



Monitoring and enforcement: strategies to ensure an effective national minimum wage in South Africa

Brian Murahwa
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Abstract

Many developing countries suffer from high levels of minimum wage violations despite legislation and mechanisms put in place to ensure compliance. South Africa is no exception, particularly in vulnerable sectors covered by sectoral determinations. This paper explores what we currently know about monitoring and enforcement in South Africa, before drawing on international case studies and exploring lessons that can be applicable to the South African context. Existing labour market features that require consideration when designing an effective minimum wage monitoring and enforcement system are explored. The paper then concludes and provide recommendations.

Project information

This paper forms part of the National Minimum Wage Research Initiative (NMW-RI), an independent academic research initiative run by CSID in the School of Economics and Business Science at the University of the Witwatersrand. The NMW-RI presents theoretical and case-study evidence, statistical modeling and policy analysis relevant to the potential implementation of a national minimum wage in South Africa.

For more information contact Gilad Isaacs, the project coordinator, at gilad.isaacs@wits.ac.za or visit www.nationalminimumwage.co.za.

Author and Acknowledgements

Brian Murahwa holds a Masters in Labour Policy and Globalisation from the University of the Witwatersrand, South Africa
murahwa@gmail.com

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All errors are the responsibility of the author.

Executive summary

An effective monitoring and enforcement system is vital for the success of the proposed national minimum wage in South Africa. Despite a sound legislative system and some mechanisms that are in place to ensure compliance with wage legislation, minimum wage violations are still high, particularly for vulnerable workers covered by sectoral determinations.

The quantity and geographic distribution of enforcement personnel is inadequate to meet the current need for inspection in South Africa; the training and retention of this personnel is also cause for concern. Further, the enforcement procedures and mechanisms are lengthy and cumbersome. Some innovative mechanisms to positively incentivise compliance exist, such as certificates of compliance, but in relatively few sectors. Finally, workers are often not aware of their legal entitlements, fear reporting violations, or lack the means to do so.

Evidence from the international literature shows that countries that adopt a single national minimum wage system are more likely to experience higher levels of compliance compared to countries with multiple wage systems. Moreover, organised workers are more likely to denounce violations and claim their rights than non-organised workers, and labour formalisation also improves compliance.

Strong inspection mechanisms and widespread public knowledge of minimum wage entitlements have been shown to be crucial. These must be accompanied by sufficient penalties to deter non-compliance and incentive schemes to encourage voluntary compliance. Channels for complaints must be easily accessible and worker-friendly. Importantly, different stakeholders must be involved in designing and enforcing minimum wage policies. Whilst there is no universally accepted level at which minimum wages should be set, they should be neither too high nor too low, in order to meet both their purpose and encourage full compliance.

The South African context of growing casualisation and atypical forms of work, falling union density, irregular migration, an expanding informal sector, low access to resources by many poorly-paid workers and high rates of unemployment all complicate monitoring and enforcement and should be duly considered.

We recommend, among other actions: revision of the inspection and enforcement procedures; improvement of both the quality and quantity of labour inspectors; streamlined reporting, enforcement and sanctioning processes; laws and policies to formalise small and micro-sized businesses; dissemination of information through public awareness campaigns; incentives for voluntary compliance; and grace periods for immature firms to comply. These, among other policy interventions, are vital for an effective enforcement and monitoring system.

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1. Introduction

Many developing countries suffer from low levels of compliance with labour regulations in general, and minimum wages in particular, despite structures that they put in place to ensure compliance (Ronconi 2010; Strobl and Walsh 2003). South Africa has sound labour legislation and a progressive constitution that in principle protect the rights of workers. However, violations of labour regulations in general, and minimum wages in particular, remain a major challenge. The introduction of a national minimum wage, as is currently under debate in South Africa, offers an opportunity to improve compliance (see Section 3.1); indeed this is a major factor in determining whether the national minimum wage will achieve its objective of ensuring that every wage earner earns enough to meet their basic needs.

This policy document explores approaches to ensuring effective monitoring and enforcement of minimum wages as well as various South African specific challenges. Section 2 of this paper explores the problems of enforcement in South Africa's labour market, covering both the formal and informal sectors, including workers covered through collective bargaining and sectoral determinations in sectors where unionisation rates are low and collective bargaining is weak. In Section 3 the paper outlines international best practice vis-à-vis ensuring compliance with minimum wage legislation. This is followed, in Section 4, by an analysis of existing labour market dynamics – likely to impact on monitoring and enforcement – that need consideration when designing labour policies. It then concludes, in Section 5, with a discussion of possible policy options regarding enforcement of a national minimum wage in South Africa.

2. The South African context

2.1. Legislative and wage formation framework in South Africa

In South Africa, statutory minimum wages are set through bargaining council agreements, which are negotiated between trade unions and employer organisations, or via sectoral determinations (SDs) set by the Minister of Labour on the recommendation of the Employment Conditions Committee (ECC). There are currently nine sectoral wage determinations – domestic work, contract cleaning, private security, wholesale and retail, farm work, forestry, taxis, hospitality, and learnerships – some of which are differentiated by job grades and geographic location (urban, semi-urban and rural areas).¹ There are approximately 38 bargaining council agreements in the private sector (see Castel Branco 2015) in sectors such as automobile, road freight, and textiles. Minimum wages are also negotiated outside the statutory system between employers and employees at the company or plant level, as is the case in food manufacturing (Bhorat, Van der Westhuizen, and Goga 2009).

¹ There are also sectoral determinations for small businesses and for children in the performing arts, but these do not regulate wages.

Section 23 of South Africa's constitution deals with labour relations and confers on all workers the right to fair labour practices (and this arguably should include fair remuneration). This is given effect via, amongst other laws, the Labour Relations Act (LRA) of 1995 and the Basic Conditions of Employment Act (BCEA) of 1997, which are the two main pieces of legislation governing bargaining councils and wage determinations (Bhorat, Van der Westhuizen, and Goga 2009). The LRA provides the necessary legislative framework for the establishment of bargaining councils. The LRA also provides protection for employees against unfair labour practices as well as legislating the right to collective bargaining and freedom of association. The BCEA of 1997 and its amendments establish, enforce, and regulate the basic conditions of employment which include the regulation of minimum wages for all workers. The BCEA empowers inspectors to effectively conduct inspections to monitor and enforce compliance with employment laws. For instance inspectors are empowered under this act to enter workplaces, question and inspect, and issue a compliance order in cases of wage violations.

Section 33 of the LRA makes provision for the appointment of designated agents of bargaining councils who can promote, monitor, and enforce compliance with any of the council's collective agreements, including wages. Chapter 9 of the BCEA makes specific provision for the establishment of an 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 to provide these records to their employees upon request (DoL 2004).

2.2. Minimum wage violation in South Africa

Minimum wage violations in South Africa remain high despite the legislative frameworks in place. Evidence (Mayet 2010, Rani et al. 2013) has shown that wage violation is particularly high in vulnerable sectors covered by sectoral determinations such as the security, domestic work, taxi, construction and farming sectors. Table 1 below shows an overall synopsis of sectoral wage violation using the Labour Force Survey (LFS) for September 2001 and 2007.

Table 1: Estimates of sectoral wage violations for 2001 and 2007

Year	V0:	V1	V1/V0	V2
	Percentage of workers paid below the minimum wage	The wage gap: the gap between the actual wage and the official minimum wage	Ratio of wage gap to percentage violation	The squared wage gap (a measure of severity of violation)
2001	0.55	0.25	0.45	0.15
2007	0.45	0.16	0.36	0.08

Source: Bhorat, Kanbur, and Mayet (2010)

Column 1 (V0) in Table 1 shows that in 2001, about 55% (0.55) of workers covered by sectoral determination were earning below the prescribed minima,

and by 2007 this rate had decreased to 45% (0.45). The wage gap (V1) – the gap between actual wages and the official minimum wage – was, on average, 25% (0.25) in 2001 and declined to 16% (0.16) by 2007. The ratio of wage gap to percentage violation (V1/V0) – which denotes the percentage shortfall of the average wage of violated workers from the minimum wage – for both years (2001 and 2007) – was 45% (0.45) and 36% (0.36) respectively. Finally, the severity of violation (V2) calculated by squaring the wage gap declined from 15% (0.15) to 8% (0.08) between these two years.² Considering that this is linked to the number of violated workers as expressed by V0, it suggests that the decline in the severity of violation from 15% to 8% (between 2001 and 2007) may be attributed to either improved inspection or increased cases of under-reporting. Levels of violation varied across sectors with the highest level of violations, at 67%, observed in the security industry and the lowest, at 9%, observed in the civil engineering sector. The decline between 2001 and 2007 in the average incidence and severity of violation was pronounced in some very low-wage sectors: violations regarding domestic workers fell from 63% to 39%, and in agriculture from 78% to 55%

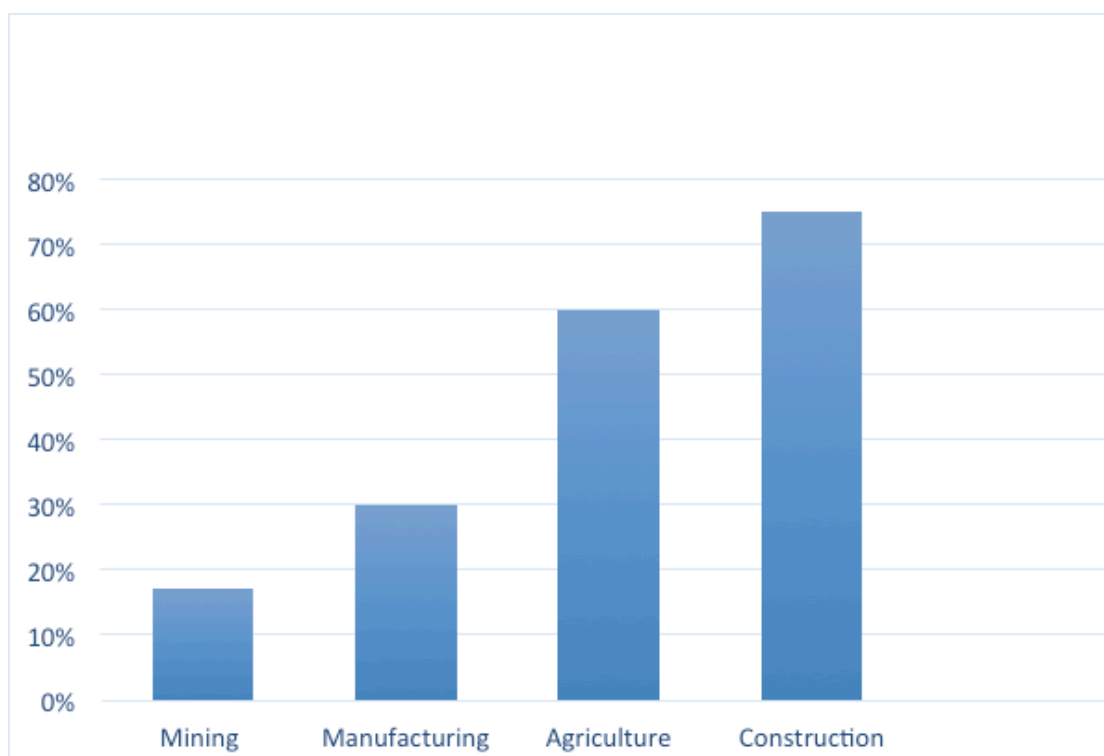
Studies (Bloch 2008; Weil 2005) have shown that low-skilled workers, some of them irregular migrants in vulnerable sectors like construction, agriculture, security, and domestic work, often lack collective representation.³ Sectors like mining and manufacturing (see Figure 1 below) where trade unions and employers negotiate in bargaining councils have relatively high levels of compliance compared to other low-wage sectors where higher rates of casualisation and low representation are more pronounced. A synopsis of the variations in levels of non-compliance is illustrated below. In 2011, levels of non-compliance were high in construction (75%) and lower in the mining sector (17%).

The challenges of enforcement in sectors with a history of violence such as the taxi industry, the mobile nature of work for security guards, and in some cases the impossibility of identifying domestic workers in private homes, among other dynamics, partially explains why there are differences in violations between different sectors. Formally employed workers generally experience lower levels of violation compared to informal workers. Levels of compliance are also often differentiated by variables such as geographical location (rural, urban, and semi-urban), industry, and gender, among others.

² Minimum wage violations may in fact be lower if there is under-reporting of wage data in the labour force surveys as some evidence indicates there may be (see Finn 2015 for a discussion of under-reporting). The data presented in this section draws exclusively on the formal sector.

³ See section 3 for a discussion on how lacking collective representation complicates effective enforcement and monitoring of minimum wages.

Figure 1: Non-Compliance rate in South Africa by industry, 2011



Source: Rani et al. (2013)

2.3. Inspections

According to the International Labour Organization, the enforcement and monitoring of minimum wages falls within the scope and responsibilities of the labour inspectorate (ILO 2016). The main role of labour inspection is the promotion of compliance with labour legislation as well as good labour practises to achieve basic worker rights and the promotion of effective industrial relations (DoL 2015). In South Africa, the enforcement of labour regulations in general, and minimum wages in particular, is the mandate of the Department of Labour. The Department, through the Inspection and Enforcement Service (IES) Business Unit conducts two types of inspections: pro-active and re-active inspections. Pro-active or routine inspections are regular inspections carried out in different sectors and regions. They are also known as ‘blitz’ or random inspections and they usually target vulnerable sectors, particularly those covered by sectoral determinations.⁴ During these inspections, the inspector is mandated to inform employers and employees about their rights and obligations in terms of the Employment Equity Act.

Re-active inspections, on the other hand, are conducted as a result of lodged complaints. When inspectors conduct these kinds of inspections they should not

⁴ Data on the effects of blitz inspection on compliance are scarce. However, improved inspections were one possible explanation for a fall in minimum wage violations among vulnerable sectors between 2001 and 2007 (Bhorat et al. 2010).

restrict themselves to the complaint and are also required to do a full wage inspection when appropriate (DoL 2015). In these two types of inspections, reports are compiled and to a certain extent will be utilised to influence subsequent action, policies, and successive follow-up visits on previously inspected enterprises. Follow-up visits, either announced or unannounced, are usually conducted no later than one month after the compliance deadline has elapsed. Generally, inspections by the DoL are conducted where worker organisations and trade unions are absent and where workers are not properly covered by bargaining councils or related wage regulating mechanisms (DoL 2003). Effective enforcement is, however, dependent on adequate staff and sufficient resources as it is practically impossible to conduct successful inspections with inadequate resources.

The duties of the IES go beyond ensuring that covered workers are paid a prescribed minimum wage. South African inspectors deployed at different labour centres across the country are also responsible for checking that workers work under conditions prescribed under labour legislations such as the BCEA and SD. These conditions include being registered for Unemployment Insurance Fund (UIF) and having written contracts. According to the Development Policy Research Unit report of 2016, compliance with these non-wage issues is closely linked to wage compliance. In addition, inspectors also educate and advise stakeholders and partners on labour market policies.

One of the main challenges to enforcement of minimum wages in South Africa lies in the quality and availability of inspectors. The International Labour Organization (ILO) reports that in 2009 approximately 60% of labour inspectors in South Africa did not hold university degrees (ILO 2009). While university degrees are not the be-all and end-all this may be indicative of insufficient skills and training. Inspectors are required to have technical skills and qualifications, in addition to the personal qualities that allow them to work in a broad range of situations and with a wide range of people.

Internationally – in countries such as Brazil, the United Kingdom, and Germany – labour inspectors are required to hold a degree or equivalent academic or professional qualification. In Macedonia, labour relations inspectors are all lawyers, with a minimum of three years' work experience including experience in administrative work (ILO 2009). In South Africa, the Minister of Labour may appoint any person in the public service as a labour inspector or designate any appointed agent of a bargaining council to perform any of the functions of a labour inspector. There are no standard criteria for the selection of inspectors at the national or provincial level (ILO 2004). According to the ILO Convention No. 81, inspectors should be duly qualified to conduct inspections and enforce the legal provisions relating to conditions of work including wages. Article 7(1) of Convention No. 81 and Article 9(1) of Convention No. 129 stipulate that inspectors should be recruited solely on the basis of their qualifications and the performance of their duties, subject to national laws pertaining to the recruitment of public servants.

The issue of the quality of inspectors, as well as the quantity of inspectors (discussed below), is further worsened by the fact that available inspectors are leaving for better opportunities in other sectors. High turnover has resulted in an inspectorate that is undertrained and unable to ensure compliance (ILC 2011a). The high turnover of inspectors is due, in part, to low salaries and the absence of career prospects, causing many qualified inspectors to leave for the private sector or more prestigious roles in the public service. This was confirmed by the Director-General of Labour in a DoL briefing held in Mpumalanga in 2012 (Themba 2012). In the same meeting, calls for a specialisation model were made to provide a career path for inspectors and build capacity at both provincial level and at the head office.

Regarding the quantity of labour inspectors, the Department of Labour (DoL) inspectorate should have a compliment of 1 347 inspectors. However, only 1 056 posts are filled (Department of Labour 2015). This has prompted the Director General to appeal to the Parliamentary Portfolio Committee on Labour for more resources to fill the vacant posts. There is little information available from Government on the budgetary resources made available to the labour inspectorate or how they are determined. The Department of Labour (2015) estimates that there are approximately ten inspectors for every hundred thousand employees; the ILO standard for an industrialising country is one inspector per fifteen thousand employees, or just under seven inspectors per hundred thousand (ILO 2006). This indicates that South Africa has a reasonable number of inspectors according to ILO standards.

South African inspectors also carry out a large number of inspections. For instance, of the eight selected countries shown in Table 2 below, South Africa had, between 2007 and 2009, one of the highest number of inspections carried out by each inspector: 232 in 2007 compared (for example) to New Zealand's 56. In 2009, the inspection rate dropped to 159, probably due to an increase in the number of inspectors from 779 in 2007 to 965 in 2009. This data does not however tell us anything about the quality of the inspections, nor does it indicate whether South African inspectors are performing adequately or if they are overworked. Inspections in South Africa are also not related to firm size. For instance, inspecting a small informal firm and a large retailer (which involves much more work) are both classified as one inspection (DPRU 2016).

While the overall number of inspectors in South Africa may be sufficient by ILO standards, the distribution of these inspectors is skewed both regionally and sectorally. Regionally, data from the Department of Labour (2015) reveals that there is a mismatch between the number of inspectors and the number of employers and employees in the allocation of inspectors provincially, as illustrated in Table 3 below.

Table 2: Inspectors and inspections in selected countries

Year	Criterion	Latvia	Netherlands	New Zealand	Nicaragua	Peru	Poland	Singapore	South Africa
2007	Inspection actions	13538	36 621	9 582	4 383	59 900	80 525	6 904	180 767
	Number of inspectors	134	455	172	92	340	1513	185	779
	Inspection ratio	1:101	1:80	1:56	1:48	1:176	1:53	1:37	1:232
2008	Inspection actions	13 238	35 000	9 388	6 716	77 590	80 500	6 714	200 665
	Number of inspectors	124	473	189	94	424	...	178	...
	Inspection Ratio	1:107	1:74	1:50	1:71	1:183	...	1:38	...
2009	Inspection actions	...	35 404	9 372	6 861	84 095	88 000	5 643	153 697
	Number of inspectors	...	458	189	96	411	1 397	194	965
	Inspection ratio	...	1:77	1:50	1:71	1:205	1:63	1:29	1:159
2009/2007 percentage change	Inspection actions	-2 (08/07)	-3	-2	57	40	9	-18	-15
	Number of inspectors	-8 (08/07)	1	10	4	21	-8	5	24
	Inspection Ratio	5.7 (08/07)	-4	-1	50	163	18	-22	-31

Source: International Labour Conference (2011b)

Note: There are significant challenges in data quality regarding inspections and this data should be viewed with caution. However, the point raised here is how South African inspectors perform in comparison to other countries.

Table 3: Allocation of labour inspectors per province

Province	Labour inspectors	Labour centres	Inspectors per labour centre	Inspectors per 100 000 employees
Eastern Cape	119	16	5.7	10.9
Free State	87	11	6.6	13.3
Gauteng	224	26	7.2	5.5
KwaZulu Natal	231	16	11.6	10.8
Limpopo	111	13	6.3	12.3
Mpumalanga	80	16	4	8.5
Northern Cape	44	8	4.1	15.2
Northwest	66	10	5.1	8.7
Western Cape	94	12	6.4	4.9
Total/Average	1056	128	6.3	10.0

Source: DPRU (2016)

In Table 3 above, the ratio of labour inspectors per 100 000 employees is higher in less populous and less industrialised provinces such as the Northern Cape, Free State, and Limpopo and lower in the industrial and commercial heartlands of Gauteng and the Western Cape; Gauteng makes up 32% of the employed workforce, while the Western Cape accounts for 15%, just shy of KwaZulu Natal which comprises 16% (Finn 2015). Using the ILO recommendation of just under seven inspectors per hundred thousand, we see that South Africa's largest and third largest provinces, by workforce, fall well short of this, with Gauteng having 5.5 inspectors per 100 000 and the Western Cape just under 5. This skewed distribution of resources naturally undermines inspections and there is a need to rebalance the allocation of inspectors considering the workforce size of the different provinces. We should, however, note that the sectoral composition of each province should also be taken into account because some sectors may require more or fewer inspectors than others. Furthermore, each province needs consideration for the size of workplaces and the density of their distribution. The density of Gauteng, for instance, may make labour inspectors more efficient: there are more workplaces closer together which improves accessibility.

The number of inspections also vary according to province and sector. Table 4 below highlights this in the case of different provinces.

Table 4: Total inspections per province, 2014

Province	Inspections
Eastern Cape	17 590
Western Cape	13 912
Free State	10 693
Northern Cape	5 780
North West	10 497
Gauteng	34 172
Mpumalanga	10 350
Limpopo	12 025
KwaZulu-Natal	27 910
TOTAL	142 929

Source: DoL (2014)

In South Africa, another enforcement challenge is a lack of inspection resources to effectively reach all sectors. In domestic work for instance, Dinkelman and Ranchhod (2012) noted that only 1 600 houses were inspected from a total of 30 000 households that were meant for inspection from five provinces between November 2002 (when the minimum wage became effective) and August 2003. The country has approximately 800 000 households that employ domestic workers (StatsSA 2015). A study conducted by Tanzer, deCant and Terzian (2013) showed that the Department of Labour lacks sufficient resources to credibly inspect all households countrywide. With insufficient inspection resources, it becomes a challenge to effectively fulfill inspection roles and functions. This is further complicated by the fact that there are no proper record of households that employ domestic workers in the country. For this reason, inspecting households systematically in South Africa is difficult.

The inspection criteria and procedures adopted in different sectors also affect effective enforcement. The inspection procedure in the domestic work sector, for instance, requires both employers and employees to be present during an inspection (as is true in other sectors). It is possible that workers will feel intimidated and this may prevent them from reporting cases of non-compliance with minimum wage regulations due to the fear of losing their jobs (Tanzer, deCant, and Terzian 2013). Legally, inspectors also have to respect the employer's right to privacy, guaranteed in Section 65 (2) of the BCEA (1997). Given this, private homes generally have more restrictive rules for conducting labour inspections than other workplaces and inspections within private residences depend on the consent of the homeowner.

Should a homeowner refuse a voluntary inspection, an inspection can be compelled but only with an order from the Labour Court. The Labour Court is however not obligated to authorise such inspections; as Section 65 (3) clearly states, the "Labour Court *may* issue an authorisation" (emphasis added) once the inspector has provided justification for why they suspect a breach of labour legislation by the employer. In other support services, where work is sub-contracted or outsourced (such as cleaning and catering), there is also the

challenge of identifying the employer with whom the employment contract exists and who should be held accountable in cases of wage violations. Similarly, on farms there is an agreement between Agri SA (the industry lobby group), the main farmers' association, the DoL and other parties that requires inspectors to give employers notice prior to inspections. This generally undermines the ability to identify violations. Employers may threaten employees with dismissal (or eviction in the case of resident farm workers) prior to inspections should they report cases of violations, and employers have the opportunity to destroy or tamper with relevant evidence.

Another challenge to effective enforcement in South Africa has been a lack of awareness of existing minimum wages and the possibility of inspections and the legal recourse available, particularly in vulnerable sectors. For instance, according to the Social Law Project (2010) many domestic workers do not know inspections are possible. This lack of awareness affects the extent to which violations are reported and investigations take place. This is important given that the choice by employers of whether to comply with labour legislation is partially shaped by the possibility of being inspected. In the Western Cape, like in many other provinces, the probability of a farmer being visited by a labour inspector in 2007 was low at about 11% (Stanwix 2013). As a result it may become financially beneficial for a farmer to risk paying sub-minimum wages, given the low probability of being caught and the fines that would result. Reaching workers in vulnerable sectors, the majority of which are low-skilled and unorganised, is always a challenge for effective enforcement of wage regulations. This is however less of a problem when workers are formally employed, have fixed workplaces, and are highly organised.

Where wages are negotiated through a bargaining council, the council's agents are responsible for monitoring and enforcing conditions of employment including wages. Designated agents are appointed by the Minister of Labour at the request of a bargaining council to promote, monitor and enforce compliance with any collective agreement concluded in that bargaining council. The LRA provides for the appointment of agents "to enforce any collective agreement concluded in that bargaining council" (LRA, Section 33). The roles of the designated agents include among others:

- Promoting, monitoring and enforcing compliance with collective agreements.
- Educational inspections of employers in the industry with the objective of assisting stakeholders to move towards voluntary compliance.
- Interpretation and explanation of the provisions of collective agreements.
- Registration of unregistered employers.
- Investigation of complaints and enquiries.
- Effectively and successfully concluding enforcement, conciliation and arbitration matters.
- Conducting of routine inspections at all registered establishments.

Designated agents are granted certain powers in terms of Section 33 of the LRA. These include:

- Entering at any time, without warrant or notice any workplace or any other place where an employer carries on business or keeps employment records that is not a home. This enables agents to monitor or enforce compliance with the collective agreements concluded in the bargaining council.
- Inspecting and questioning a person about any record or document to which a collective agreement relates.

There is little available research on the efficacy of these inspections.

2.4. Penalties and enforcement proceedings

Appropriate penalties are an important mechanism to ensure compliance with minimum wages, especially when they are set such that they outweigh the costs of non-compliance (see Section 3.5). As Bhorat and Stanwix (2013) note, higher penalties and better inspections pave the way for greater levels of enforcement. Table 5 below illustrates the penalty system in South Africa, reflecting the magnitude of the fine paid to the Department of Labour upon a finding of non-compliance.

Table 5: Violation fines

Nature of violation	Magnitude of fine
No previous violation.	25% of the underpayment, including any interest owing on the amount at the time of the order.
A previous violation of the same provision during the past three years.	50% of the underpayment including applicable interest.
A previous violation of the same provision within a year or two previous violations.	75% of the amount due, including any interest owing on the amount at the date of the order.
Three previous failures to comply in respect of the same provision within three years.	100% of the amount due, including any interest owing on the amount at the date of the order.
Four or more previous failures to comply in respect of the same provision within three years.	200% of the amount due, including any interest owing on the amount at the date of the order.

Source: Basic Conditions of Employment Act, No. 75, 1997 (amended 2014)

The table above shows the severity of fines depending on the extent of violation. The percentage of underpayment charged as a fine is high for repeat offenders (100% and 200%) and relatively low (25%) for first time offenders. In addition, employers must pay violated workers the wages that are due to them. Fines to the DoL are paid at the rate of interest prescribed in terms of Section 1 of the Prescribed Rate of Interest Act of 1975 (Act No 55 of 1975) (DoL 2004). Despite this penalty system, many sectors still experience high rates of non-compliance (see Bhorat and Stanwix 2013, Dinkelman and Ranchhod 2012). This suggests a weak enforcement system that is also threatened by insufficient resources. The extent to which these fines are enforced is also questionable: a study conducted by Dinkelman, Ranchhod, and Hofmeyr (2014) revealed a minimum wage

compliance rate of 25% among domestic workers in 1 600 households studied, with no traces or reports of fines or other sanctions for non-compliant employers.

The problem of non-enforcement of penalties in South Africa is exacerbated by the lengthy process entailed in taking action against non-compliant employers. As documented in Naidoo, Klerck, and Manganeng (2007), the enforcement procedure starts with the inspector notifying the employer of the need to inspect their workplaces by sending a “notice of visit letter” (DoL 2015). This may be as a result of ordinary random inspections (pro-active inspections), following up on previous inspections, or complaints lodged by employees (re-active inspections). Having notified the employer the inspector will then visit the workplace, acquire relevant information either by checking relevant company documents like payslips, or by talking to the employer, workers, or both.

In the event that non-compliance is discovered, the inspector issues a report detailing the violations found and, in some cases, attempts to secure an agreement on money owed to the employee. The employer is then given a specific number of days to comply. After the agreed period the inspector returns to check. In the event that the inspector finds that the employer failed to comply, a Compliance Order is issued detailing the fines that are due to the employer. The employer must comply within 21 days, where failure to do so will result in the case being referred to the Director General. The employer is granted a further 21 days to appeal to the Labour Court before the compliance order is made an order of court. After 42 days in total, the fine is enforced. The process of the enforcement proceeding is lengthy with employers generally given a total of 42 days to comply before court action is taken. The length of the procedure may however be necessary to allow for due process. Crucially, according to Tanzer et al. (2013), it can take up to three years before a matter is heard by the Labour Court which would significantly delay any sanction of non-compliant employers. There is therefore a need to revise this process so to ensure it is both speedy and fair so that it does not discourage workers from reporting violations.

Sector-specific issues: An example of the agricultural sector

In addition to the general issues outlined above, there are also issues specific to each sector. In the agricultural sector, low levels of compliance may also be attributable to the following factors:

- Paternalistic relationships between farmers and workers;
- A history of informal labour relations in the agricultural sector;
- Dependence of farm workers on farmers for jobs and other services;
- Absence of consistent labour inspections and law enforcement on commercial farms. (Lindoor et al. 2009)

2.5. Compliance certification

In a country where minimum wage violations are common, it is important to devise different strategies to motivate employers to comply with wage legislation. Measures for promoting compliance do not work in isolation. One

such motivational tool for business to comply with minimum wage legislation is the issuance of a certificate of compliance to compliant employers.⁵ The certificates of compliance are only issued in sectors that are covered by bargaining council agreements, particularly in the clothing, leather, and textile industries. In these sectors, the South African Clothing and Textile Workers Union (SACTWU) issues certificates of compliance valid for up to one year to employers who comply with bargaining determinations including wages, an innovative way of ensuring compliance. Compliant companies become eligible for accessing government procurement and government-related loans, such as Industrial Development Corporation (IDC) loans, Sector Education and Training Authority (SETA) assistance, and import duty rebates, among other benefits.

This system is further enhanced by the fact that the compliance certificates are only valid for one year from the date of issue. The compliance certificate can be terminated should employers be found guilty of violating any labour legislation before the expiry of the certificate; which employers have the right to appeal. In the textile industry, companies that are issued with compliance certificates are also published on the National Textile Bargaining Council's website. This helps to increase their competitive advantage especially against non-compliant companies whose names do not appear on the Council's website. Compliant companies are also privileged in terms of commercial contracts with organs of the state.

Conditions for obtaining a compliance certificate include meeting minimum wage payments and arrears owed to employees, and the registration of both contract and permanent workers. Tying access to other benefits to compliance is an important strategy for enticing informal enterprises to formalise so that they qualify for the related benefits (Konopelko 2016). In South Africa, certificates of compliance have been relatively effective in small and medium sized enterprises. According to Konopelko (2016), 65% of companies in the clothing and textiles sector were issued with compliance certificates since 2010. Further labour formalisation would make enforcement of minimum wages in such sectors easier.

2.6. Conclusion

This section has shown that despite a progressive constitution and strong labour legislation meant to protect the rights of workers, there remains a high rate of minimum wage violation, particularly for workers in vulnerable sectors covered by sectoral determinations. The challenge of enforcement may be attributed to, among other factors, the quality, quantity, and geographic distribution of inspection resources, the lengthy and cumbersome enforcement procedure, and the general fear of employees to report cases of violations as well as their ignorance of both the labour standards and complaint mechanisms. Measures to encourage compliance such as issuing compliance certificates that are linked to

⁵ See Konopelko 2016 for a detailed discussion on other incentive mechanisms to enhance compliance with a NMW in South Africa.

government procurement and loans have been introduced, but only in a limited number of sectors such as clothing and textiles. In the section that follows, we draw on international evidence and analyse what is relevant and applicable in the South African context.

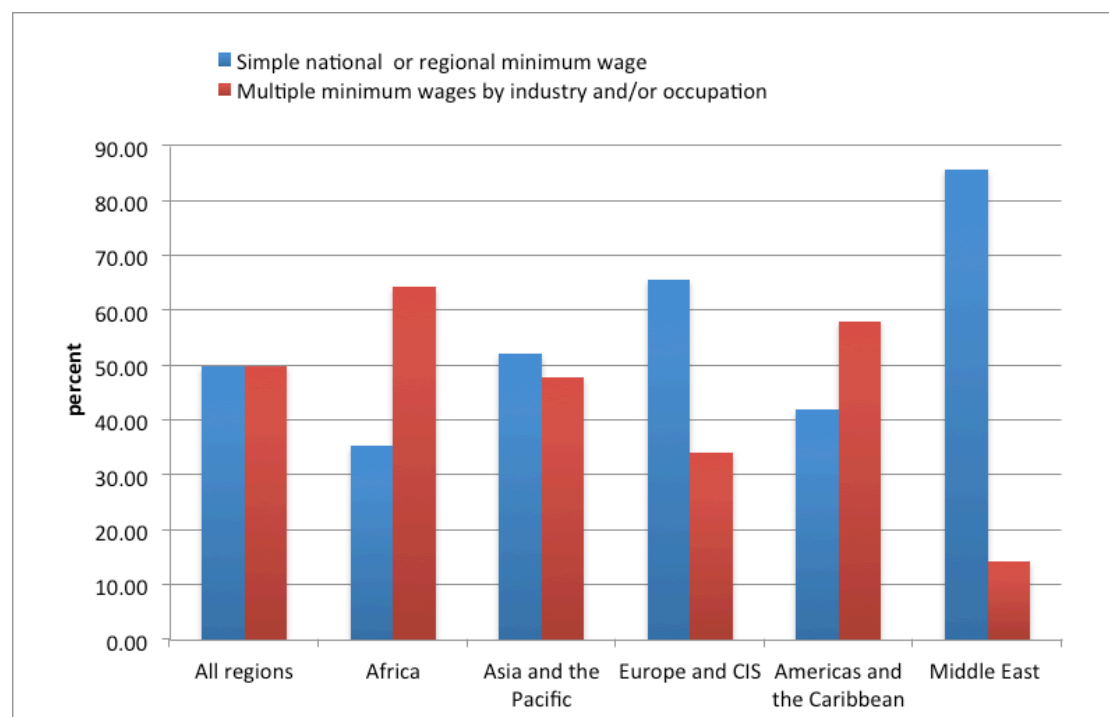
3. The International experience

This section unpacks various facets of the international experience regarding effective enforcement and monitoring of minimum wage policies. The factors addressed in this section are interlinked but their relative influence varies across countries.

3.1. Minimum wage coverage

The design of the minimum wage system has a significant impact on the nature and effectiveness of monitoring, compliance, and enforcement. There are a variety of minimum wage systems, detailed in Castel Branco (2015). Minimum wages can be set as a single national wage floor, as in Britain and most Latin American countries (Brazil, Mexico, and Peru, among others); differentiated by sector, geography, occupation, and so on, as is the case in South Africa and India; or some hybrid of the two as is the case in Costa Rica. Of the 151 countries reviewed by the International Labour Conference in 2014, about half have a minimum wage system which applies uniformly on a national or regional basis. Figure 2 below shows a synopsis of global minimum wage systems. As can be seen, the Middle East, Europe, and Asia have a higher proportion of national or regional minimum wage systems than Africa, the Americas, and the Caribbean.

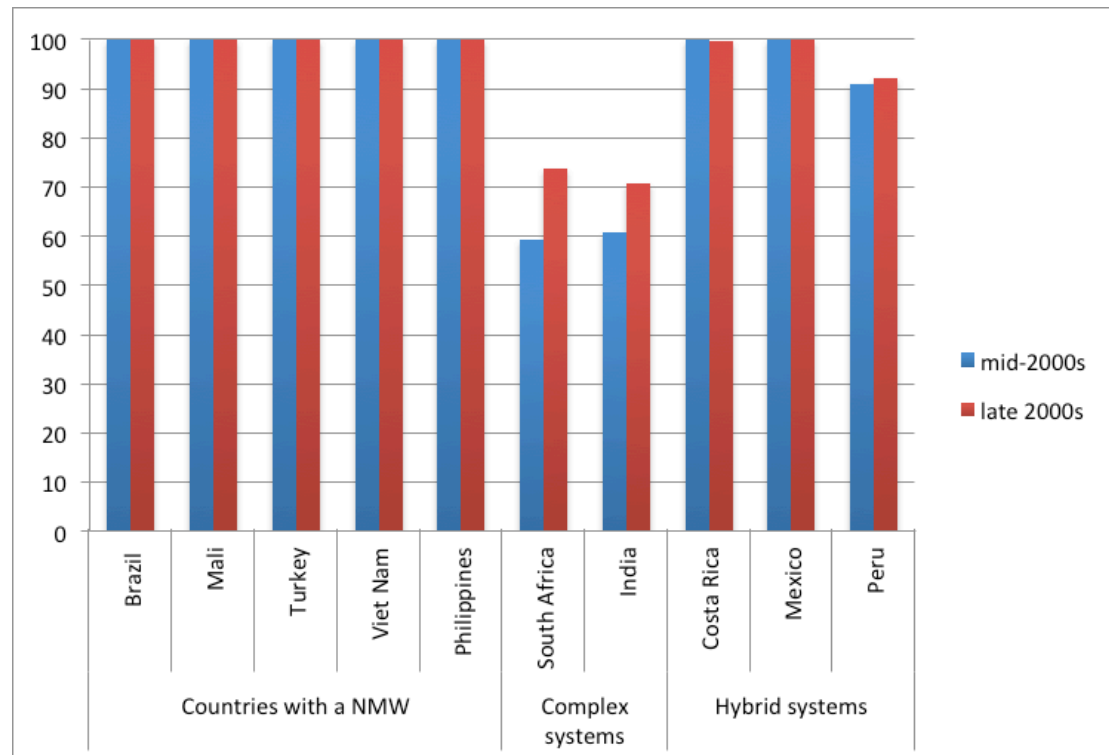
Figure 2: Global minimum wage systems



Source: Rani et al. (2013)

The proportion of wage earners covered by minimum wage regulations is generally higher in countries that adopt a national minimum wage than in countries with sectoral or industry-based minima. This can be seen in the study conducted by Rani et al. (2013) on eleven developing countries; Figure 3 below illustrates their findings.

Figure 3: Percentage of wage earners covered by minimum wage

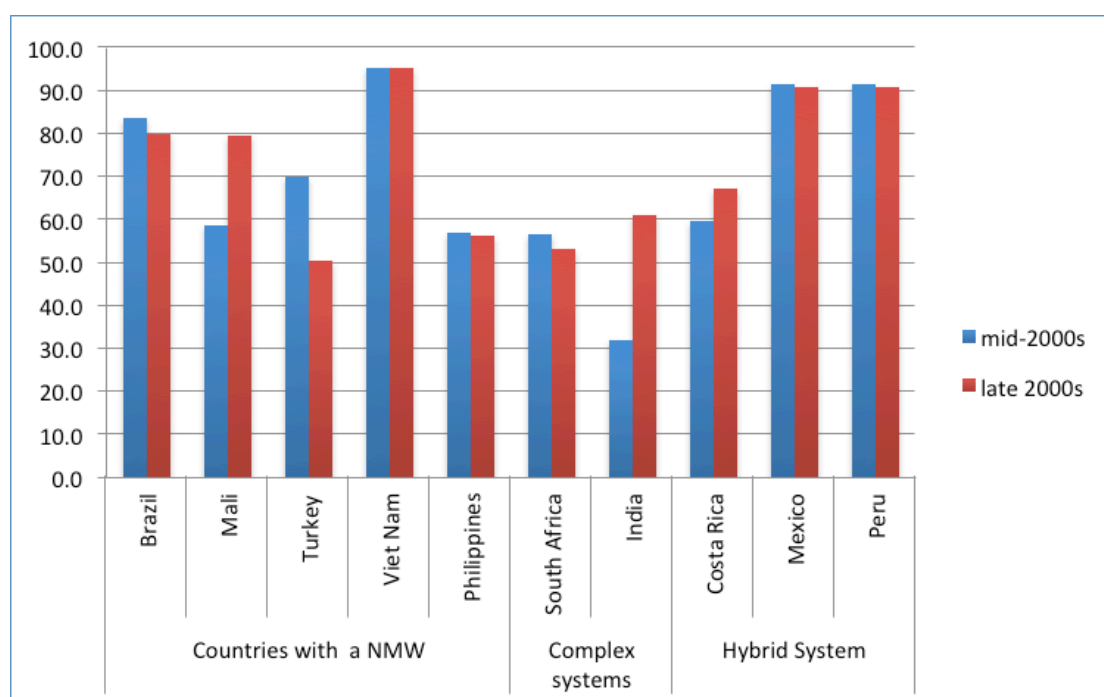


Source: Rani et al. (2013) Data estimates for all countries inclusive of public-sector employees.

As illustrated in Figure 3, the percentage of wage earners covered by minimum wages is high in countries that have a single national minimum wage like Vietnam, the Philippines, and Brazil and relatively low in India and South Africa where there are sectoral or industry-based minima. The late 2000s has however seen some percentage increases in the number of workers covered by minimum wages from about 60.7% to 70.7% in India and from approximately 59% to 73% in South Africa. The percentage of wage earners covered by minimum wages is also high in countries like Costa Rica, Mexico, and Peru, where hybrid system are in place. Complex systems are generally more costly and difficult to administer (Rani et al. 2013).

There is a close link between minimum wage coverage and compliance. This relationship is illustrated using data from the same study conducted by Rani et al. (2013) as illustrated in Figure 4 below.

Figure 4: Compliance rate in selected developing countries



Source: Rani et al. (2013)

In Figure 4, the rate of compliance is relatively high among countries with simple and more broadly applicable minimum wages compared to those with complex sectoral wage systems. Vietnam for instance has a compliance rate of approximately 95% between the two periods (mid-2000s and late 2000s) whilst low levels of compliance were observed in South Africa and India, countries with complex minimum wage systems, during the same period. The compliance rate is also relatively high amongst countries with hybrid systems.

3.2. Inspection

Inspection is of course important in ensuring compliance with minimum wage legislation. Indicators such as the number of inspectors, the number of inspections conducted and the amount of penalties imposed are often used to assess both the commitment to enforcement and the capacity of labour inspection systems in several countries (ILO 2016).

The availability of adequate inspection resources is necessary for effective enforcement of minimum wage regulations. A study conducted by Ronconi (2010) on labour inspectors working in provincial public enforcement agencies in Argentina, concluded that the intensity of enforcement due to inspection is a significant determinant of adherence to minimum wage law. Benassi (2011) finds that a comprehensive monitoring system in which regular labour inspections are carried out is crucial for compliance with labour regulations, especially in vulnerable sectors. Other research (see Almeida and Carneiro 2009; ILO 2013) has shown that there is close relationship between the ratio of inspectors to workers and the level of compliance. Higher ratios of inspectors to workers are in most cases associated with higher levels of compliance and the

opposite also holds true. The correlation between the number of inspectors and workers covered by inspection is clear in the Indonesian case as shown in Table 6. The table also highlights that increasing inspections also improve labour standards, with a reduction in child labour.

Table 6: Labour inspection in Indonesia, 2009-2013

	2009	2010	2011	2012	2013
Companies reporting	208 737	216 547	224 383	237 846	252 117
Workers covered	13 998 035	15 950 143	16 603 693	17 653 260	18 712 456
Labour inspectors	1 986	2 354	2 255	3 964	4 202
Specialist Inspectors	131	162	238	252	267
Child labour reduction		3 000	3 360	10 750	12 367

Source: MOMT (2011)

In the above case, we are conscious of the fact that the analysis of labour inspection in Indonesia, as is the case with many other countries, remains partial, as it refers exclusively to detected cases (ILO 2016). Despite a close correlation between inspectors and inspections, there remains an enforcement challenge due to limited inspection resources in Indonesia, as in other developing countries. Data from the economic census of 2006, for instance, shows that the country had approximately 26.5 million small, medium, and large enterprises in total. However, due to insufficient inspection resources, labour inspection services reached only between 200 000 and 250 000 firms per year from 2009 to 2013 thus leaving a large inspection gap. In fact, less than 1% of enterprises are serviced by labour inspectors each year (MOMT 2011). This has serious implications for compliance levels.

The process of minimum wage enforcement in Brazil, particularly in the 2000s, was tied to a drive towards business formalisation. Between 1992 and 1999, the rate of growth in employment in the informal sector was 3%, compared to 1.3% in the formal sector.⁶ This pattern was reversed between 1999 and 2008 with an annual rate of growth in the formal sector of 5.3%, outpacing growth in the informal sector which declined to 1.7% annually (Berg 2010). The growth in formality was more pronounced among domestic workers. For instance, annual formal job growth for domestic workers was 7% annually compared to 3.4% for informal domestic workers during the same period. Improvements in formality may be attributed to two main factors.

⁶ Formal employment refers to private salaried workers and domestic workers with a signed labour card, government workers, and military, as well as employers and self-employed workers who contribute to the Brazilian social security scheme.

First, the “Integrated System for the Payment of Taxes and Contributions by Micro and Small Enterprises” (the ‘Simples’ law) is a system of tax exemptions and simplification procedures for small and micro enterprises introduced in 1997 in Brazil to facilitate registration and compliance with labour legislation, including minimum wages. Between 2000 and 2005 the law contributed to the formalisation of nearly 500 000 micro enterprises accounting for 2 million jobs (Delgado et al 2007 cited in Berg 2010). The formalisation of micro enterprises improves minimum wage enforcement since these enterprises are registered and easier to identify.

Second, labour inspection improved, not necessarily as a result of an increased number of labour inspectors. Important innovations included changes in the incentive structure for inspectors as well as new methods of meeting inspection targets that were introduced in the mid-1990s. Specifically, a performance-based pay scheme is used to reward inspectors. This system gives inspectors an incentive to penalise violations of non-compliant employers. In fact up to 50% of the inspector’s wage is tied to the efficiency 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 2008). There are also various bonuses tied to group performance where team progress is used to reward inspectors. The incentive system has resulted in improved labour inspection in Brazil.

In addition, inspectors in Brazil are paid relatively good wages which improves efficiency and reduces chances of taking bribes from non-compliant employers. In 2004 for example, inspectors were paid approximately USD \$2 490 (starting positions) and approximately USD \$3 289 (top management) per month, whereas the average wage in Brazil during the same year was approximately USD \$501 (de Azevedo and Fontes 2010). Importantly, inspectors in Brazil are also assigned to particular sub-regions for a limited time period of up to twelve months, and they cannot be assigned to the same area during two consecutive periods; this helps avoid the creation of clientelist relations, although one cannot rule out the possibility of corruption.

There has also been innovation in monitoring in other countries to improve compliance. Countries like Peru and the United Arab Emirates have adopted electronic systems through which employers register their employees, including migrant workers, and submit monthly social security declarations online (ILO 2016). This system of employment formalisation, adopted in the early 2000s, provides a comprehensive wage database and an electronic wage payment monitoring mechanism and allows authorities to monitor whether payments are made in full. In addition, the electronic system also allows the timely detection of delays in payment of salaries and enables it to subject non-complying companies to sanctions.

In Peru this electronic system has contributed to a high compliance rate (see Figure 4). These examples notwithstanding, most countries rely on random firm audits and reports of violations, as in Brazil, South Africa, and the United States. Reacting to reports of violations is often preferred where there are insufficient

resources to reach all employers; this has been the case in the United States where, in 2007, approximately 75% of labour inspections were conducted following a complaint (Weil 2005). Most countries that adopt this system tend to conduct follow-up inspections on previously inspected firms. Inspections should not rely entirely on reported complaints but ensuring effective mechanisms for lodging complaints, to which we now turn, is critical.

3.3. Information and capacity building

Clear information and understanding of minimum wages for both employers and workers is vital for compliance. Training is an important tool that has to be provided to employers, workers, and worker representatives to ensure that non-compliance is not due to a lack of knowledge or capacity (Benassi 2011). For example, a programme run in Cambodia by the ILO called the 'Better Factories Cambodia' (BFC) programme invested heavily in training and capacity building in the garment industry to ensure compliance with labour standards, and minimum wages in particular. The training programme targeted employers, employees, and human resource managers. The BFC capacity building approach, together with its extensive monitoring system, improved the minimum wage compliance rate for regular workers from 93% to 100%, and for casual workers from 74% to 89%, between 2006 and 2009 (Gallina 2005: 15; Skidmore 1999: 428 cited in Benassi 2011).

Empowering workers has to be backed by public awareness campaigns. Some countries have adopted this approach with positive outcomes for compliance. In the Costa Rican case, Gindling et al. (2013, cited in Rani et al. 2013) note that the compliance rate was improved by a National Minimum Wage Campaign which combined sustained awareness-raising and encouragement of individual complaints, for example through telephone hotlines and an online system. In the United Kingdom the awareness-raising campaigns conducted by the Department of Trade and Industry (DTI) in the hairdressing sector resulted in a 400% increase of reported cases of non-compliance between October 2008 and March 2009 and a rise in the 'awareness rate' from 10% to 70% (Low Pay Commission 2009). As in Costa Rica, complaints through telephone hotlines and online were effective in the UK. Generally, workers who know about their rights and entitlements are more likely to be paid accordingly.

The majority of these campaigns have also stressed the importance of worker organisations and the importance of workers belonging to such organisations. According to Benassi (2011) a strong and well organised workforce is more likely to monitor compliance and denounce violations. Because individuals are likely to face retaliation and thus be unwilling to report cases of wage violations, worker organisations may report such cases on their behalf. The option of collective legal action is guaranteed in Australia, for example, where employee organisations are also allowed to go to labour courts in cases of underpayment of wages (Fair Work Act 2009 Section 539). According to Berg (2010), greater legal awareness is often associated with better working conditions as workers are better-informed and thus better-positioned to negotiate.

The provision of adequate information through training and information campaigns should not be the mandate of the government only. Employers' organisations, workers' organisations, and other civil society formations should be instrumental in the dissemination of information. In India for instance, the success of the awareness campaigns under the government's public employment programmes such as the National Rural Employment Guarantee Scheme (NREGS) was enhanced by the active participation of non-governmental organisations and other civic organisations in the implementation and outreach work and not only by acting as watchdogs (Sudarshan, Bhattacharya, and Fernandez 2010).

In countries like Brazil, Indonesia, and South Africa, trade unions have been instrumental in campaigns and awareness raising, thereby influencing the implementation of minimum wages policies (Rani et al. 2013). The South African Domestic Service and Allied Workers Union (SADSAWU) for instance, has made efforts to campaign for a living wage for domestic workers. Unions not only play crucial roles in monitoring compliance by employers: they also provide legal advice and assistance to their members in cases of industrial disputes, thus reducing worker exploitation. According to Mishel and Walters (2003) unionised workers are likely to earn better wages and experience better working conditions than their non-unionised counterparts.

The dissemination of information through public campaigns can potentially also improve compliance in the informal economy. In this sector, a widely known wage standard can be instrumental for wage fixing by altering employers' and employees' expectations and behaviour. This is commonly known as the 'lighthouse effect' (ILO 2016). The Brazilian experience proves that information dissemination is important for reaching small enterprises and the informal sector (see Section 3.2).

3.4 Naming and shaming

'Naming and shaming' has also been used to ensure compliance. This strategy works on the basis of tarnishishing the company's public image and negatively impacting their competitive advantage; such an approach has been adopted by many governments and trade unions. In Indonesia in the 1990s, for instance, companies that violated minimum wage legislations were blacklisted and had their names published (Rama 1996: 868 cited in Benassi 2011). In the UK, from October 2013 to March 2015, more than 200 employers were named and shamed for violating minimum wage legislation with total arrears amounting to £635 000 and penalties of up to £250 000 (The Telegraph, 24 March 2015).

In Europe, a network of labour organisations under the banner of the Clean Clothes Campaign (CCC) has used naming and shaming to achieve better working conditions, including living wages, in the garment industry of developing countries. The CCC blacklists companies that violate workers' rights and consumers are encouraged to boycott their products. The logic behind such an approach is that employers who do not comply with minimum wage regulations need to be presented to the society as 'cheaters' (Ayres and Braithwaite 1992: 92

cited in Benassi 2011). This, proponents argue, will negatively affect the growth of these firms and they will be forced to comply with labour laws and minimum wages.

3.5 Setting penalties

The threat of sanctions remains a necessary tool for any credible compliance system, especially in vulnerable sectors where violations of labour standards, including wage payments, are often rampant. Sanctions can include: denial of both public and private credit, revoking of operating licenses, and stiff fines or criminal penalties. One measure of ensuring compliance with minimum wage legislation is denying employers who violate labour standards, including minimum wage legislation, access to public and private financial credit such as state loans. The Brazilian legislation for instance empowers the Department of National Integration to suspend all lines of financial credit, either from state financial institutions or from private money lenders, to companies whose names appear on the slave labour blacklist (Benassi 2011).

Another type of sanction is the revocation of operating licenses. In Britain for example, cases of minimum wage violations are generally high in vulnerable sectors such as agriculture, horticulture, fishery, and in the processing and packaging of these products (Low Pay Commission 2009). Although the extent of undetected cases of non-compliance in these sectors remains unknown, estimates suggest that non-compliance in these low-paying sectors was 36% in 2007/08, an increase by 4% from 32% that was recorded in 2005/6 (Low Pay Commission 2009). Non-compliance with national minimum wage policies is regarded as one of the most serious offenses in these sectors and between 2005 and 2008 the Gangmasters Licensing Authority (GLA), an independent inspecting body for vulnerable sectors, revoked 85 licenses for those who were found guilty of non-compliance with the national minimum wage (Low Pay Commission 2009). Such an approach deters other companies from violating minimum wage regulations.

Stiff penalties may also deter employers from violating minimum wages. One such measure can be through the application of criminal sanctions for non-compliant employers. The imposition of criminal sanctions can be both a deterrent and an educational tool for the offenders, while providing worker protection (Santoso and Hassan 2013). For example, in the United States, specifically in New York and Los Angeles, the application of criminal sanctions for employers who violate wage and hour regulations has contributed greatly to increasing public awareness of wage violations and thus empowering workers to report such violations (Benassi 2011). In Malaysia, India, Indonesia, and Israel, among other countries, non-compliant employers may face imprisonment and prosecution (Santoso and Hassan 2013).

The imposition of heavy fines is another strategy. In Colombia, for example, fines may amount to a hundred times the minimum wage salary. Incentives can also be offered for speedy compliance; for example, in Brazil a 50% discount is offered to firms that comply within ten days of notification after being found guilty of a

violation, with small and medium firms generally paying fines early to capitalise on this discount (Almeida and Carneiro 2009). Similarly, employers in the UK benefit from a penalty reduction if they pay the full arrears quickly (Low Pay Commission 2009: 199). In some countries, like Algeria, Belgium, and the Dominican Republic, the fine doubles for repeated offenses (Benassi 2011).

It is crucial that any penalties set outweigh the cost-saving benefits of non-compliance. In his study of the apparel industry in US, Weil (2005) noted that employers will choose to violate minimum wage standards after evaluating the costs and benefits of compliance. Broadly speaking, there are two ways to understand how employers decide whether to comply with minimum wage regulations: a rationally calculated decision and a non-rationally calculated one. In the first, employers are less likely to comply when the costs of complying outweigh the costs of non-compliance, and more likely when the costs of non-compliance outweigh the costs of complying. This can best be diagrammatically represented as in the table below. The rows express an employer's risk of being caught violating wage legislations and receiving sanctions (high or low risk) and the columns the severity of the sanction that would be imposed.

Table 7: Compliance structure

		Weight of sanction	
		High	Low
Risk of being caught and sanctioned	High	Comply	Non-comply
	Low	Non-comply	Non-comply

The combination of possibilities identified in the table above yield four typical responses:

- 1) the employer complies due to a high chance of being caught and sanctioned and the presence of heavy sanctions (top left)
- 2) the employer is less likely to comply even though the weight of sanction is heavy because the chances of being caught and being sanctioned are low (bottom left);
- 3) the employer is less likely to comply because the weight of sanction is very light although the risk of being caught and being sanctioned is high (top right);
- 4) the employer is less likely to comply due to a combination of weak sanctions and the low chances of being caught and being sanctioned (bottom right).

To ensure compliance with minimum wage legislation, the cost of non-compliance should be set such that they exceed the benefits and strong monitoring should be in place to ensure culprits are found and sanctioned. However, non-compliance is not always a result of this rational calculus. It can be attributed to a range of factors, including limited capabilities on the part of the

employers (Piore and Schrank 2008). This would suggest that a more ‘conciliatory’ and less ‘punitive’ approach could also be taken, assisting employers to achieve compliance over time.

3.6 The minimum wage level

The level at which the minimum wage is set is an important factor that requires attention when considering the enforcement of minimum wage policies. It is beyond the scope of this paper to calculate the appropriate level for a national minimum wage. However, a negative relationship between the level and compliance has been noted in some of the literature, implying that higher minimum wages could lead to lower compliance (Lee, 2012 cited in Rani et al. 2013; Marinakis 2015). Similarly, low levels of minimum wages tend to be associated with a high degree of compliance. In countries like Vietnam and Mexico the minimum wage is set relatively low (Rani et al 2013) and compliance in these countries is very high at above 90% (see Figure 4). However, similarly high rates of compliance also exist in countries with much higher minimum wages (such as the UK, Germany and Malaysia). There is also consensus that setting the minimum wage too low renders it unable to meet its objective, that is, ensuring sufficient social protection for workers.

The minimum wage should therefore be set at a level that would not make compliance impossible while still being sufficiently high to achieve its objectives; the ILO’s Minimum Wage Fixing Convention of 1970 (No. 131) recommends this balanced approach (Belser and Sobeck 2012). In the same vein, Marinakis (2015) notes that although the level at which minimum wages are set is important for them to be effective, there is generally no optimal level but rather a reasonable range that avoids extremes.

3.7. Social partners

The implementation and monitoring of minimum wage policies requires the participation of different actors. Minimum wages are generally set either through statute or by giving legal force to the terms of collective agreements between employers and worker organisations (Benassi 2011). In some countries, governments set minimum wages alone without the consultation of employers’ and workers’ organisations. In Seychelles for instance, the government submits a minimum wage rate to the social partners for adoption, which cannot be challenged or rejected (International Labour Conference 2014). Other countries where the government generally imposes minimum wage by decree are Venezuela, Bulgaria, and Colombia.

Many countries however adopt a consultative approach whereby governments consult bipartite or tripartite bodies consisting of labour, capital, academics, and other stakeholders for instance in Uruguay, Mexico, South Africa, and Indonesia (see Castel-Branco 2016 for a full discussion of the composition of the different bodies that set minimum wages). This approach allows for effective consideration of the concerns and priorities of those most directly affected by the minimum wage policy.

A substantial body of research (Lemos 2004; Rani et al. 2013) has shown that countries that adopt a participatory approach to minimum wage setting – engaging different actors like business, labour and the state – are more likely to experience relatively better levels of compliance than those where there is no participation. A participatory approach provides room for minimum wages to be set at a level on which both workers’ and employers’ representatives agree. In such a scenario, employers are more likely to comply than when the minimum wage is imposed on them by the government (Rani et al. 2013). In other words, the minimum wage is given more legitimacy if a participative process is adopted during the process of minimum wage fixing.

3.8. Labour market structure

Labour market structure plays an important part in influencing enforcement and monitoring of wage policies. Writing about the apparel industry in the US, Weil (2005) noted that market features such as a splintered production system or the sub-contraction of work, high levels of competition, and a high density of low-skilled workers who can easily be replaced, all create a favorable environment for non-compliance with labour standards in general and minimum wages in particular. In South Africa, the DPRU (2016) concludes that factors such as differences in firm sizes and unemployment rates affect compliance.⁷ In the US, the situation is further worsened by the fact that a high proportion of contractors in this sector (apparel industry) do not stay in business for more than two years and are thus more difficult to sanction (Weil 2005).

This speaks to the growing global trend towards informalised and atypical forms of work. These workers are often excluded from collective bargaining. Declining union coverage also often has important gender dimensions with non-standard forms of employment often more common amongst women than men. This has meant lower minimum wage coverage or compliance in female-dominated industries such as the apparel industry in the US (ILO 2008).

For effective enforcement of minimum wage policies, it is imperative to devise strategies to formalise different sectors. The Brazilian case – where the Brazilian government has made inroads in formalising small and micro-sized businesses – reminds us of the important role of the government in instituting laws and policies that extended formality. The Simples Law of 1996 for instance eased business registration and lowered taxes, encouraging firms that may not have registered under the previous system due to bureaucratic red tape. The law opened new economic opportunities for these businesses: access to formal credit markets and to contracts with large, formal firms and the public sector.

Discussing the experiences of how three informal manufacturing clusters became formalised in Brazil, Almeida and Carneiro (2009) noted that the government played a crucial role in granting subsidies to these firms, which helped to

⁷ See section 4 for a discussion on how these factors impact on compliance.

improve their competitiveness and productivity. These businesses were also given grace periods for complying with tax, labour, and environmental laws so as not to impair them with debilitating sanctions during the transition phase. As a result, the firms in these clusters came into compliance with the law and achieved greater financial success after investment was made to improve their productivity (Berg 2010).

In the contemporary world, the complexity of the global supply chains that link firms, large and small, foreign and domestic across multiple cultural and political boundaries has become a major factor affecting compliance. Multinational corporations have become adept at finding ways to arbitrage highly diverse regulatory environments and labour market conditions to keep costs low and maximise profits (Locke 2013). This demands coordinated efforts or 'synergistic governance' to improve labour standards including wages in the global economy (Mayer 2014). In China for instance, the coordinated efforts between the government and manufacturing companies like Apple and Foxconn saw an increase of 13% a year between 2008 and 2012 of the mandated minimum wages (Gereffi, Regini, and Sabel 2014).

According to Murgai and Ravallion (2005, cited in ILO 2016), minimum wage legislation in poor countries can be made more effective if the government acts as the 'employer of last resort' and commits to employ a pool of unskilled workers at the stipulated minimum wage rate. In the Indian case, the state, through the Mahatma Gandhi National Rural Employment Guarantee Act of 2005, provided low-paid unskilled workers with employment at minimum wage levels and equal remuneration without any form of discrimination (Rani et al. 2013). Following the introduction of this employment guarantee scheme through the state, compliance rates increased from 26.4% in 2004-5 to 49.8% in 2009-10 in the rural areas (Rani and Belser 2012). The results also saw a reduction in wage gaps in the rural areas between formal salaried workers and casual workers as well as between men and women.

3.9. Conclusion on the international experience

This section has unpacked various facets of the international experience regarding effective enforcement and monitoring of minimum wage policies. The relevant factors addressed in this section include minimum wage coverage, inspection, penalties, minimum wage levels, and market structure. These factors are interlinked and all contribute to effective enforcement and monitoring of minimum wage policies. This section has also shown that the influence of these factors varies across countries. The influence of factors identified in this section to the South African context is shaped by a number of local factors, to which we turn in the next section.

4. Labour market considerations

The designing of an effective minimum wage monitoring, compliance, and enforcement system requires a context-specific approach. In addition to our discussion in Section 2, in this section, we identify a number of current features

of the South African labour market that further complicate effective monitoring and enforcement and should be considered.

4.1. Labour casualisation and union density

South Africa has been subject to the global trend of labour casualisation and externalisation, which includes non-standard and non-permanent employment such as temporary work, fixed-term contracts, seasonal work, and outsourcing or subcontracting. Casualisation and externalisation increasingly erodes the traditional standard employment relationships of permanent and full-time work with a clear and direct relationship between employer and employee, and this complicates the monitoring and enforcement of minimum wages.

A standard employment relationship exhibits the following characteristics:

- Employment is full-time and the employee has one employer;
- That the employee works on the premises of the employer and there is a designated workplace;
- The employment is ongoing and the employee has an employment contract (Theron 2008).

Casualisation has given rise to less stable and often more vulnerable forms of employment (Cheadle 2005 cited in Bodibe 2006), driven by an economic rationale of profit maximisation through lowering all production-related costs, coupled with an ideological strategy to weaken labour. The driving force behind the rise in casualisation has been global market liberalisation with its attendant restructuring of work under flexible accumulation. This has included flexibility in employment levels, wage levels and the terms and conditions of employment (Bodibe 2006).

Traditional employment relationships have been replaced by a 'triangular employment relationship', in which a labour broker supplies the labour of a worker to a firm. This complicates the whole process of monitoring and enforcing minimum wages as it becomes more difficult to identify who should shoulder responsibility in cases of non-compliance. For instance, if a firm contracts a labour broker to provide workers, does it assume the responsibility for abiding by minimum wage regulations for the hired employees, or should the labour broker be held accountable for any minimum wage violation? In a study conducted on labour brokerage on fruit farms in Grabouw in the Western Cape, workers expressed confusion over the lines of accountability in this three-tiered relationship (Lindoor et al. 2009).

Increased casualisation – in both the public and private sectors – also means less stable employment relations. This is exacerbated by the fact that high levels of casualisation are present in some of the most vulnerable sectors. In a study of grape producing areas in the Western Cape, Visser and Ferrer (2015) show that in 2011/12 approximately 80% of employment was seasonal and only 20% permanent. Casualisation has also increased in the public sector. In provincial governments for instance, statistical figures suggest that part-time jobs increased by 32 000, from 171 407 to 203 407, between 2013 and 2014 (van

Rensburg 2015). This trend is also visible in local government and other government sectors such as universities and parastatals (StatsSA 2015).

Casual work is intermittent and often in shifting locations, making casual workers more difficult to organise. Unions find it difficult to recruit temporary workers and to retain them during periods of non-placement, when they are not earning and cannot pay membership fees. As a result seasonal workers have little, if any, bargaining power (Visser and Ferrer 2015). Further, casualised workers rarely associate themselves with unions due to fear of losing their jobs. As noted above, compliance is better when workers are represented by worker organisations and worse when they are not. High non-compliance rates in low-skilled, non-unionised sectors like agriculture, domestic work, and construction in South Africa seem to indicate that this is true in the South African case.

The decline in union density in South Africa is therefore cause for concern. Table 8 shows a significant decline in the private sector where union membership fell from 35.6% in 1997 to 24.4% in 2013. Manufacturing, construction, and agriculture were the sectors hardest hit by this downward trend in union density (Bhorat, Naidoo, and Yu 2014). However, union density in the public sector during the 2000s was fairly stable at around 70%. As the national minimum wage will affect the private sector more strongly (given the relatively higher wages in the public sector) these trends are a problem for the prospect of enforcement. In the absence of worker organisations, workers are less likely to report cases of violations of the minimum wage and less likely to know about their rights and claim them.

Table 8: Union density in private and public formal sectors

Year	Private sector		Public Sector	
	Number of union members	Union members as a percentage of workers	Number of union members	Union members as percentage of workers
1997	1 813 217	36%	835 795	55%
2001	1 748 807	31%	1 070 248	70%
2005	1 925 248	30%	1 087 772	68%
2010	1 888 293	26%	1 324 964	75%
2013	1 868 711	24%	1 393 189	69%

Source: Bhorat, Naidoo, and Yu (2014)

4.2. Migration trends

The monitoring and enforcement of the national minimum wage will likely be impacted by rising levels of irregular migration between South Africa and its neighbours and a shift in the nature of migrant work. Traditionally, labour immigrants were concentrated in the mining sector. However the growth of the service sector – particularly domestic work, the retail sector, and the private security industry – coupled with declining opportunities in the mining sector, has meant new opportunities for low-skilled labour migrants from across the SADC region and is increasingly shaping the patterns of migration. This shift in the

concentration of migrants from highly to poorly regulated sectors poses a challenge to effective monitoring of minimum wages.

There has also been an increase in undocumented (or irregular) labour migration over the last two decades, despite the lack of adequate data and the sometimes exaggerated claims over the scope of this (Crush and Williams 2010). These irregular migrants are able to find jobs in sectors such as construction, agriculture, and services (Bloch 2008; Lindoor et al. 2009). South African employers in these sectors show a distinct preference for non-South African workers since their vulnerability allows employers to circumvent labour laws, avoid paying benefits, and violate minimum wage legislation. Further, employers have been known to use the threat, and in some instances the reality, of police denunciations and deportation to intimidate workers to prevent them from lodging complaints (Visser and Ferrer 2015). All these factors complicate monitoring and enforcement of minimum wages.

4.3. Informalisation

Generally, it is difficult to enforce and monitor minimum wage policies when there is a growing rate of informalisation, defined in terms of employment in the informal sector as well as informal employment outside the informal sector (ILO 2003). This definition captures enterprises that are not legally regulated and employment in precarious work situations with no written contracts and no benefits (ILO 2015). The table below show a snapshot of the growth of the informal sector from 2009 to 2014. We employ this definition in our discussion in this section.

Table 9: Total informal sector employment 2009-2014 (Thousand)

	2009	2010	2011	2012	2013	2014
Informal sector employment	2 221	2 259	2 270	2 275	2 366	2 393

Source: StatsSA (2015)

Note: The difference between the numbers shown in the table above indicates the growth of informal sector employment during the period 2009-2014.

The informal sector does not provide for stable employment. In 2014 for instance, 15% of workers in the informal sector moved out of employment (StatsSA 2015). Considering the challenge of identifying those in the informal sector, some of them being undocumented migrants, the figure might be slightly higher. Furthermore, workers in the informal sector are highly unorganized and therefore lack confidence in denouncing violations for fear of being fired. Trade unions struggle to organise workers in the informal sector. The informal sector also largely remains outside the reach of labour inspectors. This is potentially problematic in South Africa where there is evidence that the informal sector in South Africa has grown twice as fast as the formal sector in the last twenty years (Pennington 2014), and in 2015 comprised 36% of total employment (ILO 2015). Informal sector employment is relatively high in vulnerable sectors such as agriculture, construction, trade, transport, and domestic work, and tends to be quite volatile.

Linked to the growth of informal sector employment is the increasing proliferation of fly-by-night companies that are unregistered and non-compliant with labour laws including minimum wages. The private security sector, for example, has seen a large increase in these companies on the back of increasing demand for security services due to high crime rates and declining “public confidence in government’s control over crime” (Louw 2000:197). The existing relationship between formality and unionisation suggests that there are low levels of unionisation in unregistered fly-by-night companies. Such companies may also have a high concentration of irregular migrants. There is therefore a triple challenge in monitoring and ensuring compliance with minimum wage legislation: worker informality, businesses being unregistered and unidentifiable, and workers being undocumented and thus even more vulnerable.

4.4. Worker resources and recourse

Worker recourse, either collective or individual, is an important factor in effective enforcement of minimum wages. In many countries, legislation is put in place to empower workers to claim their rights (collectively or individually). In countries like Norway and the Philippines, various laws empower union and worker representatives to inspect workers’ wages and conditions of work (ILO 2016).

Without access to resources, workers whose rights have been violated may find it difficult to lodge complaints. Some workers in South Africa especially those in very remote areas, may not have access to the internet to lodge complaints online or may not be computer-literate. Others may not be willing or able to spend money on airtime in order to lodge complaints via the department’s call centre. Calling the Department of Labour is costly and time-consuming and there is no guarantee that action will be taken immediately. Accessible and efficient complaint services, free calls or callback messages, and widespread knowledge of the availability of these services are therefore essential.

4.5 Unemployment

Another factor that complicates the enforcement and monitoring of minimum wages is unemployment. In an environment where jobs are scarce and competition for jobs is stiff, violation of labour standards including wages is likely to be high. Commenting on the relationship between unemployment rates and compliance, Bhorat, Kanbur, and Mayet (2012) noted that a higher rate of unemployment is associated with high rates of minimum wage violation. DPRU (2012) confirmed these findings and found that 81% of the inspectors they surveyed were of the view that non-compliance levels were high in areas with high rates of unemployment. Put simply, the higher the rate of unemployment, the higher the probability of non-compliance with wage legislation and meeting other labour standards. Operating in a high unemployment environment for inspectors is often challenging considering the need to strike a balance between ensuring that employees are not exploited and, at the same time, not being too stringent on employers as this may result in companies laying off workers.

5. Conclusions and recommendations

The evidence presented in this paper is important for the design of enforcement and monitoring systems of the forthcoming national minimum wage in South Africa. The paper has highlighted evidence that shows that compliance with existing minimum wages in South Africa is relatively low, particularly among low-skilled casual employees in vulnerable sectors covered by sectoral determinations, despite legislation and structures that are in place to regulate minimum wages. The complexity of South Africa's minimum wage system, which is determined by geographical location, sector, and job grades, among other variables, poses a challenge to effective monitoring and enforcement of minimum wage legislation. Evidence from other countries has shown that countries that adopt a single national minimum wage are more likely to experience higher levels of compliance since single national minimum wages are easier to monitor and administer. This however does not suggest that adopting a national minimum wage policy will necessarily result in higher levels of compliance. The pitfalls of the current enforcement procedure in South Africa, which include the quality and quantity of the available inspection resources and the lengthy time before court action is taken against non-compliant employers, will reduce the effectiveness of a national minimum wage.

There is a growing tendency amongst employers to switch away from permanent and full-time employment towards atypical forms of employment such as casual labour, part-time employment, and temporary and seasonal work. This switch from permanent to temporary employment creates enforcement and monitoring challenges due to the complexity associated with identifying workers in atypical forms of employment. This also poses a threat to trade union density and organising. Historically, the labour movement in South Africa has been a vital force in championing the rights of the working class. Trade unions are important organisations to ensure monitoring and compliance with wage legislation, particularly for their members. Evidence has shown that organised workers are more likely to claim their rights and monitor compliance than non-organised workers.

The paper has shown the importance of an effective inspection and monitoring system, stiff penalties for non-compliant companies, incentivising compliance, and the role of naming and shaming. Decisions to comply by employers are in most cases based on a rationally calculated cost-benefit analysis; the costs of non-compliance must outweigh the labour cost savings of non-compliance. The paper has stressed that information and worker recourse is crucial and that collaboration between the social partners can be of great benefit. The level at which the minimum wage is set is also important; this level should aim to be economically viable while addressing workers' needs.

Recommendations include:

- Improve the quality and quantity of labour inspectors by recruiting more highly qualified inspectors and allocating them according to regional

economic concentration. Improve the wages of inspectors and incentivise more rigorous inspection.

- Revise the inspection procedure in sectors such as domestic and agricultural work to allow easier access to workers.
- Reform the lengthy enforcement procedure to be faster and more responsive.
- Ensure penalties are stiff enough to spur compliance, and speedily imposed. Consider criminal sanction and higher fines for repeat offenders.
- Institute additional forms of sanctions such as revoking operating licenses for repeat offenders, or naming and shaming lists.
- Embark on information campaigns to ensure workers are empowered and employers sufficiently informed and trained.
- Provide incentives for complying employers such as compliance certificates which give access to tax deductions or access to subsidised credit.
- Incentivise inspectors who conduct inspections in large firms with more employees.
- Institute laws and policies to formalise both small and micro-sized business.
- Provide grace periods for firms in their infancy to comply with minimum wage legislations so as not to impair business with debilitating sanctions during the transition phase.
- Make individual complaint procedures easy, free, and accessible, and encourage workers to join trade unions for representation and collective action.
- Continue to involve all social partners in the monitoring of the newly-instituted national minimum wage.
- To protect migrants and encourage reporting of violations, none of the institutions of enforcements should require residency documentation or link in any way with the police or Department of Home Affairs. On paper this is already the case but not necessarily the practice.

Ultimately the success of the national minimum wage relies on effective systems of monitoring and enforcement and this should be prioritised as the process of instituting a national minimum wage moves forward.

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