



# POLICY CONSIDERATIONS FOR THE DESIGN AND IMPLEMENTATION OF A NATIONAL MINIMUM WAGE FOR SOUTH AFRICA

DRAFT VERSION

Ruth Castel-Branco

WITH

Elena Konopelko  
Brian Murahwa

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## National Minimum Wage Research Initiative

### Summary Report 2

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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.

This summary report is based on a series of Policy Briefs and a Working Paper:

- Policy Brief 1: The building blocks of a national minimum wage for South Africa  
By Ruth Castel-Branco
- Policy Brief 2: Defining the reference period and premium payments for a NMW  
By Ruth Castel-Branco
- Policy Brief 3: Exclusions and exemptions from a NMW in South Africa  
By Elena Konopelko
- Policy Brief 4: NMW Coverage for workers in structured learning programmes  
By Ruth Castel-Branco
- Policy Brief 5: Incentives to enhance compliance with a NMW in South Africa  
By Elena Konopelko
- Policy Brief 6: Setting a NMW in relation to labour market indicators  
By Elena Konopelko
- Policy Brief 7: The institutional framework for setting and overseeing a NMW  
By Ruth Castel-Branco
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The views expressed in this document are solely those of the National Minimum Wage Research Initiative. For further information please contact the NMW-RI coordinator, Gilad Isaacs, [gilad.isaacs@wits.ac.za](mailto:gilad.isaacs@wits.ac.za).

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## LIST OF ACRONYMS

BCEA	Basic Conditions of Employment Act
CMBT	Competency Based Modular Training
CPI	Consumer Price Index
DoL	Department of Labour
DTI	Department of Trade and Industry
ECC	Employment Conditions Commission
EPWP	Expanded Public Works Programme
IDC	Industrial Development Corporation
ILC	International Labour Conference
ILO	International Labour Organisation
LRA	Labour Relations Act
NBCCMI	National Bargaining Council for the Clothing Manufacturing Industry
NEDLAC	National Economic Development and Labour Council
NMW	National Minimum Wage
NWCC	National Wages Consultative Council
PI	Production Incentive
QCTO	Quality Council for Trades and Occupations
SAQA	South African Qualifications Authority
SDA	Skills Development Act
SER	Standard Employment Relationships
SETA	Sector Education and Training Authority

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## FOREWORD AND ACKNOWLEDGEMENTS

Designing a national minimum wage (NMW) is not a simple matter. Agreeing to the level is only one, albeit critical aspect, of the complex architecture that needs careful thought in order to ensure that the NMW meets its objections. This summary report hopes to raise many, but we are sure not all, of the pertinent policy questions. It draws from a series of Policy Briefs undertaken by the National Minimum Wage Research Initiative at the University of the Witwatersrand. Each Brief deals with a particular policy question. The report condenses the detailed material of those Briefs, which offer an exhaustive review of the international and local experience on each question.

The report deals in consecutive sections with: setting and adjusting the level of the national minimum wage; the role of exclusions and exemptions in transforming the wage structure; the role of social partners in the design and implementation of a national minimum wage; the composition of the national minimum wage; incentives for compliance with the national minimum wage; and enforcing the national minimum wage.

Thank you to Ruth Castel-Branco, Elena Konopelko, and Brian Murahwa, the researchers whose work forms the basis of this report, for their hard work under extremely tight deadlines, and to Ruth Castel-Branco for compiling this report – 7 Policy Briefs, a Working Paper and this summary report in under six months is truly an extraordinary fete. Thanks also go to Dr. Patrick Belser, Dr. Uma Rani, Kristen Sobeck, Dr. Debbie Budlender, Dr. Debbie Collier, Dr. Shane Godfrey, Etienne Vlok, and Jane Barrett, for their comments on the Briefs reviewed thus far. Further review by other academics of not-yet-finalised Briefs is still underway.

Please note the current version is a DRAFT pending further editing and review by our Oversight Committee.

Gilad Isaacs  
Project Coordinator, National Minimum Wage Research Initiative  
University of the Witwatersrand

# 1 SETTING AND ADJUSTING THE LEVEL OF THE NATIONAL MINIMUM WAGE<sup>1</sup>

The objective of a national minimum wage (NMW) is to reduce poverty and inequality by increasing the wages of the working poor, raising the labour share<sup>2</sup> and reducing wage differentials. However, none of these is a given. For the NMW to reduce poverty it must be set at a level sufficient to meet workers' basic needs. For the NMW to be a redistributive tool it must be designed in a way that wage growth at the bottom outstrips wage growth at the top. This section deals with the process of setting and adjusting the level of the NMW. After looking at the current sectoral minimum wage-setting system in South Africa, it focuses on the three most common ways of setting an initial NMW: indexing the NMW to the cost of living, indexing the NMW to a wage indicator, or drawing both methods in a process of social dialogue between stakeholders.

## 1.1 THE CURRENT MINIMUM WAGE-SETTING SYSTEM IN SOUTH AFRICA

There is currently no NMW in South Africa. Instead minimum wages are determined sectorally either through collective agreements<sup>3</sup> negotiated at the level of Bargaining Council, or sectoral determinations published by the Minister of Labour on the recommendation of the Employment Conditions Commission (ECC)<sup>4</sup>. In making a recommendation the ECC must take into account: poverty indices; the cost of living; wage differentials and inequality; the impact on small, medium or micro- enterprises; and the likely impact of any proposed measure on employment levels among other factors (DOL 1997).

Sectoral minimum wages are revised approximately every three years. In many sectors adjustments are based on the Consumer Price Index (CPI) for the lowest quintile six weeks prior to the increment date, plus an additional one or two percent (Budlender 2013). Within sectoral determinations, minimum wages may vary according to geographic location, firm size, occupational category, tenure and skills level. Consequently South Africa's eleven sectoral determinations have 124 different minimum wage rates, the highest number on the African continent (Bhorat *et al.* 2015). Minimum wages, set through both methods, range from as low as R75 a day for workers in the Expanded Public Works Programme (EPWP), which amounts to a monthly wage of R1 720 (EPWP 2013/14) to above R7 000 for workers in the mining and utility sectors. Although South Africa's sectoral wage-setting system may be able to respond to the particularities of work arrangements in specific sectors, the complexity of such a system can have negative implications for compliance and enforcement, particularly where resources for labour administration are scarce. A single NMW is therefore easier to comply with and more straightforward to enforce (ILO 2014).

A further drawback of the sectoral wage-setting system is that 2.35 million workers are currently excluded *de facto* from minimum wage coverage (DPRU 2015) because they fall neither under the

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<sup>1</sup> This section draws from Policy Brief 6.

<sup>2</sup> The "labour share" or "wage share" is the percentage of "value added" received as compensation to employees.

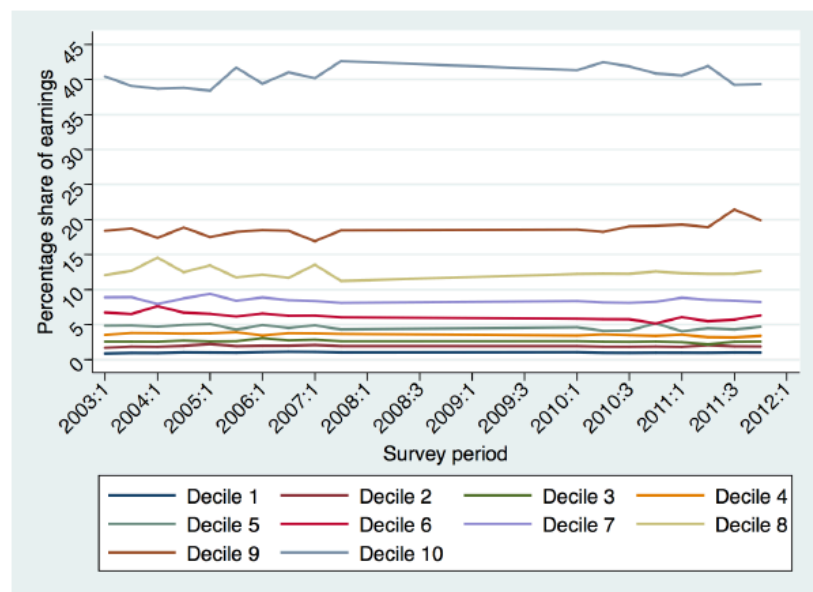
<sup>3</sup> There are approximately 38 collective bargaining agreements.

<sup>4</sup> There are currently 11 sectoral minimum wages covering the following sectors: domestic work, contract cleaning, private security, wholesale and retail, farm workers, forestry, taxi sector, hospitality, civil engineering, learnerships, children in the performance of advertising, artistic and cultural activities.

jurisdiction of bargaining councils nor are recognised as one of the sectors of vulnerable workers to be covered under a sectoral determination. In addition, sectoral determinations tend to set lower wages for sectors that primarily employ women, young workers, migrant workers and people with disabilities, thereby perpetuating wage inequality (ILO 2014). In South Africa, paid domestic work is the second most important source of employment for women yet the hourly rate for a domestic worker is the second lowest wage determination (after the EPWP), with minimum wages starting from R1 994 (DOL 2015a). Finally, the sector-specific wage-setting process typically takes account of a more limited range of factors, with broader social objectives such as reducing poverty and inequality or providing a uniform “decent” standard of living overshadowed by sector-specific considerations. Indicators such as employment are also only considered at a sectoral level, without accounting for potential positive implications on inter-sector aggregate demand from higher wages.

In South Africa average wage growth has outstripped median wage growth, as wages at the top of the distribution rise faster than at the bottom. Between 2003 and 2012 real average wages grew 35% whereas real median wages grew by only 22% (Isaacs, 2016). As Figure 1 illustrates, the top 20% of wage earners have a 60% of the share of total earnings, while the bottom 60% of the distribution have only 20%, and the wages of white workers remain approximately three times higher than wages of African workers. High wage inequality directly feeds staggering household inequality (Finn 2015).

**Figure 1. Share of total wages per decile of the earnings distribution, 2003-2012**



*Source: Finn (2015, 21), based on own calculations.*

In addition, a high proportion of workers live in households that fall below the poverty line. Over half of full-time workers earn below R4 125 — the threshold for working poverty. This is the minimum level at which workers and their dependents can be kept above the poverty line, assuming that they have complimentary forms of household income such as social grants. The SALDRU (2015) upper bound poverty line on the other hand sets the threshold for a household of four at R5 276 (Ngidi, forthcoming).

## **1.2 INTERNATIONAL APPROACHES TO SETTING AND ADJUSTING THE NMW**

ILO Convention No. 131 outlines the following interrelated criteria to be considered in setting and adjusting the NMW: the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, the relative living standards of other social groups and economic factors. There are a number of approaches to translating these into a process of setting the level of the NMW, including indexing the wage to the cost of living, indexing the level to wage indicators, or a combination of both (Eyraud and Saget 2005). While some countries like Brazil incorporate indexing the NMW to GDP, there is overwhelming consensus that in countries with high unemployment, the GDP is not an appropriate indicator (Herr and Kazandziska 2011, OECD 2010).

### ***INDEXING THE NMW TO THE COST OF LIVING***

The NMW can be indexed to the cost of living by defining a set of goods and services that constitute a basic standard of living, measured on the basis of a household rather than an individual (Eyraud and Saget 2005; Herr and Kazandziska 2011). The minimum wage in this case is indexed to the minimum living level. When using this method, the country has to decide on what constitutes the minimum living level, how many dependants each working person has and whether there is a significant regional (rural vs. urban) difference in the standards of living that should be reflected in the NMW. Brazil, Costa Rica, Guatemala, India and Turkey also use a workers' needs approach that takes into account food, housing, education, sanitation, leisure, clothing health and transport as the necessary needs (ILO 2014).

### ***INDEXING THE NMW TO WAGE INDICATORS***

A NMW can be indexed to the average wage or to the median wage; the average wage is more commonly used. The ILO states that the NMW index converges on 39-40% of the average wage or 60% of the median wage internationally (OECD 2010; ILO 2008). Israel for instance sets the NMW at 52% of the mean, Montenegro at a minimum of 30% of the mean wage over the previous six months, and Macedonia at 39.6% of the previous year's mean (ILO 2014). Which approach is most appropriate – indexing to the average wage or indexing to the median wage – depends on country specific factors.

In countries with low levels of inequality the difference between the two measurements is 10-15%. In countries with high levels of inequality and a significant proportion of low-wage workers, as in South Africa, there is a much larger discrepancy between the average and median wage. In South Africa, (in April 2015 rands) the average wage for full-time workers<sup>5</sup> is R8 669 and the median wage R3 640 (Finn 2015). Given that the threshold for working poverty is R4 125, one would need to index the NMW to over 100% of the median wage in order to cover workers' basic needs, which is ultimately the primary objective of the NMW. Therefore, the average wage is a more appropriate wage indicator for South Africa. In addition, because growth in average wages exceeds growth in median wages, a NMW indexed to the median will not transform the wage structure. By indexing the NMW to the average wage, the NMW will help to ensure that wages at the bottom grow faster than wages at the top, thereby reducing household income inequality.

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<sup>5</sup> "Full-time" work is defined in Finn (2015) as working 35 hours or more a week.



## **MEDIUM-TERM TARGETS AND A PHASING-IN APPROACH**

In some instances, a phased approach is necessary in order to allow for businesses and the economy to gradually adjust to the NMW. In this case the initial level of the NMW might be set at the bottom of the ideal range of 40-50% of the average wage. However, over a 5 to 10-year period, it can be progressively increased. The final target and increments should be negotiated in advance.

The economic modelling undertaken on behalf of the National Minimum Wage Research Initiative, illustrates how a medium-target approach could be implemented. The modelling includes the following two scenarios (Isaacs 2016):

1. Indexation 40% - 45%: Initially setting the NMW at 40% of the average wage and aiming for it to reach 45% of the inflation-adjusted 2015 mean real wage by 2020. In monetary terms, the starting NMW would be R3 467, which will rise to R5 220 in nominal rands by 2020 (or R3 901 in 2015 rands). In this scenario, less than 50% of full-time workers in South Africa will be affected by the minimum wage legislation at the start of the NMW policy. This indexing is in line with the OECD and ILO norm of a NMW of 40% of the average wage.
2. Indexation 45% - 50%: The second permutation aims to cover a larger portion of workers, namely 55-60% of workers in 2016. In this case, the initial NMW is set at 45% of the average wage and is targeted to reach 50% of the average wage by 2020. In monetary terms, the starting NMW wage is then R4 623 and the wage will reach R6 874 in nominal rands by 2020 (or R5 137 in 2015 rands). This scenario is specifically targeted to ensure that workers are able to meet their basic needs.

This medium-term approach allows the NMW to initially be set below the target and increased over a period of 5-10 years, at a rate higher than inflation until it reaches the pre-negotiated target. Once reached, the targets and increments can be renegotiated.

Alternatively, annual wage adjustments could be made on the basis of the average real wage increase of the previous year plus 2%. This would ensure that the NMW rises faster than the average wage, thus reducing wage inequality. One caveat is that the NMW should also be an easy to remember number and any phased indexation should be rounded off.

Finally, if the NMW is initially “tiered” – that is, some sectors have covered by a sub-NMW – a medium-term plan for phasing out these exceptions should be agreed upon from the outset. This is discussed in further detail in Section 2.

Ultimately, which method to use is a political choice, that should be grounded in an analysis of the national context (see Isaacs 2016) and decided on through a process of social dialogue (see Section 3). The ILO also underscores that regardless of the chosen method the needs of workers and their families have to be sufficiently covered, as “the fundamental purpose of a minimum wage fixing should be to give wage earners necessary social protection as regards minimum permissible levels of wage” (ILO 2014).

## KEY FINDINGS

- The objective of NMW is to reduce poverty and inequality. For the NMW to reduce poverty it must be set at a level sufficient to meet workers' basic needs. For the NMW to be a distributive tool it must be designed in a way that wage growth at the bottom outstrips wage growth at the top.
- Regardless of the preferred indexing approach, the NMW level should constitute a "decent wage floor" for workers and their dependants.
- Given the high rates of wage inequality and incidence of unemployment in South Africa, it is preferable to index a NMW to the average (rather than the median) wage. International norms benchmark the NMW at 40-50% of the average wage.
- A phased approach, where the NMW is initially set below benchmark targets and progressively increased over the medium term, allows for the economy to adjust to the NMW, which can be favourable for both workers and employers. The final target and increments should be negotiated in advance.
- NMW tiers (if set) should be gradually phased out.

## 2 THE ROLE OF EXCLUSIONS AND EXEMPTIONS IN TRANSFORMING THE WAGE STRUCTURE<sup>6</sup>

In order for the NMW to have its desired effect, workers excluded from NMW coverage should be kept to a minimum. A universal NMW not only ensures that workers and their families are able to meet their basic needs regardless of the sector they work in, the region they live in or occupational category they occupy, but also contributes to improved compliance. International evidence shows that a single NMW is easier for both workers and employers to comprehend and for the State to enforce (Rani 2013). Therefore, the majority of minimum wage systems do not allow for exclusions or exemptions (ILO 2014).

However, in some instances it may not be viable to introduce a uniform NMW immediately due to large discrepancies in wages between sectors. In certain circumstances, introducing a viable uniform wage would almost certainly mean introducing a wage that is significantly below the line of working poverty, which would do little to transform the wage structure or address basic needs. In this context, exclusions and exemptions play an important role. Exclusions are the exception of entire sectors or categories of workers from the NMW. This could be through the establishment of subminimum tiers which are phased out over time. Exemptions are the exception of individual employers from the obligation to pay the full NMW for a given period of time if they can demonstrate financial hardship. Exclusions should be considered up-front and legislated as part of the NMW legislation. The legislation should also define the procedures for case-by-case exemptions. The combination of exclusions and exemptions can ease the transition to a NMW. Nonetheless, they should be approached with caution.

### 2.1 THE APPROACH TO EXCLUSIONS AND EXEMPTIONS IN SOUTH AFRICA

Because South Africa has a sectoral wage-setting system, exclusions are not stipulated on a national level. However, recent estimates suggest that 2.35 million workers are currently excluded *de facto* from minimum wage coverage (DPRU 2015). In addition, workers who participate in structured learning programmes such as learnerships and apprenticeships are paid a subminimum wage. For instance, learners registered with the Sector Education and Training Authority (SETA) are covered under Sectoral Determination 5 and receive an allowance rather than a wage. Apprentices enrolled in the Competency Based Modular Training (CBMT) system are also paid subminimum wages, though these are defined through the Bargaining Councils.

There is no standard national procedure for issuing exemptions. In South Africa exemptions are determined on a case-by-case basis either by the DoL, if it pertains to a sectoral determination, or the relevant Bargaining Council. Applications for exemptions require supporting documentation. They can be approved, denied pending further documentation, or appealed. While the current system gives sectors autonomy, the absence of specific indicators for approval, the lack of transparency in administrative procedures and inadequate public reporting means the process of exemptions is vulnerable to abuse.

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<sup>6</sup> This section draws from Policy Briefs 3 and 4.

## **2.2 THE INTERNATIONAL APPROACH TO EXCLUSIONS**

There is no single approach to exclusions and exemptions. While most countries do not allow for exclusions, some opt to except certain categories of workers from the NMW coverage or establish subminimum tiers pegged to the NMW which can be phased out over time. Exclusions are particularly common for workers in low-wage sectors, young workers, workers with disabilities and workers engaged in formal learning programmes. While a tiered approach is preferable to a blanket exclusion, it can result in a more complex minimum wage system, which may be more difficult to enforce.

### ***LOW-WAGE WORKERS***

Domestic workers, agricultural workers and workers in public-employment programmes are the three categories of low-wage workers most frequently excluded from NMW coverage. In South Africa, these sectors are among the most vulnerable, with 50% of full-time domestic workers earning a monthly wage below R1 577 and full-time agricultural workers below R2 253 (Finn 2015). Workers in the EPWP earn up to R1 720 a month (EPWP 2013/2014). National survey data suggests that these three categories alone comprise approximately 2.1 million workers (StatsSA 2015). Their blanket exclusion from the NMW could further deepen wage inequality and undermine one of the key objectives of the NMW. A tiered system, where low-wage workers receive a percentage of the NMW, would ensure that low-wage workers are not left behind.

As the case of Chile illustrates, these tiers can be phased out over time. In 2008 the Chilean Government initiated the phase out of differentiated treatment for domestic workers, gradually increasing the minimum wage from 75% to the 100% of the NMW. As of 2011, Chile had successfully equalised wages (ILO 2014). Portugal excluded agriculture and domestic sectors during the first years of the implementation of a NMW in 1974. Three years later, agricultural workers were included in the NMW albeit at a subminimum level, and in 1978 domestic workers were also incorporated. It took Portugal 14 years to phase out the subminimum wage for the agricultural sector by adjusting the agricultural minimum at a rate higher rate than the general adjustments (Portugal and Cardoso 2001). By 2004, Portugal had also phased out the differentiated treatment of domestic workers (ILO 2013).

### ***WORKERS WITH DISABILITIES***

Workers with disabilities are sometimes excluded from NMW coverage on the basis of the largely unsubstantiated belief that they are less productive. Because this is generally done with little regard for the nature of specific disabilities or their impact on productivity, these exclusions are discriminatory. Many countries, including Malaysia, strongly oppose minimum wage exclusions for people with disabilities. Other countries allow for exemptions on a case-by case basis. In order for an exemption to be granted, the employer must prove that an employee with a disability has lower productivity and work efficiency than her or his colleagues. In the Philippines, Czech Republic, and France a percentage of the NMW is specified above which workers with disabilities must earn; in Portugal a “productivity gap” between a worker with a disability and one without must first be established (ILO 2014).

### ***YOUTH***

Youth are another category that is frequently excluded from NMW coverage – most often through the establishment of a subminimum wage which ranges between 60-90% of the NMW. This

exclusion is justified on the basis that they are less productive, have fewer skills and require more on-the-job training than their adult counterparts. This is often not the case, particularly in low-skill jobs. In addition, there is a prevailing belief that lower wages for young people will make them more competitive in the labour market which in turn will contribute to a reduction in youth unemployment. This is a key concern in South Africa where youth unemployment surpasses 50%. However, international evidence does not substantiate this (Eyraud and Saget 2005). The exclusion of youth from the NMW, many of whom are employed in low-skilled positions, has little demonstrable impact on youth employment. In South Africa, lowering youth wages via the “youth wage subsidy” has had no discernable employment benefit (Ranchhod and Finn 2014, 2015). Conversely in Korea, the abolition of subminimum wages for young workers had no disemployment effects (ILO 2014).

#### ***WORKERS ENROLLED IN LEARNING PROGRAMMES***

Workers enrolled in learning programmes, such as learners and apprentices, are another category of workers who are frequently excluded from NMW coverage on the grounds that they are less productive, have fewer skills and benefit from on-the-job training. The ILO Expert Committee on Wages emphasises the importance of clearly defining and monitoring the parameters of apprenticeships, establishing objective criteria for sub-minimum wages and respecting the principle of equal pay for work of equal value, so as to ensure that learners and apprentices are not used as a way for employers to circumvent paying the NMW. A phased approach would allow for the gradual phase out of the exclusions, as workers engaged in learning programmes gain progressively more skills and work experience. In Pakistan and El Salvador workers in vocational training receive 50% of the NMW in the first year, 75% in the second year and 100% in the third year. This provides the benefits of a national wage-setting system while allowing for some degree of flexibility (ILO 2015).

Many countries including Uruguay and Malaysia provide the same wage for apprentices and learners as other qualified workers. There are numerous advantages to this approach: it ensures that workers who are undergoing training are not trapped in a cycle of working poverty and are able to meet their basic needs; it removes the incentive to replace positions for qualified workers with learnerships thus ensuring career progression for qualified workers; it reinforces the function of apprenticeships as an entry point to a long, productive career; and it reduces the downward pressure on the wages of qualified workers.

#### ***PUBLIC SECTOR AND STATE SECURITY EMPLOYEES***

Although public sector employees generally earn above the NMW they are often excluded due to pre-existing administrative arrangements. International evidence suggests that there are no economic reasons for a blanket exclusion of public-sector employees and/or national defence and military personnel from the NMW (Rani 2013). However, low-wage public employment schemes, such as the Expanded Public Works Programme, could be considered for a NMW tier.

### **2.3 THE INTERNATIONAL APPROACH TO EXEMPTIONS**

International evidence suggests that providing blanket exemptions is risky. In cases where exemptions are based on the size of the business, companies may opt to employ unregistered workers or reclassify workers as volunteers in order to remain below the threshold. In cases where exemptions are based on turnover, companies may attempt to disguise their real turnover. Time-limited blanket exemptions are sometimes used. In Malaysia, which recently introduced a NMW,

small and medium enterprises with less than five employees were allowed to defer payment of the NMW for up to six months, with the possibility of extension if the NMW was deemed unaffordable for individual firms.

Exemptions on a case-by-case basis are generally the preferred modality, as the need for the exemption must be justified; most often employers must prove they are unable to pay the NMW. This requires a solid administration, regular monitoring and strict enforcement. While exemptions can ease the transition to a NMW system (Eldring and Alsos 2012) they can be subject to abuse.

## SUMMARY OF FINDINGS

- A single NMW ensures maximum coverage, which is a key element of a successful NMW. However, in countries with high inequality attempting to set a NMW too low in order to cover every worker can also undermine the objectives of a NMW.
- Where it may not be possible to introduce a single NMW, completely excluding low-wage sectors should be avoided. Doing so would decrease the efficacy of the NMW and lead to widening wage gaps and inadequate social protection in these sectors. As an interim measure, a “tiered” system could be considered, which allows for subminimum wages pegged to the NMW. However, the nature of exclusions and the process of phasing these out must be clearly defined in the NMW legislation.
- There is no justification for providing subminimum wages for young workers and a blanket lower wage for workers with disabilities runs contrary to the principle of equal pay for equal work. In certain circumstances, workers engaged in learning programmes could earn a subminimum wage but these should be carefully regulated and phased out.
- There is no economic justification for the exclusion of public sector employees, although public-employment schemes could be considered for a subminimum tier.
- Business specific exemptions, applied on a case-by-case basis, with clearly defined rules, are commonly used and allow governments to be responsive to the circumstances of individual businesses.

### **3 THE ROLE OF SOCIAL PARTNERS IN THE DESIGN AND IMPLEMENTATION OF A NATIONAL MINIMUM WAGE<sup>7</sup>**

ILO Convention 131 emphasises the importance of full consultation with and participation of social partners in the process of designing and implementing a NMW. Engagement with social partners ensures that those most directly affected by minimum wage policies are able to participate in the wage-setting process, thereby pre-empting potentially disruptive adjustments to the NMW, giving the wage setting process and outcome legitimacy and strengthening compliance. There is no standard international approach to engaging with social partners. While in some countries social partners play an advisory role, in others, their recommendations carry significant weight. Few countries rely solely on an outside “expert body” to make decisions regarding a NMW. Regardless of the approach, the ILO recommends that the process for engagement with social partners be objective and precise, and that consultations take place prior to decision making, in order to ensure that all partners have a stake in the wage-setting process (ILO 2014).

#### **3.1 ENGAGEMENT WITH SOCIAL PARTNERS IN SETTING THE NMW**

In South Africa, as discussed in Section 1, minimum wages are determined sectorally either through collective agreements or sectoral determinations, the latter published by the Minister of Labour based on the recommendation of the ECC. Bargaining councils are voluntary, industry-specific associations between employers and registered trade unions that come together to negotiate the conditions of employment for worker under their jurisdiction. Bargaining councils can request that the Minister of Labour extend collective agreements to non-parties within their jurisdiction.

The ECC is an independent statutory body established under the terms of the BCEA (1997). It is made up of five members and two alternates. One member and alternate is nominated by organised labour, and one member and alternate by organised business, and three members are nominated on the basis of their expert knowledge of the South African labour market. Members’ terms of office cannot exceed three years. The ECC is supported by a secretariat, responsible for overseeing research, drafting reports, attending hearings and liaising with stakeholders. However, studies of the ECC point to the weak research and technical capacity of the ECC.

#### **3.2 THE INTERNATIONAL APPROACH TO ENGAGEMENT WITH SOCIAL PARTNERS**

It is important to distinguish between the process of setting an initial level for the NMW and adjusting the NMW. As Section 1 outlines, in most instances the initial NMW is the outcome of a political compromise between representatives of workers’ and employers’ organisations, and the State, based on a combination of cost of living and/or wage indicators. Internationally, there are three main approaches to adjusting the NMW (Eyraud and Saget 2005):

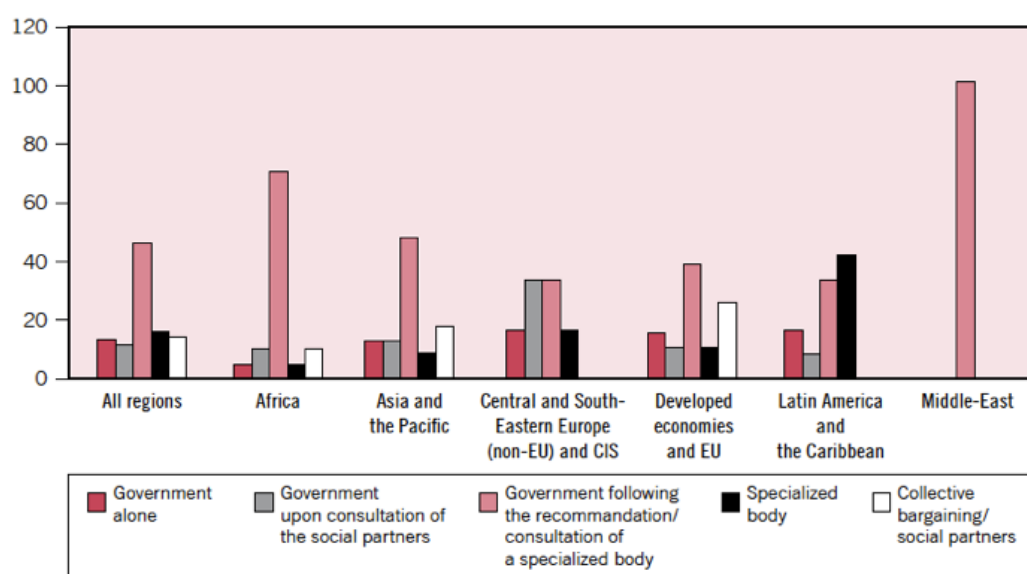
- The Government decides without consulting with social partners;
- The Government decides after consultation with or a recommendation from social partners;
- The NMW is set by a tripartite body and approved by the Government;

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<sup>7</sup> This section draws from Policy Brief 7.

Figure 2 provides an overview of the main approaches to engaging with social partners by continent. The most common is for Government to make a decision about the NMW following consultation with a specialised body. The structure of the specialised 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. The approach of Government setting the NMW after consultation with such specialised bodies is particularly common in Africa, Asia and the Middle East. In Latin America the most common method is for minimum wages to be set by specialised bodies. In practice, it is difficult to distinguish between these approaches (ILO 2012).

**Figure 2. The role of social dialogue in minimum wage-setting processes**



Source: ILO (2012); ILO Database on Conditions of Work and Employment Laws.

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

Very few countries require no consultation with social partners. Even instances where no formal consultation is stipulated in the 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. The formula is based on the inflation rate of the previous year plus the average GDP growth rate of the previous two years. The NMW is adjusted by presidential decree and approved by parliament, according to this formula. Collective bargaining plays a complimentary function (Manzano 2015).

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

The most commonly adopted approach entails consultation with social partners. Government can either propose a minimum wage rate and consultations take place based on that proposal, on an individual basis with social partners or with a specialised body, or a specialised body makes a non-binding recommendation which is decided upon by Government. As mentioned previously, the structure of specialised bodies varies widely.



In Malaysia, the National Wages Consultative Council (NWCC) consists of 29 members appointed by the Minister, and includes at least 5 public officers, 5 worker representatives and 5 employer representatives. It also includes at least 5 independent experts. Prior to making a recommendation on a new level for the NMW, the NWCC must undertake public consultations. It must also conduct research on wages and other indicators. Upon receiving the NWCC's recommendation, the Government may agree, request that the NWCC revise the recommendation, or introduce their own wage rate (National Wages Consultative Council 2012).

In the United Kingdom, the Low Pay commission, an independent body which consists of nine members including three with an academic background, three with a trade union background and three with links to employers, makes a recommendation to the Secretary of State. Prior to making a recommendation, the Commission must consult employers' and workers' organisations (LPC 1998).

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

Only in a minority of cases is full decision-making power handed over to a specialised tripartite body. In Costa Rica, the National Wage Council fixes minimum wages by sector and occupation for workers in the private sector by executive decree. The Council is made up of an equal number of representatives from Government, workers and the employers. The Council's proposal for a minimum wage is sent to the Ministry of Labour for comments however the Council makes the final decision. In addition, minimum wages can be revised at any time during the year at the request of 5 employers or 15 workers in the same occupation.

In Korea, the Minister of Employment and Labour determines the NMW based on the recommendation of the Minimum Wage Council. The Council consists of 9 worker representatives, 9 employer representatives and 9 people who represent the public interest. Three members of the relevant Government agency may also attend the Council meetings. Decisions are made by majority vote, but must be approved by at least one third of employer and worker representatives. Once announced by the Minister, employer and worker representatives have 10 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).

Fixing the NMW through collective bargaining is very rare; Greece and Belgium are two exceptions (ILO 2014).

#### **KEY FINDINGS:**

- Engagement with social partners ensures that those most directly affected by minimum wage policies are able to participate in the wage-setting process, thereby pre-empting potentially disruptive effects of the NMW, giving the wage-setting process legitimacy and strengthening compliance.
- Most countries have a NMW setting process where Government makes a decision upon the recommendation of a specialised body composed of representatives of workers, employers and the State, as well as experts. This is the case in much of the African continent, including South Africa.
- In order for such specialised body to be able to make informed decisions, they must be supported by a well-capacitate Secretariat.

## 4 THE COMPOSITION OF THE NATIONAL MINIMUM WAGE<sup>8</sup>

In order to define the NMW, it is necessary to establish what counts as time worked, the period over which compliance will be measured and the components of remuneration which counts towards compliance. There is no international, legally binding definition of a NMW but the ILO emphasises the importance of establishing a clear, transparent definition of working time (actual working time, ordinary hours of work or full working time), the reference period (hourly, daily, weekly or monthly), and the components of the wage (ILO 2014).

### 4.1 ESTABLISHING THE REFERENCE PERIOD

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

In an attempt to address this concern, some sectoral determinations and collective agreements in South Africa have introduced a web of incentives and regulations to ensure that workers earn a minimum income. These include restrictions on the categories of workers that can be paid on an hourly basis, premium wages for part time workers and a minimum number of hours of work per day or a minimum number of hours above which a worker will earn a full wage.

If minimum wages are not defined on an hourly basis, it is important to specify the ordinary hours of work in order to ensure that workers are not forced to work overtime without additional compensation. The advantage of a weekly or monthly reference period is that it guarantees that workers earn enough to meet their basic needs over a longer reference period. The disadvantage is that if the number of hours is either not clearly defined or not enforced, workers may be forced to work unpaid overtime. Consequently, daily, weekly or monthly wages can result in less pay overall.

### 4.2 DEFINING THE COMPONENTS OF THE WAGE

Figure 3 shows the possible components of what can be included in the NMW. The green shaded blocks towards the bottom of the figure are most commonly included, the red shaded blocks at the top most commonly excluded, with a gradation between the two.

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<sup>8</sup> This section draws from Policy Brief 1 and 2

Figure 3: Components of remuneration



Source: Castel-Branco (2015)

### **THE WAGE**

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

### **PRODUCTIVITY AND PERFORMANCE PAY**

Productivity and performance pay are supplemental forms of remuneration. They include commission work, piecework and tipped work. Commissions are supplemental pay based on the value or volume of sales. Some countries exclude commissions from the calculation of the NMW in order to minimise abuse and confusion. However, in certain sectors, such as the hospitality and retail sector, commissions are an important component of the pay structure. Many countries including Germany, Malaysia, Portugal and the United Kingdom include commissions in the definition of the wage but under strict regulations. If at the end of the reference period the total

value of basic pay and commissions falls below the NMW level, the employer must top these up in order to comply with the NMW (Low Pay Commission 1998, Schulten 2015). The advantage of this system is that it does not deny the right to pay or receive earnings above the NMW due to positive performance but provides safeguards to ensure that all workers are able to meet their basic needs as defined by the NMW law. Given the incentive pay structures currently in place in South Africa the inclusion of commission work in the calculation of the NMW would maintain the current remuneration structure, productivity incentives and benefits. In order to ensure that workers do not earn below the minimum wage, or are not forced to work overtime, it is recommended that in reference periods where wages fall below minimum levels, employers top these up.

Piecework refers to an employment arrangement where workers are paid by the piece or task, rather than by the time worked. For employers, the advantage of piecework is that it is directly tied to output and production targets and can incentivise greater productivity. For workers however, it can lead to long working hours and subminimum wages. For this reason, piecework is being phased out internationally. Some countries have incorporated safeguards to ensure that pieceworkers' wages cannot be lower than the applicable minimum wage. In Malaysia, if the pieceworker's wage at the end of the reference period is lower than the statutory minimum, the employer must top-up the wage to meet the NMW (National Wages Consultative Council 2012). In Cambodia, pieceworkers' wages must be fixed at a level that enables a wage earner with below average skills and normal output to receive, for the same length of work, a salary at least equal to the guaranteed NMW (ILO 2014). For South Africa, careful consideration must be given to whether this form of remuneration should be included.

Tips are a productivity bonus paid by the customer rather than the employer. Germany is among the many countries which excludes tips from NMW calculations on the basis that they are not a form of remuneration but a gratuity (Federal Ministry of Labour and Social Affairs 2015). The challenge of including tips in minimum wage calculations is that the prevalence of unreported tip income makes it difficult to define and enforce. Given that tips are currently not included in minimum wage calculations in South Africa, it seems appropriate to exclude them from the calculation of the NMW.

### ***IN-KIND BENEFITS***

In-kind benefits are non-wage forms of remuneration. While in some sectors in-kind benefits such as accommodation may be beneficial for both employers and employees, they are also prone to abuse and over-valuation. The ILO recommends that the payment of minimum wages in-kind be discouraged, and where parties agree that it is desirable, arrangements should be made for the independent valuation of benefits (ILO 2014). In-kind benefits are prevalent in South Africa and an appropriate formula for their inclusion or exclusion must be reached.

### ***PREMIUM PAYMENTS***

Premium payments are supplemental forms of remuneration for extraordinary work. The ILO recommends that allowances and premiums for non-standard work hours or overtime should not count towards compliance with the NMW (Belser 2008) and most countries exclude these. The German minimum wage law, argues that: 'If an employee works "more" or performs "higher-value" work at the employer's request, the additional pay for this does not pertain to the employee's "normal work" and for this reason cannot be taken into account' (Federal Ministry of Labour and Social Affairs 2015). In South Africa, the standards for premium payments as outlined in the BCEA

are aligned with international practice. It is recommended therefore that these standards be maintained.

### 4.3 THE CURRENT COMPOSITION OF MINIMUM WAGES IN SOUTH AFRICA

In South Africa, the BCEA currently defines wages as a component of remuneration paid to an employee in respect of ordinary hours of work (Department of Labour 1997). The ordinary hours of work are generally calculated based on a 45-hour workweek; this comprises a 9-hour workday if an employee works 5 days a week, or an 8-hour workday if an employee works 6 days a week. Currently minimum wages are defined on an hourly basis and then converted to a daily, weekly or monthly wage depending on the sector. In some sectors such as paid domestic work, workers who work less than 27 hours are paid a higher premium rate.

While the BCEA implies that not all forms of remuneration are necessarily part of the wage, it does not provide a standard definition of the components of the wage. Table 1 illustrates the current variation within sectoral determinations and collective bargaining agreements. An approach to streamlining these could be incorporated into the NMW legislation.

**Table 1: Variation in the components of the wage in collective agreements and sectoral determinations in South Africa, 2015**

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

## KEY FINDINGS

- While there is no single approach to defining a NMW it is important to ensure that definitions of what counts as time worked, the reference period and what components of remuneration count as part of the NMW are clear, easy to comply with and straightforward to enforce.
- Given the South African context, an approach which combines an hourly and weekly/monthly reference period is most appropriate.
- In order to reduce the incidence of abuse and ensure that workers are able to meet their basic needs, it is important to clearly establish and enforce the ordinary hours of work, and extend current mechanisms that guarantee a minimum number of working hours to all sectors covered by the NMW. Mechanisms to be considered include: the restriction of hourly pay to casual employees without a fixed contract who work 24 hours or less a week, the establishment of a minimum number of hours and a premium rate for casual or part time workers.
- The inclusion in the NMW of the basic wage, productivity and performance pay, and *top-ups* by employers when these fall below NMW levels would safeguard incentive pay while ensuring that workers do not earn below the NMW and/or are not forced to work overtime.
- The case of piecework must be carefully considered.
- Given the prevalence of unreported tips and gratuities, their inclusion in the calculation of a NMW would complicate monitoring, compliance and enforcement.
- In some sectors in-kind benefits may be beneficial for both employers and employees. These are, however, prone to abuse and over-valuation and it is therefore important to clearly limit deductions as is current practice in South Africa.
- ILO experts recommend that allowances and premiums for dangerous work, non-standard work hours or overtime not count towards compliance with the minimum wage. These currently do not count towards minimum wage compliance in South Africa.

## 5 INCENTIVES FOR COMPLIANCE WITH THE NATIONAL MINIMUM WAGE<sup>9</sup>

Incentives are an important tool to strengthen compliance (Shapiro and Rabinowitz 1997). The most commonly used incentives are: public awareness campaigns, certificate of compliance programmes, public sector procurement incentives, tax incentives, and access to Government loans or credit.

### 5.1 PUBLIC AWARENESS CAMPAIGNS

Generating a positive public discourse around the necessity and the benefits of a NMW can have a positive impact. In the UK for instance, Government departments practice “faming, naming, and shaming” of companies (Hampton 2004). The “naming and shaming” identifies non-compliant businesses, while “faming” recognises companies and organisations that go above and beyond legislated standards.

### 5.2 CERTIFICATES OF COMPLIANCE

Certificates of compliance are an effective and affordable mechanism to motivate businesses to comply with minimum wage legislation. Certificates, issued for a particular period of time, are issued to compliant companies upon application and these entitle them to forgo inspection and/or make them eligible for various incentives. Certificates of compliance have been used in a number of countries and are recognised as having a positive impact on improving the conditions of workers (Newitt 2013).

In South Africa, the National Bargaining Council for the Clothing Manufacturing Industry (NBCCMI) and the National Textile Bargaining Council (NTBC) issue Certificates of Compliance that are valid for up to one year. With the certificate, a company can apply for a loan from the Industrial Development Corporation (IDC), receive a discretionary grant from the Skills Education and Training Authority (SETA), and qualify for rebates. Additionally, a compliance certificate is a prerequisite for the Department of Trade and Industry’s Production Incentive (PI) and Competitiveness Improvement Programme (CIP). Furthermore, as the South African example suggests, certificates of compliance can successfully reach small and medium sized companies.

### 5.3 PUBLIC PROCUREMENT

Another incentive is to tie public procurement to compliance with the NMW. The advantage is its simplicity and relatively low cost. It can also trigger a “compliance multiplier,” where the main contractor is liable for wage compliance not only in her company but also among sub-contractors. However, vulnerable and very low-paid workers working in small and medium enterprises may not be reached through this incentive (Lawton and Pennycook 2013).

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<sup>9</sup> This section draws from Policy Brief 5.

## **5.4 TAX INCENTIVES**

Some Governments create tax incentives to motivate businesses to comply with NMW laws. Brazil introduced the Simples programme in order to promote the formalisation of small businesses. Under this programme small companies are entitled to make a single tax payment rather than numerous contributions to different funds. They are only eligible for participation once compliance with labour legislation and minimum wages laws is certified. By 2012 over 9 million small enterprises had been formalised in Brazil and were paying at least the NMW (ILO 2014b). This scheme has the triple advantage of benefiting affected workers, assisting small business, and collecting additional tax revenue.

With the introduction of the NMW in Malaysia in 2014, small and medium enterprises and associations could benefit from tax deductions for the first year of the implementation of the NMW. The deducted amount was based on the difference between the cost of previously paid wages and the newly implemented NMW. The objective was to help firms transition to paying higher wages, which can then translate into greater spending and economic growth, while ensuring a fair wage for workers and a reduction of poverty and inequality.

## **5.5 GOVERNMENT FINANCIAL ASSISTANCE**

Another incentive is tying government grants, loans and subsidies to NMW compliance. In Brazil, the Brazilian Development Bank offers loans at heavily subsidised rates to companies who comply with minimum wage and labour legislation, environmental legislation, and pay taxes and social security contributions (Borges 2014). If an employer has a proven record of non-compliance they can be blacklisted and denied access to public or private credits and loans. The employer stays on that blacklist for a minimum of two years and is heavily monitored during that time. If the employer complies with the NMW during the two-year period and pays all the relevant fines and debts, they can then be removed from the blacklist (Benassi 2011). The provision of grants, loans, or tax cuts could require additional spending from Government budgets. However, these funds could also come from development finance institutions.



## KEY FINDINGS

- The most widely used incentives include public awareness campaigns, certificates of compliance programmes, public procurement, tax incentives and government grants.
- The Certificate of Compliance programme in the clothing and textiles sector offers an example which could be scaled up.
- Public procurement policies should include NMW compliance, as should access to government grants and subsidies.
- Tax incentives that streamline tax payments and collections to formalise informal business could be considered but general tax incentives should be approached with caution.
- Access to preferential credit for NMW compliant firms should be considered.
- International practice shows that in order to be successful, incentives need to be coupled with strong monitoring and enforcement.

## **6 ENFORCING THE NATIONAL MINIMUM WAGE**

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

### **6.1 THE SOUTH AFRICAN FRAMEWORK**

In South Africa the LRA (1995) and the BCEA (1997) establish the legal framework for enforcement. The LRA protects workers against unfair labour practices, establishes the right to collective bargaining and enables bargaining councils to appoint designated agents to promote, monitor and enforce the Council's collective agreements. The BCEA (1997) establishes the ECC, which monitors the enforcement of sectoral determinations for vulnerable workers. The BCEA also establishes the grounds for inspection. Despite South Africa's regulatory framework, national household data suggests that the incidence of wage violations remains high (Finn 2015). The introduction of a national minimum wage offers the opportunity to improve compliance.

### **6.2 PUBLIC INFORMATION**

Ensuring public awareness of the NMW is essential in ensuring compliance. There are multiple avenues for communication including public campaigns through mass media such as radio, television, newspapers, leaflets, and social networks; trainings for employers and workers; and internal organising by workers' organisations and trade unions. In South Africa, dissemination has been a particular challenge in vulnerable sectors such as paid domestic work and agricultural work. However, even where dissemination has taken place this has generally been limited to specific constituencies, sectors and regions.

In the UK, one DTI-initiated campaign targeted the hairdressing sector. This resulted in higher levels of awareness and a surge of 400% in the reporting of cases of non-compliance. In Cambodia, the ILO's "Better Factories Cambodia" implemented a training and monitoring programme for employers, workers and human resource managers which resulted in an increase in compliance from 93% to 100% for permanent workers, and from 74% to 89% for casual workers.

Unions also play an important role, not only in dissemination of information but in protecting workers from retaliation by filing collective complaints against employers, providing legal assistance to their members and mobilising collective power around worker demands. As Benassi (2011) asserts, a strong and well-organised workforce is more likely to monitor compliance and denounce violations.

### **6.3 THE INSPECTORATE**

Workplace inspections are a key component of enforcement and a determinant of compliance with the minimum wage law (Berg 2010). In South Africa inspections are carried out by the Inspection and Enforcement Service (IES) of the Department of Labour, both as part of a targeted blitz in vulnerable sectors and in response to complaints. A proxy for measuring enforcement is the number of inspectors in relation to the population. According to the Department of Labour (2015) there are currently 1 056 inspectors nationally working from 128 workers' centres. This translates

into 10 inspectors for every 100 000 workers in South Africa, which is higher than the ILO standard for an industrialising country of 7 inspectors for every 100 000 workers. Although the number of inspectors nationally is in line with ILO standards, there is significant regional variation and a clear misallocation of inspectors between provinces. The economic hubs of Gauteng and the Western Cape have much lower ratios of inspectors to workers (Murahwa, forthcoming).

While the ratio of inspectors to the total population surpasses ILO standards, South Africa has an elevated ratio of inspections per inspector. In 2009, a South African inspector made an average of 159 workplace visits, in contrast to 71 for Nicaragua or 29 for Singapore. This points to a shortage of inspectors, and suggests that either inspectors are overstretched and overworked, or that they spend comparatively less time per worksite inspection. In addition, there is a high turnover of inspectors which means that labour inspectors may lack sufficient training, experience and expertise to adequately respond to issues of non-compliance (Murahwa, forthcoming).

Brazil is one of the countries that has made significant advancements in strengthening its inspectorate. Improved inspection in Brazil is partially attributed to changes in the incentive structure for inspectors. Inspection is a well-paid job, and therefore bribes are not an essential part of inspectors' incomes. Furthermore, an inspector receives a base salary but 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 2009). Finally, inspectors in Brazil are assigned to sub-regions for a maximum of twelve months, with the caveat that they cannot visit the same area during two consecutive periods. This is an attempt to reduce opportunities for the cultivation of clientalist relationships.

#### **6.4 THE MANDATE OF THE INSPECTORATE**

The BCEA stipulates that private homes can only be inspected with permission from the homeowner or with the approval of the labour courts. In the agricultural sector there is an agreement between AgriSA (the industry lobby group), the main farmers' association, the DoL and other parties that requires inspectors to give employers notice prior to inspections. This, it has been argued, undermines the ability to identify violations. According to Stanwix (2013) the probability of a farmer in the Western Cape being visited by a labour inspector is low.

Asymmetrical power relationships particularly in the "private" spaces of the home or the farm, combined with the reliance of workers on employers for housing and other services means that workers in some sectors may be less willing to confront employers or report wage violations. This is compounded by the absence of a strong union presence.

#### **6.5 PENALTIES FOR NON-COMPLIANCE**

Penalties are an important mechanism to ensure compliance. In South Africa employers with no history of violations in the last three years pay a fine of 25% of the underpayment, including interest. The fine increases with the amount of violations. Employers with four or more violations must pay 200% of the amount due plus interest (DoL 1997). While the amount increases for repeat offenders it is capped at four violations. In the context of a limited probability of inspection, employers may opt to pay workers subminimum wages, and if caught, pay a fine. The process for

taking action against employers is lengthy. Employers are given 42 days to comply before the case is forwarded to the labour courts, and it can take up to three years for the case to be heard.

Internationally, penalties include naming and shaming, denial of access to credit or public contracts, revoking operating licences, stiff fines and prison time. Brazilian legislation for instance empowers the Department of National Integration to suspend all lines of financial credit, either from state financial institutions or from other independent private financial institutions, to companies whose names appear on the slave labour blacklist (Benassi 2011). In Colombia 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). It is crucial that any penalties outweigh the benefits of non-compliance.

In Malaysia non-compliant companies may face imprisonment and prosecution. The threat of criminal sanctions indicates that a violation of the provisions of the minimum wage is considered a crime and can be both a deterrent and an educational tool for the offenders while providing worker protection (Santoso and Hassan 2013).

## **6.6 CASUALISATION AND SUBCONTRACTING**

Forms of employment in South Africa have 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. In many sectors standard employment relationships have been replaced by a “triangular” employment relationship. This complicates the process of monitoring and enforcing minimum wages as it becomes more difficult to identify who should shoulder responsibility in cases of non-compliance.

## KEY FINDINGS

- Embark on information campaigns to ensure workers are empowered and employers sufficiently informed and trained.
- In South Africa, it is important to strengthen the capacity of the inspectorate, including the working conditions of labour inspectors.
- Reform the lengthy enforcement proceedings in order to make it faster and more responsive.
- Make individual complaint procedures easy, free and accessible.
- Impose stiff penalties that ensures that the costs of non-compliance outweigh the benefits, including higher fines for repeat offenders.
- Institute additional forms of sanctions such as revoking operating licenses for repeat offenders, naming and shaming lists and exclusion from public procurement.
- Continue to involve all social partners in the monitoring of the newly instituted national minimum wage.

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National Minimum Wage Research Initiative  
CSID, School of Economics and Business Sciences  
University of the Witwatersrand

[www.nationalminimumwage.co.za](http://www.nationalminimumwage.co.za)

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