application, and for a limited time.

SMALL AND MEDIUM AND FAMILY BUSINESSES

Small businesses, family businesses and charitable organisations are interesting cases in that in some countries they are subject to wholesale exclusion and in many countries exemptions are granted on a case-by-case basis. These exemptions can be important but there is evidence to show that such exemptions create disincentives for businesses to grow and employ more workers because in doing so they become subject to national minimum wage legislation.



"Most importantly, according to the research commissioned by the ILO (Fenwick et al. 2007), excluding small businesses from national minimum wage coverage does not provide the claimed positive effects for SME development and growth, and does not assist with the formalisation of SMEs."

Perhaps one of the least-debated and most commonly provided national minimum wage exclusion is the case of allowing **family businesses employing family members** who reside in the same house to pay below the national minimum wage. This exclusion is made because of the shared living and working arrangement of many family businesses. Such exclusions have been made in many countries such as the UK, Egypt, Libya, Jordan, Lebanon, Iran, Gambia, Oman, Japan, Korea, Spain, Belgium, and Ireland (ILO 2014). Family businesses in those countries retain the same national minimum wage responsibilities as any other business when hiring employees who are not family members.

Some countries have made provisions for excluding **small businesses**. There are various ways of defining "small" businesses including: by number of employees; by turnover; or by a combination of the two. The number of workers below which a business is considered "small" varies: 10 in the Philippines, Nepal, and Egypt; 15 in Myanmar; and 50 in Nigeria (Herr and Kazandziska, 2011). Morocco combines both approaches: companies employing fewer than 5 people and with an annual turnover under five times the income tax exemption amount do not need to pay minimum wages (Herr and Kazandziska 2011). Nigeria and the Philippines do not provide restrictions on the lowest wage which can be paid by small businesses. In the United States, businesses with a turnover of less than $500 000 are exempted from the national minimum wage (ILO 2014). US federal law has no guidelines on how much lower the wage can be for small businesses, although states have the right to set this limit. Leaving workers completely uncovered makes them vulnerable to exploitation.

These exclusions carry substantial risks. In cases where business exemptions are based on the number of employees, some companies employ workers illegally or classify permanent employees as volunteers to remain below the threshold and therefore avoid paying the national minimum wage (see for example Tubout 2000; Besley and Burgess 2004). As such firms do not reach their optimal size, do not achieve economies of scale, and remain less competitive (Bhorat and Westhuizen 2009). In cases of exemptions being based on turnover, some companies start illegal accounting schemes to hide their real turnover. Labelling staff as volunteers or interns and paying them below the national minimum wage has also been documented in the UK (Low Pay Commission Report 2015).

Most importantly, according to research commissioned by the ILO (Fenwick et al. 2007), excluding small businesses from the national minimum wage does not provide the claimed positive effects for SME development and growth, and does not assist with the formalisation of SMEs. Without providing any tangible benefits for businesses, and even providing some negative incentives to avoid the law, business exemptions significantly hurt workers as the quality of employment and remuneration of workers in SMEs tends to be severely compromised (Fenwick et al. 2007).

Finally there are business types that might not be excluded or exempted from a national minimum wage internationally, but that could be considered in the South African context. One of those is cooperatives, defined as a type of business where a group of persons join forces voluntarily to meet their common goals. Cooperatives are currently largely excluded from most South African labour legislation and bargaining council determinations. However, a 2013 amendment to the Cooperatives Act might challenge this and cooperatives might no longer enjoy those liberties (the amendment still has not been signed by the President). Given the situation, a national minimum wage design should either include all cooperatives into the national minimum wage determination, or provide a special arrangement to accommodate this type of business.

Considerations for a South African national minimum wage: Small Business Exclusion

Available research indicates that blanket exemptions for small businesses are not optimal as they lead to numerous disincentives that result in worker exploitation and limit the growth of small enterprises. In addition, some sectors of the South African economy (such as the textile sector) consist predominantly of small and medium-sized enterprises and introducing a blanket exclusion would not provide a "decent wage floor" for workers, potentially defeating the purpose of a national minimum wage.

This problem might be solved by introducing a very specific definition of what a small-sized enterprise is. For instance, South Africa might emulate the Philippines, which allows businesses to pay less than the minimum wage if they are located in "barangays," i.e. local small villages, and employ fewer than 10 people. It would be important to consider how much lower than a general minimum wage these wages should be.

In the South African context, one might also consider providing national minimum wage exemptions to new enterprises for the first year after their establishment, similar to the provision in the Malaysian national minimum wage.

It seems reasonable in the South African context to exempt family businesses employing family members who share accommodation, allowing them to pay a specified lower proportion of a general minimum wage. The issue of cooperatives' inclusion or exclusion from the national minimum wage should be carefully examined, but similar concerns to small business exemptions arise, as well as the danger of "front co-operatives" established to circumvent the law.

EXEMPTIONS UPON APPLICATION

Countries such as Egypt, the Netherlands, Luxembourg, and Portugal allow employers to apply for individual exemptions provided they can substantiate the claim that paying minimum wages will be unaffordable. By Dutch Labour Law, the Minister can grant a minimum wage exemption to an employer or employers' organisation upon application if the Minister decides that the sector, enterprise, or an occupation is threatened and if relaxing minimum wage conditions would assist to mitigate these threats. There is no data on how often the Minister has used this power, nor is there data on the number of applications made by employers. In Egypt, any company can apply to the Minister for an exemption, and provided that the Minister finds the application "sufficiently motivated" the exemption can be granted. Beinin (2012) claims that this exemption mechanism has been heavily abused by employers.

"Exemptions based on application require a solid administration to process the applications as well as an enforcement system which is well informed of the levels of exemptions."

Portugal allows employers to pay less than the current national minimum wage (but no less than the previous year's minimum wage) if the increase in wages would lead to an increase of business costs of over 10% (ILO 2014). There is, however, no available data on how often this exemption has been implemented. Luxembourg's labour law states that a company can apply to the Minister of Labour if it cannot afford paying minimum wages to its employees. Such application would be reviewed by the Minister and if successful, the Minister will grant a temporary order that will allow the company to pay lower minimum wages.

In the first few years of the national minimum wage implementation in Malaysia, SMEs were given an advantage: a deferment of the starting date of the national minimum wage. Companies that employed fewer than five employees could start paying the national minimum wage six months later than other businesses in the country. In addition, SMEs and any other businesses had an opportunity to apply for a further deferment from paying the national minimum wage. The application had to be substantiated with financial documentation proving "unaffordability". In addition to that, the Malaysian government issued several decrees and amendments in which it allowed certain companies to defer paying the national minimum wage to their workers for up to a year (National Wages Consultative Council, 2012).

Giving businesses exemptions based on the number of employees, annual turnover, family relationships, and on a case-by-case basis are the most common exemptions from a national minimum wage.

Some researchers claim that instituting exemptions on application can assist in the transition to the national minimum wage system (Eldring and Alsos 2012). Additionally, taking business needs into consideration by providing certain exemptions may improve the compliance rate. However, exemptions based on application require a solid administration to process the applications as well as an enforcement system which is well-informed of the levels of exemptions, both of which can be costly.

Considerations for a South African national minimum wage: Business Exemptions

South Africa currently makes allowances for individual businesses to apply to be exempt from minimum wages. It seems appropriate that this process be retained with some improvements. Namely, the legislation should clearly define:

a) the criteria for exemptions;

b) minimum levels of pay for excluded companies;

c) the period for which the exemption applies;

d) the process for application and decision including the format of representation (written or in person) and the format of the response;

e) the body responsible.

SUMMARY

The international experience of exclusions and exemptions from the national minimum wage is diverse as countries tend to create a mix of different approaches, excluding some categories and providing sub-minimum tiers for other categories of workers. The global trend, however, is to have fewer and fewer exclusions and exemptions, and to create tiers of minimum wages that will eventually be phased out (ILO 2014).

International national minimum wage best practice suggests that excluding a large number of employees in particular sector or sectors from minimum wage determinations is a harmful practice that leads to the growth of the sectoral wage gap and inequality. Additionally, excluding the lowest-wage sectors runs contrary to the purpose of the national minimum wage, as the goal of a national minimum wage is social protection and poverty reduction.

Many experts (for example, Herr and Kazandziska 2011) have warned against deliberately excluding the lowest-wage earners from national minimum wage coverage. International experience mirrors this warning as only just over an eighth of national minimum wage countries opted for the exclusion of domestic and/or agricultural workers. If low-wage sectors cannot be accommodated under one statutory national minimum wage, a lower minimum wage tier can be created.

Within a tiered system, pegging a sectoral minimum to a proportion of the national minimum wage is useful if the national minimum wage is approached as a tool to alter the wage distribution. Such pegging will mean that as the national minimum wage is increased wages in the differentiated sectors will also increase, allowing for the national minimum wage to play a positive role in reducing poverty and inequality. There is also the possibility of phasing out tiers by increasing this proportion over time, with the ultimate intention of integrating all sectors at one national minimum wage level. Pegging each tier to a percentage of national minimum wage will simplify the process of phasing out the differentiated treatment.

While creating a lower wage tier is preferable to excluding workers completely, there are nonetheless some downsides. A potential downside of differentiated treatment is that if multiple sectors, occupations, and ages are excluded all at once, it will create a very complicated national minimum wage system. Overly complicated minimum wage systems usually lead to lower compliance rates and less efficient and effective national minimum wages.

In particular the research indicates that there is no evidence that creating sub-minimum wages for youth and people with disabilities will assist the economy or those workers. A blanket approach of excluding all young and disabled workers or creating lower wage tiers without due consideration for individuals' abilities may be discriminatory and would violate the principle of equal remuneration for equal work.

With respect to size-based business exemptions, one has to be mindful of negative incentives that may arise from exempting small businesses from the national minimum wage, which might in turn be harmful to businesses, workers, and the economy as a whole.

In general, the discussion on exclusions and/or exemptions should be guided by the core purposes of instituting the national minimum wage, including the fact that the national minimum wage is supposed to be a social protection tool to provide a decent wage floor and to ensure that the basic needs of workers and their families are met.

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