



ILO Convention 131 emphasises the importance of full consultation with and participation of social partners in the process of setting, adjusting, and implementing a national minimum wage (NMW). Engagement with social partners – including representatives of workers, employers, and civil society – ensures that those most directly affected by minimum wage policies are able to participate in the wage-setting process, thereby strengthening its legitimacy, promoting consensus, anticipating potentially disruptive adjustments, and improving compliance (ILO 2014a). This Policy Brief discusses the advantages and disadvantages of the current wage-setting mechanism in South Africa and, based on an analysis of minimum wage mechanisms internationally, outlines a series of policy considerations for determining the form, composition, and function of a South African wage-setting body.

**Key questions:**

- What are the current minimum wage-setting mechanisms in South Africa, and what are their benefits and limitations? (p. 2)
- Internationally, what are the most common approaches to establishing a wage-setting body in terms of its form, composition, function, and decision-making power? (p. 3)
- Given the South African context, what considerations should be taken into account in the design of a national minimum wage-setting body? (p. 5)

**Summary of Findings:**

- Internationally, almost all countries require consultation with social partners either on a one-on-one basis or through a specialised body. Even in instances where no formal consultation is stipulated in the law, this takes place informally. Conversely, very few countries approve minimum wage rates independently of the government (e.g. through collective bargaining).
- 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 for setting and adjusting the national minimum wage. However, the following reforms should be considered:
- The composition of the ECC should be reformed to ensure greater representation. Currently the ECC's composition is weighted towards experts, appointed by the Minister of Labour. Given the existence of multiple trade union federations and employers' organisations, as well as civil society groups, 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 NMW is not to replace collective bargaining but rather to complement and strengthen it.

## THE CURRENT MINIMUM WAGE-SETTING MECHANISMS IN SOUTH AFRICA

In South Africa, minimum wages are determined on a sectoral basis either through collective agreements, negotiated at the level of the firm or bargaining council<sup>1</sup>, or through sectoral determinations, published by the Minister of Labour on the recommendation of the Employment Conditions Commission (ECC)<sup>2</sup>. The Labour Relations Act of 1995 (LRA) and the Basic Conditions of Employment Act of 1997 (BCEA) establishes the legal and institutional framework for minimum wage-setting. The LRA provides for centralised and company-level collective bargaining between employers and registered trade unions through voluntary, industry-specific bargaining councils. Bargaining council agreements can be extended to non-parties by the Minister of Labour (MoL). The BCEA establishes the basic conditions of employment for all workers, including vulnerable workers outside collective bargaining structures. It provides for the creation of sectoral determinations by the Minister of Labour upon the recommendation of the ECC. The BCEA also defines the structure and functions of the ECC.

*“Studies also point to the need for greater independence from the DoL, which could be achieved by locating the ECC outside of the department, and adequately funding both the ECC and the Secretariat.”*

The ECC is an independent, statutory body, responsible for regulating both the minimum wages and conditions of employment of vulnerable and unorganised workers. 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 commissioners – one of whom is appointed as chair – are nominated by the Minister of Labour after consultation with the National Economic Development and Labour Council (NEDLAC). Expert commissioners are nominated on the basis of their expert 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 and not as representatives of their constituencies. Their terms of office are defined by the Minister of Labour and, though limited to three years, are renewable.

The ECC is supported by a technical secretariat which is responsible for overseeing research, coordinating the consultation process with social partners, and drafting ECC recommendations. According to the BCEA, the Minister must provide Commissioners with the necessary staff to adequately perform these functions. It directs the Director-General to undertake research to enable the commission to make informed decisions. However a number of studies point to the limited capacity of an already taxed secretariat, based at the Department of Labour’s (DoL’s) Employment Standards Directorate, to collect and analyse data (DPRU 2016; Seekings 2016; NMWRI 2016). The ECC does not have its own administrative or research capacity and must therefore rely on DoL staff, who have limited expertise in this area or time available. While the DoL does commission some outside research, in-house capacity to evaluate research findings is weak.

This revision of the ECC would ensure its de facto independence. According to the DPRU (2016), the ECC’s greatest strength is that it brings together labour market expertise and social partners. However, membership is currently weighted towards labour market experts rather than social partners. This poses a challenge of representation, as social partners comprise a minority of commissioners and many smaller but relevant partners, including civil society groups, are excluded.

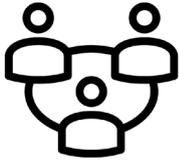
*“The expansion of the ECC to include a wider range of members, in line with current practice at the National Economic Development and Labour Council (NEDLAC), South Africa’s primary social dialogue institution, should be considered.”*

Finally, there is little articulation between the ECC and the institutions of compliance and enforcement in South Africa. This is discussed in greater detail in a forthcoming paper by Murahwa (forthcoming).

<sup>1</sup> In some industries, unions and companies bargain both at the level of the council and of the firm (Godfrey 2010).

<sup>2</sup> There are currently nine Sectoral Determinations covering the following sectors: domestic work, contract cleaning, private security, wholesale and retail, farm workers, forestry, hospitality, taxi and learnerships. Minimum wages for workers in the Expanded Public Works Programme (EPWP) are set by Ministerial Determination.

## INTERNATIONAL APPROACHES TO ENGAGEMENT WITH SOCIAL PARTNERS



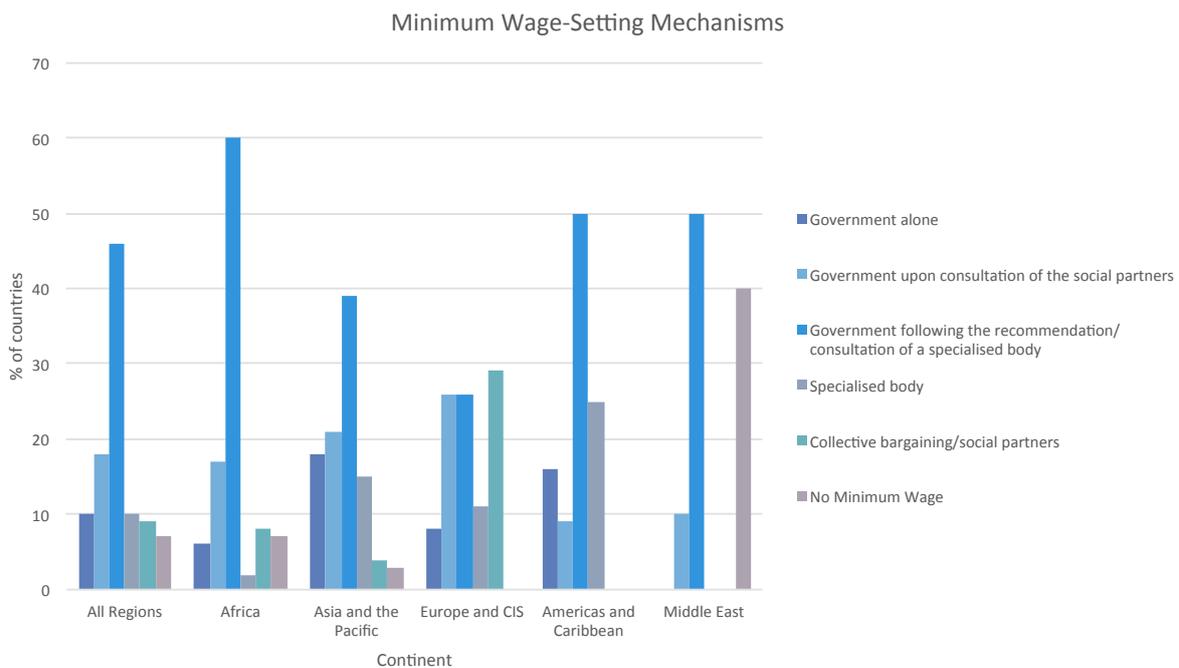
However, there is no international standard for the architecture of a wage-setting process. Internationally, there are five main approaches (Eyraud and Saget 2005):

- The government decides without consulting with social partners;
- The government decides, but consults on a one-on-one basis with social partners;
- The government decides, based on the recommendation of a specialised body that may be bipartite, tripartite, or independent;
- A specialised body decides;
- Collective bargaining.

*“The ILO emphasises the importance of full consultation with, and participation of, social partners in the process of setting, adjusting, and implementing a national minimum wage.”*

Figure 2 provides an overview of the main approaches by continent, with governments deciding based on the recommendation of a specialised body the most common. As it clearly illustrates, few countries rely solely on an external body of experts to make decisions regarding a national minimum wage.

Even where a specialised body has the mandate to decide, this body is generally bipartite or tripartite in nature. In Europe many countries still set the minimum wage through collective bargaining, though there has been a shift away from this approach due to growing informality (ILO 2012). In Germany for instance, a national minimum wage was introduced in 2015 with the recognition that social partners no longer had the bargaining power necessary to set effective wage floors (Bosch 2015).



Source: ILO (2014b)

### FIXED BY THE STATE WITHOUT CONSULTATION WITH SOCIAL PARTNERS

Nigeria, Bolivia, Brazil, and the United States are among the handful of countries where the law does not provide for consultation with social partners (ILO 2014a).

*“However, even in instances where formal consultation is not stipulated by law, this often takes place informally.”*

In Brazil the Lula administration introduced a quadripartite commission in 2005, made up of representatives of employers, employees, Government, and retirees, with the objective of establishing a consensus formula to adjust the NMW. Retirees were considered a key constituency because the non-contributory, means-tested social pension is tied to the national minimum wage rate. The formula is based on the inflation rate of the previous year plus the average GDP growth rate of the previous two years.

The national minimum wage is adjusted by presidential decree and approved by parliament, according to this formula (Manzano 2015).

### **FIXED BY THE GOVERNMENT BASED ON CONSULTATION WITH OR A RECOMMENDATION FROM SOCIAL PARTNERS**

The most common approach is that the government decides based on consultation with or the recommendation of social partners. Either Government can propose a minimum wage rate and consultations can take place based on that proposal, as is the case in China, Russia, and Cuba, or a competent body comprising of social partners can make a non-binding recommendation that is decided upon by Government (ILO 2014). The structure of competent bodies varies widely.

They can be bipartite, tripartite, or independent; membership may be limited to social partners and representatives of the state or include experts; members may be required to represent particular constituencies or conversely function independently; and they may be nominated by social partners or by the State. Engagement with a competent body is by far the most common approach, particularly in Africa and Latin America. This is also the current approach in South Africa, where the Minister of Labour publishes a sectoral determination on the basis of a recommendation made by the ECC.

In Malaysia, it is the Parliament – and not the Minister of Labour – which determines the minimum wage rate 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 officers, 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 that is nominated and selected by the NWCC rather than the Ministry of Labour. This ensures that the technical committee and secretariat are adequately resourced to perform their functions and are accountable to the NWCC (NWCC 2012).”*

The NWCC can submit multiple recommendations to Parliament if consensus cannot be reached among social partners. Upon receiving the NWCC's recommendations, Parliament may agree, request that the NWCC revise the recommendation, or introduce their own wage rate. The drawback of issuing minority reports or multiple recommendations is that it gives Parliament, rather than a specialised body composed of social partners, decision-making power regarding the national minimum wage rate. Nonetheless, by placing the final decision-making power with elected representatives the Malaysian NWCC is not reliant on any one state institution (NWCC 2012).



In the United Kingdom, the Low Pay Commission (LPC) is the competent body responsible for recommending the level of the national minimum

wage. Established in 1998 to define the initial level of the wage, its functions have evolved to include making recommendations on adjustments to national minimum wage rates and other related conditions of employment. The LPC is composed of nine commissioners: three with an academic background and relevant knowledge pertaining to labour markets; three with a trade union background or experience in matters relating to workers; and three with links to employers' associations or matters relating to employers generally.

Like the ECC, commissioners are expected to act in their personal capacity and not as representatives of the constituencies to which they are linked (ILO 2014).

Unlike the ECC, all commissioners are nominated through an open competition according to the code of practice for ministerial appointments to public bodies defined by the Commissioner of Public Appointments, and the Secretary of State for Business must approve all nominations. However, the chair is appointed by a panel comprised of representatives of organised labour and business. The LPC answers to the Secretary of State for Business and the Prime Minister (Brown 2009).

*“In addition, while the ECC is housed in the Department of Labour, the LPC is a non-departmental body and thus has full control over its budget.”*

Its budget comes from the Department of Business, Innovation and Skills and covers staff, research, and administrative costs. The work of the LPC is supported by a Secretariat of eight people, which include administrative staff, economists, statisticians, wage experts, and experts familiar with questions of policy and enforcement. The LPC uses a combination of in-house research, commissioned research, and consultation with stakeholders to gather evidence. LPC members meet on a monthly basis. They also participate in public consultations, research workshops, and an annual retreat in January to finalise the recommendation. The recommendation must be supported by a report. To date, all recommendations have been unanimous and the government has generally implemented the proposed national minimum wage (Low Pay Commission 1998; Low Pay Commission and Department for Business, Innovation & Skills, 2015). One exception was the recent proposal for the introduction of a living wage, which was overridden at the ministerial level.



In Korea, the Minister of Employment and Labour (MOEL) determines the national minimum wage based on the recommendation of the Minimum Wage Council. The Council consists of nine worker representatives nominated by organised labour, nine employer representatives nominated by

organised business, and nine people who represent the public interest appointed by the President of Korea upon nomination of the MOEL. The latter include senior civil servants, academics, and researchers with experience in questions related to the labour market (ILO 2014).

Like the case of South Africa, Malaysia, and the UK, Korea's National Wage Council is supported by a technical committee, responsible for reviewing the cost of living and labour market indicators. After deliberating over the technical reports, the National Wage Council must make a decision regarding the wage level. Decisions are made by majority vote, but must be approved by at least one third of employer and one third of worker representatives.

Once the decision is announced, employer and worker representatives have ten days to raise objections. If the Minister deems the objections reasonable, they may request the Council to deliberate further. If two thirds of the Council decides to maintain the initial proposal, the Minister must agree with the minimum wage proposal (ILO 2014). The Minister has not requested a revision of the recommendation since 1988, giving the Council de facto power to determine the national minimum wage level (Jeong 2011).

#### **FIXED BY A SPECIALISED TRIPARTITE BODY**

Only in a minority of countries is full decision-making power handed over to a specialised tripartite body. This is the case for instance in the Philippines, Mexico, and Costa Rica. In Costa Rica the National Salary Council, established in 1949, is a tripartite body made up of an equal number of representatives from government, trades unions, and employers' organisations, with the legislative power to issue a legally binding executive decree which sets the level of the national minimum wage. Minimum wages are reviewed twice a year and adjusted in relation to inflation, labour market indicators, and productivity.

The process of adjusting a national minimum wage is largely public, with both trades unions and employers' organisations publishing their proposals (MTSS 2016). The Council's proposal is sent to the Ministry of Labour for comments, but it is the Council which makes the final decision. Minimum wages can be revised at any time during the year at the request of five employers or fifteen workers in the same occupation (ILO 2014).

#### **FIXED THROUGH COLLECTIVE BARGAINING**

Fixing the national minimum wage through collective bargaining is very rare; the European countries of Denmark, Finland, Iceland, Italy, and Sweden are among the few examples (ILO 2014). Until recently, minimum wages in Germany were also set exclusively through collective bargaining. However as union membership declined collective bargaining ceased to be an effective wage-setting mechanism (Bosch 2015). Today, minimum wages in Germany are adjusted by the cabinet upon recommendation of the Minimum Wage Commission. The Commission is an autonomous, bipartite wage-setting institution housed in the Federal Institute for Occupational Safety and Health.

*"It is comprised of a chairperson and six commissioners with voting rights – three who represent organised labour and three who represent organised business – as well as two advisory experts, without voting rights".*

The chairperson is appointed by the Federal Government on recommendation of bipartite constituents. Decisions are based on a simple majority. Unlike the case of Malaysia, it is not possible for the Commission to issue a minority report. The recommendation is then forwarded the Federal Government who issues a binding recommendation. A Secretariat of approximately eight people assists the commission in its work (Federal Ministry of Labour and Social Affairs 2015).

## SETTING THE INITIAL LEVEL

There is no universal mechanism to set the initial level of a minimum wage. Nonetheless, social dialogue is essential in order to guarantee that those most directly affected by minimum wage policies are able to participate in the wage-setting process. For instance, in Germany, social partners decided at the outset that the national minimum wage should be reviewed only every two years, in order to allow the economy to adjust and ensure predictable increases. Social dialogue at this initial stage helps to build consensus among social partners regarding the initial wage rate, thereby ensuring the legitimacy of the national minimum wage system. This is particularly important in the context of South Africa, where labour relations have become increasingly fraught. Furthermore, social dialogue can anticipate the potentially disruptive effects of a national minimum wage and allow for the introduction of measures to reduce these. For instance, in Malaysia, employers were given a year's grace period to implement the wage rate. Finally, engagement with social partners in the process from the early stages ultimately strengthens compliance, a key concern in South Africa, as Muharwa (forthcoming) notes.

Nonetheless, rigorous evidence is needed to inform the process. This can occur through specially commissioned work, in-house research, or through academic institutions. The ILO stresses the need to ensure that the national minimum wage is able to meet the basic needs of workers and their families. As Policy Brief 6 outlines, indicators such as the average wage are also important in the wage setting process. Evidence should be publicly debated, giving social partners, experts, and the public the opportunity to evaluate it.

## CONSIDERATIONS FOR THE SOUTH AFRICAN CASE

There are at least six key considerations regarding the competent body tasked with overseeing a national minimum wage for South Africa.

1. **The relationship between the national minimum wage and collective bargaining:** The introduction of a national minimum wage raises the question of how the different elements of the current sectoral wage system will interact with one another.

### 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.

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- Alan Manning - London School of Economics

*"The objective of the national minimum wage is not to replace collective bargaining but to strengthen it."*

In Germany the national minimum wage was introduced under the 'Act on the Strengthening of Free Collective Bargaining'. Its objective is not only to introduce a minimum wage, but also to increase the coverage of collective agreements and facilitate the declaration of collective agreements as binding (Bosch 2015).

2. **Whether to retain or replace the ECC:** Given that the ECC already exists, one possibility is to strengthen the ECC and reform its composition and function.
3. **The composition of the competent body:** Consideration should be given to increasing the number of social partner representatives on the competent body. Only by expanding the number of seats for social partners will the multiple trade union federations and employers' organisations, as well as civil society groups, be adequately represented. The NEDLAC structure, whereby each social partner is represented by 5 delegates, could serve as a model.
4. **The independence of the competent body:** The competent body requires some level of political and administrative autonomy from the Department of Labour and the Executive. This could be achieved by allowing constituencies to nominate labour-market experts, giving labour-market experts appointed by the Department of Labour non-voting status, providing the Secretariat with the necessary resources, and making them directly accountable to the competent body.
5. **The capacity of the competent body:** The ECC currently has limited capacity to generate and analyse the necessary data for commissioners to be able to make informed decisions. Consideration should be given to setting up a structurally autonomous, well-resourced body with the capacity to fully support the commissioners. In Germany the secretariat or technical committee is composed of eight people. In Malaysia, members of the technical committee are selected by the wage-setting institution.
6. **Recommendations by the competent body:** Given the context, the current approach by the ECC – where minority reports are allowed but where it is the majority report which is accepted as the recommendation of the ECC – is most appropriate.

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**NATIONAL MINIMUM WAGE RESEARCH INITIATIVE**

**[www.nationalminimumwage.co.za](http://www.nationalminimumwage.co.za)  
CSID- School of Economic and Business Sciences**

For further information please contact:

[nmw.csid@wits.ac.za](mailto:nmw.csid@wits.ac.za)

+27 (0)11 717 8042

Room 56, Commerce, Law and Management (CLM) Building, Braamfontein Campus West



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