Policy Considerations for the Design and Implementation of a National Minimum Wage for South Africa

Ruth Castel-Branco
University of the Witwatersrand
International Centre for Development and Decent Work
July 2016

NATIONAL MINIMUM WAGE RESEARCH INITIATIVE
Summary Report No. 2
www.nationalminimumwage.co.za

With thanks to:

[Logos of FRIEDRICH EBERT STIFTUNG, OXFAM, and PERSA]
The National Minimum Wage Research Initiative (NMW-RI) is an independent academic research project run by the Corporate Strategy and Industrial Development (CSID) Research Unit 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 introduction of a national minimum wage in South Africa. Information on the NMW-RI can be found at www.nationalminimumwage.co.za.

The NMW-RI has benefitted from the insight and expertise of our Oversight Committee made up of local and international experts, as well as labour and civil society leaders who originally suggested the research. The Oversight Committee members are:

- Basani Baloyi – SOAS, University of London
- Dr Patrick Belser – International Labour Organisation
- Dr Neo Bodibe – National Union of Metalworkers
- Neil Coleman – Congress of South African Trade Unions
- Yoliswa Dwane – Equal Education
- Professor Ben Fine – SOAS, University of London
- Isobel Frye – Studies in Poverty and Inequality
- Professor Carlos Salas Paéz – Universidade Estadual de Campinas
- Dennis George – Federations of Unions of South Africa
- Prof Hansjörg Herr – Berlin School of Economics
- Dr Erika Kraemer-Mbula – Tshwane University of Technology
- Prof Christopher Malikane – University of the Witwatersrand
- Professor Robert Pollin – University of Massachusetts, Amherst
- Dr Nicolas Pons-Vignon – University of the Witwatersrand
- Professor Imraan Valodia – University of the Witwatersrand
- Dr Robert van Niekerk – Rhodes University

For their on-going support, the NMW-RI would also like to thank:

- Professor Jannie Rossouw – Head of School of the School of Economic and Business Sciences, University of the Witwatersrand;
- Professor Imraan Valodia – Dean of the Faculty of Commerce, Law and Management, University of the Witwatersrand;
- The staff at the Friedrich-Ebert-Stiftung (FES) South Africa.
- The staff of the School of Economic and Business Sciences, University of the Witwatersrand;
- Our research team.
This summary report draws in part on a series of policy briefs and a working paper commissioned by the National Minimum Wage Research Initiative. These are:

1. Policy Brief 1: The building blocks of a national minimum wage for South Africa. By Ruth Castel-Branco
2. Policy Brief 2: Defining the reference period and premium payments for a national minimum wage. By Ruth Castel-Branco
3. Policy Brief 3: Exclusions and exemptions from a national minimum wage. By Elena Konopelko
5. Policy Brief 5: Incentives to enhance compliance with a national minimum wage in South Africa. By Elena Konopelko
6. Policy Brief 6: The institutional framework for setting, adjusting and implementing a NMW. By Ruth Castel-Branco
7. Policy Brief 7: Setting and adjusting the national minimum wage. By Elena Konopelko

The report is complemented by A National Minimum Wage for South Africa by Gilad Isaacs, which analyses the labour market and the potential impact of a national minimum wage in South Africa.

The author would like to thank the following individuals for their comments on earlier drafts of the report and/or the policy briefs and working paper:

- Gilad Isaacs, University of the Witwatersrand
- Professor Ben Fine, School of Oriental and African Studies, University of London
- Dr Alan Manning, London School of Economics
- Dr Debbie Collier, University of Cape Town
- Dr Shane Godfrey, University of Cape Town
- Dr Debbie Budlender, Independent consultant
- Jane Barrett, Women in Informal Employment Globalizing and Organizing
- Neil Coleman, Congress of South African Trade Unions
- Etienne Vlok, South African Clothing and Textile Workers’ Union
- Shanmugam Thiagarajan, Malaysian National Wages Consultative Council
- Dr Uma Rani, International Labour Organisation
- Kristen Sobeck, International Labour Organisation

For copy-editing and design thanks to: Jesse Harber, Helen Isaacs, Fix Mthembu, and Helen Philippou.

The views expressed in this document are solely those of the National Minimum Wage Research Initiative. For further information, please contact the NMW-RI coordinator, Gilad Isaacs, gilad.isaacs@wits.ac.za.
Executive summary

In 2014, on the eve of the 20th anniversary of freedom and democracy, the Government of the Republic of South Africa announced that it was considering the introduction of a national minimum wage. As the President made clear, the objective was not to establish a residual wage floor but to profoundly transform the deeply unequal wage structure:

“Change will not come about without some far-reaching interventions. ... It remains our strong belief that the most effective weapon in the campaign against poverty, is the creation of decent work. ... On our side as Government, we will, during this term, investigate the possibility of a national minimum wage as one of the key mechanisms to reduce income inequality.” (Parliament of the Republic of South Africa 2014)

Currently, South Africa does not have a national minimum wage. Instead wages are set on a sectoral basis through collective agreements negotiated at the level of the firm or bargaining council, or through sectoral determinations published by the Minister of Labour (MoL) on the recommendation of the Employment Conditions Commission (ECC). With 124 sectoral determinations, South Africa has the highest number of minimum wages of any country in Africa, posing a challenge to compliance and enforcement, particularly where resources for labour administration are scarce. Many workers fall through the cracks of labour protections, with an estimated 2.35 million low-wage workers excluded from minimum wage coverage altogether (DPRU 2016). Furthermore, sectoral wages typically take into account a limited range of factors, overshadowing broader social objectives such as the reduction of working poverty and wage inequality, while setting lower wages in sectors that primarily employ women, young workers and migrant workers. The introduction of a national minimum wage has the potential to address these shortcomings.

However, introducing a national minimum wage is no simple matter. This summary report, based on seven policy briefs and a working paper by the National Minimum Wage Research Initiative (NMW-RI), examines some of the key policy considerations in the design and implementation of a national minimum wage. Chapter 1 briefly explores the role of a national minimum wage for South Africa, given high and persistent levels of inequality and working poverty. It concludes that in order for the national minimum wage to respond to its objectives, it must be set at a level sufficient to meet workers’ basic needs, and designed so that wage growth at the bottom outstrips wage growth at the top.

Chapter 2 explores the question of who should set the national minimum wage. It highlights the importance of engagement with social partners for legitimising the wage-setting process, particularly where labour relations are fraught. While the ECC is a competent wage-setting body, this report proposes a series of reforms to the ECC including: restructuring its composition so that the ECC is representative of the diversity of unions and employers’ organisations, as well as of civil society groups; increasing
the ECC’s autonomy; and strengthening the ECC’s capacity to collect, generate, and analyse data by adequately funding an independent secretariat.

Chapter 3 examines the benchmarks for setting and adjusting the level of the national minimum wage, including: cost of basic needs indicators such as the poverty threshold for the working poor; labour market indicators such as the average wage; and collective bargaining indicators. It concludes that, given the variation in existing minimum wages, a phased approach may be necessary to allow businesses and the economy to adjust. However, it stresses that final targets and increments should be negotiated in advance.

Chapter 4 explores the possibility of initially introducing a tiered national minimum wage. While exclusions and exemptions are discouraged, given the wide wage-gap between sectors, and exceptionally low wages in some professions, there is a danger that without special accommodation for very low-wage sectors, the national minimum wage may be ‘pushed down’ to a level significantly below the line of working poverty. However, tiers must be pegged to the national minimum wage, and phased out over a period of five to ten years. The chapter also emphasises that the exclusion of young workers, workers with disabilities, public sector workers, and workers enrolled in learning programmes is unnecessary and in some instances, illegal.

Chapter 5 considers the definition of a national minimum wage and the forms of remuneration that should count towards compliance. It concludes that in most instances, only the basic wage should count. Tips, bonuses, and other premium payments are considered additional income.

Chapter 6 focuses on the reference period over which the national minimum wage is calculated. It suggests that an approach combining an hourly, weekly, and monthly reference period is most appropriate. Furthermore, it highlights the importance of clearly establishing and enforcing the ordinary hours of work, and considers a number of measures to ensure that hourly workers are guaranteed a minimum number of working hours.

Chapter 7 examines incentives for compliance, including: public awareness campaigns, certificates of compliance, compliance-linked access to public procurement and government finance, and tax incentives. It notes that while tax incentives might be beneficial if appropriately targeted and designed – for instance to facilitate exemptions in instances where employers are unable to pay the national minimum wage immediately – they place additional strain on the fiscus.

Chapter 8 focuses on enforcing compliance, and examines the role and mandate of the inspectorate, the length and cost of complaint procedures, and penalties and sanctions for violators. It concludes that both the risk of being inspected and the penalties for non-compliance are currently low, leading to widespread minimum wage violations, and proposes a number of reforms.

It is the hope that through an examination of these key policy considerations, this summary report will prove to be a useful tool in the ongoing discussions regarding the design and implementation of a national minimum wage for South Africa.
# Table of contents

Executive summary iv
List of tables vii
List of figures vii
List of acronyms viii

1 The objective of a national minimum wage for South Africa 1

2 The role of social partners in setting and adjusting the national minimum wage 3
  2.1 The current wage-setting mechanism in South Africa 3
  2.2 Wage-setting mechanisms internationally 4

3 Benchmarks for setting and adjusting the level of the national minimum wage 7
  3.1 The current approach to setting and adjusting the level of the minimum wage in South Africa 7
  3.2 International approaches to setting the level of the national minimum wage 8
  3.3 International approaches to adjusting the level of the national minimum wage 10

4 The role of exclusions and exemptions in the implementation of a national minimum wage 13
  4.1 The current approach to exclusions and exemptions in South Africa 13
  4.2 The international approach to exclusions and tiers 14
  4.3 The international approach to exemptions 16

5 Defining the components of the national minimum wage 18
  5.1 The components of minimum wages in South Africa 18
  5.2 International approaches to defining the components of the national minimum wage 19

6 Determining the reference period of the national minimum wage 22
  6.1 The current approach to determining the reference period in South Africa 22
  6.2 International approaches to determining the reference period 23

7 Incentivising compliance with the national minimum wage 24
  7.1 The current approach to incentivising compliance in South Africa 24
  7.2 International approaches to incentivising compliance 24

8 Enforcing the national minimum wage 27
  8.1 The framework enforcing minimum wages in South Africa 27
  8.2 International approaches to enforcing a national minimum wage 27

9 Conclusion 31

References 32
List of tables

Table 1  | The working poor line, 2015 and 2016
Table 2  | Average minimum-to-mean and minimum-to-median wage ratios, by country
Table 3  | Percentage of mean and median wages for South Africa (Feb 2016)
Table 4  | Current collective bargaining level, 2015
Table 5  | Variation in the components of the wage in collective agreements and sectoral determinations in South Africa, 2015
Table 6  | Allocation of labour inspectors by province

List of figures

Figure 1 | Share of total wages per decile of the earnings distribution, 2003-2012
Figure 2 | Minimum wage-fixing mechanisms by continent (percent of countries)
Figure 3 | International approaches to the calculation of the national minimum
## List of acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BCEA</td>
<td>Basic Conditions of Employment Act</td>
</tr>
<tr>
<td>CIP</td>
<td>Competitiveness Improvement Programme</td>
</tr>
<tr>
<td>CMBT</td>
<td>Competency Based Modular Training</td>
</tr>
<tr>
<td>CPI</td>
<td>Consumer Price Index</td>
</tr>
<tr>
<td>DoL</td>
<td>Department of Labour</td>
</tr>
<tr>
<td>ECC</td>
<td>Employment Conditions Commission</td>
</tr>
<tr>
<td>EPWP</td>
<td>Expanded Public Works Programme</td>
</tr>
<tr>
<td>IDC</td>
<td>Industrial Development Corporation</td>
</tr>
<tr>
<td>IES</td>
<td>Inspection and Enforcement Service</td>
</tr>
<tr>
<td>ILC</td>
<td>International Labour Conference</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organization</td>
</tr>
<tr>
<td>LRA</td>
<td>Labour Relations Act</td>
</tr>
<tr>
<td>MoL</td>
<td>Minister of Labour</td>
</tr>
<tr>
<td>NBCCMI</td>
<td>National Bargaining Council for the Clothing Manufacturing Industry</td>
</tr>
<tr>
<td>NCR</td>
<td>National Credit Regulator</td>
</tr>
<tr>
<td>NEDLAC</td>
<td>National Economic Development and Labour Council</td>
</tr>
<tr>
<td>NEF</td>
<td>National Empowerment Fund</td>
</tr>
<tr>
<td>NMW</td>
<td>National Minimum Wage</td>
</tr>
<tr>
<td>NMW-RI</td>
<td>National Minimum Wage Research Initiative</td>
</tr>
<tr>
<td>NTBC</td>
<td>National Textile Bargaining Council</td>
</tr>
<tr>
<td>NWCC</td>
<td>National Wages Consultative Council</td>
</tr>
<tr>
<td>PI</td>
<td>Production Incentive</td>
</tr>
<tr>
<td>QCTO</td>
<td>Quality Council for Trades and Occupations</td>
</tr>
<tr>
<td>SAQA</td>
<td>South African Qualifications Authority</td>
</tr>
<tr>
<td>SARS</td>
<td>South African Revenue Service</td>
</tr>
<tr>
<td>SDA</td>
<td>Skills Development Act</td>
</tr>
<tr>
<td>SER</td>
<td>Standard Employment Relationships</td>
</tr>
<tr>
<td>SETA</td>
<td>Sector Education and Training Authority</td>
</tr>
<tr>
<td>SME</td>
<td>Small and Medium Enterprises</td>
</tr>
<tr>
<td>UIF</td>
<td>Unemployment Insurance Fund</td>
</tr>
</tbody>
</table>
1 The objective of a national minimum wage for South Africa

South Africa’s economy is characterised by extremely high levels of working poverty, income inequality, and unemployment. Wage inequality, which has its roots in the apartheid wage structure, is the primary driver of household inequality (Leibbrandt et al. 2012). This is because wages are, on average, the most important source of household income. Therefore, the introduction of a national minimum wage has the potential not only to increase the earnings of the most vulnerable workers but to reduce the staggering rates of household inequality in South Africa (Finn 2015).

Although real average wages have risen since the end of apartheid, wages at the top of the distribution have risen faster than those at the bottom, with average-wage growth outstripping median-wage growth, widening the gap between the poorest and wealthiest workers. As Figure 1 shows, the top 20% of wage earners take home 60% of total earnings, while the bottom 60% take home only 20%. Given the legacy of apartheid, race continues to be an important factor in the distribution of wages, with average wages of white workers being almost three times higher than those of African workers (Finn 2015).

In addition, employment is not a guarantee of not being poor. According to Finn (2015) over half of all full-time workers in South Africa earn a wage below the line of working poverty, equivalent to R4 125 in April 2015 rands (or R4 317 in February 2016 rands). This means that even when supplemented by other forms of income such as social grants, their wage is insufficient to bring them and their dependents out of poverty. Levels of poverty are highest among historically disadvantaged groups, with 71% of African workers living below the poverty line, in comparison with 57% of Coloured, 20.5% of Asian/Indian, and 4% of White workers (Finn 2015).

While a national minimum wage can contribute to the transformation of South Africa’s wage structure by increasing the wages of the working poor, raising the labour share, and reducing wage differentials, this is not a given. For the national minimum wage to contribute to a reduction in working poverty it must be set at a level sufficient to meet workers’ basic needs. For it to function as a redistributive tool it must be designed so that wage growth at the bottom outstrips wage growth at the top (Mudronova 2016). Bearing this in mind, this summary presents some of the key policy considerations for the design and implementation of a national minimum wage.

---

1 This report offers figures in both April 2015 and February 2016 rands. The former is to maintain consistency with Finn (2015), the latter was the most updated data available when the calculations for this report were first made in April 2016. Adjustments are made using StatsSA CPI tables. Policy makers should adjust all the figures to the most recent equivalent available.
Chapter 2 explores the question of who should fix the national minimum wage, while Chapter 3 examines the benchmarks for setting and adjusting the wage level. Chapter 4 discusses the potential role of exclusions and exemptions in easing the transition from sectorally-set minima to a national minimum wage. Chapter 5 considers the forms of remuneration should count towards compliance, and Chapter 6 the reference period over which the national minimum wage should be calculated. Chapter 7 focuses on the various approaches to incentivising compliance, while Chapter 8 looks at the role of enforcement. Through an analysis of these key policy considerations, this summary report hopes to contribute to the design and implementation of a national minimum wage for South Africa.
2 The role of social partners in setting and adjusting the national minimum wage

There is no universal approach to setting and adjusting a national minimum wage. ILO Convention 131 emphasises the importance of full consultation with, and participation of social partners, including representatives of trade unions, employers’ organisations, and civil society groups, in a process of social dialogue (ILO 1970). Social dialogue guarantees that those most directly affected by minimum wage policies are able to participate in the wage-setting process, thereby ensuring its legitimacy, promoting consensus, anticipating potentially disruptive adjustments, and strengthening compliance. This chapter outlines the current sectoral wage-setting process in South Africa, examines international approaches to engaging with social partners in setting and adjusting the national minimum wage, and concludes with a series of policy considerations regarding the structure, makeup, and function of the competent wage-setting body.

2.1 The current wage-setting mechanism in South Africa

South Africa does not have a national minimum wage. Minimum wages are determined sectorally; either through collective agreements negotiated at the level of the firm or bargaining council, or through sectoral determinations published by the Minister of Labour (MoL) on the recommendation of the Employment Conditions Commission (ECC). Bargaining councils are voluntary, industry-specific associations of trade unions and employers, with the mandate to negotiate the conditions of employment for workers under their jurisdiction. According to the terms of the Labour Relations Act (LRA) of 1995 and the Basic Conditions of Employment Act (BCEA) of 1997, bargaining council agreements can be extended to non-parties by the MoL.

The ECC is an independent statutory body established under the terms of the BCEA. It is composed of five commissioners and two alternates. One commissioner and one alternate are nominated by organised labour, one commissioner and one alternate by organised business, and three expert commissioners by the MoL, upon consultation with the National Economic Development and Labour Council (NEDLAC), on the basis of their knowledge of the South African labour market including the conditions of employment of vulnerable and unorganised workers. Commissioners are expected to act in an independent capacity rather than as representatives of their constituencies. Their terms of office are defined by the MoL and, though limited to three years, are renewable (Castel-Branco 2016c). The ECC is supported by a technical secretariat responsible for overseeing research, coordinating the consultation process with social partners, and drafting recommendations. However, numerous studies point to the

---

2 There are approximately 38 bargaining councils.
3 There are currently nine sectoral minimum wage determinations covering the following sectors: domestic work, contract cleaning, private security, wholesale and retail, farm workers, forestry, hospitality, taxis, and learnerships. Minimum wages for workers in the Expanded Public Works Programme (EPWP) are set by Ministerial Determination.
limited capacity of an already-taxed secretariat to collect and analyse data (Seekings 2016). The ECC does not have its own administrative or research capacity and therefore relies on DoL staff. While the DoL does occasionally commission outside research, in-house capacity to evaluate research is weak (NMW-RI 2016).

### 2.2 Wage-setting mechanisms internationally

Internationally, there is no standard approach for engaging with social partners when setting or adjusting the national minimum wage. Figure 2 provides an overview of wage-setting mechanisms by continent. The five most common approaches are:

- The government decides without consulting social partners;
- The government decides, but consults social partners on a one-on-one basis;
- The government decides, based on the recommendation of a specialised body composed of social partners and/or experts;
- A specialised body composed of social partners and/or experts decides;
- Collective bargaining (Eyraud and Saget 2005).

Regardless of the approach, the ILO recommends that consultations with social partners take place prior to decision making (ILO 2014a).

**Figure 2: Minimum wage-fixing mechanisms by continent (% of countries)**

[Diagram showing the percentage of countries by continent using different mechanisms for setting the minimum wage.]

*Source: ILO (2014c)*
**Fixed by the Government, without consultation with social partners**

Very few countries exclude social partners from the wage-setting process entirely (ILO 2014d). Even in instances where no formal consultation is stipulated by law, this often takes place informally. In Brazil, the national minimum wage is adjusted by presidential decree and approved by parliament based on a formula (Manzano 2015). In order to develop the formula, the Lula administration established a quadripartite commission in 2005 composed of representatives of workers, employers, government, and retirees, to define a consensus formula for adjusting the national minimum wage. The resulting formula is based on the inflation rate of the previous year plus the average GDP growth rate of the previous two years.

**Fixed by the Government, upon consultation with or a recommendation from social partners**

The most common approach is for government to make a final decision after consultation with or upon the recommendation of social partners (ILO 2014d). Government can either propose a minimum wage rate or a competent body can make a non-binding recommendation. The latter is by far the most common approach, particularly in Africa and Latin America. In Malaysia, the Parliament – and not the MoL – determines the minimum wage based on the recommendation of the National Wages Consultative Council (NWCC). The NWCC consists of 29 members appointed by the Minister and includes at least five public officials, five worker representatives, and five employer representatives. It also includes at least five independent experts. The work of the NWCC is supported by a technical committee, nominated and selected by the NWCC rather than the MoL. This ensures that the technical committee is directly accountable to the NWCC. Upon receiving the NWCC’s recommendation, Parliament may agree, request that the NWCC revise the recommendation, or introduce their own wage rate (NWCC 2012).

**Fixed by a specialised tripartite body**

Only in a minority of cases is full decision-making power placed in the hands of a specialised body (ILO 2014d). In Costa Rica, the National Salary Council – a tripartite body made up of an equal number of representatives from government, trade unions, and employers’ organisations – has the power to set the national minimum wage level by decree. Minimum wages are reviewed twice a year, or at the behest of employers or workers, and adjusted in relation to inflation, labour market, and productivity indicators. The process of adjusting the national minimum wage is public, and both trade unions and employers’ organisations publish their proposals. The MoL can comment on the Council’s recommendation but it is the National Salary Council that makes the final decision (MTSS 2016).
Fixed through collective bargaining

Fixing the national minimum wage through collective bargaining is exceedingly rare, especially as union density declines, and collective bargaining becomes an increasingly ineffective wage-setting mechanism (ILO 2014d). In Germany minimum wages used to be set exclusively through collective bargaining, but today they are adjusted by the cabinet upon recommendation of the Minimum Wage Commission: an autonomous, bipartite wage-setting institution, housed in the Federal Institute for Occupational Safety and Health (Bosch 2015).

Policy considerations for engaging with social partners in the process of setting and adjusting the national minimum wage

- Engagement with social partners legitimises the wage-setting process, pre-empts the potentially disruptive effects of introducing a national minimum wage, and strengthens compliance. Given the fraught state of labour relations in South Africa, social dialogue is essential for both setting and adjusting a national minimum wage.
- The Employment Conditions Commission (ECC), currently responsible for issuing recommendations related to sectoral determinations, could be an appropriate institutional body to set and adjust the national minimum wage. However, the following reforms should be considered:
  - The composition of the ECC should be changed to ensure broader representation. Currently the ECC’s composition is weighted towards experts appointed by the MoL. Given the existence of multiple trade union federations and employers’ organisations, as well as civil society groups, the expansion of ECC membership should be considered.
  - The secretariat should be a structurally autonomous, well-resourced body with the capacity to fully support the commissioners and conduct outreach to the public regarding the evidence produced. The ECC currently has limited capacity to generate the data and analysis necessary for commissioners to make informed decisions.
  - The objective of the national minimum wage is not to replace collective bargaining but rather to complement and strengthen it.
3 Benchmarking for setting and adjusting the level of the national minimum wage

The previous chapter examined the role of social dialogue in the wage-setting process. While the process of fixing a national minimum wage is ultimately political, social dialogue should be supported by evidence. The ILO Minimum Wage Fixing Convention No. 131 (1970) outlines the following criteria to be considered when fixing minimum wages: the needs of workers and their families, the general level of wages in the country, the cost of basic needs, social security benefits, the relative living standards of other social groups, and economic factors. After providing a summary of the current approach to benchmarking in South Africa, this chapter explores the three most common benchmarks used internationally: workers’ basic needs, labour market indicators, and collective bargaining minima.

3.1 The current approach to setting and adjusting the level of the minimum wage in South Africa

As previously stated, minimum wages in South Africa are currently set on a sectoral basis, either via collective bargaining or through sectoral determinations published by the MoL on the recommendation of the ECC. The Basic Conditions of Employment Act of 1997 (BCEA) defines the following criteria to be considered by the ECC when setting or adjusting minimum wages: the outcomes of public hearings and public comments; the ability of employers to continue their business; the operation of small, medium, and micro-enterprises and new enterprises; the cost of basic needs; the alleviation of poverty; conditions of employment; wage differentials and inequality; the likely effect on employment; the possible effects on health, safety, and welfare; and any other relevant information. Sectoral minimum wages are generally reviewed every three years, with annual increases established based on the Consumer Price Index (CPI), plus an additional one to four percentage points (Konopelko 2016c).

However, the BCEA does not define how each criterion should be assessed and what their relative weights should be. The absence of concrete indicators means that it is difficult to monitor progress and hold the ECC accountable. For instance, the BCEA stipulates that the ECC should take into account the cost of basic needs. Yet many of the wage determinations recommended by the ECC are well below the line of working poverty of R4 125 as determined by Finn (2015). This indicates a very cautious approach to wage setting, which is unwarranted given strong evidence that minimum wages do not result in widespread job losses (Takala-Greenish and Sipula 2015).
3.2 International approaches to setting the level of the national minimum wage

Benchmarking the national minimum wage to the cost of basic needs

Most countries use a cost-of-living indicator to set or adjust minimum wages. One approach is to define a basic basket of goods and services and, based on that definition, to calculate the level of the national minimum wage (Luebker 2012). In Brazil for instance, the national minimum wage must cover: housing, food, education, sanitation, leisure, clothing, health, transport, and social security (ILO 2014b). Another approach is to benchmark the minimum wage to a national poverty threshold which reflects the needs of workers and their families. The ILO recommends that, for developing countries, the poverty threshold should be defined in relation to the household rather than the individual (Herr and Kazandziska 2011). The cost-of-basic-needs poverty line, which is the most common country-specific poverty measure, measures only the bare subsistence needs and is therefore more limited than ‘decent living levels’ measures or the Brazilian case which includes leisure costs. As Table 1 illustrates, the preferred individual poverty line in South Africa is R1 319 (in April 2015 rands) with a family of four requiring R5 276 to meet their most basic needs (based on the most recent cost-of-basic-needs poverty line by Budlender, Leibbrandt, and Woolard 2015). The working-poor line, which measures the wage income required for an average worker to bring them and their dependents out of poverty, is R4 125 in April 2015 rands or R4 317 in February 2016.

Table 1: The working poor line, 2015 and 2016

<table>
<thead>
<tr>
<th></th>
<th>Apr-15</th>
<th>Feb-16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual poverty line</td>
<td>1 319</td>
<td>1 386</td>
</tr>
<tr>
<td>Household poverty line (family of four)</td>
<td>5 276</td>
<td>5 544</td>
</tr>
<tr>
<td>Working poor line</td>
<td>4 125</td>
<td>4 317</td>
</tr>
</tbody>
</table>

Source: Finn (2015)

Benchmarking the national minimum wage to labour market indicators

A third of countries also take into account labour market indicators, namely the average (mean) wage and the median wage (Luebker 2012). Which of these indicators is most appropriate depends on the country context and the objectives of the national minimum wage. In countries with low levels of inequality, the difference between the average and the median wage is typically between 10% and 15% (OECD 2010). In countries with high levels of inequality and a significant proportion of low-wage workers, such as South Africa, there is a much larger discrepancy between the average and median wage. In South Africa, in April 2015, the average wage for full-time workers was R 8 168 while the median wage was R3 640 (Finn 2015). Benchmarking the national minimum wage to the average wage on an on-going basis would ensure
that wages at the bottom grow at least as fast as average wages which is not currently the case; this is essential if the national minimum is to function as a redistributive tool. As Table 2 illustrates, in middle-income countries, national minimum wages are on average set at 48% of the average wage or 80% of median wage (Isaacs 2016, using data from the ILO Global Wage Database). South Africa falls well below this with a minimum-to-mean ratio of 36% and a minimum-to-median ration of 74% (Rani et al. 2013 using weighted values of sectoral determinations). As Table 3 shows, depending on the definition of the mean and median wage,4 48% of the mean wage in South Africa is equivalent, in February 2016, to between R4 355 and R5 161 per month while 80% of the median wage is equivalent to between R3 428 and R3 918 per month (Isaacs 2016).

Table 2: Average minimum-to-mean and minimum-to-median wage ratios, by country group

<table>
<thead>
<tr>
<th>Minimum-to-mean</th>
<th>Minimum-to-median</th>
</tr>
</thead>
<tbody>
<tr>
<td>All available countries</td>
<td>0.46</td>
</tr>
<tr>
<td>Developing countries</td>
<td>0.47</td>
</tr>
<tr>
<td>Middle-income countries</td>
<td>0.48</td>
</tr>
</tbody>
</table>

Source: Isaacs (2016), using data from the ILO Global Wage Database

Table 3: Percentage of mean and median wages for South Africa

<table>
<thead>
<tr>
<th>April 2015</th>
<th>48% of Mean</th>
<th>80% of Median</th>
</tr>
</thead>
<tbody>
<tr>
<td>All full-time employees</td>
<td>4 161</td>
<td>2 912</td>
</tr>
<tr>
<td>Formal ex. agriculture ex. domestic work</td>
<td>4 932</td>
<td>3 744</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>February 2016</th>
<th>48% of Mean</th>
<th>80% of Median</th>
</tr>
</thead>
<tbody>
<tr>
<td>All full-time employees</td>
<td>4 355</td>
<td>3 428</td>
</tr>
<tr>
<td>Formal ex. agriculture ex. domestic work</td>
<td>5 161</td>
<td>3 918</td>
</tr>
</tbody>
</table>

Source: Isaacs (2016)

Benchmarking the national minimum wage to collective bargaining indicators

Collective bargaining indicators may also be useful for benchmarking the level of the national minimum wage. Table 4 shows the weighted and unweighted average wages of bargaining council agreements in South Africa in 2015, based on DoL data. In the private sector the weighted average wage for bargaining council agreements, which takes into account the number of workers covered under each collective agreement, is

---

4 For different approaches to specifying mean and median wages, see Finn (2015).
R4 355 per month. If the public sector is included the weighted average wage increases to R5 747 per month (Isaacs 2016).

**Table 4: Collective bargaining levels for bargaining councils, 2015**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Unweighted average</td>
<td>3 750</td>
</tr>
<tr>
<td>Unweighted median</td>
<td>2 866</td>
</tr>
<tr>
<td>Weighted average - private sector</td>
<td>4 355</td>
</tr>
<tr>
<td>Weighted average - public and private sector</td>
<td>5 747</td>
</tr>
</tbody>
</table>

*Source: Isaacs (2016)*

When considering these three benchmarks – cost of basic needs, current wage levels, and collective bargaining – it becomes clear that the relevant benchmarks in South Africa cluster in the range between R3 500 and R5 500.

### 3.3 International approaches to adjusting the level of the national minimum wage

#### Medium-term targets and a phasing-in approach

Given the desire to set a national minimum wage that would make a meaningful impact on the extremely high levels of wage inequality and working poverty in South Africa, a phased approach may be necessary in order to allow for businesses and the economy to gradually adjust to the national minimum wage. This medium-term approach allows for the national minimum wage to be initially set below the target level and increased over a period of time at a rate higher than inflation. The final target and the increments should be negotiated in advance. The starting point and final target may be selected on the basis of the benchmarks outlined above, with discretion given to the competent authority in moving from one to the other. Alternatively, an ‘indexation’ approach may be used. For instance, the national minimum wage could initially be benchmarked at 40% of the average wage or R3 467 a month (in April 2015 prices) – which is both below the line of working poverty in South Africa and international standards – and gradually increased to 45% of the inflation-adjusted 2015 mean wage, R3 901, by 2020 (Adelzadeh 2015). If the national minimum wage is initially “tiered” – that is, some sectors are covered by a lower national minimum wage – a medium-term plan for phasing out these exceptions could be agreed from the outset. This is discussed further in Chapter 4.

#### Adjusting the national minimum wage

Whether targets are in place or not, the minimum wage needs to be adjusted regularly. There is no standard time period within which minimum wages are revised although ILO Convention No. 131 makes regular minimum wage adjustments obligatory. This said, only 40% of countries have a specified adjustment period, ranging from six months to more than two years (ILO 2014b). Assuming no fixed target to be reached, minimum wage adjustments can be made either automatically, according to a
prescribed index or formula, or at the discretion of the competent authority. While the automatic increase of wages provides a transparent, reliable and regular mechanism of adjusting the national minimum wage, it is inflexible (Dickens 2015).

As discussed earlier, the most common indicators for setting and adjusting the minimum wage are: the cost of basic needs, as measured by changes in the value of a “basic basket of goods”, the poverty threshold, or the Consumer Price Index (CPI); labour market indicators such as the average or median wage; and economic factors such as the GDP growth rate, employment rates, and changes in productivity. The CPI is a commonly used measure when adjusting minimum wages. However, the ILO warns against indexing the minimum wage solely to inflation as it may lead to the erosion of the minimum wage over time, as inflation for low-wage earners tends to be higher than overall CPI (Luebker 2012) as is the case in South Africa. If CPI is to be used it should be CPI plus a certain percent (for instance, two to four percent) to ensure the real minimum wage is not eroded. However, the ILO suggests combining several indicators.

The purpose of the national minimum wage should also be considered: if the reduction of inequality is an objective, then the minimum wage must increase at a rate above average wage growth; for instance, at average wage growth plus two to four percent. In Malaysia the national minimum wage is calculated in relation to the poverty line, the average number of workers per household, the median wage, productivity growth, the consumer price index, and unemployment rates (Shanmugan 2016).
Policy considerations when setting and adjusting the level of the national minimum wage

- The objective of a national minimum wage in South Africa is to transform the wage structure, and reduce working poverty and wage inequality. For the national minimum wage to reduce poverty it must be set at a level sufficient to meet workers’ basic needs. For it to function as a redistributive tool it must be designed such that wage growth at the bottom outstrips it at the top.

- When setting a national minimum wage most countries take into account cost-of-living, labour-market, and collective-bargaining indicators.
  - Cost-of-living indicators: In developing countries the poverty threshold should be measured in relation to the household rather than the individual. In South Africa the working-poor line is equivalent to R4 317 a month in February 2016 prices and a household of four requires R5 544 to meet their most basic needs.
  - Labour market indicators: Given the extremely high levels of wage inequality, the average wage is the most appropriate labour market indicator. Currently sectoral minimum wages in South Africa fall well below international standards. Depending on how the average wage is defined, in February 2016, 48% would be equivalent to between R4 355 and R5 161 per month.
  - Collective bargaining indicators: in South Africa, the weighted average wage for bargaining council agreements in the private sector is R4 355 per month, and R5 747 for the public and private sectors combined.

- Given the extremely high levels of wage inequality and working poverty, a phased approach may be necessary in order to allow for businesses and the economy to gradually adjust to the national minimum wage. This medium-term approach allows for the national minimum wage to be initially set below the target and increased over a period of five to ten years. The final target and increments should be negotiated in advance and national minimum wage tiers (if any) should be gradually phased out.
4 The role of exclusions and exemptions in the implementation of a national minimum wage

Exclusions refer to the exception of entire sectors or categories of workers from national minimum wage coverage. Exemptions are the exception of individual employers from the obligation to pay the full national minimum wage for a given period of time (Konopelko 2016a). In order for a national minimum wage to effectively contribute to the reduction of poverty and inequality, exclusions and exemptions must be kept to a minimum. A universal national minimum wage not only ensures that workers and their families are able to meet their basic needs regardless of the sector in which they work, the region in which they live, and their occupational category, but also that workers know what they should at minimum be paid, thereby strengthening enforcement (Rani et al. 2013).

The majority of minimum wage systems do not allow for exclusions or exemptions (ILO 2014b). However, the presence of very low-wage sectors – such as agriculture and domestic work in South Africa – has been used to justify setting a very low national minimum wage. In these instances, introducing a uniform wage may mean introducing a wage significantly below the line of working poverty, which would do little to transform the wage structure or address workers’ basic needs. Exclusions and exemptions can ease the transition to a national minimum wage. However, the terms of exclusions and exemptions – including their phasing-out – should be negotiated up-front and codified in national minimum wage legislation (Konopelko 2016a).

4.1 The current approach to exclusions and exemptions in South Africa

Because South Africa has a sectoral wage-setting system, there is currently no universal approach to exclusions. Workers enrolled in structured learning programmes such as learnerships and apprenticeships may be paid a wage lower than the minimum for their sector. For instance, learners registered with a Sector Education and Training Authority (SETA) receive a monthly ‘allowance’ which ranges from R1 139 to R6 440 depending on the qualification and the number of credits earned. Apprentices enrolled in the Competency Based Modular Training (CBMT) system are also paid a sub-minimum wage, determined by bargaining council agreements (Castel-Branco 2016b).

The procedure for issuing exemptions is outlined in the Labour Relations Act (LRA) of 1995 and the Basic Conditions of Employment Act of 1997 (BCEA), as amended. Applications for exemptions are evaluated either by the DoL, if it pertains to a sectoral determination, or by the relevant bargaining council. Exemptions can be requested in relation to the minimum wage, hours of work, and other conditions of employment. The employer must offer reasons for an exemption and provide supporting documentation. Applications are reviewed within thirty days and can be either approved, denied pending further documentation, or denied outright. Employers have the right to appeal. Exemptions granted by the DoL expire within a year, while bargaining council exemptions vary. The current system gives sectors autonomy but the
absence of specific indicators, lack of transparency in administrative procedures, and inadequate public reporting means the process of exemptions is vulnerable to abuse (Konopelko 2016a).

4.2 The international approach to exclusions and tiers

When introducing a national minimum wage most countries have had to decide how best to incorporate very low-wage sectors such as paid domestic work and agricultural work, young workers, workers with disabilities, and workers enrolled in learning programmes. While most countries do not allow for exclusions, some opt to except certain categories of workers from national minimum wage coverage or establish lower minimum wage tiers that can be phased out over time. In contrast to exclusions, which except entire categories of workers from minimum wage coverage, a tiered system sets different wage levels for select sectors as a percentage of the national minimum wage. It is distinct from a sectoral system in that the tiers are pegged to the national minimum wage with the objective of eventually phasing them out.

Low-wage sectors

Domestic work, agriculture, and public employment programmes are the three ultra-low wage sectors that are most frequently considered for differentiation within minimum wage systems. In South Africa these sectors are among the most vulnerable, with 50% of full-time domestic workers earning a monthly wage below R1 577 and 50% of full-time agricultural workers earning below R2 253 (Finn 2015). National survey data suggests that these three categories alone comprise approximately 2.1 million workers (StatsSA 2015). Their blanket exclusion from the national minimum wage could further deepen wage inequality and undermine one of the key objectives of the national minimum wage. A tiered system - where workers receive a percentage of the national minimum wage - would ensure that they are not left behind. As the case of Chile illustrates, these tiers should be phased out over time. In 2008 the Chilean Government initiated the phasing-out of differentiated treatment for domestic workers, gradually increasing their minimum wage from 75% to 100% of the national minimum wage (ILO 2014b).

Workers with disabilities

The exclusion of workers with disabilities is based on the largely unsubstantiated assumption that they are less productive. Many countries including Malaysia strongly oppose minimum wage exclusions for people with disabilities on the basis that it is discriminatory (Konopelko 2016a). In South Africa, the Employment Equity Act effectively forbids lower minimum wages for employees with disabilities. Other countries allow for exemptions on a case-by-case basis if the employer can prove that an employee with a disability has lower productivity and work efficiency than their colleagues. In Portugal a ‘productivity gap’ between a worker with a disability and one without must first be established by the employer (ILO 2014b).
Young workers

The exclusion of young workers is based on the assumption that they are less productive, have fewer skills, and require more on-the-job training than adults. This is largely unfounded, particularly in low-skilled jobs (Konopelko 2016a). In addition, there is a prevailing belief that lower wages for young people will make them more competitive in the labour market, which in turn will contribute to a reduction in youth unemployment. This is a key issue in South Africa where youth unemployment exceeds 50%. However, neither international nor national evidence supports this assumption (Eyraud and Saget 2005). For instance in South Africa, the Employment Tax Incentive (ETI) – commonly known as the youth wage subsidy – had no discernible impact on youth employment (Ranchhod and Finn 2014, 2015). Furthermore the Employment Equity Act effectively forbids setting lower minimum wages for young workers.

Workers enrolled in learning programmes

The exclusion of workers enrolled in learning programmes is based on the assumption that they are not workers but learners who, by virtue of being enrolled in training programmes are less productive or less deserving of remuneration. Therefore, in order to incentivise employers to set up learning programmes, they are excluded from the national minimum wage. This is the case for instance in Chile (ILO 2014b). However, the outright exclusion of workers in learning programmes means that they are not assured a wage sufficient to meet their needs and those of their families. Furthermore, while this approach assumes that learners and apprentices are not workers, they often perform similar work to full-time employees, thereby undermining the principle of ‘equal pay for equal work’, as well as potentially undercutting the positions of experienced workers. Given that learners and apprentices are currently covered by bargaining council agreements and sectoral determinations in South Africa, excluding them outright from a national minimum wage would undermine current labour protections and ultimately the objectives of a national minimum wage (Castel-Branco 2016b).

Some countries have opted to cover learners and apprentices at a lower minimum wage tier, generally calculated as a percentage of the national minimum wage, and increased progressively as workers gain qualifications and experience. This is the case for instance in Portugal, where apprenticeships are limited to between six months and a year. However, the ILO recommends that in order to uphold the principle of equal pay for work of equal value, differentiated wages should only be considered for learners who receive structured training during working hours (ILO 2014b). However, many countries, including Uruguay and Malaysia, provide the same wage for apprentices and learners as other qualified workers (ILO 2014b; NWCC 2012). There are numerous advantages to this approach: it ensures that workers who are undergoing training are not trapped in a cycle of working poverty and are able to meet their basic needs and those of their families; it removes the incentive to replace positions for qualified workers with learnerships, thus ensuring career progression for qualified workers; it
reinforces the function of apprenticeships as an entry point into a long, productive career; and it reduces downward pressure on the wages of qualified workers.

Given that South Africa already offers an array of incentives to employers to defray the potential costs related to lower productivity output and training, such as grants administered by SETAs and tax incentives by SARS, there is no rationale for the exclusion of learners or their inclusion in the national minimum wage system at lower wage tiers (Castel-Branco 2016b).

4.3 The international approach to exemptions

International evidence suggests that providing blanket exemptions from a national minimum wage is damaging (Konopelko 2016a). In cases where exemptions are based on the size of the business, companies may opt to employ unregistered workers or reclassify workers as volunteers in order to remain below the threshold. In cases where exemptions are based on turnover, companies may attempt to disguise their real turnover. Time-limited blanket exemptions are sometimes used. In Malaysia, which recently introduced a national minimum wage, small and medium enterprises with less than five employees were allowed to defer payment of the national minimum wage for up to six months, with the possibility of extension if the national minimum wage was found to be unaffordable for individual firms (NWCC 2012). Exemptions on a case-by-case basis are generally preferable. However, while exemptions can ease the transition to a national minimum wage system they are also subject to abuse (Eldring and Alsos 2012).
Policy considerations regarding the role of exclusions and exemptions in the implementation of a national minimum wage

• While exclusions and exemptions should be kept to a minimum, the presence of ultra-low wage sectors may be used to justify a very low national minimum wage level significantly below the line of working poverty. This would do little to address workers’ basic needs.
• Exclusions and exemptions can ease the transition to a national minimum wage, but their terms should be negotiated up-front and codified in national minimum wage legislation.
• Excluding low-wage sectors entirely should be avoided. Their exclusion would decrease the efficacy of the national minimum wage and widen the wage gap. As an interim measure, a ‘tiered’ system can be considered that allows for lower minimum wages pegged to the national minimum wage. However the process of phasing these out must be clearly defined.
• The Employment Equity Act forbids setting lower minimum wages for young employees or employees with disabilities.
• Given that learners and apprentices are currently covered under sectoral minima, excluding them entirely would undercut current protections. South Africa already offers various incentives to employers such as grants administered by SETAs and tax incentives by SARS. Therefore, there is no justification for the exclusion of these workers.
• Case-specific exemptions based on clearly defined rules are commonly used and allow governments to be responsive to the circumstances of individual businesses.
5 Defining the components of the national minimum wage

After establishing the level of the national minimum wage and the process for exclusions and exemptions, it is important to define the forms of remuneration that count towards compliance. There is no international, legally-binding definition of a national minimum wage. Nonetheless, the ILO recommends that definitions be clear, transparent, easy to comply with, and straightforward to enforce (ILO 2014b).

5.1 The components of minimum wages in South Africa

In South Africa the BCEA of 1997 provides a basic definition of remuneration and wage, but the components of the wage which count towards compliance are determined by sectoral determinations and collective bargaining agreements. The wage is defined as a component of remuneration paid to an employee in respect of the ordinary hours of work.\(^5\)

As Table 5 illustrates, in South Africa there is significant variation in terms of the components of remuneration that count towards compliance. Nonetheless, the following are generally considered part of the wage:

- Employee contributions to the Unemployment Insurance Fund, benefit funds, and trade unions;
- Productivity and performance pay, which includes commissions and piecework, but importantly excludes tips and gratuities\(^6\);
- In-kind benefits such as accommodation, food, and in some sectors, uniforms\(^7\);
- Deductions for loans, goods purchased from the employer, and under very specific circumstances, damaged goods.\(^8\)

The following are always excluded from the wage:

- Premium payments;
- Allowances for night work and standby work;
- Tips and gratuities.

---

5 The ordinary hours of work are calculated based on a 45-hour work week; this comprises a nine-hour workday if an employee works five days a week, or an eight-hour workday if an employee works six days a week.

6 In order to ensure that workers receive a wage to meet their basic needs, productivity pay is regulated. For instance, in the hospitality sector an employee who performs commissioned work must be paid no less than the prescribed minimum wage for the period worked.

7 Similarly, in-kind pay is also regulated. For instance, for domestic work a maximum deduction of 10% is allowable for accommodation, provided that it meets quality standards.

8 Deductions for the loss of or damage to goods are limited to no more than 20% of the employee’s remuneration, if the employee is found to be at fault.
Table 5: Variation in the components of the wage in collective agreements and sectoral determinations in South Africa, 2015

<table>
<thead>
<tr>
<th>Included across all sectors</th>
<th>Included in some sectors</th>
<th>Excluded from all sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net wage: employee’s take-home pay after taxes and statutory deductions.</td>
<td>Productivity and performance pay including commission and piecework. Piecework is prohibited in some sectors such as the contract cleaning bargaining council in KZN.</td>
<td>Allowances for night work, transportation, and stand-by work.</td>
</tr>
<tr>
<td>Employee contributions to the Unemployment Insurance Fund (UIF); benefit funds such as pension, provident, retirement, and medical aid funds; and dues to registered trade unions where applicable.</td>
<td>In-kind benefits including accommodation, food and, in some sectors, uniforms. In the hospitality and private security sectors these are expressly prohibited.</td>
<td>Overtime and premium payments beyond the ordinary hours of work.</td>
</tr>
<tr>
<td></td>
<td>Deductions for loans, goods purchased from the employer, and damaged goods under very specific circumstances.</td>
<td>Tips and gratuities (only explicitly mentioned in the hospitality sector).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Annual bonuses.</td>
</tr>
</tbody>
</table>

Source: Castel-Branco (2015)

5.2 International approaches to defining the components of the national minimum wage

Internationally there is no standard definition of the components of a national minimum wage. Figure 3 provides an overview of the components that are generally considered to count towards compliance. Those at the bottom are the most commonly used in measuring compliance, those in the middle are contested, and those at the top are strongly discouraged.

The wage

The net wage refers to workers’ take home pay after taxes and statutory deductions. Few countries set a national minimum wage as a net wage because wage data are generally collected and analysed in gross terms. The basic wage includes income tax and social insurance contributions, but excludes wage supplements such as productivity pay and in-kind benefits. The advantage of working on the basis of the basic wage is that it is straightforward to implement, particularly if the value of wage supplements is difficult to assess. A few countries adopt a total-earnings approach by including all wage supplements – including premiums for non-standard work – in the
calculation of the national minimum wage. The drawback of the total-earnings approach is that workers may be forced to work overtime or in abnormal conditions in order to earn the minimum wage (ILO 2014b).

Figure 3: The components of remuneration

![Diagram of remuneration components]

**Productivity and performance pay**

Productivity and performance pay are supplemental forms of remuneration. They include commission work, piecework, and tipped work. Commissions are based on the value or volume of sales. Many countries exclude commissions from the calculation of the national minimum wage in order to minimise abuse and confusion (ILO 2014b). However, in certain sectors, such as the hospitality and retail sector, commissions are an important component of the pay structure. Therefore, some countries allow for commissions but under strict terms. For instance, in the UK, if at the end of the reference period the total wage falls below the national minimum wage level the employer must top these up (Low Pay Commission 1998). This is also the case in South Africa. The advantage of such an approach is that it allows workers to receive earnings above the national minimum wage due to positive performance but provides safeguards to ensure that all workers receive at least the national minimum wage and are, therefore, able to meet their basic needs (Castel-Branco 2015).

Piecework refers to an employment arrangement where workers are paid by the piece or task, rather than by the time worked. For employers the advantage of piecework is that it is directly tied to output and production targets. For workers, however, it can lead to long working hours and low hourly wages. For this reason, piecework is being phased out internationally. Some countries have incorporated safeguards to ensure that pieceworkers’ wages cannot be lower than the applicable minimum wage. In Cambodia, pieceworkers’ wages must be fixed at a level that enables a wage earner
with below-average skills and normal output to receive, for the same duration of work, a salary at least equal to the guaranteed national minimum wage (ILO 2014b).

Tips or gratuities are a productivity bonus paid by the customer rather than the employer. Germany is among the many countries that exclude tips from national minimum wage calculations on the basis that they are not a form of remuneration but a gratuity (Federal Ministry of Labour and Social Affairs 2015).

**In-kind benefits**

In-kind benefits are non-wage forms of remuneration. While in some sectors in-kind benefits such as accommodation may be beneficial for both employers and employees, they are also prone to abuse and overvaluation. The ILO recommends that the payment of minimum wages through in-kind benefits be discouraged, and where parties agree that it is desirable, arrangements should be made for the independent valuation of benefits (ILO 2014b).

**Premium payments**

Premium payments are supplemental forms of remuneration for extraordinary work. The ILO recommends that premiums for non-standard work should not count towards compliance with the national minimum wage (Belser 2008).

---

**Policy considerations in defining the components of a national minimum wage**

- It is important to ensure that the definition of the national minimum wage is clear, easy to comply with, and straightforward to enforce.
- Given the South African context, only the basic wage should count towards compliance. In some instances, performance pay with top-ups by employers could also be considered. The case of piecework must be carefully considered.
- Given the prevalence of unreported tip income, its inclusion in the calculation of a national minimum wage would complicate monitoring, compliance, and enforcement.
- In some sectors in-kind benefits may be beneficial for both employers and employees. These are however prone to abuse and overvaluation and it is therefore important to clearly limit deductions as is current practice in South Africa.
- Allowances and premiums for dangerous work, non-standard work hours, and overtime should not count towards compliance with the national minimum wage.
6 Determining the reference period of the national minimum wage

When considering the implementation of a national minimum wage, a country must decide over what time period the wage will be calculated. Should it be calculated on an hourly, daily, weekly, or monthly basis? Before deciding, it is important to clearly define what counts as working time and to ensure that the definition is aligned with statutory labour protections (ILO 2014b). In South Africa wages are calculated based on the ordinary hours of work, which ensures that workers receive premium payments for work beyond the ordinary hours (DoL 1997). This chapter offers an overview of current practice in South Africa, explores the international approaches to determining the reference period, and concludes with some considerations for the case of South Africa.

6.1 The current approach to determining the reference period in South Africa

In South Africa, sector-specific minimum wages are defined on an hourly basis and then converted to a daily, weekly, or monthly rate depending on the sector. Some sectors such as contract cleaning only publish an hourly minimum wage. The daily wage is the hourly wage multiplied by the number of ordinary hours of work prescribed in a day. As mentioned earlier, the ordinary hours of work are calculated based on a 45-hour workweek: a nine-hour workday if an employee works five days a week, or an eight-hour workday if an employee works six days a week (DoL 1997).

In instances where minimum wages are defined only on an hourly basis – as is the case in contract cleaning and the textile sector in South Africa – workers may earn the hourly minimum wage but work insufficient hours to meet their basic needs, which ultimately undermines the objective of a national minimum wage. In an attempt to address this risk, some sectoral determinations and collective agreements have introduced a series of measures to ensure that workers earn a minimum income (Castel-Branco 2016a). The first measure is to reduce vulnerability to casualisation by limiting the categories of work that can be paid on an hourly basis. In the domestic, forestry, and farm work sectors, full-time employees can reject being paid on an hourly basis. In the road freight and logistics sectors, workers can only be paid on a weekly basis (DoL 2016; Department of Labour 2015). A second measure is to establish higher wage rates for part-time workers. In the retail and wholesale sector, employees who work less than 27 hours a week are paid 25% above the hourly wage for a full-time worker but forfeit the right to premium payments for work on Sunday, paid sick leave, and allowances for night work. Domestic workers who work less than 27 hours a week are also entitled to a premium rate (Department of Labour 2015). A final measure to ensure that workers work for a minimum number of working hours is to directly stipulate it. In the contract cleaning sector an employee must be paid for a minimum of six hours on a given day, even if they work less. In the private security and domestic work sectors, an employee who works less than four hours a day is deemed to have worked four hours (Department of Labour 2015; Castel-Branco 2016a).
6.2 International approaches to determining the reference period

In some countries, including the UK and Germany, the national minimum wage is set only on an hourly basis. A single hourly wage may facilitate compliance because it is easy to remember and straightforward to enforce (ILO 2014). In addition, it ensures that workers are paid for every hour worked. This is particularly important in sectors where working hours fluctuate or where there is poor adherence to the ordinary hours of work. However, as mentioned previously, an hourly rate does not guarantee workers a minimum wage over a longer period of time, for example, a week or a month. This is particularly harmful in sectors where casualised or seasonal work is prevalent, or where there is a concern that a national minimum wage will result in the reorganisation of employment arrangements and lead to a substantial reduction in working hours (Castel-Branco 2016a).

If minimum wages are not defined on an hourly basis, it is important to specify the ordinary hours of work in order to ensure that workers are not forced to work overtime without additional compensation. The advantage of a weekly or monthly reference period is that it guarantees that workers earn enough to meet their basic needs over a longer reference period. The disadvantage is that if the number of hours is not clearly defined or not enforced, workers may be forced to work unpaid overtime. Consequently daily, weekly, or monthly wages can result in lower overall pay (Castel-Branco 2015). Although more complex, a combined approach to establishing a reference period has the advantage of being able to respond to a variety of work arrangements. In order to prevent abuse it is important to ensure that the ordinary hours of work are clearly defined and workers duly compensated for work performed beyond these.

Policy considerations in determining the reference period of a national minimum wage

• While there is no single approach to determining the reference period it is important to ensure that definitions of what counts as time worked and the reference period are clear, easy to comply with, and straightforward to enforce.
• Given the South African context, an approach that combines an hourly, weekly, and monthly reference period is most appropriate.
• In order to reduce the incidence of abuse and ensure that workers are able to meet their basic needs, it is important to clearly establish and enforce the ordinary hours of work and extend current mechanisms that guarantee a minimum number of working hours to all sectors covered by the national minimum wage. Mechanisms to be considered include: the restriction of hourly pay to casual employees without a fixed contract who work 27 hours or less per week, the establishment of a minimum number of hours, and a premium rate for casual or part-time workers.
7 Incentivising compliance with the national minimum wage

Once the national minimum wage is introduced, incentives play an important role in strengthening voluntary compliance. This chapter provides an overview of monetary and non-monetary incentives, and explores the main advantages and disadvantages of each. After briefly examining the current framework for incentives in South Africa, it raises a number of policy considerations, based on international experience, to strengthen compliance with a national minimum wage in South Africa.

7.1 The current approach to incentivising compliance in South Africa

In South Africa there are currently no uniform measures to incentivise compliance with sectoral minimum wages. However, in certain sectors such as the clothing, leather, and textile sectors, some incentives have been introduced (Konopelko 2016b). For instance the National Bargaining Council for the Clothing and Manufacturing Industry (NBCCMI) and the National Textile Bargaining Council (NTBC) issue certificates of compliance, valid for one year, to firms who comply with labour standards. With a certificate of compliance a firm can apply to the Industrial Development Corporation (IDC) for a loan, receive a discretionary grant from the Sector Education and Training Authority (SETA), and qualify for rebates on import duties. Additionally, a compliance certificate is a prerequisite for applying for the Department of Trade and Industry’s Production Incentive (PI) and Competitiveness Improvement Programme (CIP). While little is known about the impact of certificates of compliance, anecdotal evidence suggests that they have had a positive effect (Vlok 2015).

7.2 International approaches to incentivising compliance

Internationally the most commonly used incentives are: public awareness campaigns, certificate of compliance programmes, public sector procurement incentives, tax incentives, and access to government loans or credit (Konopelko 2016b).

Public awareness campaigns

Generating a positive public discourse around the national minimum wage can have a positive impact on compliance. In particular, public awareness campaigns that recognise the best performers and publicly shame non-compliant firms can promote compliance. In the UK for instance, government departments ‘fame, name, and shame’ (Hampton 2004). ‘Naming and shaming’ publicly identifies non-compliant firms, while ‘faming’ recognises firms that go above and beyond legislated standards. As a result, some firms have even introduced codes of conduct to ensure that all subcontractors along the supply chain comply with minimum wage legislation and other labour standards. In addition, public awareness campaigns inform workers about their rights, which in turn empowers them to demand to be paid the national minimum wage. Unions also play a key role, not only in disseminating information but in protecting
workers from retaliation by filing collective grievances against employers, providing legal assistance to their members, and mobilising collective power around worker demands. As Benassi (2011) argues, a strong and well-organised workforce is more likely to monitor compliance and denounce violations.

**Certificates of compliance**

Certificates of compliance are an effective and affordable mechanism to motivate businesses to comply with minimum wage standards. Generally, a firm applies to a competent body for a certificate of compliance, issued upon full inspection of the firm, which is valid for a prescribed period of time. A certificate of compliance is particularly effective if it is tied to access to public procurement, tax incentives, and government finance (OECD 2010). While some studies suggest that certificates of compliance are unlikely to reach small- and medium-sized companies (Newitt 2012), the case of South Africa suggests otherwise. In the clothing and textiles sector approximately 65% of the companies that participated in the certificate of compliance scheme were small- and medium-sized enterprises (Vlok 2015).

**Public procurement**

ILO Convention 131 states that public procurement contracts should stipulate adherence to minimum wages, hours of work, and working conditions in accordance with collective agreements and national legislation (Rani et al. 2013). The advantage of tying access to public procurement to compliance with labour standards is that it is simple and affordable to implement. Furthermore, it can trigger a ‘compliance multiplier,’ where the main contractor is liable not only for wage compliance at their company but also their sub-contractors. Public spending in South Africa is significant, and small and medium enterprises (SMEs) receive a relatively high share of tenders. Consequently, this strategy could be effective for both large corporate firms and SMEs (Konopelko 2016b).

**Tax incentives**

Some governments provide tax incentives to motivate businesses to comply with national minimum wage standards. For instance, Brazil introduced the Simples programme in order to promote the formalisation of small businesses. Under this programme, small companies who comply with labour standards are entitled to make a single tax payment rather than multiple contributions. By 2012 over nine million small enterprises had been formalised in Brazil and were paying at least the national minimum wage (ILO 2014a). This scheme has the triple advantage of benefiting workers, assisting small business, and increasing tax revenue. In Malaysia, with the introduction of the national minimum wage, small and medium enterprises and associations were given a tax benefit equivalent to the difference between workers’ previous wages and the newly implemented national minimum wage. The objective was to help firms transition to paying higher wages while ensuring a fair wage for workers (Shanmugan 2016). The experience of Brazil and Malaysia suggest that, if
properly designed and targeted, tax incentives can improve compliance with the labour standards. However, tax incentives are also open to abuse, and across-the-board tax reductions are neither necessary nor sustainable. Additionally, they can put pressure on the fiscus (Konopelko 2016b), particularly given that certain targeted tax assistance programmes, most notably the Employment Tax Incentive, more commonly known as the “youth wage subsidy”, have had no discernible impact on employment despite significant cost (Ranchhod and Finn 2014). Therefore any tax incentives need to be carefully thought through.

**Government financial assistance**

Another approach is to tie government grants, loans, and subsidies to compliance with the national minimum wage. In South Africa, SMEs face considerable obstacles in accessing financing credit (Konopelko 2016b). Finance institutions such as the IDC and the National Empowerment Fund (NEF) could provide affordable development finance tied to national minimum wage compliance. The Brazilian Development Bank for instance, offers subsidised loans to firms that comply with labour and environmental standards (Borges et al. 2014). If an employer has a proven record of non-compliance they can be blacklisted for a minimum of two years, and denied access to public or private credits and loans. If the employer complies with the national minimum wage over the two-year period and pays all the relevant fines and debts, they can then be removed from the blacklist (Benassi 2011).

**Policy considerations for incentivising compliance with a national minimum wage**

- A combination of incentives and strict monitoring and enforcement can yield higher rates of compliance with a national minimum wage.
- Public awareness campaigns can be highly effective, especially if they empower workers to champion their rights.
- Participation in any kind of public procurement and/or government programmes should be conditional on national minimum wage compliance. This is a cost-effective option, particularly if collective bargaining bodies assist in certifying compliance.
- Access to finance from government financial institutions such as the Industrial Development Corporation (IDC) and National Empowerment Fund (NEF) should be subject to compliance with the national minimum wage.
- Direct tax incentives might be beneficial if targeted and designed appropriately, but may place additional strain on the fiscus.
8 Enforcing the national minimum wage

Although incentives are an important policy instrument, they must be coupled with strong monitoring and enforcement.

8.1 The framework enforcing minimum wages in South Africa

In South Africa, the LRA (1995) and the BCEA (1997) define the legal framework for enforcement. The LRA protects workers against unfair labour practices, establishes the right to collective bargaining, and enables bargaining councils to appoint designated agents to promote, monitor, and enforce collective agreements. The BCEA enforces and regulates the basic conditions of employment, which include the regulation of minimum wages for all workers. The BCEA empowers inspectors to enter workplaces in order to monitor and enforce compliance with employment laws, and issue compliance orders in cases of wage violations. The BCEA also established the Employment Conditions Commission (ECC) whose functions include keeping track of compliance by requiring employers to keep employment records, make such copies available for inspection, and provide records to workers upon request (DoL 1997). Despite South Africa’s regulatory framework, national household data suggest that the incidence of wage violations remains high (Finn 2015). The capacity of the inspectorate is uneven, the procedure for submitting and arbitrating labour violations complicated and lengthy, and penalties very low. The introduction of a national minimum wage offers the opportunity to improve enforcement.

8.2 International approaches to enforcing a national minimum wage

Workplace inspections

Workplace inspections are a key component of enforcement (Berg 2011). However, for them to be an effective mechanism, the inspectorate must have adequate staff and sufficient resources to carry out its mandate. In South Africa inspections are carried out by the DoL’s Inspection and Enforcement Service (IES). According to the DoL, there are approximately ten inspectors for every 100 000 workers in South Africa, higher than the ILO standard for industrialising countries of seven inspectors for every 100 000 workers. While the overall number of inspectors may meet ILO standards, their distribution is skewed geographically and sectorally. For example, the ratio of labour inspectors to workers is higher than ILO standards in less populous regions and lower in the commercial and industrial nodes of Gauteng, Western Cape, and KwaZulu-Natal (see Table 6). There is a need, therefore, to re-evaluate the allocation of inspectors (Murahwa 2016).
Table 6: Allocation of labour inspectors by province

<table>
<thead>
<tr>
<th>Province</th>
<th>Labour inspectors</th>
<th>Labour centres</th>
<th>Inspectors per labour Centre</th>
<th>Inspectors per 100 000 employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>119</td>
<td>16</td>
<td>5.7</td>
<td>10.9</td>
</tr>
<tr>
<td>Free State</td>
<td>87</td>
<td>11</td>
<td>6.6</td>
<td>13.3</td>
</tr>
<tr>
<td>Gauteng</td>
<td>224</td>
<td>26</td>
<td>7.2</td>
<td>5.5</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>231</td>
<td>16</td>
<td>11.6</td>
<td>10.8</td>
</tr>
<tr>
<td>Limpopo</td>
<td>111</td>
<td>13</td>
<td>6.3</td>
<td>12.3</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>80</td>
<td>16</td>
<td>4.1</td>
<td>8.5</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>44</td>
<td>8</td>
<td>5.1</td>
<td>15.2</td>
</tr>
<tr>
<td>Northwest</td>
<td>66</td>
<td>10</td>
<td>4.1</td>
<td>8.7</td>
</tr>
<tr>
<td>Western Cape</td>
<td>94</td>
<td>12</td>
<td>6.4</td>
<td>4.9</td>
</tr>
<tr>
<td>Total/Average</td>
<td>1056</td>
<td>128</td>
<td>6.3</td>
<td>10.0</td>
</tr>
</tbody>
</table>

*Source: Murahwa (2016)*

Furthermore, in some sectors such as domestic and agricultural work, inspectors face many obstacles in accessing places of work. In their study of paid domestic work in South Africa, Dinkelman and Ranchhod (2012) noted that less than 0.2 percent of domestic workplaces were inspected during the targeted blitz between November 2002 and August 2003, following the introduction of a sectoral determination for domestic workers. The DoL simply does not have the resources to inspect all private homes (Tanzer, deCant and Terzian 2013). Private homes, due to privacy regulations guaranteed in Section 65 (2) of the BCEA (1997), generally have more restrictive rules for conducting labour inspections than other workplaces and require the consent of the homeowner. Should a homeowner refuse a voluntary inspection, an inspection can be compelled with authorisation from the Labour Court, but only if justification is provided. In the agricultural sector, inspectors must give employers notice prior to inspections. This undermines the inspectorate’s ability to identify violations. According to Stanwix (2013) the probability of a farmer in the Western Cape being visited by a labour inspector is low. Asymmetrical power relationships, particularly in the ‘private’ spaces of the home or the farm, combined with the reliance of workers on employers for housing and other services, means that workers in these sectors may be less willing to confront employers or report wage violations. This is compounded by the absence of strong union representation in these sectors.

In addition, there is a high turnover of inspectors, driven in part by low salaries and limited career opportunities. As a result, labour inspectors may lack the training, experience, and expertise to adequately respond to issues of non-compliance. Interestingly, inspectors undertake considerably more inspections in South Africa than in many other countries. In 2009, the average South African inspector made 159 workplace visits, in contrast to 71 for Nicaragua and 29 for Singapore. This may be due to inspectors being rewarded based on the number of workplaces inspected rather than on the number of workers covered.
Brazil has made significant advances in strengthening its inspectorate. Improved inspection is partially attributed to changes in the incentive structure. Inspection is a well-paid job and, therefore, inspectors are retained and bribes minimised. Furthermore, inspectors receive a base salary but up to 50% of the inspector’s wage is tied to the effectiveness of the enforcement system – a third of this is tied to the inspector’s own performance while the other two-thirds is tied to the system’s overall performance (Almeida and Carneiro 2009). Finally, inspectors in Brazil are assigned to sub-regions for a maximum of twelve months, and cannot visit the same area during two consecutive periods. This is to prevent relationships of patronage from developing.

**Penalties for non-compliance**

Penalties or sanctions are an important enforcement tool. Internationally, sanctions include: naming and shaming, denial of access to credit or public contracts, revoking operating licences, stiff fines, and prison time. In South Africa penalties are relatively low. Employers with no history of labour violations pay a fine of 25% of the underpayment, including interest. The fine increases with the number of violations. Employers with four or more violations must pay 200% of the amount due plus interest (DoL 1997). While the amount increases for repeat offenders it is capped at four violations. Given the limited probability of inspection, employers may opt to pay workers subminimum wages, and if caught, pay a fine.

In Brazil, national legislation gives the Department of National Integration the power to suspend all lines of financial credit, both from state financial institutions and from private financial institutions, to companies whose names appear on the slave labour blacklist (Benassi 2011). Such an approach deters other companies from violating minimum wage regulations. Stiff penalties may also deter employers from violating minimum wages. In Colombia fines may amount to a hundred times the minimum wage salary. Incentives can also be offered for speedy compliance. In Brazil a 50% discount is offered to firms who comply within ten days of being notified of a violation, with small- and medium-sized firms generally paying fines early. Finally, in some countries the payment of below minimum wages is considered a crime. In Malaysia, India, Indonesia, and Israel, heads of non-compliant companies may face imprisonment and prosecution (Santoso and Hassan 2013). Regardless of the approach or combination of approaches, it is crucial that penalties and sanctions outweigh the benefits of non-compliance.
Policy considerations for enforcing a national minimum wage

• In South Africa it is important to strengthen the capacity of the inspectorate, including the working conditions of labour inspectors.
• It is also essential to reduce the length of enforcement proceedings in order to make them faster and more responsive.
• Complaint procedures for individuals should be accessible and affordable.
• Penalties should be increased in order to ensure that the costs of non-compliance outweigh the benefits.
• Additional sanctions such as revoking operating licences for repeat offenders, naming and shaming lists, and exclusion from public procurement, should be instituted.
• All social partners should be engaged in the monitoring of the national minimum wage.
9 Conclusion

As this summary report demonstrates, the form that a national minimum wage takes varies from country to country depending on social, economic, political, and institutional contexts. For South Africa, a country with extreme and persistent levels of inequality and working poverty, a national minimum wage is one policy instrument with the potential to transform the wage structure by increasing the wages of the working poor, raising the labour share, and reducing wage differentials.

However this is not a given. For the national minimum wage to meet its stated objectives it must be set at a level sufficient to meet workers’ basic needs; designed so that wage growth at the bottom outstrips wage growth at the top; applied to all workers regardless of occupation, age, disability, terms of employment, and skill level; calculated using a definition and reference period that ensures that in practice workers receive a national minimum wage at the end of the month; and adequately applied through a combination of incentives and enforcement measures.

This is not a simple task and will ultimately be the outcome of a political process of negotiation between the government and social partners. Nonetheless, we consider that the policy considerations raised in this summary report, which draw on analysis of both the current South African context and international experience, will prove useful to policy debates.
References


———. 2016. “Global Wage Database.”


Santoso, Budi, and Kamal H Hassan. 2013. ‘Enforcing the minimum wage through criminal sanctions: the case of Indonesia’. National University of Malaysia.


