

2016

# A National Minimum Wage for South Africa

**FINAL DRAFT**

**RECOMMENDATIONS ON POLICY AND  
IMPLEMENTATION  
NATIONAL MINIMUM WAGE PANEL REPORT TO THE  
DEPUTY PRESIDENT**

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# 1. Executive Summary

## 1.1. Landscape and context

The South African landscape in 2016 demonstrates a number of very urgent challenges, as well as systemic problems that we as a country have been unable to rectify. There is an inextricable link between low levels of wages, high unemployment rates, the great number of people living in poverty, and the massive inequality in South Africa. We know that out of a population of 55,900,000 people, 29,733,210 are living below the poverty line. This means that over 51% of the people in our country live on less than R1,036.07 per month in 2016.

While there are different poverty indicators, for the purposes of this Report we used the Upper Bound Poverty Line. However, we also found it useful to look at the most severe situation which describes the absolute minimum calorie needs per person per day, what that would cost, and how many people live on less than this minimum. A minimum diet of 2,100 calories per day is estimated to cost R445.55 per person per month. And yet, over 11 million people in South Africa live below that level.

It is important to place South Africa's employment situation within this overall poverty profile. There is consensus that the country should look urgently at ways of creating jobs that are secure, pay decent wages and are able to lift people out of poverty. This is particularly the case given that unemployment in South Africa is currently around 26.7%; if people who have given up looking for work are included, that number rises to over 36%. One of the main reasons why people are poor is that they do not have access to employment. Only 36% of the poorest households have access to employment opportunities. But even those people who do have jobs often earn such low wages that they are unable to help their unemployed and dependent family members. The working poverty line has been estimated to be approximately R4,317 in 2016. Over 6.7 million people earn less than R4,000 a month. Over half of the workforce in South Africa earns below R3,700, and 4.6 million people don't even earn R2,500 per month. If you were supporting a family of five, that R2,500 would only cover your minimum food requirements.

The data thus paints a clear picture of poverty being a combination of low wages and very high levels of unemployment. Added to this are the exceptionally high levels of inequality in the country. South Africa is known as being among the top three most unequal countries in the world. The World Bank estimates our Gini coefficient to be between 0.66 to 0.70, where the richest 10% of the population accounts for 58% of the country's income while the poorest 10% accounts for 0.5% of income.

It must be clearly stated that the people at the bottom of the wages and poverty picture are overwhelmingly women. It is women who are most vulnerable to unemployment, earn the lowest wages in the most vulnerable sectors, and who dominate the care-work and unpaid sectors. These realities create power imbalances in households. Because of gender discrimination in access to the labour market, households that comprise only women or are headed by women are more likely to experience poverty than households with men. This is not about income alone; a 2014 study by the World Bank also showed that a lower household wealth index increases the chance of intimate partner violence by up to 45%. Thus we need to acknowledge the very gendered nature of poverty in South Africa, and how the related societal crises of unemployment and inequality contribute to the discrimination against women.

This all takes place in a country of very low growth, where National Treasury has predicted a 0.5% growth rate for 2016, rising to 1.7% for 2017. Government has previously noted a growth rate of 5.6% is needed to start addressing the unemployment crisis.

## 1.2. Why a national minimum wage?

The social partners have agreed that the implementation of a national minimum wage (NMW) provides a positive intervention in addressing this situation in our country. On its own it will not solve all of the

challenges we face, but it is an implementable policy which is designed to have a measurable and concrete benefit on the poor. The minimum wage is therefore seen as one of the tools to close the wage gap, including between the genders, and thereby to overcome poverty.

There is an argument that any big policy interventions should ideally take place when the economy of the country is strong, or at least growing. However, we should consider that in a country characterised by low levels of employment growth, high levels of working poverty and the untenable socio-economic situation described above, there has to be some intervention to support the most vulnerable in the labour market and the poorest of the poor. Furthermore, under the correct conditions and at the correct wage level, it is possible for minimum wage policies to contribute to improving economic growth.

### 1.3. International experience

Minimum wages have been introduced in many developed and developing economies. It is important to bear in mind that by introducing a national minimum wage South Africa will be joining many other countries where such policies have been successfully introduced. Overall, the evidence from studies undertaken by various researchers and institutions on the impact of these policies around the world shows that introducing a national minimum wage will often have little or no negative effect on employment, and that, correctly implemented, it can have positive impacts on poverty levels. If it is set too high, it can have negative employment effects. In a cruel irony, evidence internationally and in South Africa suggests that it is the most vulnerable workers who are most susceptible to possible negative consequences of a national minimum wage set at inappropriately high levels. It is therefore important that the implementation of a national minimum wage should be undertaken in a cautious, balanced and evidence-based manner.

Looking across this vast international experience, the International Labour Organisation (ILO) has outlined four factors which will impact the efficacy of a national minimum wage:

- broad legal coverage to most or all workers;
- an adequate level that considers the needs of workers and their families, and balances these with the risk of potential employment losses and other economic trade-offs if the level is set too high;
- measures to ensure maximum compliance;
- a consultative process with all social partners that will strengthen legitimacy, ownership and compliance.

The ILO strongly supports an evidence-based process to set the level that is based on sound research and credible data. This approach should be continuously used to monitor the effects and propose any changes to the level in the future. The minimum wage system is captured in ILO Convention 131 which encourages states to:

- Offer a broad scope of application to keep exclusions to a minimum.
- Establish a machinery to fix and adjust minimum wages from time to time.
- Involve social partners on an equal footing, as well as independent experts, in the design and operation of the system.
- Consider appropriate measures to ensure effective application of minimum wages.

Given that the national minimum wage is essentially a policy to help the poor, it is generally accepted that exemptions and exclusions should be kept to an absolute minimum.

### 1.4. The Advisory Panel – process and considerations

The Advisory Panel was established in August 2016 to interrogate the current literature on the national minimum wage and to engage with the concerns and proposals of the Nedlac social partners – Organised



Labour, Organised Business, Community, Government. The Panel consulted over 60 research reports and met with all the social partners and also with experts from small business, youth, care work and the informal sector.

The Panel's overarching considerations were:

- the poverty impacts;
- general employment effects;
- impact on:
  - small business,
  - youth,
  - vulnerable sectors including domestic and agricultural workers;
- collective bargaining.

The Panel also wanted to make sure the institutional arrangements were clearly proposed in order to ensure that the best possible mechanisms were set up for compliance and enforcement.

### 1.5. The initial level for the national minimum wage

The Panel carefully considered the proposals, research and evidence from the social partners and interested parties and after much deliberation unanimously agreed that the level of R20 per hour adjusted to a monthly wage of approximately R3,500 was a starting level for the national minimum wage that would maximise benefits to the poor and minimise any possible disemployment effects. A lower number would have a much smaller effect on poverty, and a higher number would likely start causing unemployment consequences. The Panel believes that a clear number (rather than a range) will be simpler and easier to communicate and implement.

Table 1: The National Minimum Wage

Hourly wage	Weekly wage (40 hours/week)	Monthly Wage (4.3 wks/month)
<b>R20</b>	<b>R800</b>	<b>R3 440</b>

It must be noted that there is no research or data that can accurately predict the outcome of any policy intervention. It is for this reason that strong emphasis has been placed on the need for good solid research to support the work of the NMW institution into the future. Any future changes to the level of R3,500/R20 per hour should be based on solid evidence of the impact of the national minimum wage and the conditions prevailing in the economy.

The Panel is of the view that the process by which enterprises and workers adjust to this initial level is the most important consideration that will determine the success of the policy. The Panel has therefore recommended that the level be announced as soon as possible, that the institutional arrangements be legislated in early 2017 and that enterprises and workers be given a two-year period to adjust to this initial level. The Panel believes that this two-year period is feasible and will significantly reduce the risk of any negative effects, and allow for effective monitoring.

Assuming that new legislation is to be introduced to establish the NMW Rule, we propose the following timeline

- By December 2016:
  - Agreement by the Committee of Principals on the NMW level and publication of the proposed rate and basic details of the NMW system; agreement reached on the rule and draft legislation prepared for Parliament.
- By 1 July 2017:
  - Legislation enacted and the Decent Work Commission/NMW Expert Panel and secretariat established; rolling out of an extensive public campaign and training programme; setting up of ICT systems and modernising the administration of the NMW system. We propose that the initial level (R20) take effect subject to any transitional arrangements that have been permitted; compliance should be achieved through technical assistance and persuasion (no sanctions by way of a fine in year 1 and year 2)
- 1 July 2017-30 June 2019:
  - Applicable transitional arrangements in place, and compliance aided through technical assistance and persuasion.
- 1 July 2019:
  - Universal coverage of the NMW. Enforcement to include payment of a fine for non-compliance, and the Expert Panel can consider implementing an adjustment to the level.
- The Panel believes that, as far as is possible, consideration should be given to compressing the timelines for the institutional and legal requirements. The Panel does, however, believe that a 2-year period of adjustment is needed to monitor the effects of the NMW and to minimize the risks of negative employment impacts.

Importantly the Panel feels that this level addresses all the concerns raised in the following ways:

- Small business – The Panel believes that other policies, such as taxation policies and Government procurement, are better suited to addressing the needs of small businesses (employing fewer than ten people). Furthermore, the incidence of low pay is as much an issue for large firms as it is for small business. The Panel believes that, given appropriate time to adjust, most small businesses will be able to adjust to this level. The recommendation is that small businesses be given a further 12 months to adjust to the level.
- Youth employment – The Panel noted there are a host of policies currently in place to encourage youth employment. There is no evidence to suggest that the introduction of a national minimum wage will have any negative impact on this sector.
- Vulnerable workers – The Panel recognises that these sectors are very vulnerable to disemployment and are often poorly organised, which makes them especially vulnerable. The proposal, therefore, is to have a longer phase-in time notably,
  - Farm workers and forestry sectors
    - Year 1 – 90% of the NMW, with any adjustments to this being done on the basis of evidence.
  - Domestic workers
    - Year 1 – 75% of NMW, with any adjustments to this level being done on the basis of evidence.
- The Panel suggests that the system should be based on universal coverage and that these tiers for farm workers and domestic workers should be done away with over time to enable the NMW to apply to all workers in South Africa.

- Temporary exemptions - very important to note is the exemption mechanism which is being built into the process. This essentially means that any employer who can effectively motivate why they are unable to meet the minimum wage level will be granted exemption.
- Permanent exemptions – the Panel recommends that own-account workers, and paid or unpaid family workers in informal enterprises are permanently excluded from the NMW.
- Collective bargaining: Some of the social partners raised concerns that the national minimum wage should in no way undermine collective bargaining. The view of the Panel was that collective bargaining is an important tool for building a stable labour market, and it is important for all stakeholders that it be strengthened. A stronger collective bargaining system will bring more workers into the formal bargaining structures, with the aim that a national minimum wage should apply to the very smallest numbers of workers who do not presently fall under this system. The Panel believes the number proposed is unlikely to have any negative impact on collective bargaining.
- The Employment Conditions Commission (ECC) – the Panel recommends that the work of the ECC continues in its current form.

## 1.6. Adjusting the minimum wage

The Panel has proposed that from 2019, the new body reviews and proposes an adjustment to the national minimum wage once a year. Chapter 6 looks at how this should be done. Some of the key factors that should be considered include the needs of workers, the needs of employers and the macroeconomic environment. The chapter suggests consideration of the UK Low Pay Commission adjustment process which considers employment growth in low-paying sectors, wage levels, inflation, coverage and other evidence. The chapter emphasises the need for an evidence-based approach and the importance of strong data collection, analysis and research capacity in the new institution.

## 1.7. Institutional arrangements for implementation and adjustment

Outside of the formal collective bargaining system, there are currently two main bodies doing work around wages and conditions of work, namely the Employment Conditions Commission (ECC) and the Employment Equity Commission (EEC). The Panel recognised the link between the work of these two commissions and the work that will need to be done around the national minimum wage. A key consideration of the Panel was the need to avoid setting up another institution that would be administratively and financially burdensome. For this reason, the Panel has proposed that a single institution be created to link the work of all three of these commissions under the decent work umbrella.

The institution will be called the Decent Work Commission (DWC) and will comprise three streams of work – Employment Conditions; Employment Equity; National Minimum Wage. The DWC will be supported by a well-resourced secretariat and will include a data centre which will collate data and research to inform the work of all three streams. The structure of the DWC is proposed as follows:

- It will be an independent statutory body.
- The Minister of Labour will be the Executive Authority.
- It should be run by a full-time Commissioner who is an independent expert appointed by Minister after consultation with Nedlac and the Presidency.
- The Commissioner who is the Chief Executive Officer of the DWC will appoint staff to run the three streams of work, which will each be managed by Expert Panels.
- The Commissioner will be an observer member of the three Expert Panels.
- The NMW Expert Panel shall comprise ten part-time Deputy Commissioners, to be appointed as follows:
  - six Deputy Commissioners appointed by the Minister of Labour, comprising three representatives of Organised Business and three representatives of Organised Labour;

- four Deputy Commissions appointed by the Presidency in consultation with Nedlac, who will have expertise in:
  - the labour market,
  - macroeconomics,
  - the informal economy,
  - poverty and inequality.

The mandate of the NMW Expert Panel will be to:

- Review the NMW level on a regular basis and recommend adjustments.
- Publish an annual report on analysis of relevant data and evaluation of the impact of the NMW.
- Engage Nedlac on the NMW.
- Deliberate on broader wage policy and the data on income differentials.

The Panel considered what other supporting mechanisms are needed to ensure the NMW is as effective and compliant as possible, and suggests the following:

- Research unit – The DWC requires access to the most up-to-date research in order to advise all three of the Expert Panels. This means creating formal relationships across institutions such as Statistics South Africa, the South African Revenue Service (SARS) and the Department of Labour (DoL) to ensure the required data on wages and employment is pooled, harmonised and analysed. This requires that the capacity is created within the DWC to analyse the data in order to make informed decisions on a regular basis.
- The data should also be made available under appropriate conditions to the research community in order to stimulate research on the national minimum wage.
- Inspection and Enforcement Agencies in the Department of Labour – There are currently too few labour inspectors and they are not sufficiently capacitated to carry out their mandate. This area of the DoL needs to be strengthened by increasing the number of inspectors and providing adequate training for them to carry out their job.
- The Council for Conciliation, Mediation and Arbitration (CCMA), the Labour Court and the Labour Appeal Court must all be capacitated to deal with unfair labour practices (which include underpayment and dismissal) relating to the NMW.
- A hotline for reporting non-compliance should be established.
- An information campaign about the initial level, the process, the adjustment time, dispute resolution issues and support in terms of applications for exemptions should be designed and implemented.

## 1.8. Other policy issues for consideration

The Panel was also asked to consider and suggest any further measures with respect to wage policy and social protection that could be implemented alongside the NMW to address excessive wage inequality and working poverty. The Panel did not spend a great deal of time deliberating on these measures, but has suggested some possible areas for further consideration including:

- the promotion and strengthening of collective bargaining;
- ratification of ILO Convention 131;
- wage inequality;
- social wage policy including the Comprehensive Social Security policy;
- cost-drivers of households including transport and utilities;
- industrial and productivity-focused policies;
- strengthening research and development;

- encouraging innovation;
- human capital and education;
- physical and digital infrastructure;

## 1.9. Summary

The South African socio-economic story tells us that the majority of people in this country live in very bad conditions. There is a gendered aspect to this picture in that this situation affects many women. The national minimum wage is seen as one of the policy interventions that has the potential to make a real difference to many people living in abject conditions.

The Advisory Panel has very carefully considered the following issues when deliberating on the national minimum wage:

- employment effects;
- small business;
- vulnerable sectors including agriculture, domestic workers and care workers;
- youth.

The Advisory Panel believes that an initial level of R3,500 per month or R20 per hour is the best level for minimising the danger of job losses while at the same time maximising the potential to pull people out of poverty. The Panel has recommended a number of additional issues be considered in the future to complement the intention of the national minimum wage initiative.

## 2. Introduction

### 2.1. Context

South Africa's dire poverty situation is inextricably linked to the crisis of low levels of employment growth, extremely high levels of unemployment, and very high and increasing levels of inequality. Of a total population of 55,900,000 people, 29,733,210 live below the Upper Bound Poverty Line of R1,036.07 in 2016. What this means is that more than half the population does not have sufficient income to meet basic needs of food, transport, shelter and education. Even more worrying is that nearly 12 million people live below the food poverty line. The food poverty line refers to how much it costs one person to meet the daily calorie requirement of 2,100 calories. In South Africa, this costs R445.55 per month.

The employment situation is equally bleak. Unemployment is around 26.7%, and if discouraged work seekers are taken into account this number increases to around 36.3%. But it is worth noting that many employed people are still considered working poor. It is in this context that the proposal for a national minimum wage (NMW) for South Africa was introduced. In a country whose growth forecast does not promise to solve the unemployment crisis in the near future, it was believed by all of the National Economic Development and Labour Council's (Nedlac) social partners that a decent NMW could play some role in alleviating poverty for those in the lowest income quintile. A national minimum wage is a tool used by many countries around the world as the Report, explains later. Although it is not a complete solution it is believed that it will bring about positive change to many of the poorest people in the country.

### 2.2. Policy pronouncements

#### 2.2.1. State of the Nation Address 2014

In his 2014 State of the Nation Address the President urged the social partners of Nedlac to address the state of the labour relations environment, and in particular to explore issues such as wage inequality and the length and violence of strikes. At the Nedlac Annual Summit of September 2014 the Deputy President announced that Nedlac would convene a Labour Relations Indaba in November 2014 to look into these two issues. The Indaba, or Conference, led to the so-called Ekuhuleni Declaration.

#### 2.2.2. Ekuhuleni Conference and Declaration

The Indaba was held in Ekuhuleni and was important because it was at this conference that all the Nedlac social partners – Organised Labour, Organised Business, Community, Government – recognised that:

- wages are the most important component of income for South Africa's working people;
- income from wages is the main source of ensuring a sustainable livelihood for workers while also being a key factor in the competitiveness and sustainability of enterprises in the private sector, as well as the sustainability of enterprises in the public sector, and for raising state revenue for the fiscus;
- unemployment and underemployment, including the legacy of low wages, are the biggest causes of poverty and inequality in the country;
- unemployment, underemployment, poverty and income inequality can result in income insecurity that undermines social cohesion;
- large pay differentials between executives and low-income workers undermine the prospects for cooperative labour relations and workplace cohesion.

The constituencies at the Ekuhuleni Conference therefore agreed to:

- engage on the modalities of introducing a national minimum wage in South Africa;
- explore ways of reducing pay differentials while maximising job creation efforts; and
- explore ways to achieve the elimination of poverty and inequality.

At this conference a Committee of Principals (CoP) – chaired by Deputy President Cyril Ramaphosa and comprising leadership from all of the Nedlac social partners – was established. The CoP set up two task teams to take forward the work of the conference – the Labour Relations Task Team and the Wage Inequality Technical Task Team.

### 2.2.3. Conference on international experiences

In June 2015 Nedlac convened a workshop on international experiences of introducing a national minimum wage. Reports were heard from Brazil, Malaysia, the United Kingdom, Argentina, Chile, Colombia, Costa Rica, Mexico, Uruguay, China, India, France, Turkey, Kenya, Mauritius, Morocco, Cape Verde and the International Labour Organisation (ILO). The Secretariat produced a booklet based on the conference, which was distributed to the Advisory Panel at the start of their work.

### 2.2.4. Progress of the WITTT

The Wage Inequality Technical Task Team (WITTT) has focused on establishing a national minimum wage for the country, and met 13 times over the past financial year.

## 2.3. Advisory Panel

### 2.3.1. Formation

The Committee of Principals meets periodically to get feedback from the task teams. At the meeting of 25 June 2016, the Deputy President noted while all the social partners had moved on their proposal for the level of the first national minimum wage for South Africa, it has proved difficult to reach an agreement on the level. It was agreed at this CoP meeting to establish a Panel of Experts to interrogate all the research that has been developed for the social partners. That Panel of Experts became the Advisory Panel which has produced this report.

### 2.3.2. Terms of reference

The Advisory Panel will be expected to make recommendations on the following matters, drawing on relevant international and South African evidence:

- Consider the NMW ranges proposed by Nedlac constituencies. Without being limited by the specified ranges or levels, the Panel is to recommend a meaningful level or range for the first NMW, as well as a medium-term target, and mechanisms to achieve these levels.
- Recommend how to design the NMW so as to maximise its positive impact on addressing inequality, poverty and unemployment.
- Recommend whether any exclusions, tiers, exemptions or phasing in of the NMW are required to manage the introduction of an NMW in order to best achieve its objectives, without unduly undermining the need for its universal application.
- Consider the potential impact of the levels of the NMW on employment.
- Consider the impact of the levels of the NMW on bargaining council agreements, collective agreements and sectoral determinations.
- Recommend actions that can be taken to maximise the positive impact, and mitigate any negative impact of an NMW.
- Recommend social and economic benchmarks that can be used to set and review the NMW including but not limited to Gross Domestic Product (GDP), the Consumer Price Index

(CPI), the average wage, the median wage, minimum living levels and an appropriate benchmark from collectively bargained wages.

- Recommend the review period and the type of body that should be tasked to review the NMW.
- Advance consideration of an appropriate institutional and legal framework to implement the NMW, which ensures a comprehensive and effective implementation of the NMW and the new wage policy which addresses the challenge of excessive wage inequality.
- Suggest any further measures (with respect to wage policy and social protection, for instance) that could be implemented alongside the NMW to address excessive wage inequality and working poverty.

This Panel met for the first time on 11 August 2016 at Nedlac House.

### 2.3.3.Composition

The Advisory Panel is made up of seven people who bring economic, legal, social and international expertise. The Panellists are:

Professor Imraan Valodia – Chair of the Panel  
Mr Ayabonga Cawe  
Ms Mamokete Lijane  
Dr Debbie Collier  
Dr Siphokazi Koyana  
Professor Murray Leibbrandt  
Dr Patrick Belser, of the ILO – International Advisor to the Panel

The work of the Panel is assisted by Mr David Francis, economics researcher at the University of the Witwatersrand.

### 2.3.4.Mandate

The Panel has been briefed to advise on the introduction of a national minimum wage, taking into account progress that has been made by the Committee of Principals to date. The Panel should also consider agreements and discussions of the Wage Inequality Technical Task Team, as well as the various research outputs that have been commissioned by the constituencies or presented for consideration by the social partners

### 2.3.5.Process

#### **Social partners**

The Advisory Panel had intensive engagements with all four Nedlac constituencies – Organised Labour, Organised Business, Government, Community. The constituencies were asked to comment on a range of issues including:

- identifying key areas of consensus and critical “sticking” points between the constituencies;
- the suggested NMW range and a brief indication of the basis for this calculation;
- any anticipated macroeconomic impacts of an NMW;
- any anticipated impacts on disemployment or employment;
- envisaged time frame for the introduction of an NMW.



## **Researchers**

The Panel met with three bodies who have conducted extensive research on the national minimum wage. These include the National Treasury, the South African Labour and Development Research Unit (Saldru) at the University of Cape Town (UCT), and the Corporate Strategy and Industrial Development (CSID) unit at the University of the Witwatersrand.

## **Subject experts**

The Panel also met with representatives from and researchers who had done work on small business, the informal sector, the care-worker sector and the youth sector.

While the Panel agreed that it would be ideal to introduce a national minimum wage in a country that has a strong and growing economy, it felt that the potential of this policy tool to positively affect the working poor and significantly reduce poverty it is worth introducing the NMW at this point, even though the conditions are not optimal.

The approach to this work was strongly influenced by a reading of the vast international evidence acknowledging both potential benefits and potential risks associated with the implementation of a national minimum wage, while at the same time acknowledging that the impacts are context-specific. The Panel worked within the understanding that setting and adjusting the level is perhaps the most challenging part of fixing a minimum wage. If set too low, the minimum wages will have little effect in protecting workers and their families against unduly low pay or poverty. If set too high, minimum wages will be poorly complied with and/or have adverse employment effects. This is why a balanced and evidence-based approach is necessary to ensure that minimum wages are adapted to the national context.

This has been the generally accepted approach in this entire Nedlac process. In the Panel's engagements with the social partners, this context-specific approach was acknowledged as the appropriate one. Moreover, all the social partners explicitly or implicitly applied a benefits/risks framework in the South African context, albeit with markedly different understandings and formal modelling of these frameworks.

## **2.4. Structure of the Report**

The remainder of the Report is structured as follows:

Chapter 3 looks at the international experience of implementing a national minimum wage, what mechanisms other countries have used in considering the level, and the different institutional arrangements

Chapter 4 presents an overview of the South African economy and labour market, and provides the context for the implementation of the national minimum wage. Through an examination of the wage distribution in the country, it provides the data that were used to inform the setting of the minimum wage.

Chapter 5 looks at the research and explains why the Panel came to its conclusion on the proposed introductory level. It also talks about the key areas of concern that were considered throughout the process.

Chapter 6 looks at how the level should be adjusted, and also talks to the need for research, strong data and an evidence-based approach. This chapter examines what considerations other countries take into account when making their adjustments.

Chapter 7 makes proposals around the institutional arrangements that are needed to implement the national minimum wage, and the related legislative requirements for this to happen. It also discusses support mechanisms needed to ensure maximum compliance and enforcement.

Chapter 8 lists some of the issues the Panel thought should be considered in the future. It should be noted the Panel did not engage extensively on these issues and makes no recommendations other than that these are some of the policy areas that could be considered for further discussion.

Chapter 9 presents a summary of the Panel's recommendations.

## 3. International standards and trends in minimum wage policy<sup>1</sup>

### 3.1. Introduction

The national minimum wage is a policy intervention that has been carried out in numerous countries around the world. The Panel deliberated on the experiences of other countries and looked at the mechanisms and criteria that have been considered in setting up this system. This chapter looks at the various approaches countries have taken, and gives some of the options available when tailoring this policy for the South African context.

### 3.2. Overview

In recent years, there has been a global trend toward the establishment or strengthening of minimum wages in many countries in order to address working poverty and inequality. The United Kingdom introduced a new statutory minimum wage with national coverage in 1999. Since the early 1990s eight other members of the Organisation for Economic Co-operation and Development (OECD) have adopted a statutory minimum wage, including the Czech Republic, the Slovak Republic, Poland, Estonia, Slovenia, Ireland, Israel and most recently Germany (OECD, 2015). Many developing and emerging economies also established or strengthened minimum wages. China adopted a minimum wage in 1994 and strengthened it in 2004; Brazil re-activated its minimum wage policy in 1995 and has accelerated the rate since 2005; the Russian Federation complemented its national minimum wage with regional floors in 2007; and Malaysia adopted a national minimum wage in 2013, followed by Myanmar and the Lao People's Democratic Republic in 2015, and by Macao (China) in 2016. In Africa, the most recent country to introduce a national minimum wage was Cape Verde in 2014.

Minimum wages have been defined in the ILO (2014b) as “the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract”. According to the ILO, the purpose of minimum wages is to protect workers against unduly low pay. They can help ensure a just and equitable share of the fruits of progress to all, and a minimum living wage to all who are employed and in need of such protection. Minimum wages can also be one element of a policy to overcome poverty and reduce inequality, including between men and women, by promoting the right to equal remuneration for work of equal value.

However, international experience shows that minimum wages should not be seen or used in isolation. Rather, they should be designed in a way that complements and reinforces other social and employment policies. While minimum wages can contribute to more social justice and a more stable industrial relations climate, they are no substitute for economic growth, job creation, education policies or fiscal policies such as taxes and transfers – all of which are key to sustainably increase the level of wages and to reduce poverty and inequality. According to the ILO (2007), an environment conducive to the creation and growth or transformation of enterprises combines the legitimate quest for profit and the need for development that respects human dignity, environmental sustainability and decent work. Minimum wages should also be seen as only one component of a broader wage policy, which includes collective bargaining and equal pay policies.

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<sup>1</sup> This chapter is based in part on the ILO online minimum wage policy guide ([www.ilo.org/minimumwage](http://www.ilo.org/minimumwage)).

While recent minimum wage experience in countries as diverse as the UK, Germany, Brazil, China and Malaysia has generally been positive, the effectiveness of minimum wages depends on their policy design. Four factors stand out.

1. First, whether minimum wages have broad legal coverage, affording protection to most or all workers in an employment relationship.
2. Second, whether minimum wages are set at an adequate level that takes into account the needs of workers and their families, as well as economic factors.
3. Third, whether minimum wages are accompanied by effective application measures to ensure high compliance with the minimum wage.
4. And fourth, whether minimum wages are set and operated in consultation with social partners (or with their direct participation), thereby strengthening its legitimacy and ownership.

### 3.3. The role of evidence in setting a minimum wage

While minimum wage fixing is always the result of a political process, including in principle full consultation with social partners, setting the minimum wage should be evidence-based. This means that social dialogue and decision making should be informed by data and if possible a wide range of studies using different credible methodologies to ensure that conclusions are not driven by biases in the choice of methodologies.

In terms of data, the importance of the collection of statistics and other data for analytical studies is emphasised in ILO Recommendation No. 135 and the ILO Labour Statistics Convention, 1985 (No. 160). Data used for the purpose of minimum wage fixing should ideally be timely, comprehensive, and disaggregated by sex and industry. In order to assess the effect of the minimum wage, or to simulate the effects a rate increase might have on the economy, it is necessary to have data which are as representative of the economy as possible. In many countries, a labour force survey will broadly meet these requirements. In some cases, in cooperation with national statistical offices, the labour force survey can be modified to include questions on wages or to oversample a specific population, like domestic or migrant workers, as was done recently in Namibia. Admittedly, there are criticisms of household surveys like labour force surveys, since they are prone to measurement error, particularly with regard to self-reporting of income, wages and hours. Other surveys, like establishment surveys, can complement analyses undertaken using the labour force survey. However, it is important to note the groups that may be excluded from establishment surveys – such as workers in the informal economy, the self-employed, and often small or medium-sized enterprises. Excluding these groups from surveys also excludes them from subsequent data analyses that are used to set and adjust the minimum wage.

In terms of analysis, current empirical research varies in methods, data and measures, especially when compared with earlier research on the subject (Belman and Wolfson, 2014). Because the choice of methodology can have an effect on results that are obtained, it is important to carry out a critical mass of studies using a variety of methodologies. Ideally, governments and social partners should have access to studies on the effects of minimum wages on variables such as wages, employment, informality, hours of work, gender pay gaps, income inequality or poverty. Studies should also monitor effects on prices and on the different elements of aggregate demand, including household consumption, investment or the competitiveness of exports. Data can be used after a minimum wage has been implemented or increased in order to monitor its effects, or before it is introduced in order to simulate or predict the effects that a future minimum wage might have on economic and social variables (as will be discussed for the case of South Africa in Chapter 4). Modelling possible effects is a notably difficult exercise, and results tend to be heavily driven by key modelling assumptions. Inevitably, and perhaps particularly when conflicting outcomes emerge from different modelling strategies, some judgment must therefore be passed on the credibility of underlying assumptions.

### 3.4. ILO Conventions and the evolution towards broad coverage

Minimum wages initially covered relatively few categories of workers and sought to protect those considered to be especially vulnerable. New Zealand was the first country to implement a minimum wage in 1894, followed by the Australian state of Victoria in 1896, and the United Kingdom in 1909. Minimum wages were generally considered a temporary measure, to be phased out once wage bargaining between social partners was established.

In line with the prevailing philosophy of the time, the ILO Minimum Wage Fixing Machinery Convention, 1928 (No. 26) was adopted in 1928.<sup>2</sup> This Convention encouraged member states to implement minimum wages “for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low” (Article 1). With 105 ratifications, Convention No. 26 is one of the most widely ratified ILO Conventions. South Africa ratified this Convention in 1932.<sup>3</sup>

In the course of the twentieth century, the legal coverage of minimum wages expanded, and national minimum wages became the preferred modality in many countries. Reflecting the objective of a generally applicable lower limit under which wages are not permitted to fall and the idea that all workers, as a matter of right, should receive protection against unduly low wages, in 1970 the ILO adopted the Minimum Wage Fixing Convention, 1971 (No. 131), which is considered to offer broader protection than that envisaged by ILO Convention No. 26 (ILO, 2014a: para 406).<sup>4</sup> Convention No. 131 encourages member states which ratify to establish a *system* of minimum wages which:

- (a) offers a broad scope of application and where exclusions made are kept to a minimum;
- (b) establishes a machinery to fix and adjust minimum wages from time to time;
- (c) is based on the principle of full consultation with social partners, and wherever appropriate involves social partners, on an equal footing, as well as independent experts in the design and operation of the system;
- (d) sets minimum wage levels that take into account the needs of workers and their families, as well as economic factors;
- (e) includes appropriate measures to ensure the effective application of minimum wages.

Convention No. 131 does not prescribe a single national minimum wage rate. The Minimum Wage Fixing Recommendation, 1970 (No. 135), which accompanies the Convention, recognises that broad coverage can be achieved “either by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular groups of workers” (Para. 13.4.5(1)).<sup>5</sup> By not seeking to impose a single model on all ILO member states, Convention No. 131 allows for the existence of different national circumstances and different levels of economic and social development (ILO, 2015a). Convention No.

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<sup>2</sup> The text of Convention No. 28 is included in this Report as Appendix 4.

<sup>3</sup> Convention No.26 only applies to manufacture and commerce. In 1951, the ILO adopted the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) which covers the agricultural sector. By the end of 2015, Convention No. 99 had 54 ratifications. South Africa has not ratified this Convention.

<sup>4</sup> The text of Convention No. 131 is included in this Report as Appendix 2.

<sup>5</sup> The text of Convention No. 135 is included in this Report as Appendix 3.

131 has been ratified by 53 member states, 11 of them since 2000. The last country to ratify was Malaysia (in 2016). South Africa has not yet ratified Convention No.131.

## 3.5. The diversity of minimum wage systems

### 3.5.1. Overview

Across the world, minimum wage systems are diverse and many approaches are possible, depending on the needs and choices of individual countries. Some countries set minimum wages by giving the force of law to collective agreements. This, however, requires high collective bargaining coverage, such as in Denmark or Sweden where 80–90% of workers are covered, or sufficiently representative parties who negotiate a wage that is then extended to a sector or country by the government. Belgium, for example, sets its national minimum wage through a collective agreement adopted by the National Labour Council.

But there are only a few countries which rely exclusively on collective bargaining to fix the minimum wage. In most countries, the coverage of collective bargaining is insufficient to provide minimum wage protection to a broad majority of workers, and governments have therefore adopted statutory minimum wages in addition to those set through collective agreements. Some countries have multiple minimum wage rates by sector of activity, occupation or geographical region. In India, for example, a large number of sectoral and occupational rates are set by individual states (provinces in the Indian political system). Such systems only provide minimum wage protection to workers in these selected sectors. In some countries, sectoral rates are complemented by a general minimum wage for all other categories. This is the approach in Costa Rica and Kenya, where the General Wages Council provides for minimum wages that cater for sectors that have no specific wage orders.

Other countries have minimum wages of national application which is the approach of Argentina, Spain, Germany, the Republic of Korea and Malaysia.<sup>6</sup> Some countries have regional rates, like China or Japan, while others (generally large countries) have a combination of national and regional rates such as the United States, Brazil and the Russian Federation. In most countries, statutory minimum wages are complemented by higher floors set through collective agreements. In Brazil, for example, the national and state-level minimum wages are complemented by an estimated 40,000 collective labour contracts on wage readjustments for workers in the private sector.

Which minimum wage system is more appropriate depends on national circumstances. Simple systems are easier to operate, communicate and enforce. More complex systems can be better tailored to the circumstances of different sectors or regions, but require more institutional capacity. It has been noted that systems that are overly complex tend to lose their effectiveness, and may in some instances interfere with collective bargaining between workers and employers. (Collective bargaining issues are discussed in more detail further down in this chapter.) In the Philippines, for example, before the minimum system was simplified in 2012, regional wage boards set numerous multiple minimum wage rates that seemed to have supplanted collective bargaining, as companies waited for the annual announcements of the boards rather than negotiate with workers (ILO, 2009). Simpler minimum wage systems can avoid such problems. A regional study in Latin America concluded that the least effective minimum wage institutions are those that are too complex and, therefore, that “it is better to design a simple system that is well understood by all, rather than trying to fully address the heterogeneous needs of the labour force” (Cunningham, 2007: 4).

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<sup>6</sup> One rate applies for Peninsular Malaysia, another one for Sabah, Sarawak and the Federal Territory of Labuan.

### 3.5.2. Lower wages for specific sectors

A number of countries have set lower minimum wage rates for a few sectors, such as agricultural workers or domestic workers, or for some selected groups of workers, such as persons with disabilities, young workers, apprentices or trainees. In many francophone African countries there are two rates: a general rate and a rate for agriculture. In Morocco, the difference between the general minimum wage and the minimum wage in agriculture has been reduced from 35% in 2000 to around 20% in 2012.

### 3.5.3. Youth

The UK's approach to youth rates was to have four different rates for different age categories: 25 and above; 21–24 years; 18–20 years; and workers under 18. In France, the minimum wage is reduced by 10% for workers aged between 17 and 18, and by 20% for workers below 17 years of age. However, these reductions only apply if young persons have less than six months of work experience in the sector.

While lower rates may be adopted with a view to promote employment for some groups, they can also be viewed as a form of wage discrimination if they are not based on objectively valid reasons, such as educational objectives, work experience or skills. This may explain why many countries have kept lower rates for apprentices and trainees, but some have recently removed, or restricted in scope, provisions fixing lower minimum wages for young workers. In Slovenia, for example, this reform was adopted under the legislation on equality of treatment and the protection against discrimination (ILO, 2014a). Belgium, the Czech Republic and Spain have also abolished lower rates for youth. Where lower rates are set for certain workers with disabilities, like in New Zealand or the United States, this is only after an assessment of the reduced productivity of the worker. Some countries have lower rates for workers who have less than one year of work experience (such as in Poland) or less than two years (as in Ireland).

### 3.5.4. Gender

Where different minimum wages are set by sector or occupational category, concerns have been raised about indirect discrimination against women as a result of their over-representation in certain categories of jobs. The ILO Equal Remuneration Convention, 1951 (No. 100) affirms the principle of equal remuneration for men and women workers for work of equal value. Regarding domestic workers, many of whom are women, the ILO Domestic Workers Convention, 2011 (No. 189), states that “Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex” (Article 11). Moved by such concerns, the government of Chile decided in 2008 to gradually eliminate over a three-year period from 2009 to 2011 the difference between the general minimum wage and the rate applicable for domestic workers.

### 3.5.5. Exclusions and exemptions

Under ILO Convention 131 (see Appendix 2), exclusions are possible but the number of excluded groups should be kept to a minimum, and exclusions should be subject to consultations with social partners.

In some countries, the minimum wage applies to all paid employees. In other countries agricultural workers or domestic workers may be excluded from legal coverage. However, this weakens the minimum wage as a tool to protect the wages of vulnerable workers. Some countries, such as Ireland and the Netherlands, allow a temporary exemption for enterprises in case of financial difficulty. In Germany there is only one rate, but children and adolescents who have not completed vocational training are exempt from the Minimum Wage Act, and the long-term unemployed (who have been unemployed for at least one year) are exempt for six months after returning to work. Enterprises employing fewer than ten wage earners are excluded in Nepal, and in the Philippines micro-enterprises registered with the local government units as so-called “Barangay Micro Business Enterprises” are excluded as these enterprises are considered as seedbeds of entrepreneurial talent. In Thailand, employees in non-profit organisations

are among those who are excluded from coverage. With respect to the informal economy, the recently adopted ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) recommends that where this is not yet the case, countries should progressively extend minimum wage protections, in law and in practice, to workers in the informal economy through the process of formalisation.

### 3.6. Who sets the minimum wage?

At its heart, the ILO Minimum Wage Fixing Convention, 1970 (No.131) calls for full consultation with social partners on an equal footing in the design and operation of the minimum wage system, and where appropriate, their direct participation in the system. In addition, the Convention calls for the participation of “persons having recognised competence for representing the general interests of the country” and appointed after consultation with social partners (Appendix 2: Para 12.5.3(b)). In practice, the most frequent way of ensuring participation of social partners and independent experts is through institutions such as tripartite wage commissions, wage boards, or other tripartite bodies with general competence for economic and social affairs.

Different models include, for example:

- In France the minimum wage is adjusted by Decree after a recommendation by the National Collective Bargaining Commission (CNNC). Since 2008, the CNNC has been supported by an expert group, whose five members are nominated for four years by the Prime Minister. The expert group consults social partners and collects other relevant empirical evidence.
- In Malaysia, the government makes the final decision following recommendations from the National Wages Consultative Council, a tripartite advisory body that also includes technical experts, and consults relevant stakeholders throughout the country. The government may either agree with the Council’s recommendations or direct it to make fresh recommendations.
- In the UK, the Low Pay Commission is an independent body comprising nine commissioners drawn from a range of employee, employer and academic backgrounds, who serve in an individual capacity. They are supported by a secretariat, which has eight members of staff and is based in London; the Commission consults widely. The Low Pay Commission monitors the effect of the minimum wage through a variety of studies and advises the government about the level of the National Minimum Wage.
- In Cape Verde, the minimum wage level is set following an agreement at the tripartite Council for Social Concertation (CPCS).

### 3.7. Enforcement and awareness raising

Enforcement is a major challenge, particularly but not only in the informal economy. High rates of non-compliance have negative consequences not only for workers and their families, whose rights are violated, but also for compliant employers, as it gives non-compliant enterprises an illegitimate cost advantage. The rate of compliance is affected by a range of factors including the level at which minimum wages are set, as well as by institutional factors. But experience shows that compliance can be increased through a number of implementation measures, including:

- information and awareness raising campaigns,
- capacity building activities for employers’ and workers’ representatives,
- empowering workers to claim their rights through individual complaints as well as collective action,
- measures to formalise the informal economy,
- targeted labour inspections,
- sanctions that function as a deterrent to non-compliance,



- responsible purchasing practices within global supply chains.

In the United Kingdom, when the national minimum wage was introduced, it was widely believed that the policy would be successful only if it was largely “self-enforced” – that is, so widely known about and accepted that there would be widespread compliance. To this end, much attention was devoted to information campaigns, by the authorities as well as social partners. In the months before and after the introduction of the national minimum wage about £4.5 million was spent on a national publicity campaign, including television advertisements. Separate campaigns subsequently targeted ethnic minority communities and young people. Over the span of two months a Helpline dealt with 50,000 enquiries. More than a million copies of short information pamphlets were sent to organisations and individuals in the first few months. Separately tailored booklets on “best practice” aimed at businesses in the six sectors most affected – hospitality, retail, social care, cleaning and security, hairdressing, clothing – were produced. Awareness campaigns were run using the national press, local radio, youth magazines, internet advertisements, beer mats and postcards. A further campaign targeted television advertising and the women’s press. An interactive website was set up to provide users with a decision tree to help them assess their entitlement.<sup>7</sup>

In Costa Rica, a National Minimum Wage Campaign was undertaken in 2010, which combined awareness raising, facilitating and encouraging complaints. A central feature of the campaign was information on a new telephone hotline allowing workers to report wage violations in a simple and anonymous manner. This hotline received tens of thousands of calls. During the campaign, important personalities, including the country’s President, made public statements calling for respect of minimum wage rates (Trejos, 2013).

Information dissemination can potentially improve compliance even in the informal economy, where a widely known wage standard can play a guiding role for wage fixing and alter workers’ and employers’ expectations and behaviour – the so-called “lighthouse” effect. In Brazil, for example, it has been observed that to some extent the minimum wage guides wage fixing for workers in small enterprises which were rarely inspected, as well as in the informal sector; even self-employed workers considered the minimum wage as a reference to determine the price to be paid for their products or services.

### 3.8. At what level are minimum wages set?

Setting and adjusting the level is perhaps the most challenging part of minimum wage fixing. If set too low, minimum wages will have little effect in protecting workers and their families against unduly low pay or poverty. This reduces the relevance of minimum wages and the potential for this policy tool to address inequality and the living standards of the working poor. If set too high, minimum wages run the risk of being poorly complied with or of having adverse effects on employment and pushing vulnerable workers into informality (Kuddo, Robalino and Weber, 2015). This is why a balanced and evidence-based approach is necessary to ensuring that minimum wages are adapted to the national context, and that both the effective protection of workers and the development of sustainable enterprises is taken into account.

The balanced approach is emphasised in the ILO’s Minimum Wage Fixing Convention, 1970 (No. 131), which in Article 3 states that the elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include:

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<sup>7</sup>[www.gov.uk/browse/working/tax-minimum-wage](http://www.gov.uk/browse/working/tax-minimum-wage)

- a. 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, and the relative living standards of other social groups;
- b. economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

It is understood that these criteria are not exhaustive and there is no fixed formula to set minimum wage levels.

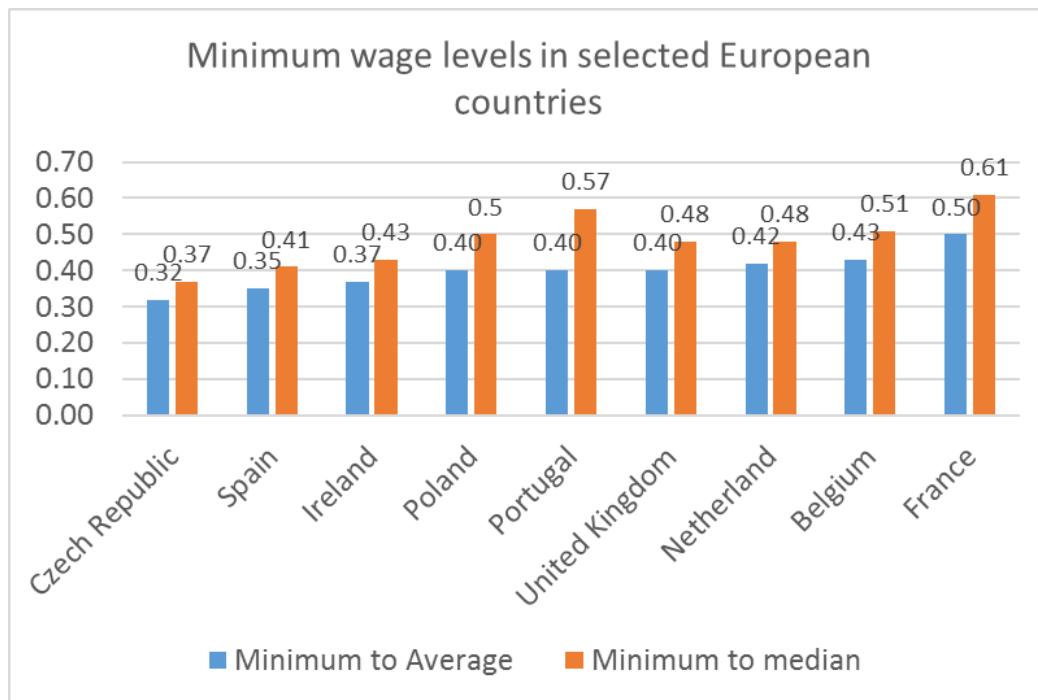
To measure needs of workers and their families, poverty lines or living wages benchmarks are frequently used. Living wage benchmarks are usually constructed by estimating the average cost of a basic but decent living standard for a family of average size by adding up the cost of food, housing, and other essential expenses like health, education of children and participation in the social life of the community. Needs can also be defined as some proportion of median wages or of median household income. The OECD (n.d.), for example, defines low pay as wages below two-thirds of median wages.

The economic factors are often captured statistically by the ratio of the minimum wage to median wages or mean wages. In Malaysia, for example, median<sup>8</sup> wages are one of the criteria used to determine the minimum wage level and are used as an indicator of enterprises' "ability to pay". As mean wages are affected by extreme values, medianwages provide a more frequent point of reference. In addition, economic indicators frequently include the levels of productivity and the general economic and employment situation.

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<sup>8</sup> Median wages refer to the middle wage. For example, in a country with five people who earn monthly wages equal to 5, 6, 7, 9, and 15, the median would be 7

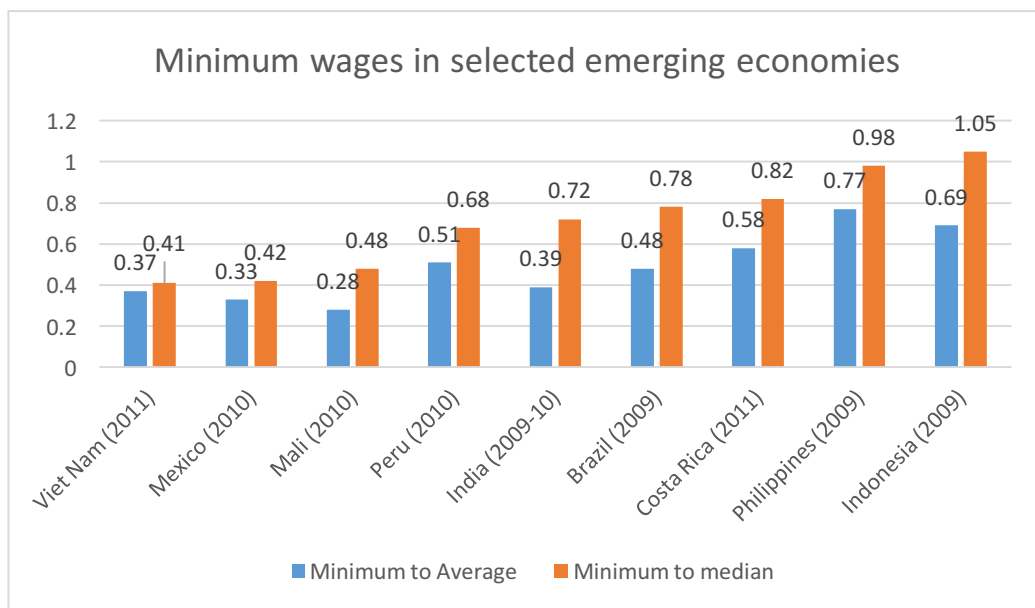
Figure 1: Minimum wage levels in selected European countries



Source: OECD

Figure 1 shows that in developed economies, the minimum wage usually ranges from 35–60% of the median wage, and from 35–50% of average wages.

Figure 2: Minimum wages in selected emerging economies



Source: Rani, Belser, Oelz, and Ranjbar 2013.

Figure 2 shows that in developing countries, the ratio of minimum to median wages is frequently higher than in developed economies. For example, it ranges between 68% and 82% in Peru, India, Brazil and Costa Rica. This pattern is probably because in developing countries wage distributions are often relatively compressed in the lower half and the median wage earner is often relatively low-paid (Kuddo et al, 2015). Yet because there is more inequality in those countries, the ratio of minimum to mean wages is closer to those found in developed countries.

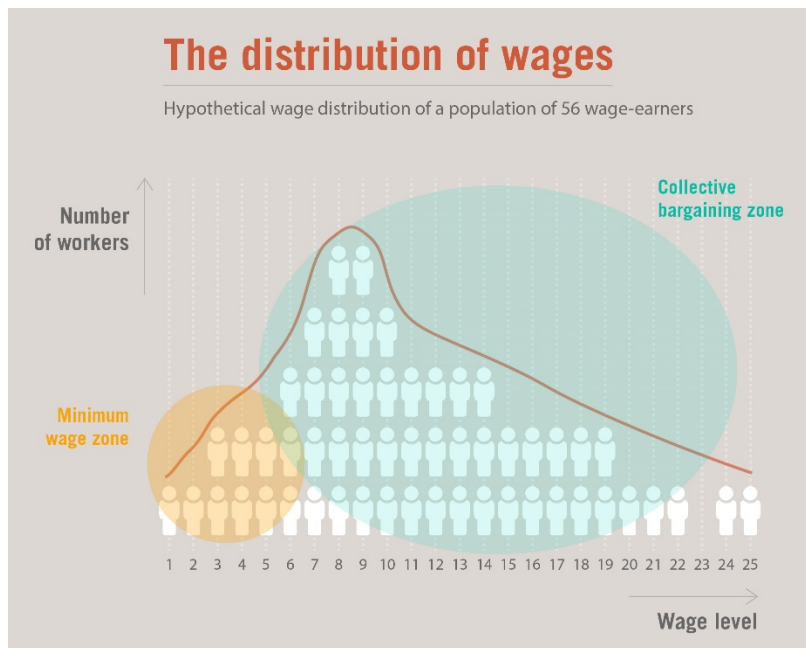
Note that Figure 2 uses information on multiple minimum wage rates where they exist. So, for example, the estimate for Brazil uses not only the federal minimum wage but also the state-level minimum wages where they are set at a level that exceeds the federal floor. In the case of Indonesia, provincial rates are taken into account.

It should be noted that there are different data sources and methods for calculating such estimates (particularly in countries with multiple minimum wage rates), and so comparisons across countries should be interpreted with care. Data from different sources sometimes rank countries very differently on these indicators. Hence, while cross-country indicators can be useful in evaluating minimum wage levels, they should be complemented by more refined country-specific analysis.

### 3.9. Relationship between the NMW and collective bargaining

As we have said, minimum wage systems should not be seen or used in isolation, but should be designed in a way to supplement and reinforce other social and employment policies. Particularly important is the relationship and articulation between minimum wages and collective bargaining. Collective bargaining offers a mechanism for coordinated wage setting. Collective agreements on wages can be used to establish minimum standards and to set wages above an existing floor. Extension of collective agreements to all enterprises, in accordance with national law and practice, can be used to ensure fair competition by providing a level playing field and extend coverage to all workers (ILO, 2015b). In some countries, however, it is becoming increasingly difficult to extend agreements for reasons to do with meeting thresholds of “sufficient representativity” and challenges also arise from increases in contracting out and non-standard forms of employment. Figure 3 shows a hypothetical wage distribution with a minimum wage zone, which provides protection against unduly low wages at the bottom of the distribution, and a collective bargaining zone, which provides wage floors at or above the minimum and also sets wages for workers above the minimum.

Figure 3: Distribution of wages<sup>9</sup>



In many countries, minimum wages and collective bargaining co-exist and complement each other. In general, collective agreements can set minimum wages provided that they are not lower than statutory levels. This implies that when a statutory minimum is increased above the floor level of some collective agreements, the statutory minimum wage applies. The effects of minimum wages tend to be different in countries with a strong tradition of collective bargaining than in countries where collective bargaining is weak and wages are mostly set unilaterally by enterprises in negotiation with individuals. In France, for example, where the national minimum wage is set at a relatively high level and where most collective agreements are extended, upward adjustments in the minimum wage often exceed previously bargained minima, creating direct interaction between the two policy tools, and “pushing up” bargained wage floors. In other instances, such as in Spain, the national minimum wage is set at a level that is too low to be relevant for bargained minima. Where collective bargaining is weak, there is also a risk that a national minimum wage can become the “maximum” wage for too many workers and that too many workers may become clustered around the minimum wage (Grimshaw, Bosch and Rubery, 2014).

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<sup>9</sup>How to read this figure: Figure 3 shows a hypothetical wage distribution of a population of 56 wage-earners before the introduction of a minimum wage. The level of wages is on the horizontal axis, and the number of wage earners is on the vertical axis. We see the full range of market wages, including a relatively small proportion of workers with extremely low pay on the left end of the wage distribution. For example, one employee has a wage of 1\$, two employees are paid 3\$, while five employees receive wages of 8\$. The orange circle called the “minimum wage zone” shows that a minimum wage should in principle remain targeted at the lowest-paid employees, to eliminate “unduly low pay”; the blue circle is the “collective bargaining zone” and illustrates the principle that collective bargaining can be used to set wages above an existing floor.

### 3.10. Adjustments

To maintain their relevance, minimum wage levels need to be adjusted from time to time. Failure to do so may lead to an erosion of the purchasing power of workers who earn the minimum when prices of goods and services are rising, or may lead to more wage inequality when the general level of wages is increasing. Many countries review their minimum wages once a year. Some countries review rates every six months, while others have two-years intervals. The most frequent adjustment criteria are: (1) changes in the cost of living, (2) changes in economic growth or labour productivity, and (3) the general economic and employment situation.

Below are some international examples of processes of adjustments to the NMW.

- In Brazil, the minimum wage is increased by the sum of inflation in the previous year plus the GDP growth of two years before (if >0).
- In France, the minimum wage is automatically increased by the amount of the previous year's inflation, whenever inflation exceeds 2%, and no less than half of the average hourly wage growth of blue-collar workers.
- In the UK, minimum wage adjustments are recommended every year by the Low Pay Commission based on a situation analysis and a review of the evidence on the effects of minimum wages.

If mathematical formulas are used to periodically adjust minimum wage rates, these should not be used as a substitute for dialogue with social partners.

### 3.11. Monitoring the effects of the minimum wage

Because the social and economic effects of minimum wages are never fully predictable, it is essential to ensure that the impact of minimum wage adjustments is adequately monitored and studied. Indeed, monitoring the effects of minimum wages is a key element of an evidence-based system. Findings from rigorous studies should find their way back to governments and social partners, and inform subsequent rounds of adjustment or changes to the system.

Recent evidence shows that when they are effective, minimum wages raise the wages of low-paid workers and the incomes of their families (Belman and Wolfson, 2014). When women are over-represented among low-paid workers, the minimum wage also reduces the gender pay gap (Rubery and Koukiadaki, forthcoming). But the overall wage effect depends on the level and legal coverage of the minimum, the degree of compliance, and the “spillover” effects on the wages of workers who are paid above the minimum. Spillover effects arise when, as a result of a higher minimum wage, workers with more seniority or skills also demand higher wages, either through collective or individual bargaining. Spillovers can also occur because changes in the minimum wage can affect pay in the public sector.

Most controversial is the debate on the employment effects. Employment effects have long been at the centre of minimum wage research, with much debate over whether or how minimum wages affect jobs, employee numbers and hours worked. As highlighted by Belman and Wolfson (2014: 21), “support for the minimum wage is premised on its improving the lives of those most vulnerable in the labour market. If a minimum wage leads to job loss for many of those same people, serious questions arise with respect to its relative benefits and costs”.

A recent World Bank overview concluded that “although the range of estimates from the literature varies considerably, the emerging trend in the literature is that the effects of minimum wages on employment are usually small or insignificant (and in some cases positive)” (Kuddo et al., 2015:11). A comprehensive review of about 70 studies in high-income countries shows that findings are varied, but the most frequent finding is that employment effects are close to zero and too small to be observable in aggregate

employment or unemployment statistics (Belman and Wolfson, 2014: 21). Similar conclusions emerge from meta-studies (quantitative studies of studies) in the United States (Doucouliagos and Stanley, 2009), the United Kingdom (Leonard, Stanley and Doucouliagos, 2014), and in developed economies in general (Belman and Wolfson, 2014). Other reviews conclude that employment effects are less benign and that minimum wages reduce employment opportunities for less-skilled workers (Neumark and Wascher, 2008). Although there are fewer studies in developing countries, similarly mixed findings emerge (Betcherman, 2014; Belman and Wolfson, 2016). In any case, differences in findings across countries and studies point towards the importance of evidence-based approaches and country-specific programmes for monitoring the employment effects of minimum wages, particularly on vulnerable workers.

Another concern in developing countries is that minimum wages that are too high and effectively enforced may cause employees to be shifted from the formal to the informal economy – thereby leading to higher rates of non-compliance and downward pressure on wages in the informal economy (Nataraj et al., 2014). While several studies have documented reduced formal employment, a review of employment effects in Latin America shows that effects are frequently more complex (Khamis, 2008).

## 4. A minimum wage in context: the South African economy and labour market

### 4.1. Introduction

The deliberations of the Panel, and the level at which the national minimum wage has been recommended, were informed by a rich variety of macro and microeconomic data and research. This chapter presents an overview of key economic and socio-economic indicators that have informed the thinking of the panel. The aim of the chapter is to clearly outline the economic context against which the national minimum wage will be implemented, and to set out the data that were used to set the level as recommended in Chapter 5.

### 4.2. Economic context

#### 4.2.1. A note on the data

This report draws on a range of research and data sources. The Panel used the latest data and research available. However, different reports use different sources and surveys, different base-years, and different units of analysis. The Panel has elected to utilise a range of the latest and most useful research to underpin the analysis and guide its deliberations. An important note in this regard is that much of the analysis presented below is based on the Labour Market Dynamics of South Africa (LMDSA) report from 2014; at the time the Panel was convened, that was the latest report on the Quarterly Labour Force Survey (QLFS) data that included wage data. In the middle of October 2016, the LMDSA for 2015 was released. However, there was insufficient time to request the various researchers to update their analysis based on these data. The analysis that the Panel was able to do on the new data suggests that the results have not changed materially in the new report.

#### 4.2.2. The macro context

The deliberations regarding the setting and implementation of a minimum wage have been informed by the prevailing macro and microeconomic contexts, both in South Africa and globally. It is critical to point out that the proposal for the implementation of a national minimum wage comes at a time when South Africa is faced by a variety of serious, interrelated economic challenges, including high levels of unemployment, very low growth and global economic uncertainty, among others.

One of the key challenges at the macro level is that of very low GDP growth in South Africa. According to the World Bank (2016), the forecast for GDP growth in South Africa is at only 0.8% in 2016, while the National Treasury, in its 2016 Medium Term Budget Policy Statement (MTBPS), forecast a growth rate of 0.5% for the year. Longer-term forecasts show little improvement: the World Bank estimates GDP growth of 1.1% in 2017, while the National Treasury (2016) forecasts growth rates of 1.3% in 2017, 2.0% in 2018 and 2.2% in 2019. The World Bank argues that such low growth rates will jeopardise the country's unemployment and poverty reduction targets. Indeed, these growth rates are far below the target of 5.6% per annum as set out in the National Development Plan (NDP), and will not generate the level of job creation necessary to significantly reduce unemployment in the country.

Table 2 provides the global context for GDP growth in the medium term. It is evident that the challenges facing South Africa are not unique to the country; indeed, other developing country such as Brazil and Russia face negative growth in the coming years. More broadly, while economic growth is predicted to rise in the developed world, it remains low and uncertain. The implications of low GDP growth are widespread. Low global growth reduces demand for South African exports. Combined with low domestic growth this significantly reduces the South African economy's ability to generate sufficient jobs to make any meaningful impact on unemployment.



Table 2: Annual percentage change in GDP and consumer price inflation in selected regions/countries, IMF forecasts, 2014–2017

Region/country	2014	2015	2016	2017	2014	2015	2016	2017
Percentage	GDP projections				CPI projections			
World	3.4	3.1	3.4	3.6	3.5	3.3	3.4	3.6
Advanced Economies	1.8	1.9	2.1	2.1	1.4	0.3	1.2	1.7
United States	2.4	2.5	2.6	2.6	1.6	0.1	1.1	1.8
Euro area	0.9	1.5	1.7	1.7	0.4	0.2	1.0	1.3
United Kingdom	2.9	2.2	2.2	2.2	1.5	0.1	1.5	2.0
Japan	0.0	0.6	1.0	0.3	2.7	0.7	0.4	1.6
Emerging markets and developing economies	4.6	4.0	4.3	4.7	5.1	5.6	5.1	4.9
Brazil	0.1	-3.8	-3.5	0.0	6.3	8.9	6.3	5.2
Russia	0.6	-3.7	-1.0	1.0	7.8	15.8	8.6	7.3
India	7.3	7.3	7.5	7.5	5.9	5.4	5.5	5.4
China	7.3	6.9	6.3	6.0	2.0	1.5	1.8	2.2
Sub-Saharan Africa	5.0	3.5	4.0	4.7	6.4	6.9	7.3	6.7
South Africa	1.5	1.3	0.7	1.8	6.1	4.8	5.9	5.6
South Africa (National Treasury MTBPS forecast)	1.5	1.3	0.5	1.3	6.1	4.6	6.4	6.1

1. IMF World Economic Outlook Update, January 2016

2. IMF World Economic Outlook Update, October 2015

Table 3 presents a broader range of macro-economic indicators. It is clear that key indicators remain under pressure over the medium term. Growth in household and Government consumption remain below their 2012 level, even by the outer year of the forecast.

Table 3: Macroeconomic performance and projections, 2012–2018

Calendar year	2012	2013	2014	2015	2016	2017	2018
Percentage change	Actual			Estimate	Forecast		
Final household consumption	3.4	2.9	1.4	1.4	0.7	1.6	2.2
Final government consumption	3.4	3.3	1.9	0.4	1.2	-0.2	0.2
Gross fixed capital formation	3.6	7.6	-0.4	1.1	0.3	1.4	2.7
Gross domestic expenditure	3.9	1.4	0.6	0.1	1.1	1.7	2.2
Exports	0.1	4.6	2.6	9.5	3.0	4.6	5.2
Imports	6.0	1.8	-0.5	5.3	3.7	4.5	4.9
Real GDP growth (MTBPS)	2.2	2.2	1.5	1.3*	0.5	1.3	1.9
GDP inflation	5.5	6.0	5.8	4.0	6.7	6.3	6.0
GDP at current prices (R billion)	3 262.5	3 534.3	3 796.5	3 998.9	4 305.9	4 657.5	5 052.8
CPI inflation	5.7	5.8	6.1	4.6	6.6	6.3	5.9
Current account balance (% of GDP)	-5.0	-5.8	-5.4	-4.1	-4.0	-3.9	-3.9

Source: Reserve Bank and National Treasury 2016 Budget

\*Actual for 2015

An additional problem faced by the country is that there is evidence that the growth in the demand for labour in South Africa has not been sufficient to keep up with the much larger growth in labour supply since the early 1990s. Recent empirical work by Mkhize (2016) finds that the economy's capital intensity undermines its ability to generate jobs in times of economic growth. He finds that, in the long run, growth and job creation are not correlated, although there is some sectoral variation. This points to the broader economic policy challenge facing South Africa, which is that there are structural barriers that exacerbate unemployment, the solutions to which require more than economic growth.

#### 4.2.3. Micro context

The labour market in South Africa has been consistently characterised by high levels of unemployment, poverty and inequality. Indeed, the data on the South African labour market situation paint a bleak picture.

According to Statistics South Africa (Stats SA, 2016), and shown in Table 4, the unemployment rate in South Africa increased from 22.5% in 2008 to 25.3% in 2015, according to the narrow definition of unemployment. The unemployment rate according to the expanded definition rose markedly from 29.7% in 2008 to 34.8% in 2015, while the number of those who have been unemployed for more than five years reached 1.5 million in 2015.

Table 4: The South Africa Labour Market

Indicator (%)	2008	2009	2010	2011	2012	2013	2014	2015
Unemployment rate (narrow)	22,50	23,70	24,90	24,80	24,90	24,70	25,10	25,30
Unemployment rate (expanded)	29,70	32,40	35,40	35,60	35,60	35,30	35,30	34,80
Labour absorption rate	45,90	43,90	41,80	41,90	42,20	42,70	42,80	43,70
Labour force participation rate	59,30	57,50	55,70	55,70	56,20	56,80	57,10	58,50

Source: Stats SA (2016)

Table 5 provides a broad overview of the labour market at the household level. These data are drawn from the third wave of the National Income Dynamics Survey (NIDS) and highlight salient features of the labour market. The first key observation is the high level of unemployment among those in quintiles one and two, at 61.2% and 32.7% respectively (according to the narrow definition of unemployment), compared to 3.3% for those in quintile five. The national unemployment rate is recorded at 25.1% according to the narrow definition, and 29.1% according to the expanded definition.

The second striking feature is the average wage of employed persons. Those in quintile one earn an average wage of R1,017 per month and those in quintile two earn R1,707 per month, compared to R13,458 for those in quintile five and a national average of R5,787. These figures highlight both the magnitude of wage inequality in the country and the extent of low pay. They are lower than expected because they include part-time workers, and thus reflect actual take-home wages rather than monthly adjusted figures.

Third, the percentage of working households rises significantly across the quintiles, from 36.2% in quintile one to 87.8% in quintile five. These data suggest that poverty in the country is, among many other variables, a problem of both extremely low pay (for those in employment) and extremely high and widespread unemployment.

Table 5: Household indicators

	Poor		Non-Poor		All	
	Quintile 1	Quintile 2	Quintile 3	Quintile 4	Quintile 5	
General						
Share of Households	20%	20%	20%	20%	20%	100.0%
Number of People (000s)	16 306	12 867	8 979	7 640	6 483	52 275
Share of Population	31.2%	24.6%	17.2%	14.6%	12.4%	100.0%
Average Household Size	5.2	4.1	2.8	2.4	2.1	3.3
Labour Market Participation						
Employed	15.9%	35.9%	52.5%	65.3%	75.0%	44.4%
Unemployed (strict)	25.1%	17.4%	12.3%	9.0%	2.6%	14.9%
Unemployed (discouraged)	5.5%	4.5%	2.2%	1.7%	1.2%	3.4%
Not Economically Active	53.5%	42.2%	33.0%	24.0%	21.3%	37.3%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Unemployment Rates						
Narrow Unemployment Rate	61.2%	32.7%	10.9%	12.1%	3.3%	25.1%
Broad Unemployment Rate	65.8%	37.9%	21.7%	14.1%	4.8%	29.1%
Wages and Labour Market Linkages						
Average Wage of Employed Persons	R1 017	R1 707	R2 651	R4 751	R13 458	R5 787
Average Number Employed per Household	0.4	0.9	1.0	1.2	1.2	0.9
% Working Households	36.2%	65.8%	71.1%	85.8%	87.8%	69.3%
Average Number Non-Employed per Employed in Working Households	4.1	2.5	1.4	0.9	0.6	1.5
Average Monthly Household Income	R1 671	R3 125	R4 169	R7 317	R24 090	R8 018
Average Monthly per capita Income	R323	R773	R1 491	R3 117	R12 509	R3 611

Sources: National Income Dynamics Study Wave 3. Own Calculations. DPRU (2015).

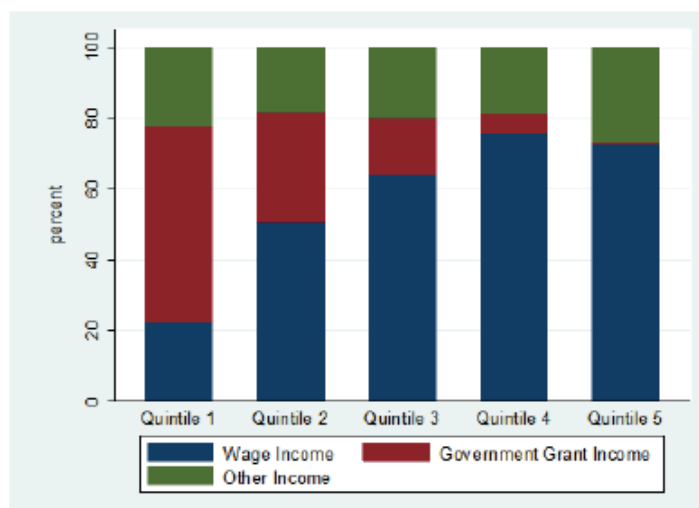
Note: All figures weighted using calibrated weights.

It is important also to reflect on the nexus of poverty and household composition. Lilenstien, Woolard and Leibbrandt (2016) note that there are two dimensions to understanding household poverty – the characteristics and employment conditions of the worker (assuming that the household has a working member), and the composition of the worker's household. Household composition means that relatively high wage earners can find themselves living in poverty due to the composition of their household, while low wage earners may be lifted out of poverty through other income sources. It is clear from Table 5 that poor households occupy this vulnerable nexus, where large household size, low employment and low wages intersect. Not only are poor households the largest on average, at 5.2 people for households in quintile one, but their average monthly household income is extremely low. As a result, per capita incomes for those in quintile one are very low, and the disparity in per capita incomes between those in quintile one and quintile five is marked; per capita incomes for those in quintile five are 38.7 times larger than those in quintile one.

Understanding income in South Africa requires looking beyond wage income. Figure 4 presents the sources of household income by income quintile. The distribution is striking: households in the poorest quintile earn approximately 20% of their income from wages, while the greatest share is derived from Government grants. For households in quintile two, approximately 50% of income is from wages, while Government transfers make up a fairly significant portion compared to the richer three quintiles. This distribution is important; minimum wages can only have anti-poverty benefits where at least some portion

of income is derived from wages. For those in the poorest quintile, only 3.6% of households have a member who is employed in some capacity, and this poses a significant problem to addressing poverty through wages.

Figure 4: Sources of household income



Sources: National Income Dynamics Study Wave 3. Own Calculations. DPRU (2015).  
 Note: All figures weighted using calibrated weights.

South African poverty indicators provide a meaningful insight into how the economic context is manifest at the household level. Poverty is measured against a variety of poverty lines, as presented in Table 6 (drawn from Budlender, Leibbrandt and Woolard, 2015). According to the Stats SA calculations, 20.8% of the population fall below the food poverty line of R335 per month, 36.2% falls below the lower-bound poverty line of R501 per month, and 53.2% fall below the upper-bound poverty line of R779 per month (in constant 2011 prices). There continues to be much debate on the correct poverty line for the measurement of poverty. This Report does not take a position on this. Rather, the figures provided here are used to illustrate the depth and extent of poverty in the country as part of the broader context in which the adoption of a national minimum wage takes place.

Table 6: Poverty lines (per capita per month in Rands)

Poverty line		Stats SA 2008	Stats SA 2015
Food	<b>Rands</b>	<b>321</b>	<b>335</b>
	<b>Headcount</b>	<b>19.14%</b>	<b>20.76%</b>
Lower bound	<b>Rands</b>	<b>443</b>	<b>501</b>
	<b>Headcount</b>	<b>31.60%</b>	<b>36.15%</b>
Upper bound	<b>Rands</b>	<b>620</b>	<b>779</b>
	<b>Headcount</b>	<b>44.66%</b>	<b>53.19%</b>

Sources: Statistics South Africa (2008; 2015). Monthly and per capita, in March 2011 Rands. Headcount ratios SALDRU (2011). Table from Budlender *et al.* (2015).

The problem of economic inequality, both of income and wealth, is a key concern which informed the deliberations of the Panel. Table 7 presents changes in key measures of inequality between 2006 and 2011. The most commonly discussed measure, the Gini coefficient, remains extremely high, at 0.69 in 2011. There has been a decline in the share of national consumption by the poorest 20%, from 4.4% in 2006 to 4.3% in 2011.

Table 7: Inequality 2006 to 2011

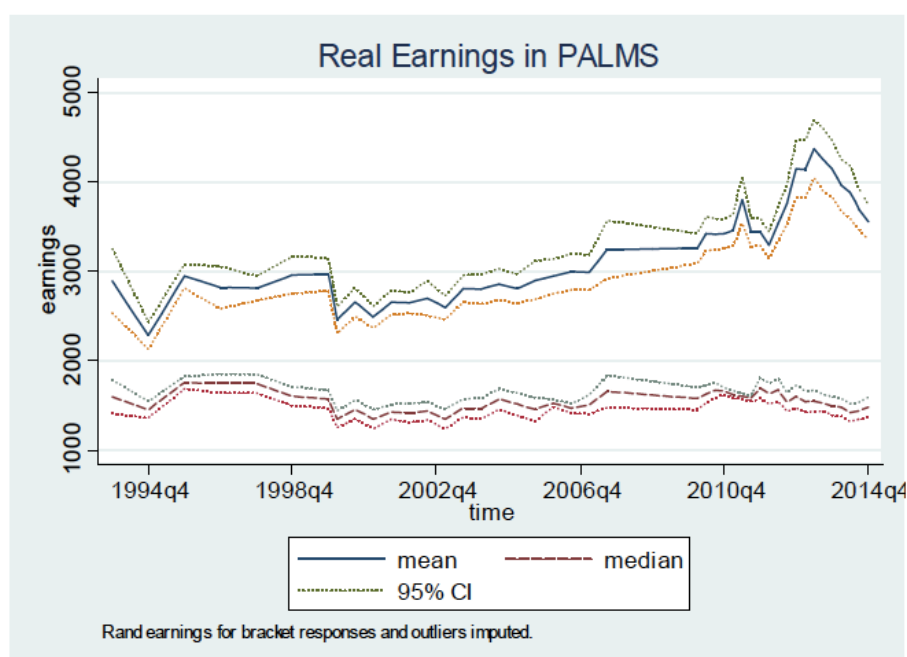
Inequality indicators	2006	2009	2011
Gini coefficient (income per capita including salaries, wages and social grants)	<b>0.72</b>	<b>0.70</b>	<b>0.69</b>
Gini coefficient (expenditure per capita excluding taxes)	<b>0.67</b>	<b>0.65</b>	<b>0.65</b>
Share of national consumption of the poorest 20% (per capita)	<b>4.4%</b>	<b>4.4%</b>	<b>4.3%</b>
Share of national consumption of the richest 20% (per capita)	<b>64.1%</b>	<b>61.4%</b>	<b>61.3%</b>

Source: Stats SA (2014)

The indicators presented above are not provided as a thorough assessment of the state of the South African economy. They are intended, however, to emphasise that the implementation of the national minimum wage comes at a time when the economy is beset by a range of serious economic challenges. Low growth, high unemployment and poor global economic performance all affect the economy's ability to respond to shocks, and South Africa's economic fragility has been at the forefront of the Panel's thinking at all stages of the deliberations.

There is extensive writing on wage inequality in South Africa, and its magnitude is evident from the data discussed in this chapter. However, it is important to make a few comments here. The ILO (2014c) has found that the rising income inequality in South Africa between 2007 and 2012 occurred because income growth in the bottom decile households, which we have highlighted above, had stagnated in real terms, while the incomes in the top decile continued to increase. This is compounded by the fact that, in South Africa, the share of income from wages rises significantly in the top three deciles, while social transfers are the largest share for the bottom two deciles, and do not enjoy real growth at the levels of wages. Figure 5 presents a 20-year trend on wage inequality in South Africa. It is clear that there has been a consistent divergence between mean and median wages since 2000, with mean earnings increasing while median earnings remain stagnant.

Figure 5: Long-term trends in real earnings from the Post Apartheid Labour Market Series (Palms)



Source: Wittenberg (2016)

Note: chart is in constant prices.

### 4.3. Distribution of low pay

The sections above have provided an overview of the macro and microeconomic context in the country, including the income distribution at the household level. This section focuses on the level and distribution of wages of those who are employed, highlighting sectors where low pay is concentrated and providing some indication as to the depth and breadth of low pay. Gathering comprehensive wage data for South Africa is a difficult task. While SARS has excellent data, these are predominantly for the formal sector so this information does not give a comprehensive overview of the labour market that includes the informal sector. Thus the data used here are from the Labour Market Dynamics Report of 2014 (which is based on the Quarterly Labour Force Survey Q3 and Q4; this is the latest report for which there are wage data, with the prices updated to August 2016 price levels. Because these data include both the formal and informal sectors they provide a more holistic picture of wages in the country.

Table 8 is critical to understanding the wage distribution in South Africa, and contains some important calculations that have underpinned much of the Panel's thinking. Of particular interest are the monthly wage based on adjusted hourly earnings, as shown in line three. Under these assumptions, the mean wage is R9,690 per month, and the median wage is R3,784 per month. A key line for understanding the South African wage distribution is line 4 in the table, which excludes agricultural and domestic workers, but includes both formal and informal workers. Excluding these two very low-wage sectors gives a better picture of the wages in the remainder of the economy. These adjustments result in a monthly mean wage of R10,634 and a median wage of R4,485 (these are hourly adjusted figures). The gap between mean and median wages highlights the magnitude of income inequality in South Africa.

Table 8: Mean and median wages under various assumptions

Assumptions	Mean	Median
• All earners including zero earners	<b>R8 773</b>	<b>R3 442</b>
• Zero earners removed	<b>R8 810</b>	<b>R3 476</b>
• Hourly average *45*4.3 (all workers)	<b>R9 690</b>	<b>R3 784</b>
• F&I ex. agri. and domestic *45*4.3 (full-time)	<b>R10 634</b>	<b>R4 485</b>

Source: Finn (2016) calculations from LMDSA 2014 dataset.

Note: F&I means Formal and Informal workers. All numbers in the box are hourly earnings (45 hours per week x 4.3 weeks per month). Full-time workers are those who work at least 35 hours per week.

A key task for the Panel is to understand the wage distribution of those affected by various minimum wage levels. Table 9 presents the number of workers earning below four monthly wage levels – R2,500, R3,000, R3,500 and R4,000. These figures include all workers in the named industries, including part-time workers, and there is no income cut-off. As a result, the table presents over-estimates of workers falling under the various minimum wage levels because some of them are on part-time salaries, and the wages presented here are not adjusted upwards to full-time equivalents.

By these calculations, 34.8% of workers (4.6 million workers) earn below R2,500 per month. There is marked variation in the distribution of low pay between sectors – 79.9% of workers in private households (domestic workers) earn below R2,500 per month, while 70.5% of workers in agriculture earn below this level. In comparison, only 16.2% of workers in the electricity, gas and water supply industry, and 13.3% of workers in mining and quarrying earn below R2,500 per month.

Considering a wage level of R3,000 per month, 41.6% (5.5 million workers) fall below this level, including 86.6% of domestic workers and 79.8% of agricultural workers. A wage level of R3,500 per month falls above the pay of 6.2 million workers, or 47.3% of the workforce, including 90.7% of domestic workers and 84.5% of agricultural workers. Furthermore, 54.6% of construction workers, and 48.2% of wholesale and retail workers earn below R3,500 per month. Finally, 6.7 million workers, or 51.1%, currently earn less than R4,000 per month. This includes 92.3% of all domestic workers and 86.0% of agricultural workers. It is important to note, however, that these numbers in some cases overstate the proportion of workers falling below a given wage level, as part-time and informal workers are included.

Table 9: Minimum wage levels and the wage distribution

Sector	Number of Workers	Number of Workers within Industry Earning Below R2500	Share of Total Number of Workers Earning Below R2500	Workers within Industry Earning Below R2500	Share of Total Number of Workers Earning Below R2500
Agriculture	657 286	463 385	3,5%	70,5%	10,1%
Mining and Quarrying	427 869	56 974	0,4%	13,3%	1,2%
Manufacturing	1 565 716	426 034	3,2%	27,2%	9,3%
Electricity, gas and water supply	117 118	18 917	0,1%	16,2%	0,4%
Construction	948 331	353 533	2,7%	37,3%	7,7%
Wholesale and Retail Trade	2 307 491	697 611	5,3%	30,2%	15,2%
Transport, storage and communication	810 423	218 066	1,7%	26,9%	4,8%
Financial Services	1 816 839	395 805	3,0%	21,8%	8,6%
CSP	3 261 921	961 416	7,3%	29,5%	21,0%
Private Households	1 235 770	986 948	7,5%	79,9%	21,5%
Other	3 933	1 963	0,0%	49,9%	0,0%
Total	13 152 697	4 580 652	34,8%		100,0%
Sector	Number of Workers	Number of Workers within Industry Earning Below R3000	Share of Total Number of Workers Earning Below R3000	Workers within Industry Earning Below R3000	Share of Total Number of Workers Earning Below R3000
Agriculture	657 286	524 743	4,0%	79,8%	9,6%
Mining and Quarrying	427 869	68 900	0,5%	16,1%	1,3%
Manufacturing	1 565 716	530 613	4,0%	33,9%	9,7%
Electricity, gas and water supply	117 118	21 743	0,2%	18,6%	0,4%
Construction	948 331	435 681	3,3%	45,9%	8,0%
Wholesale and Retail Trade	2 307 491	921 368	7,0%	39,9%	16,8%
Transport, storage and communication	810 423	267 484	2,0%	33,0%	4,9%
Financial Services	1 816 839	551 360	4,2%	30,3%	10,1%
CSP	3 261 921	1 083 449	8,2%	33,2%	19,8%
Private Households	1 235 770	1 069 950	8,1%	86,6%	19,5%



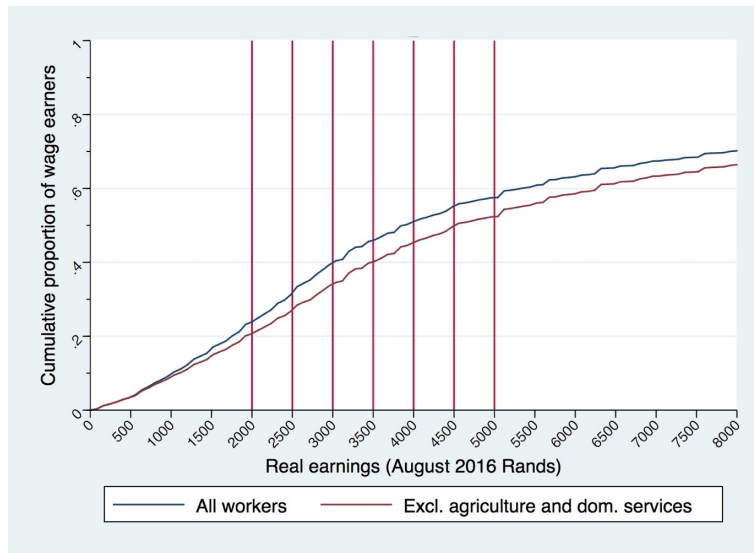
Other	3 933	2 021	0,0%	51,4%	0,0%
Total	13 152 697	5 477 312	41,6%		100,0%
Sector	Number of Workers	Number of Workers within Industry Earning Below R3500	Share of Total Number of Workers Earning Below R3500	Workers Within Industry Earning Below R3500	Share of Total Number of Workers Earning Below R3500
Agriculture	657 286	555 193	4,2%	84,5%	8,9%
Mining and Quarrying	427 869	77 912	0,6%	18,2%	1,3%
Manufacturing	1 565 716	622 181	4,7%	39,7%	10,0%
Electricity, gas and water supply	117 118	27 982	0,2%	23,9%	0,5%
Construction	948 331	517 786	3,9%	54,6%	8,3%
Wholesale and Retail Trade	2 307 491	1 112 935	8,5%	48,2%	17,9%
Transport, storage and communication	810 423	319 453	2,4%	39,4%	5,1%
Financial Services	1 816 839	671 008	5,1%	36,9%	10,8%
CSP	3 261 921	1 190 986	9,1%	36,5%	19,2%
Private Households	1 235 770	1 120 636	8,5%	90,7%	18,0%
Other	3 933	2 021	0,0%	51,4%	0,0%
Total	13 152 697	6 218 092	47,3%		100,0%
Sector	Number of Workers	Number of Workers within Industry Earning Below R4000	Share of Total Number of Workers Earning Below R4000	Workers Within Industry Earning Below R4000	Share of Total Number of Workers Earning Below R4000
Agriculture	657 286	565 457	4,3%	86,0%	8,4%
Mining and Quarrying	427 869	90 111	0,7%	21,1%	1,3%
Manufacturing	1 565 716	698 055	5,3%	44,6%	10,4%
Electricity, gas and water supply	117 118	30 965	0,2%	26,4%	0,5%
Construction	948 331	563 120	4,3%	59,4%	8,4%
Wholesale and Retail Trade	2 307 491	1 248 981	9,5%	54,1%	18,6%
Transport, storage and communication	810 423	344 607	2,6%	42,5%	5,1%

Financial Services	1 816 839	776 185	5,9%	42,7%	11,5%
CSP	3 261 921	1 264 506	9,6%	38,8%	18,8%
Private Households	1 235 770	1 140 541	8,7%	92,3%	17,0%
Other	3 933	2 021	0,0%	51,4%	0,0%
Total	13 152 697	6 724 548	51,1%		100,0%

Notes: Source: LMDS (2014); 2016 prices; used the monthly earnings variable ('s5earnings\_employees'); Number of workers represents entire industry (no income cut-off; includes full-time and part-time workers).

Figure 6 is a graphical representation of the wage coverage detailed in the table above, delineated by various wage levels. It illustrates that approximately 40% of all workers earn less than R3,000 per month, while 60% of all workers earn less than R5,000 per month (these are hourly adjusted numbers). Excluding domestic and agricultural workers highlights how these employees are clustered at the extreme low end of the distribution as they generally earn very low wages.

Figure 6: Cumulative density function of earnings calculated as hourly earnings for all workers

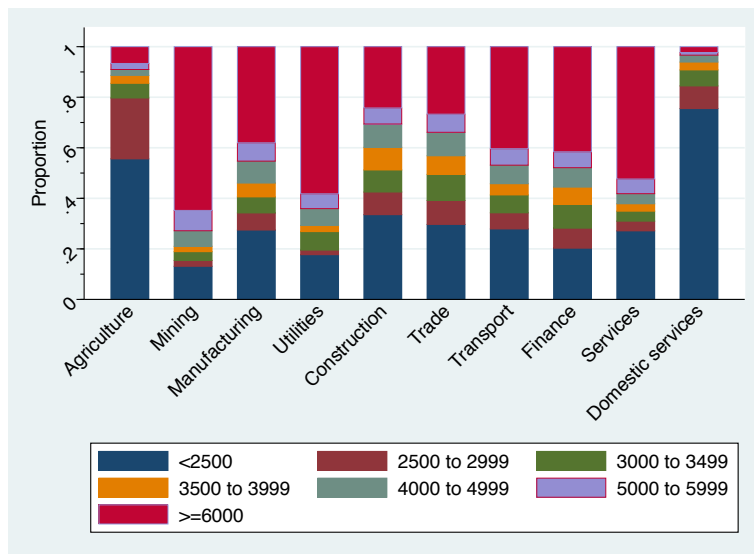


Source: Finn (2016) calculations from LMDSA 2014 dataset. August 2016 prices.

Note: All hourly earnings adjusted to a monthly wage (45 hours per week x 4.3 weeks per month).

Figure 7 gives a graphical indication of where a national minimum wage would take effect at various levels, according to sector. It is again evident how agriculture and domestic work have a markedly different wage distribution from all other sectors, with more than 80% of workers in both of these sectors earning below R3,500 per month. The distribution varies across the remaining sectors: in construction and trade, approximately 50% of workers earn less than R3,500 per month, and this drops to approximately 40% in manufacturing, transport, finance and services.

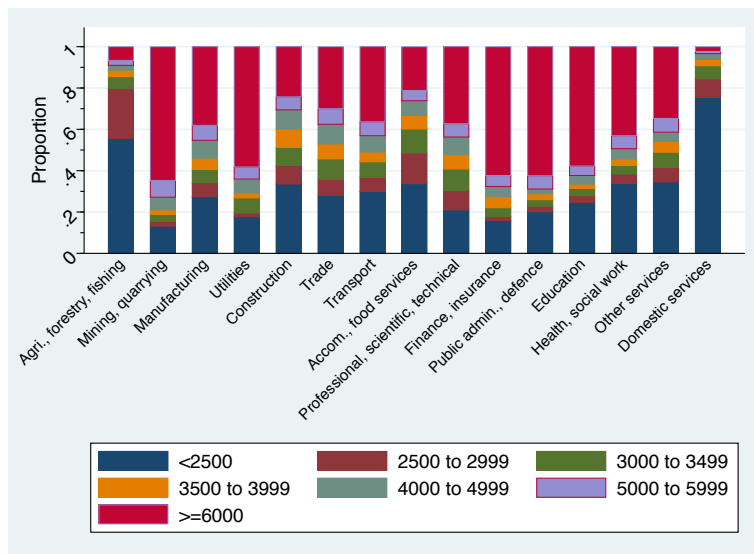
Figure 7: Sectoral wage distribution



Source: Finn (2016) calculations from LMDSA 2014 dataset. August 2016 prices.

Figure 8 provides a more disaggregated picture by smaller standard industry classification (SIC) sector. Here, accommodation and food services emerges as a low-pay sector, with 60% of employees earning below R3,500 per month. The situation is similar for health and social work, where 40% of employees earn below this level.

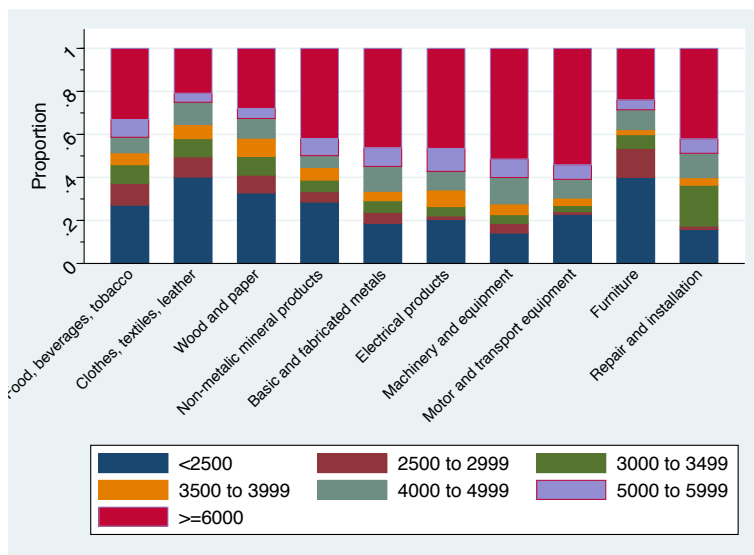
Figure 8: Sectoral wage distribution by smaller SIC classification



Source: Finn (2016) calculations from LMDSA 2014 dataset. August 2016 prices.

Turning to the manufacturing sector of the economy in more detail, Figure 9 presents the wage distribution according to manufacturing subsector. Here, the lowest-paid sectors are clothing, textiles and leather, and furniture. In both these subsectors, approximately 60% of workers earn below R3,500 per month.

Figure 9: Wage distribution by disaggregated manufacturing sector



Source: Finn (2016) calculations from LMDSA 2014 dataset. August 2016 prices.

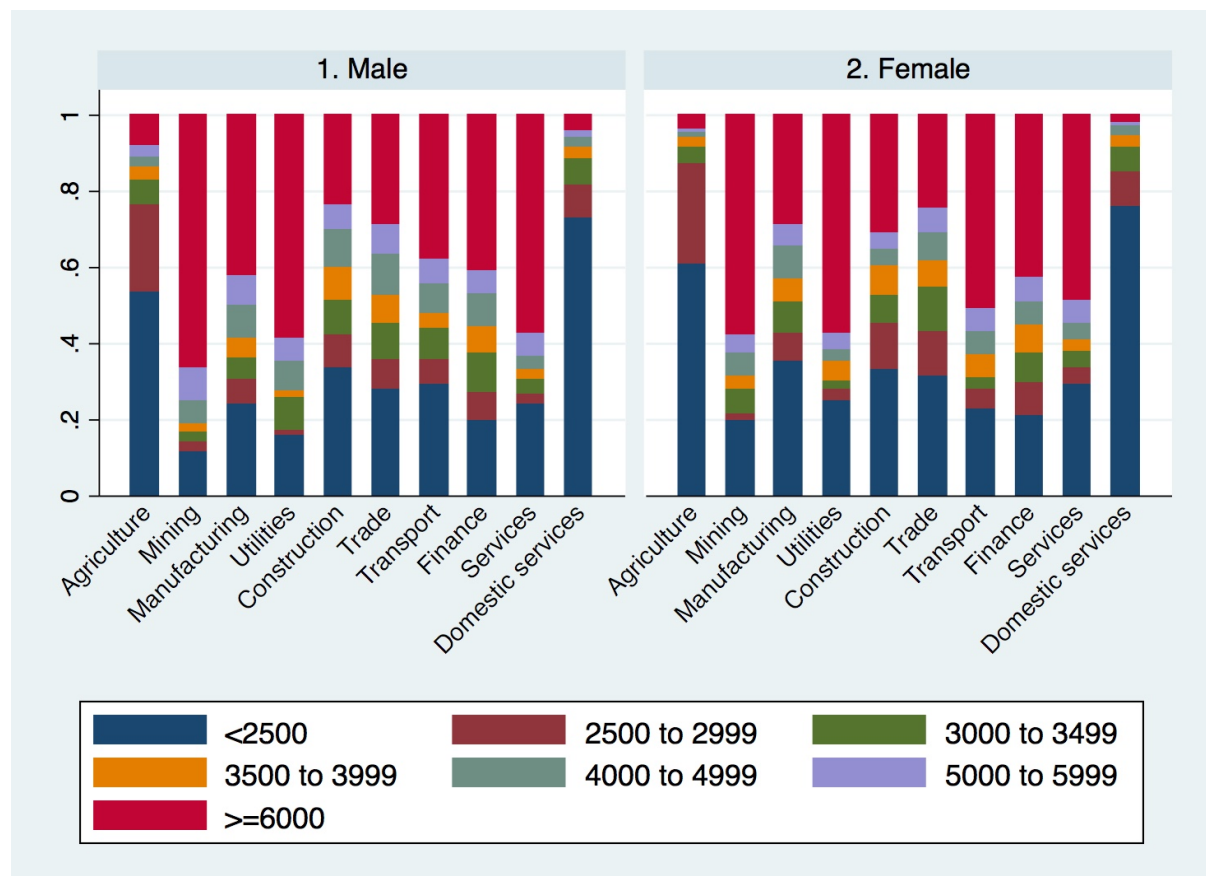
## 4.4. Special vulnerable groups

### 4.4.1. Women

Understanding the gendered distribution of pay is a critical aspect of income, poverty and inequality in South Africa. The 2015 Labour Market Dynamics in South Africa Report finds that the median wage for employed women in 2015 was 77.1% of the wage for employed men, and this persists across the income distribution (Stats SA, 2016). For the bottom 25% of wage earners, the median wage for women is only 75.0% of that for men.

Figure 10 presents the gendered distribution of pay. It is clear that the proportion of women earning low wages is significantly higher in certain sectors than that for men. This is particularly so in mining, construction and trade.

Figure 10: The gendered distribution of pay



Source: Finn (2016) calculations from LMDSA 2014 dataset. August 2016 prices.

#### 4.4.2.Small businesses

Representations to the Panel emphasised the importance of small businesses to economic growth and job creation in South Africa, while highlighting their relative fragility and sensitivity to wage increases. The impact of the national minimum wage on small businesses is a particular concern, and it is dealt with in detail in section 5.4.12 of this report. That discussion is informed by the data on small businesses presented here. Table 10 presents an overview of employment by firm size. It is striking to note that there are over 4 million employees in firms with between one and nine employees, and a further 1.9 million in firms of between 10 and 19 employees. Furthermore, it is important to highlight that 50.3% of the employees in the 1–9 category and 77.2% of those in the 10–19 category are employed in sectors covered by sectoral determinations (SD sectors). It is clear from these data that small businesses account for a significant share of employment in the country.

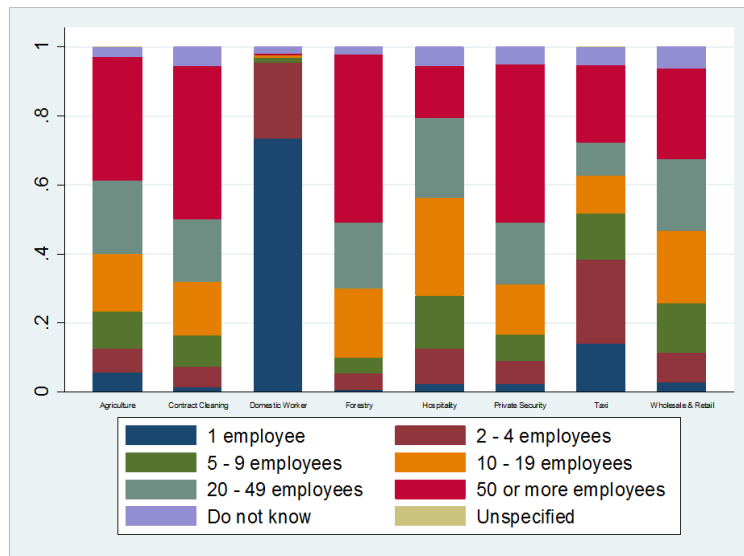
Table 10: Employment by firm size

Number of Employees	Total Number of Employees	Employees in SD Sectors	Proportion of Employees in SD Sectors (%)
1-9	<b>4 073 000</b>	<b>2 048 646</b>	<b>50.3</b>
10-19	<b>1 882 137</b>	<b>1 453 816</b>	<b>77.2</b>
20-49	<b>2 290 522</b>	<b>769 087</b>	<b>33.6</b>

Source: LMDSA (2014) from DPRU (2016).

Figure 11 provides a more detailed overview of firm size by SD sector, and emphasises the large share of many sectors that is occupied by small businesses. Indeed, in agriculture, contract cleaning, hospitality, taxi, and wholesale and retail, more than 50% of firms have fewer than 50 employees.

Figure 11: Firm size by sector

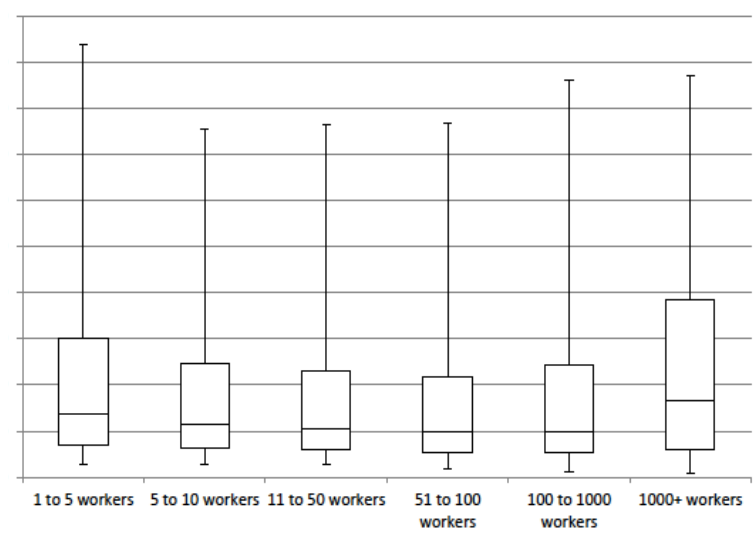


Source: (DPRU and CDSA, 2016)

A note of caution – while the data presented above are for firms covered by sectoral determinations, the small business sector in South Africa is heterogeneous, covering a vast range of occupations and earning levels. For example, small businesses cover both domestic work and medical practices. This heterogeneity is emphasised in Figure 12, which provides wage distribution by firm size (data sourced from SARS). The solid lines indicate the monthly wage distribution for employees by firm size, the rectangles cover the second and third quartiles, and the horizontal line shows the median wage. These data suggest that it is not true that all small firms support low-wage workers. Indeed, the wage distribution is greatest for firms with between one and five employees, and the median wage is bettered only by firms with more than 1,000 employees. Thus, while small firms are a very important point of consideration, it is difficult to present any generalised facts about them, given the extent of the heterogeneity across the small firm distribution. In other words, while small business considerations are clearly important for any debate about employment in South Africa, the data suggest that it would be too simplistic to make the argument that all small businesses would be disproportionately affected by a national minimum wage; nor can one say that there is a clear relationship between small business and low wages in South Africa. In this regard, the impact of various minimum wage levels on the small business sector is discussed in more detail in section 5.4.12 of this Report.



Figure 12: Wage distribution by firm size



Source: Rankin (2016)

Data presented by the National Treasury, derived from the Quarterly Labour Force Survey, suggest that a significant number of small firms would be affected by the introduction of a minimum wage above R3,000. This is illustrated in Table 11, which shows the impact on average wages in firms, and the number of workers affected in firms of different sizes. The most pronounced effects of a national minimum wage would be on firms with fewer than 20 employees. For example, for a wage of R3 189, just over 1.45 million workers would be affected, while the average wage increase would be around 23% for firms with less than 10 workers and 18% for firms with between 10 and 20 workers.

Table 11: Distribution of impact of an NMW on average wages and number of affected workers by firm size

Size of firm	Impact on Average Wages (2015 prices)				Number of workers affected			
	R1 258	R1 886	R3 189	R4 303	R1 258	R1 886	R3 189	R4 303
1-9 workers	2.3%	6.72%	23.35%	40.77%	189 236	362 668	649 088	775 467
10-19 workers	1.79%	5.20%	18.62%	33.98%	217 682	422 794	804 693	984 233
20-49 workers	1.80%	4.78%	16.79%	30.71%	262 388	489 014	922 248	1 132 988
>50 workers	1.45%	3.80%	13.02%	23.61%	518 302	924 651	1 735 124	2 145 624

Source: LMDS 2014. Wages inflated at the rate of CPI to 2015 prices. Note that the agricultural sector numbers do not reflect the increase in 2015 and 2016 of the agricultural sectoral determinations.

When the distribution is examined by sector (Table 12), a slightly different picture emerges. In firms with fewer than 20 employees, retail and community services are notably affected, as are agriculture, manufacturing, business services and construction.

Table 12: Analysis of wages and affected workers by firm size and industry

Firm size	Industry	Workers affected			Proportion of workforce with less than matric		
		R1 886	R3 189	R4 303	R1 886	R3 189	R4 303
2-19 workers	<b>Agriculture</b>	77 470	138 114	14 009	92%	93%	91%
	<b>Mining</b>	5 499	4 068	6 177	20%	84%	64%
	<b>Manufacturing</b>	56 395	114 063	138 934	63%	62%	61%
	<b>Utilities</b>	2 909	4 101	6 660	29%	34%	33%
	<b>Construction</b>	89 785	161 831	202 248	81%	84%	80%
	<b>Retail Trade</b>	190 962	438 631	564 603	57%	55%	54%
	<b>Transport</b>	52 025	1 775	74 013	39%	51%	51%
	<b>Financial and business services</b>	104 442	184 036	216 727	39%	47%	46%
	<b>Community services</b>	205 858	346 762	402 929	66%	53%	50%
	<b>Other</b>	22	400	400	0%	34%	34%

Source: LMDS 2014. Wages inflated at the rate of CPI to 2015 prices. Note that the agricultural sector numbers do not reflect the increase in 2015 and 2016 of the agricultural sectoral determinations.

The median wages reported are lower than averages, but still fairly high. However, even median wages might be upwardly skewed given the presence of 3.3 million very-low-paid workers. The data indicate that there are just over 3.3 million workers in this group who earn less than R3,000 a month. About 20% of these are situated in payroll centres with fewer than 50 employees, as shown in Table 13.

Table 13: Median monthly wage by payroll centre size

Industry	1 to 5 workers	50 to 10 workers	11 to 50 workers	51 to 100 workers	100 to 1000 workers	>1000 workers
Agriculture	<b>R5 391</b>	<b>R3 676</b>	<b>R2 882</b>	<b>R2 625</b>	<b>R2 651</b>	<b>R3 711</b>
Mining	<b>R8 752</b>	<b>R6 977</b>	<b>R6 988</b>	<b>R8 735</b>	<b>R12 822</b>	<b>R13 498</b>
Manufacturing	<b>R6 023</b>	<b>R5 706</b>	<b>R6 012</b>	<b>R6 675</b>	<b>R7 601</b>	<b>R12 563</b>
Utilities	<b>R10 011</b>	<b>R9 616</b>	<b>R13 014</b>	<b>R11 948</b>	<b>R14 413</b>	<b>R30 202</b>
Construction	<b>R5 327</b>	<b>R971</b>	<b>R4 804</b>	<b>R4 860</b>	<b>R5 821</b>	<b>R7 933</b>
Trade	<b>R5 506</b>	<b>R5 158</b>	<b>R4 915</b>	<b>R4 308</b>	<b>R4 446</b>	<b>R3 699</b>
Transport & Communication	<b>R7 624</b>	<b>R8 666</b>	<b>R8 627</b>	<b>R9 338</b>	<b>R9 749</b>	<b>R18 311</b>
Tourism	<b>R3 494</b>	<b>R3 298</b>	<b>R3 226</b>	<b>R3 414</b>	<b>R3 887</b>	<b>R3 402</b>
Financial Services	<b>R27 455</b>	<b>R13 484</b>	<b>R10 426</b>	<b>R7 718</b>	<b>R5 252</b>	<b>R5 003</b>
Government	<b>R6 029</b>	<b>R5 522</b>	<b>R13 036</b>	<b>R14 788</b>	<b>R12 701</b>	<b>R16 844</b>
Non-Government Community Services	<b>R6 507</b>	<b>R5 698</b>	<b>R5 359</b>	<b>R5 426</b>	<b>R5 731</b>	<b>R7 528</b>
Unallocated	<b>R7 236</b>	<b>R5 978</b>	<b>R5 331</b>			
<b>Total</b>	<b>R9 112</b>	<b>R6 487</b>	<b>R5 566</b>	<b>R5 178</b>	<b>R5 566</b>	<b>R10 151</b>

Source: LMDS 2014. Wages inflated at the rate of CPI to 2015 prices. Note that the agricultural sector numbers do not reflect the increase in 2015 and 2016 of the agricultural sectoral determinations.

#### 4.4.3. Care Work and the Expanded Public Works Programme

In terms of understanding the distribution of low pay in South Africa, it is important to consider the Expanded Public Works Programme (EPWP). The EPWP was launched in 2004/05 and is one of the responses of the Government to the high levels of poverty and unemployment in the country. It aims to (temporarily) alleviate unemployment through the provision of short-term, low-paid, labour-intensive work opportunities.

As indicated in Table 14 the EPWP sectors have significantly differing daily wage rates. The table also provides insight into the extent to which the EPWP is responsive to the needs of vulnerable women – a group particularly negatively impacted by poverty, unemployment and HIV (Pareeze and Budlender, 2016). It is important to note here the very low daily wage rates in the care-work sectors – namely the social sector, community works and non-profit organisations (NPOs). These rates are significantly below the infrastructure and environment and culture rates, and have a correspondingly higher percentage of female beneficiaries. The implications of this low-pay care work are discussed in more detail in section 5.4.8.

Table 14: EPWP wage rates

EPWP 30 June 2014

Women

Average daily wage

Sector

Sector	Women	Average daily wage
Infrastructure	<b>61%</b>	<b>R 128.17</b>
Environment and culture	<b>57%</b>	<b>R 106.16</b>
Social sector	<b>86%</b>	<b>R 75.32</b>
Community works	<b>78%</b>	<b>R 72.36</b>
Non-profit organisations	<b>77%</b>	<b>R 71.00</b>
Average/totals	<b>68%</b>	<b>R99.00</b>

Source: Vetten, 2016

Social services in South Africa are provided in part by a network of Government-subsidised NPOs. The Department of Social Development funds between 30% and 70% of the costs of these NPOs, and the organisations are expected to find the balance. As a result, there is evidence of widespread low pay in the sector, with wages sometimes falling below the minimum SD rate for agriculture.

#### 4.4.4. Youth

The youth in South Africa are seen as particularly vulnerable in the labour market. Data from the Centre for Social Development in Africa (CSDA) emphasise this. In work commissioned by the Department of Labour (DoL), CSDA found that young people are disproportionately affected by unemployment. Drawing from the QLFS Q2 2016 survey, they found that the youth have a labour absorption rate of 19.5% compared to 40% for the general population; there are 3.5 million youths not in employment, education or training; 63% of the unemployed youth have been unemployed for a year or more; and there are 720,000 discouraged youth work seekers. The 2015 Labour Market Dynamics in South Africa report finds that youth unemployment rates are more than double the rates for adults: in 2015, the youth unemployment rate was 35.8%, while for adults it was 16.3%. There is a notable gender dynamic, too: young women have a labour absorption rate of 15.4% and an unemployment rate of 34% compared to 23.5% and 33%, respectively, for young men.

### 4.5. Minimum wage regulation in South Africa

#### 4.5.1.4.5.1 The legislation

Section 4.3 presented an overview of the wage distribution in South Africa, and highlighted areas of low pay. This section presents an explanation of the current minimum wage architecture in South Africa, and related wage coverage, wage rates and distribution.

The current minimum wage dispensation in South Africa is based on two key pieces of legislation, the Labour Relations Act (LRA) of 1995 and the Basic Conditions of Employment Act (BCEA) of 1997. The LRA provides for the right to collective bargaining for almost all employees, and provides the legal mechanism within which this process occurs. The BCEA lays out the basic conditions for all employees, irrespective of their bargaining council membership, and outlines the process for the introduction of new sectoral determinations. The BCEA also mandates the creation of the Employment Conditions Commission (ECC) (Isaacs, 2016).

These two acts together outline the wage-setting mechanisms in the country. Briefly, these comprise: collective bargaining (CB) through statutory institutions in the form of bargaining councils (BC), and sectoral determinations (SD) which are determined by the Ministry of Labour and which set minimum wages for various sectors and occupations that are not covered by collective bargaining (DPRU and CDSA, 2016). These two mechanisms are outlined briefly below.

#### 4.5.2. Collective bargaining

Collective bargaining agreements are negotiated between trade unions and employer organisations, and can be extended by the Minister of Labour to cover all companies and workers in a particular sector, regardless of whether or not these workers are members of the relevant bargaining council. There are currently 46 bargaining councils, comprising 37 private, six public and three statutory councils. Bargaining councils can make extension agreements to non-party members through ministerial agreements. These extensions apply to non-party members in a sector – that is, the employers are not associated with a bargaining council. Through these extensions, the conditions of employment agreed to by the bargaining council can be enforced by agents of the bargaining council, and employers can incur penalties for not abiding by the agreed conditions.

#### 4.5.3. Sectoral determination

Sectoral determinations are set by the Minister of Labour, based on recommendations by the ECC, and target areas where workers are considered to be vulnerable, as well as sectors that are not represented by workers' organisations. There are currently 11 sectoral determinations. However, across these 11 SDs, there are 120 different wage rates, which makes the system extremely complex (Isaacs, 2016). Table 15 presents an overview of the current SD regime.

Table 15: Sectoral determination overview

Sector	Occupation/Other Classification	Geographical Areas	Year and Month Introduced	Schedules Within
Domestic workers	All	A and B	August 2002	2
Private security	Artisan, Clerical Assistant (4 grades), Clerk (4 grades), Driver (3 grades) General Worker (2 grades) Security Officer (4 grades), Other	1,2 and 3	November 2001	57
Taxi	Taxi Drivers, Admin, Rank Marshall and Other	All	July 2005	4
Wholesale and retail	Assistant Manager, Cashier, Clerk, Displayer, Driver (4 grades), Forklift Operator, General Assistant, Manager, Merchandiser, Security Guard, Sales Assistant, Sales Person, Shop Assistant, Supervisor, Trainee Manager	A and B	February 2003	36
Forestry	All	All	March 2003	1
Contract cleaning	All	A, B and C	May 1999	3
Farm workers	All	All	December 2002	1
Hospitality workers	Less than 10 employees, and more than 10 employees	All	May 2007	2
Learnerships	NQF 1 to 8 with credit obtainment 0-600 (4 grades)	All	June 2001	14
Expanded public works programme	All	All	November 2010	1
Small business sector	All	All	November 1999	1
Children in the performance of advertising, artistic and cultural activities	All	All	August 2004	1
Civil engineering (discontinued)	Task grades 1-9	All	March 2001	9

Source: Information collected from ECC reports and Sectoral Determinations, available at [www.labour.gov.za](http://www.labour.gov.za); DPRU (2016).

Table 16 contains the wage ranges for the various SD sectors. The Domestic Workers SD is the lowest of all the rates at R1,813 per month for a full-time worker. This is followed by private security at R2,067 per month, and then agriculture and forestry at R2,607 per month. Across the SDs, the mean wage is R3,192 per month, and the median wage is R2,396 per month. It is also important to note that the current SD system covers a large number of workers, estimated by these calculations to be 5.1 million workers.

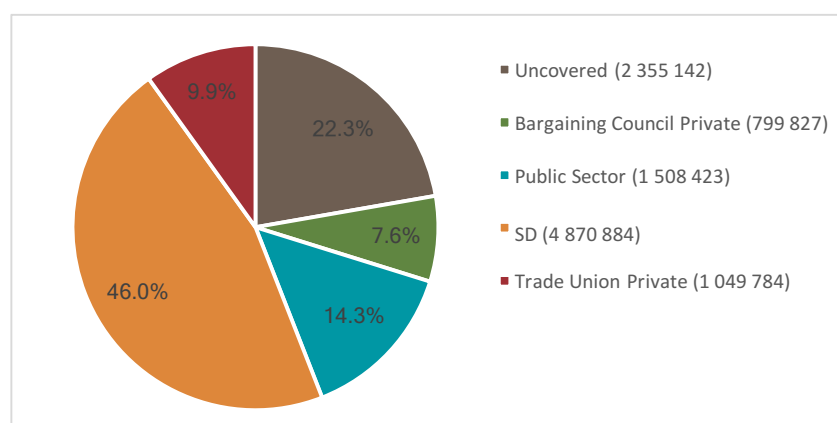
Table 16: Wages in SD sectors

Worker Category – sectoral determination	Lowest Sectoral Determination Wage	Highest Sectoral Determination Wage	Mean Wage	Median Wage	Number of Workers	% of total employees
Agriculture	R2 607	R2 607	R2 414	R2 175	668 048	5.1
Forestry	R2 607	R2 607	R2 231	R1 585	38 710	0.3
Domestic Workers	R1 813	R2 065	R1 671	R1 359	1 131 424	8.6
Private Security	R2 067	R6 155	R3 995	R3 137	523 870	4.0
Wholesale and Retail	R2 514	R6 506	R4 558	R3 171	1 382 320	10.5
Taxi	R2 113	R3 021	R3 796	R2 823	253 358	1.9
Hospitality	R2 761	R3 077	R3 935	R2 719	333 656	2.5
Contract Cleaners	R2 844	R3 122	R2 938	R2 196	743 723	5.7
Average / Total	R2 522	R3 624	R3 192	R2 396	5 075 109	38.6

Source: DPRU (2016)

Figure 13 depicts the coverage of the various minimum wage systems. Approximately 4.9 million workers (46.0% of employees) are covered by a sectoral determination, while 1,5 million workers (14.3%) are covered by public sector collective bargaining agreements. One million workers (9.9%) are private sector workers covered by trade union agreements, and a further 800,000 (7.6%) private sector workers are covered by bargaining council agreements. This leaves 22.3% of the workforce (2,4 million workers) who are uncovered by any form of minimum wage protection. It is important to note that this sample only includes those employees who earn an income that is below the BCEA cut-off, which was set at R205,433.30 per annum in 2014. The significance of the cut-off is that all sections of the BCEA, including the SD provisions, apply to workers earning below this level. Thus the sample reflected in Figure 13 includes approximately 10.5 million workers, which represents about 67% of the total number of employees in the country (DPRU, 2016).

Figure 13: DPRU minimum wage coverage



Source: DPRU and CDSA (2016)

Table 17 disaggregates the uncovered workers outlined above into sectors. The largest proportion of uncovered workers, at 31%, are in the manufacturing sector (719,467 workers). At 29%, the construction sector has the second-highest number of uncovered workers (648,839 workers). This is followed by financial services, at 26% (613,799 workers).

Table 17: Uncovered workers by industry

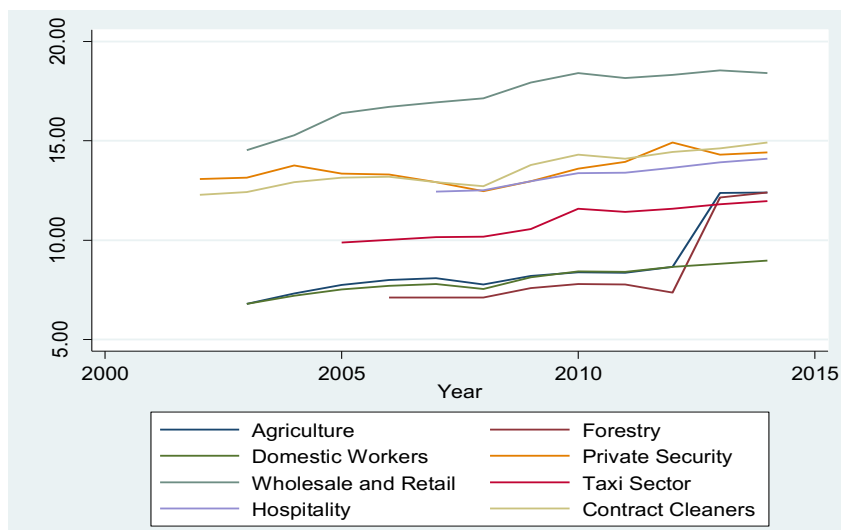
Industry	Number	Percentage
Agriculture	46 931	0%
Mining	35 062	1%
Manufacturing	719 467	31%
Utilities	24 320	1%
Construction	648 839	29%
Transport, storage and communication	250 514	11%
Financial services	613 799	26%
Private households	14 642	1%
Other	1 567	0%
Total	2 355 142	100%

Source: LMDS (2014), DPRU and CDSA calculations (2016)

SD wages are raised periodically by the Minister of Labour, based on recommendations by the ECC. Figure 14 charts SD wage rates over time for the SD sectors. It is clear that all sectors have seen nominal wage growth in the past decade, while agriculture and forestry saw step-jump increases in 2012.



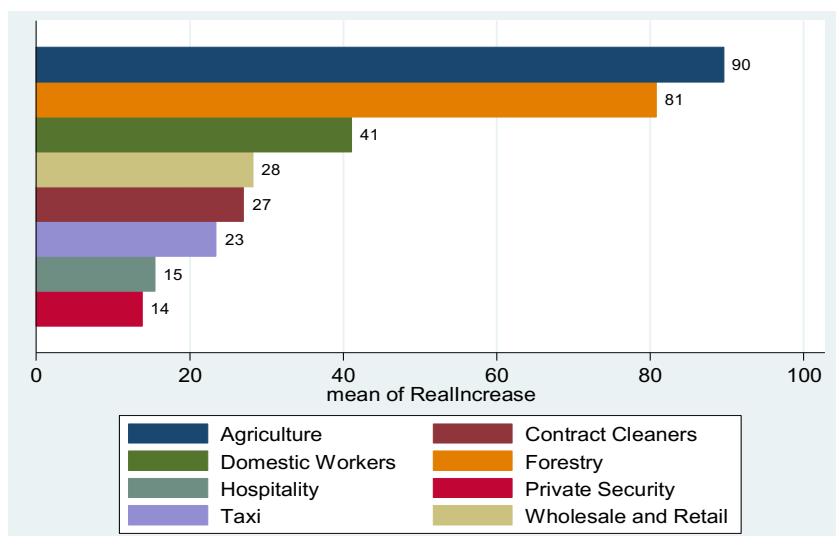
Figure 14: DPRU minimum wages



Source: DPRU and CDSA (2016)

Figure 15 shows that agriculture has seen an increase of 90%, forestry 81% and domestic work 41%. The conclusion that emerges from these figures is that the SD mechanism is effective at increasing real wages in targeted sectors.

Figure 15: Real minimum wage by sector



Source: LMDS (2014), DPRU (2016) calculations.

Note: The growth rates listed above represent the real minimum wage increases for each SD from the time each SD was established – i.e. the Contract Cleaning SD increase of 22% is measured from 1999 to 2015, while the Hospitality SD increase of 13% is measured from 2007 to 2015.

## 4.6. Conclusion

This chapter has presented an overview of low pay in South Africa. The general finding is that wages are low, and there is significant variation in mean and median wages between sectors. In addition, a large number of employees work outside of any formal wage coverage. Poverty is persistent and deep. A key point is that the decision to implement a national minimum wage has been taken in a highly constrained macroeconomic environment with low growth. Secondly, wages remain low, with certain sectors such as agriculture and domestic work receiving extremely low wages. Wage inequality is persistent and growing. Furthermore, small businesses, youth and the EPWP are areas of particular concern in terms of vulnerability and low pay. Furthermore, the current minimum wage system of collective bargaining and sectoral determination is extremely complicated and fragmented. This notwithstanding, there is evidence that these wage setting mechanisms have been successful in meaningfully raising wage rates in certain sectors, such as agriculture and forestry.

## 5. Choosing the level, and transitional arrangements

### 5.1. Introduction

This chapter looks at the relevant research that informed the decision of the Panel. The chapter examines the macroeconomic consideration and possible outcomes of the proposed level. It also talks to some of the areas of concern such as small business and vulnerable workers.

### 5.2. Overview

Having considered all of the evidence before it, and having regard for the challenge of addressing low-wage work in South Africa, while at the same time ensuring that employment creation remains at the core of South Africa's economic policy, the Panel recommends a national minimum wage of R20 hour, equivalent to approximately R3,500 per month (see Table 18), subject to the conditions and exemptions as detailed in section 5.3.5 of this report.

Table 18: The National Minimum Wage

Hourly wage	Weekly wage (40 hours/week)	Monthly Wage (4.3 wks/month)
<b>R20</b>	<b>R800</b>	<b>R3 440</b>

Working hours should be informed by the content of Schedule 1 of the BCEA ("Procedures for Progressive Reduction of Maximum Working Hours"). The goal of the Schedule is to reduce the working hours of employees to a 40-hour working week and an eight-hour day (whether through collective bargaining or sectoral determination), having regard to the impact of such a reduction on employment and employment opportunities. Although the Schedule requires the Department of Labour to consult with the ECC and report within 18 months after the BCEA came into operation, this has yet to happen.

We propose that the initial level be announced by the Nedlac Committee of Principals and be included in the legislation enacted to introduce the National Minimum Wage Rule. We recommend that an initial level of R20 per hour be announced as soon as the CoP has agreed on this proposal, and that it be enacted in 2017. Any adjustments to this level need be carefully evaluated against the evidence of the impact of the introduction of the national minimum wage. In this chapter, we outline the evidence that we harnessed to reach this level for the national minimum wage. The chapter also clarifies the timeframes that the CoP needs to consider

A phase-in period is recommended for workers in agriculture and domestic work, and for other sectors on application and for a limited time period only. We recommend that transitional arrangements be put in place for phasing-in (with a tiered NMW) for a maximum period of 24 months from the date of implementation. These recommendations are fleshed out in this Chapter, and the rationale is outlined.

## 5.3. Level and transitional arrangements

### 5.3.1. Considerations influencing the Panel

A national minimum wage set at the appropriate level is an effective policy instrument and can play a positive role in addressing extremely low earnings levels, working poverty, and the broader challenges of poverty and inequality. However, it cannot bear the burden of single-handedly solving the huge inequities in our labour market and in our society. To achieve its full impact, a national minimum wage has to be accompanied by an appropriate set of other social and economic policies.

Using an ILO framework, based on the broad lessons taken from the international experience (see Chapter 3), the Panel took the view that, to be effective, the following were the critical considerations which should inform how best to implement the first national minimum wage for South Africa:

- The wage level should be set at an adequate level that takes into account the needs of workers and their families, as well as economic factors.
- The strategy should be to have broad legal coverage, affording protection to most or all workers in an employment relationship.
- The policy should be accompanied by effective application measures to ensure high compliance with the minimum wage.
- The mechanism to set the minimum wage should have the full participation of social partners.

This chapter is focused on the first of the issues included above: the level.

The Panel was fortunate to have access to a wealth of research on the South African labour market, a set of excellent studies which have been undertaken specifically to consider the issue of a national minimum wage in South Africa, as well as evidence on the international experience with a national minimum wage. The Panel sought to fill in gaps through engagements with other stakeholders and interested parties. A comprehensive description of the Panel's engagements with researchers and stakeholders is described in Chapter 2.

Choosing an appropriate level of the national minimum wage needs to balance two opposing issues. On the one hand, it needs to be set at a level high enough so that it acts as a meaningful wage floor and has an effective and positive impact on addressing poverty and inequality. On the other hand, the level has to take account of the possible negative impacts. Here, the disemployment impacts are paramount.

International evidence suggests that these disemployment impacts are often overstated. Empirical evidence is quite unequivocal. The concerns of a disemployment effect resulting from the introduction of a national minimum wage have not been borne out in the many empirical studies that have been done (Belman and Wolfson, 2014; Kuddo *et al.*, 2015). However, potential disemployment is a very real concern in the context of unacceptably high levels of unemployment in South Africa. The NMW must not contribute to a significant increase in the level of unemployment.

The NMW is being proposed and could be implemented at a time when the economy is experiencing many challenges, including low economic growth (see Section 4.2.2). The level at which it is set and the

proposed implementation path needs to be cognisant of this, and ensure that its negative impacts on firms and employment are minimised.

The major rationale for a national minimum wage is to set an earnings floor that ensures substantive earnings support to vulnerable workers at the precarious end of the labour market. We confront a cruel irony here in that it is precisely the most vulnerable in the labour market who are most at risk of unemployment if the national minimum wage is set at a level that is too high. This is a consistent theme in the international and South African literature, and weighed heavily in our assessment of risks.

### 5.3.2. Level

The Panel concluded that, in general and in line with much of the empirical work internationally, there were real benefits to setting a reasonable minimum wage. While there are risks of employment losses, there is little evidence to support undifferentiated, inexorable and large employment losses across the board.

The setting of a national minimum wage involved the determination of a meaningful level at which the first NMW should be set. This process of deliberations was based initially on the minimum wage ranges presented by the Nedlac constituencies of R1,993 to R4,500 per month. However, the exact placing of the NMW within this range is non-trivial. The proposed number is intended to be just below the threshold where the effects on employment change from benign to negative.

In reaching the recommendation that the first national minimum wage for South Africa be set at a level of R20 per hour (R3,500 per month), the Panel carefully considered all of the evidence, debated the issues at length and reached what we believe to be a carefully considered level. Given the wide minimum wage range proposed, and the disemployment and other effects associated with the various proposals, the Panel considered several key aspects related to the wage level. These were: the wage distribution in South Africa; poverty lines and a living wage; employment effects (particularly on small businesses); effects on youth employment; and affordability

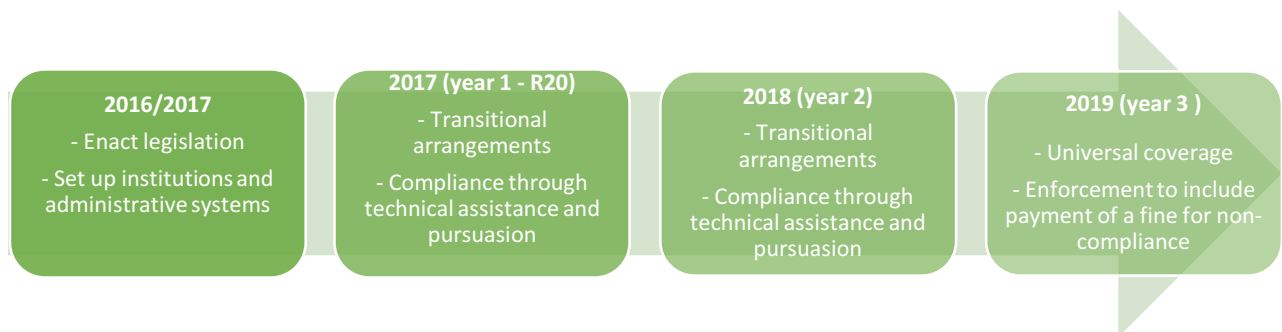
### 5.3.3. Timeline for implementation

Assuming that new legislation is to be introduced to establish the NMW Rule, we propose the following timeline (see also Figure 16):

- By December 2016:
  - Agreement by the Committee of Principals on the NMW level and publication of the proposed rate and basic details of the NMW system; agreement reached on the rule and draft legislation prepared for Parliament.
- By 1 July 2017:
  - Legislation enacted and the Decent Work Commission/NMW Expert Panel and secretariat established; rolling out of an extensive public campaign and training programme; setting up of ICT systems and modernising the administration of the NMW system. We propose that the initial level (R20) take effect subject to any transitional arrangements that have been permitted; compliance should be achieved through technical assistance and persuasion (no sanctions by way of a fine in year 1 and year 2)

- 1 July 2017-30 June 2019:
  - Applicable transitional arrangements in place, and compliance aided through technical assistance and persuasion.
- 1 July 2019:
  - Universal coverage of the NMW. Enforcement to include payment of a fine for non-compliance, and the Expert Panel can consider implementing an adjustment to the level.
- The Panel believes that, as far as is possible, consideration should be given to compressing the timelines for the institutional and legal requirements. The Panel does, however, believe that a 2-year period of adjustment is needed to monitor the effects of the NMW and to minimize the risks of negative employment impacts.

Figure 16: Proposed timeline for implementing the MNW



In the event of an unforeseen delay in establishing the rule and the NMW Commission/NMW Expert Panel, using the BCEA mechanism to introduce a general sectoral determination could be considered as an interim measure.

The debate on the impact of the national minimum wage has focused on the likely employment impacts. While these are no doubt important, the Panel believes that any negative employment effects can be significantly ameliorated by ensuring that the following three principles are built into the architecture of the system:

- The introduction of the system should be undertaken in a manner which provides firms with a sufficiently long period of time to enable them to adjust to the national minimum wage. In other words, the adjustment process should be sufficiently flexible.
- The system should be designed so that it is predictable, and firms and workers can have a reasonable amount of certainty about how the system will operate.
- Any adjustments to the initial level of the national minimum wage should be evidence-based.

The Panel believes that the timeline for the introduction of the national minimum wage outlined above, and elaborated on below, provides a sufficient period of time for firms and workers to adjust to the new system.

#### 5.3.4. Transitional arrangements

A phase-in period is recommended for workers in agriculture and domestic work, and for other sectors on application only and for a limited time period only. We recommend that transitional arrangements be put in place for phasing-in (with a tiered NMW) for a maximum period of 24 months from the date of implementation, as follows:

- Farmer Worker and Forestry sectors (subject to Sectoral Determinations 13 and 12 respectively)
  - Year 1 (2017) – the greater of 90% of the NMW, or the relevant sectoral determination. Given the vulnerability of this sector to disemployment effects, and the evidence that previous increases in the minimum wage level have resulted in job losses, any adjustment to this tier needs to be carefully considered based on a careful evaluation of evidence generated from the implementation of the NMW.
- Domestic work sector (subject to Sectoral Determination 7)
  - Year 1 (2017) – the greater of 75% of the NMW, or the relevant sectoral determination. Any adjustment to this level tier should be made on the basis of evidence on the impact of the introduction of the NMW.

The Panel strongly believes that any transitional arrangements should have effect until 2019 at the latest. After this period, the objective of universal coverage of the NMW system should be achieved. Any other transitional arrangements for sectors and industries that are currently covered by sectoral determination or bargaining council agreements should be permitted only on application to the Minister of Labour, advised by the ECC and after consultation with Nedlac (2016: 6). Such arrangements must be objectively justifiable and require progressive phasing-in of the NMW level.

#### 5.3.5. Exemptions

##### **Temporary Exemptions**

The Panel recommends that the national minimum wage system should, both during the transition phase and thereafter, have a process by which the Minister, advised by the ECC or the NMW Commission/NMW Expert Panel, and in consultation with Nedlac, is able to exempt, temporarily, firms or industries facing economic hardship. The Department of Labour needs to begin setting up processes for such exemption applications, which should be simple and efficient. The exemptions process should be designed around the following principles:

- Exemptions must only be made available to firms in significant economic distress.
- The exemptions process must be efficient and timeous.
- The exemptions process must be based on appropriate and verifiable documentary evidence.

##### **Permanent Exemptions**

The Panel recommends that own-account workers, and paid or unpaid family workers in informal enterprises are permanently exempt from the NMW.

## 5.4. Key considerations

### 5.4.1. Needs of workers and their families

There are high levels of poverty, large numbers of working poor and high dependency ratios in South Africa. Moreover, in line with broad income inequality in the overall population, wage inequality is very high and increasing. While cognisant of the fact that the minimum wage alone cannot solve South Africa’s wage inequality or poverty challenges, the NMW level must be mindful of the living wage required for a dignified life.

### 5.4.2. Poverty

The low-earnings profiles discussed in Chapter 2 show that current wage levels in South Africa do not meet the needs of families and are not sufficient to raise families above the poverty line. As we saw in Chapter 4, it is estimated that 50% of households with a wage earner live in poverty and that wage income is the most important source of income for the bottom 50% of households (Isaacs, 2016).

Table 19 shows estimated poverty lines in South Africa as at February 2016. This data shows that an employee would have to earn at least R4,400 per month to clear the working poverty line; for households the level is closer to R5,500 per month. In contrast, as at July 2016, 50% of workers earned R3,790 or below (wage calculated at hourly average), implying that many families live below poverty levels. This is further exacerbated by the low labour force participation in poor households. Many have only one earner, and many others have no wage earner at all. Referring back to the average household size in Table 5, and using the upper poverty line in Table 6, a minimum wage at R4,050 (which is  $R779 \times 5.2$  members) would be needed by a family in the lowest quintile to escape poverty, and a minimum wage of about R3,200 would be needed for a family in quintile 2 to escape poverty.

Table 19: Updated poverty lines (February 2016)

Poverty Line	<b>R1 386</b>
Household poverty line (family of four)	<b>R5 544</b>
Working poor line	<b>R4 317</b>

Source: Isaacs, (2016). Updated from Finn (2015) using NIDS Wave and LMDSA datasets. February 2016 Rands.

With the above information in mind, Table 20 presents more detailed information about household-level income. Read with Table 19, it is clear that only households in quintiles four and five earn above the household-level poverty line, while the household incomes of quintiles one and two are significantly below the poverty line.



Table 20: Household size, distribution and income across quintiles

	Poor			Non-Poor		All
	Quintile 1	Quintile 2	Quintile 3	Quintile 4	Quintile 5	
General						
Share of Households	20%	20%	20%	20%	20%	100.0%
Number of People (000s)	16 306	12 867	8 979	7 640	6 483	52 275
Share of Population	31.2%	24.6%	17.2%	14.6%	12.4%	100.0%
Ave. Household Size	5.2	4.1	2.8	2.4	2.1	3.3
Ave. Monthly Household Income	R1 671	R3 125	R4 169	R7 317	R24 090	R8 018
Ave. Monthly per capita Income	R323	R773	R1 491	R3 117	R12 509	R3 611

Source: DPRU (2016)

#### 5.4.3. Social wage

While wages are low relative to living levels, there are arguably some offsetting effects from the social wage spending by Government. About 35% of South Africa's budget is spent on programmes targeted at the poor, including free basic education, health care, water and electricity, and income support grants for children and the elderly.

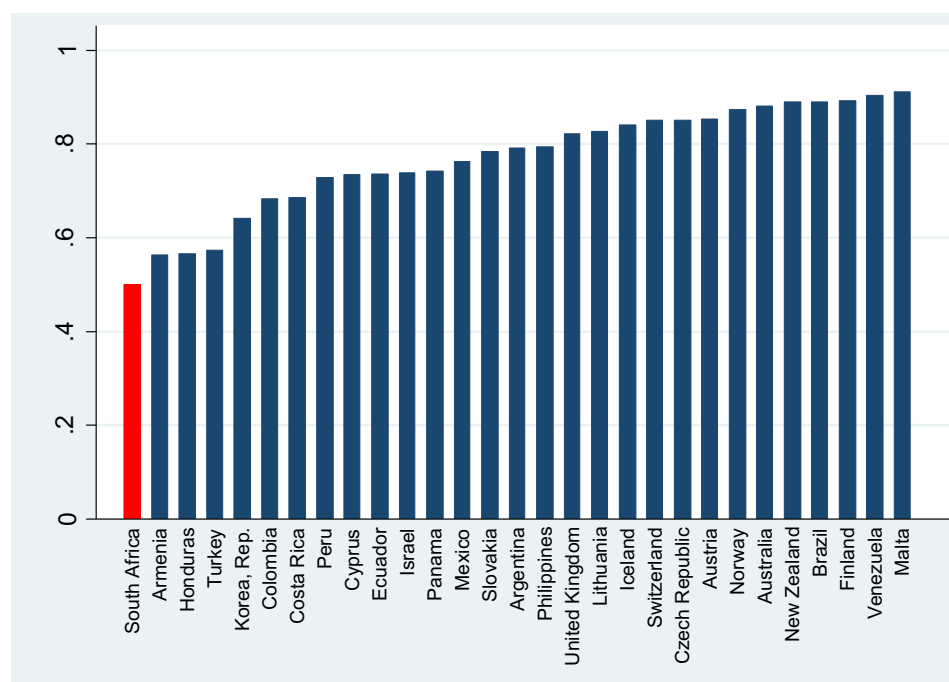
#### 5.4.4. Inequality

The South African labour market, similar to the broader population, has very high income inequality. Black Africans and coloured people comprise the largest proportion of people living in poverty (59% and 56% of each population respectively) relative to Indians and White people (37% and 22% respectively), which increases the importance of addressing low wages from a social justice perspective.

Typically, in countries with high income inequality, the mean wage will be disproportionately higher as high-income earners pull up the average. In South Africa, mean wages are higher than median wages, and growing at a faster rate. South Africa had the lowest median to mean ratio of wages compared with other countries studied, indicating that wage inequality is higher here. This is further evidence that there is high and rising inequality in the ranks of the employed. An NMW alone is not going to arrest this trend. However, linking minimum wages to the level of general wages could increase the likelihood that low-paid, vulnerable workers' income is not left too far behind.

Figure 17 provides a graphical representation of the median to the mean for a range of countries. It is striking that, of this sample, South Africa has the lowest ratio, falling below comparator countries such as Turkey, Mexico and Brazil.

Figure 17: Median to mean wage ratios



Source: ILO Global Wage Database

#### 5.4.5. Employment effects

The Panel acknowledges that an NMW set above affordability levels could have negative employment effects. This risk cannot be taken lightly, given the very high unemployment rates in South Africa, and the recognition that employment is one of the most important ways in which poverty can be addressed. It is not necessarily true that the mere presence of an NMW will lead to reduced employment opportunities, but the potential of such an eventuality was one of the foremost considerations in the decision about both the level and implementation path for the NMW.

Employment impacts of the NMW are difficult to forecast ahead of policy implementation. The different researchers who presented findings to the Panel came to differing conclusions regarding the potential impact of the NMW on employment levels. South Africa has a complicated labour market with huge wage inequality and great heterogeneity in the levels of wages. The Panel paid detailed attention to the potential coverage of any national minimum wage across this heterogeneity. It is this evidence that is at the heart of all of the discussions of exemptions, tiers and phase-in periods.

The international literature shows that the aggregate effect of the implementation of the NMW on employment is marginally negative or neutral, often statistically undetectable and sometimes positive (Isaacs, 2016). A review of global studies has shown that minimum wage-employment elasticities are relatively benign based on international evidence, although this comes with a strict caveat that it is not a result which will hold for any level of a minimum wage increase.

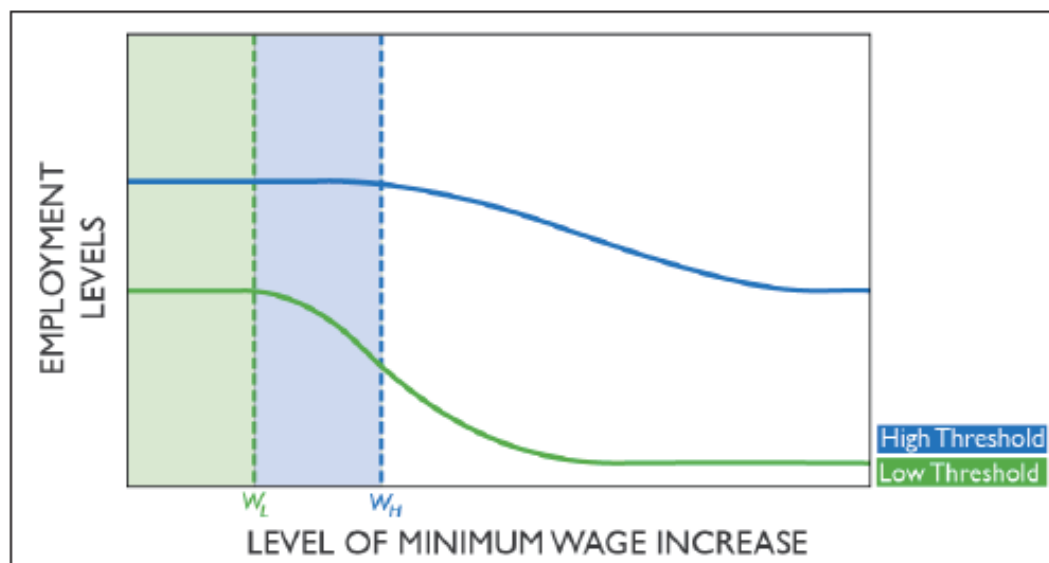
Empirical evidence suggests that different country contexts matter, and that developing economies may respond to minimum wages differently to developed ones (Isaacs, 2016). Furthermore, the impact may vary across industries and regions, as well as across different labour categories (age, gender, skilled/unskilled, private/public, formal/informal, etc.). This research makes the point that the limited employment effects of minimum wages should not be surprising given that: a) firms have multiple cost inputs, not just wage costs; b) firms adjust to wage increases in a variety of ways including productivity increases, slight price rises, wage compression and reduced profit margins; c) reducing the number of employees is often not the most efficient manner of cutting costs, while maintaining output levels can spur greater spending and demand for goods and services in the economy.

Even within narrowly defined sectors, firms exhibit markedly heterogeneous responses to shocks such as this. For example, there has been detailed research on firm-level response to trade liberalisation, and this research finds divergent responses by firms to the shock of international competition (Melitz, 2003; Bernard, Redding and Schott, 2007). What is important to note in this regard is that while the data do identify certain sectors that are more vulnerable to the imposition of the NMW, it is likely that these sectors will exhibit heterogeneous responses to the minimum wage, and that caution must be taken when presenting any sector- or industry-level generalisations.

Computable General Equilibrium (CGE) models presented to the Panel suggest material employment losses, even at the suggested NMW level, but these depend on the employment elasticities assumed (DPRU, 2016). Some sectors exhibit much higher vulnerability to disemployment effects. We have some evidence of minimum wage setting in South Africa operating within this benign range. Research has found that minimum wage adjustments in South Africa have not had significantly negative disemployment effects in general, with the notable exception of agriculture.

Conceptually, there is a benign range for a minimum wage level, and an NMW within this range will not have significant nor large disemployment effects. However, an increase beyond this range could lead to loss of employment. This is illustrated in Figure 18. The key challenge is that the threshold beyond which the NMW could result in job losses is not predictable, and will differ across sectors. The only way to discover this level to is progressively raise wages and carefully monitor employment effects.

Figure 18: Minimum wages and employment - a theoretical construct



Source: DPRU (2016)

This benign level is likely dependent on the sector, with sectors that have very low wages, such as domestic work and agriculture, being most vulnerable. In sensitive sectors where minimum wage increases have been large (such as in agriculture), employment losses ensued (DPRU, 2016). On introduction of the minimum wage in the agriculture sector, which increased wages by 17%, just under 200 000 jobs were lost, and employment never recovered to pre-minimum wage levels. Vulnerable sectors can be adjusted for in the framework by tiering the wage to accommodate sectors perceived to be more vulnerable, and adopting a cautious and flexible approach to implementation.

#### 5.4.6. General level of wages

Section 4.3 provided a detailed examination of the nature and extent of low pay in South Africa. It is worth summarising again some of the key data presented in Table 8. Some 6.2 million workers (47.3% of all workers) earn below R3,500 per month, and there is marked variation in the distribution of low pay between sectors. Of workers in private households (that is, domestic workers), 90.7% earn below R3,500 per month, while 84.5% of workers in agriculture earn below this level. In comparison, only 23.9% of workers in the electricity, gas and water supply industry, and 18.2% of workers in mining and quarrying earn below R2,500 per month.

The Panel considered economic and affordability criteria, starting with the aggregate level of wages. Benchmarks included the mean and median level of wages in the economy, and the relationship between the two. Globally there is a wide variation in the levels at which NMWs are set relative to mean and median wages. Table 21 shows ranges of ratios of the NMW to mean and median wages across selected countries. NMWs can be as high as 1 times the median and as low as 0.32 times the median. Settings relative to means also vary widely, with ratios as low as 0.37 and as high as 0.69 observed. In 2015, the

average minimum-to-median wage ratio across a set of countries was at 0.67 and the average minimum-to-mean ratio was at 0.51 (DPRU, 2016).

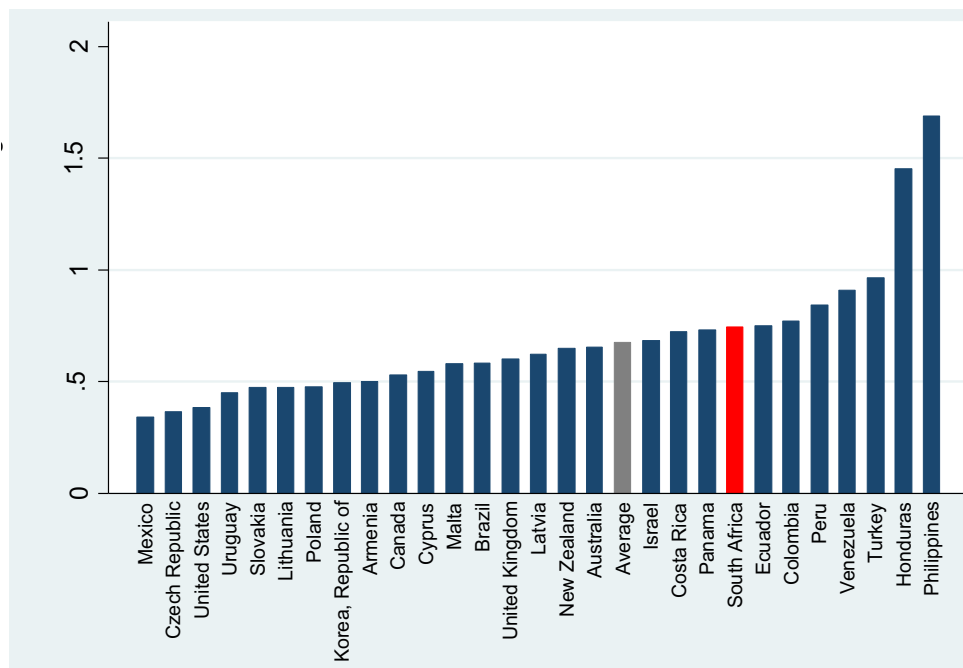
Table 21: Observed ratios to means and medians

Ratio	Min	Max
European countries		
NMW to mean	<b>0.32</b>	<b>0.50</b>
NMW to median	<b>0.37</b>	<b>0.61</b>
Emerging economies		
NMW to mean	<b>0.37</b>	<b>0.77</b>
NMW to median	<b>0.41</b>	<b>1.05</b>

Source: DPRU (2016) from the ILO

In contrast, when looking at minimum to median wages, South Africa is above average in the sample presented in Figure 19. However, this is more a result of very low median wages, more than an indication that the minimum wages are higher than in the comparator countries.

Figure 19: Minimum to median wage ratios



Source: ILO Global Wage Database

Deliberations on the appropriate wage level drew heavily on the wage and income distribution data presented in Chapter 4 of this report. This section highlights the extent and magnitude of low wages in South Africa, and the particular concerns around certain sectors such as agriculture, domestic and care work, and manufacturing. This analysis informed the development of Table 22, which presents mean and median wages in South Africa in August 2016 prices, and adjusts for the impact of the low-pay sectors. The discussions were further guided by the empirical modelling evidence presented to the Panel by the research teams, as well as the comparative and historical implementation of minimum wage regimes in other countries, as detailed in Chapter 3.

Table 22: Mean and median wages in South Africa

Assumptions	Mean (R)	Median (R)
1. All earners including zero earners	<b>8 773</b>	<b>3 442</b>
2. Zero earners removed	<b>8 810</b>	<b>3 476</b>
3. F&I ex. agri. and domestic *45*4.3 (full-time)	<b>10 634</b>	<b>4 485</b>

Source: Finn (2016), calculations from LMDS (2014)

As discussed elsewhere, the median wage is a more appropriate measure in South Africa than the mean wage, due to the very high wage inequality which biases the mean upwards. Drawing from Table 22, the proposed wage of R20 per hour or R3,500 per month is approximately 0.78% of the median wage for the formal and informal economy, excluding agriculture and domestic work, and adjusted for an hourly wage (line 3 above) as at August 2016. This is largely in line with broad international experience. As outlined in Chapter 3, the ratio of minimum wage to the median in developed countries is generally between 0.35 and 0.60, and for developing countries, with higher levels of wage inequality, this ratio is between 0.68 and 0.82. Thus, our proposal fits well within the international norms.

Table 23 shows the profile of mean and medians of wages in South Africa. It shows how each NMW level would compare with means and median.

Table 23: Estimated mean and median of wages as at July 2016

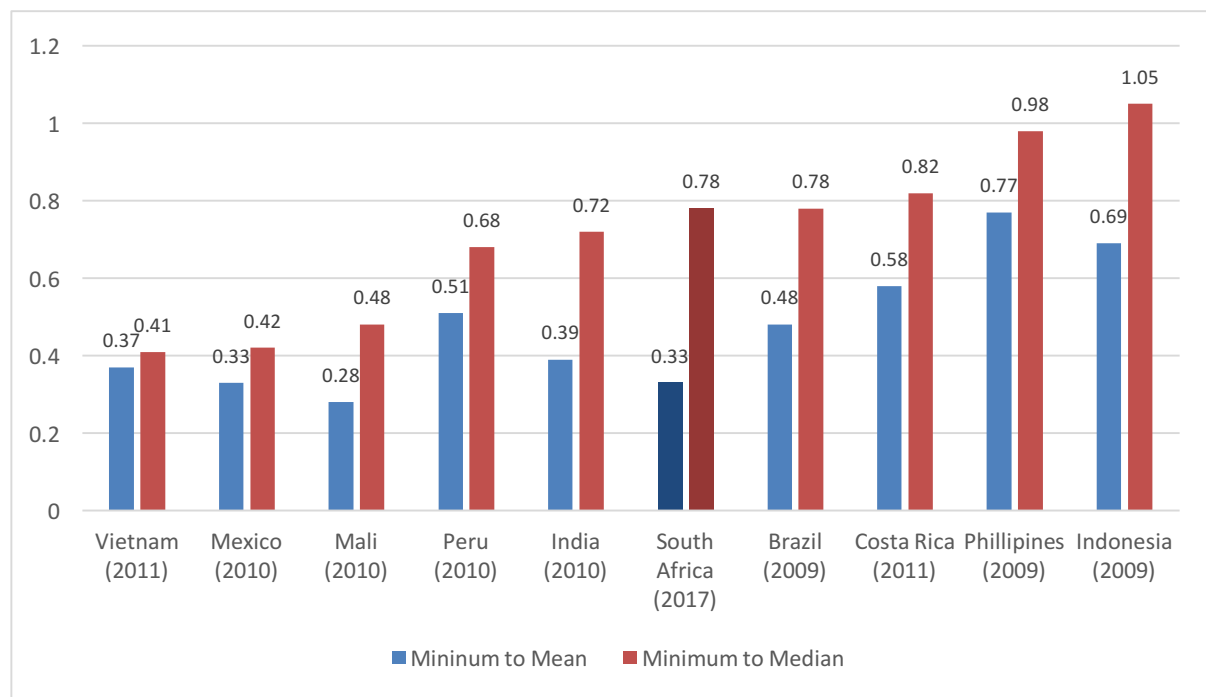
Assumptions	R2500		R3000		R3500		R4000			
	Mean	Median	Mean	Median	Mean	Median	Mean	Median		
Ratio of wage to:										
Formal ex. agriculture and domestic	<b>10 634</b>	<b>4 485</b>	<b>0.24</b>	<b>0.56</b>	<b>0.28</b>	<b>0.67</b>	<b>0.33</b>	<b>0.78</b>	<b>0.38</b>	<b>0.89</b>

Source: Finn (2016), and NMW Panel calculations

The ratio that is relevant for setting the NMW will depend on decisions about which sectors are covered and to what extent. However, a cursory glance shows that at R4,000, the NMW would be high relative to median wages, and that the ratio would be well in excess of what has been observed globally. On the other hand, R3,500 is affordable relative to international averages on a minimum to median basis. It is interesting to note that even with the most conservative wage estimates, a high R4,000 does not reach the minimum-to-mean international average of 0.51.

Figure 20 presents the minimum-to-mean and minimum-to-median wage ratios for a selection of comparator countries and presents the South African ratios for a minimum wage of R3,500 per month. While the minimum-to-mean ratio is relatively low, the minimum to median ratio is broadly in line with the comparator countries.

Figure 20: Minimum wage ratios



Source: ILO Global Wage Database and own calculations

#### 5.4.7. Macroeconomic considerations

##### **Affordability**

Another way of measuring affordability is by assessing the potential rise in the wage bill across sectors on introduction of a national minimum wage. Table 24: Impact of NMW setting on sector wages shows the estimated rise in wages across sectors if the NMW were set at R2,447 and R3,400 in 2014 (DPRU, 2016) and illustrates what an equivalent NMW setting would be in 2016 prices.

Table 24: Impact of NMW setting on sector wages

Wage level		
2014 level	<b>R2 447</b>	<b>R3 400</b>
Inflation increase (2014 - 2016)	<b>14.8%</b>	<b>14.8%</b>
2016 level	<b>R2 808</b>	<b>R3 902</b>
Simulated Wage Increase (%)		
Agriculture	<b>14.0</b>	<b>32.7</b>
Mining & quarrying	<b>1.4</b>	<b>2.6</b>
Manufacturing	<b>3.7</b>	<b>7.4</b>
Electricity; gas and water supply	<b>1.5</b>	<b>2.8</b>
Construction	<b>4.9</b>	<b>11.3</b>
Wholesale and Retail Trade	<b>4.1</b>	<b>8.4</b>
Transport; storage and communication	<b>5.1</b>	<b>8.9</b>
Financial Services	<b>3.2</b>	<b>7.3</b>
Community, Social and Personal Services	<b>5.1</b>	<b>10.0</b>
Private Households	<b>14.1</b>	<b>30.1</b>

Source: DPRU (2016)

Consistent with the distributions of low earnings, the sectors whose wage bills would be worst affected by the NMW are the agriculture and private household sectors. At an NMW of R2,800 wages in these sectors would rise by an estimated 14%. The other sectors would see wage bills rising by around 5.0% or less. At an NMW of R3,900, agriculture and private household sectors would see wages rising by over 30%. The next worst affected sectors (social and construction) would see wages rising by around 10%. Wholesale and retail trade, transport, storage and communication, manufacturing and financial services would see wages rising between 5% and 10%.

With the exception of agriculture and private household sectors, modest wage increases would be experienced by the economy as a whole at an NMW of around R2,800. However, an NMW set at R3,900 would create higher increases in overall spending on wages across a wider spread of sectors. These impact estimates argue for caution at mooted rates closer to the R4,000 mark, and argue for consideration of a tiered system to lessen the impact on the vulnerable domestic work and agriculture sectors.

This type of analysis again highlights the degree of shock to employers in the vulnerable sectors (agriculture and private households in particular) of a minimum wage set at the current R3,500. This adds to the argument to exercise caution with respect to the implementation of the NMW in these sectors, and supports the proposed tiering system.

### Current environment

The South African macroeconomic environment is challenging. It is critical to point out that the proposal for the implementation of a national minimum wage comes at a time when South Africa is faced by a variety of serious, interrelated economic challenges, including high levels of unemployment, very low growth and global economic uncertainty, among others (see Section 4.2.2). The Panel considered the potential implications of this contextual environment on the impact of the NMW, especially on employment levels. The Panel believe that this warrants a more cautious approach, and supports the



extended timing with respect to when employers are expected to comply and the provision of a mechanism to apply for temporary exemption for employers experiencing financial difficulty.

### **Potential long-term outcomes**

Much of the Panel's analysis underpinning the determination of the minimum wage level is based on excellent microeconomic data, as presented in Chapter 4 and elsewhere in the report. These data are robust and generally accepted as an accurate picture of South Africa's labour market, and especially the patterns and distributions of wages and earnings. There is agreement on their reliability across the parties, and this means that the data have been most useful in examining the various possible wage levels.

The disagreements between the social partners are essentially on how firms, and the economy more generally, will adjust to the introduction of an NMW. In reaching a view on how the economy will adjust, the Panel had to rely on macroeconomic modelling undertaken on behalf of Labour and Government. Unfortunately, the macro models took the analysis into less certain territory. Unlike the microeconomic data, which are cross-sectional and largely descriptive, the macroeconomic models are underpinned by a set of normative assumptions about how the South African economy operates. Furthermore, by their very construction, models can only provide a guide to how the economy will adjust. This is complicated by the fact that the models presented to the Panel are based on materially different assumptions, and provide markedly divergent predictions about the behaviour of the economy. Of course, since these models all look into the future and attempt to predict the impact of the NMW, it is not at all surprising that they generate very different sets of results.

The University of Cape Town's Development Policy Research Unit (DPRU) used the Computable General Equilibrium approach to estimate the impacts. The DPRU's chosen CGE model has been criticised for being biased towards indicating job losses and a fall in aggregate demand at any minimum wage level. It has been argued that "CGE models and assumptions made cannot, by design, accommodate non-negative consequences from an increase in wages" (Storm and Isaacs, 2016). According to CGE models, firms essentially have only two options available to mitigate wage increases – either they reduce employment by substituting workers for other factors of production, or they can increase prices, thus passing the burden to consumers (Pauw, 2009). This is in direct contrast to empirical studies, including those conducted by the DPRU on the South African labour market, which show much more diverse outcomes from the introduction of minimum wages. Indeed, the international experiences do not bear out the predictions of wide-scale job losses that are suggested by the GCE model (see Chapter 3). Moreover, the CGE model is highly dependent on assumed employment elasticities, about which there is no consensus, which makes its results more difficult to interpret.

The University of the Witwatersrand's National Minimum Wage Research Initiative (NMWRI) estimated the impact of various NMW levels using the US Global Policy Model (GPM). To illustrate a broader range of options that could be employed to respond to the introduction of an NMW, they present a survey of numerous meta-analytical and statistical studies presenting the impact of the NMW on employment in about 70 countries. They compare results from the meta-studies with the Dynamically Integrated Macro-

Micro Simulation model of South Africa<sup>10</sup> (DIMMSIM) and the United Nations Global Policy Model (UN-GPM)<sup>11</sup> and ultimately come up with the proposals of adjustments presented below. One of the key ways in which the DIMMSIM model differs from the CGE model is that it allows for positive benefits from the implementation of a minimum wage through productivity increases in workers, and positive externalities from the greater income share of labour.

To summarise, the Panel was left with three sets of “conclusions” that can be drawn from the macroeconomic modelling work undertaken:

- The DIMMSIM suggests a fairly optimistic view of the impact of the NMW. The model concludes that overall an NMW in South Africa would be a pro-poor measure that reduces poverty, especially among Africans, coloureds and rural communities. It also reduces inequality and improves economic growth. The wage adjustments, affecting at least 48% of full-time workers across sectors of the economy, help increase the average sector wage rates from below instead of disproportionately increasing the remuneration of high-skilled workers.
- The DPRU’s Global Environmental Multiscale (GEM) model reaches a more pessimistic view of the impact of the NMW. The DPRU model, based on an elasticity of 0.1, 0.3, and 0.5, concludes that a minimum wage of R3,400 in 2014 figures would lead to job losses in the order of 204,977, 566,107 and 897,068 jobs, respectively.
- The National Treasury GEM model reaches a similarly pessimistic view as that of the DPRU. Based on a minimum wage of R3,189 in 2014 numbers, the National Treasury concludes that approximately 715,000 jobs will be lost. Moreover, the National Treasury model predicts that GDP will fall by 2.1%.

The Panel considered research based on economic models making divergent assumptions. It was not the business of the Panel to judge the accuracy of these models, but rather the Panel considered all inputs to inform its deliberations on the minimum wage. The assessment of the probable impact of the NMW was thus not conducted on a balance-of-probabilities, but was based on a thorough and considered evaluation of all the evidence placed before the Panel.

A key consideration informing the Panel’s deliberations was an acute understanding that much of the research, and indeed the architecture of the models, is based on the experience of developed countries,

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<sup>10</sup> The DIMMSIM model, designed by Asghar Adelzadeh of Applied Development Research Solutions (ADRS), combines macro and micro model components. It is based on a broad pluralistic theoretical foundation to estimate more than 400 behavioural equations. DIMMSIM uses neither the CGE’s analytical framework nor the calibration method to develop its parameters.

<sup>11</sup> The UN-GPM is a demand-driven, global econometric model that draws on an UN-compiled dataset of consistent macroeconomic data (1970 – 2014, panel structure) for every major country or economic bloc. It is used by the G20 and the UN as a medium term (15-20 years) forecasting and modelling tool. It does not assume, a priori, that an increase in wages leads to an economic expansion, in South Africa or elsewhere.

and is thus not perfectly transferable to the South African context. As is evident from the Panel engagements detailed in Chapter 2, the Panel addressed this issue through wide and substantive consultations with a range of researchers and constituencies in order to more fully understand the nuances of implementing a minimum wage in a developing country context.

#### 5.4.8. Vulnerable workers

The deliberations on the level of the minimum wage were made iteratively with discussions about the proposed initial and eventual coverage of the minimum wage. While ideally the wage would be applicable to all employees, given the wage distribution and sector-specific concerns, this is neither practicable nor desirable – at least in the short run – and thus mandates a discussion about the intended coverage of the NMW.

With regard to workers to whom the NMW Act does not apply, we note the provisions of ILO Convention C131 on the need to identify reasons for excluding groups of wage earners,<sup>12</sup> and we recommend a limited number of exclusions only in relation to –

- Workers who are employed in terms of a learnership agreement contemplated by the Skills Development Act and whose terms and conditions are regulated by Sectoral Determination 5: Learnerships.
- Workers who are participating in the Expanded Public Works Programme. The aim of the EPWP, governed by the Department of Public Works, is to work with communities to provide work opportunities (temporary work and income relief) for the unemployed. The conditions for work, including remuneration, for participants/workers in the EPWP is regulated by Sectoral Determination 4: Expanded Public Works Programme.
- Unpaid volunteers and volunteers receiving a stipend.
- Persons employed by state security agencies or members of the South African National Defence Force.
- Family businesses, where members of the family reside in the family home of the employer and participate in the business.

It should be noted that “some countries have established a reduced minimum wage for the probationary period following a worker’s recruitment” (ILO, 2014a: 80).<sup>13</sup> However, in some countries the practice of doing so is prohibited. In the Panel’s view, any exclusions of this kind should be viewed with scepticism (in view of the equal pay principle and the social justice objectives of the NMW). However, if a strong argument can be made (for example, that productivity is low in the first few weeks of a job, then the

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<sup>12</sup> Article 1.3 of the Convention stipulates that Members who have ratified the Convention are required to report on “any groups of wage earners which may not have been covered ... giving the reasons for not covering them, and shall state in subsequent reports the positions of its law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups”.

<sup>13</sup> The ILO notes that this is the case in Cambodia, Japan, Malaysia and Vietnam.

Panel recommends that strict limitations be placed on any deviation from the minimum wage (for example, payment at 75% for the first four weeks of employment).

#### 5.4.9. Low-skilled sectors: agriculture and domestic work

The Panel was particularly exercised by those low-skilled sectors where there is limited scope for labour productivity improvements to accommodate higher wages. The Panel was guided by the data on earnings in South Africa, highlighted in Table 2, in Chapter 4. At 2014 prices, 47.3% of workers earn below the level of R3,500 per month. We summarise below the data in Table 9, but present it only for earnings below R3,500. Two sectors – agriculture and private households (domestic work) – stand out as sectors that will be particularly impacted by a minimum wage level of R3,500. In 2014, almost 84.5% of workers in agriculture and 90% of domestic workers earned below R3,500. For this reason, the Panel recommends a period of tiering for these two sectors.

#### 5.4.10. Low-skilled sectors: others including manufacturing

All the other sectors of the economy had a large percentage of workers who earned below R3,500 per month in 2014 – 54.6% in construction, 48.2% in retail, 39.7% in manufacturing, 39.4% in transport, 36.9% in financial services, 36.5% in community services, and so on. It is also worth re-emphasising the data presented in Figure 6, which shows earnings in the manufacturing sector. From these data, we see that in some sub-sectors of manufacturing, significant portions of the workforce earn below R3,500.

The clothing sector is among South Africa's last remaining labour-intensive industrial sector, where there is limited room for mechanisation. It can be argued that the imposition of a meaningful minimum wage would lead to widespread job destruction in the clothing industry, and in similar low-skills and low-wage tradeable sectors of the economy. The Panel noted that the data show that the incidence of low-wage work in fact occurs across all sectors of the South African economy. Thus, the Panel believes that careful consideration needs to be given to how the economy, across all sectors, adjusts to the new minimum wage environment. We recommend what we believe to be an adjustment process which carefully considers these challenges and provides sufficient time for employers to adjust to the national minimum wage

#### 5.4.11. Youth

The Panel took the view that youth per se should not be an excluded category, in light of the vulnerability and responsibilities of many young workers. Furthermore, employers have access to an employment tax incentive (ETI) for new employees between the ages of 18 and 29, as well as the learnership tax incentive<sup>14</sup> to encourage the employment of young workers.

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<sup>14</sup> Treasury recently announced its intention to extend the ETI by two years and the learnership tax incentive by five years.

#### 5.4.12. SMMEs

The Panel recommends that a similar position be adopted in respect of start-up enterprises, micro- and small businesses, with one important exception. So-called “SMMEs” and start-up enterprises are a heterogeneous collective and we therefore recommend that any exceptions or transitional arrangements should be objectively justifiable and should be organised on a case-by-case basis. However, we do believe that, notwithstanding their heterogeneity, as a general principle smaller firms are less easily able to adjust to policy measures. Consequently, the Panel suggests that enterprises employing less than ten employees be granted one additional year with technical assistance before they must comply or face penalties. In other words, for enterprises employing less than ten workers, penalties would only apply in 2021. Furthermore, the Panel believes that the general exemption procedure is more important for smaller enterprises than large enterprises. The Panel stresses the need for “modernised administration” of the NMW system if the objectives of the system are to bear fruit.

#### 5.4.13. Care work and community, social and personal services

As highlighted in section 4.4.3, the care-work sector in South Africa is underfunded, with the result that wages in the sector are extremely low, as volunteers and workers subsidise the cost of these services through low-wage or no-wage work. The impact of a national minimum wage on care work needs to be carefully considered. Not only would a very high wage lead to job losses among a group of low-wage workers who are mainly women, but an ill-considered wage would also lead to a reduction in the provision of very important social services.

It is important to understand that a significant amount of care work – for example early childhood development (ECD), care for the aged and care for other vulnerable groups – is provided by non-governmental organisations (NGOs) and non-profit organisations on behalf of Government. Government provides subsidies to these NGOs and NPOs. The Panel heard from researchers and specialists in the field and also received written submissions.

From Table 9 above we note that 36.5% of workers in community, social and personal services (CSP) earned below R3,500 per month in 2014. Workers in this segment of the economy form the largest share of workers who earn below R3,500 (19.2%). This segment of the economy is large and complex. To illustrate our concerns, we focus on one segment, ECD.

A written submission from Ilifa Labantwana, a national ECD programme, states that there are approximately 100,000 workers employed in ECD provision. Government’s funding model is based on a state subsidy at the relatively low rate of R15 per child per day. This covers approximately 43% of the costs of provision; the balance is funded by user fees and fundraising. At these funding levels, salaries (which make up just under 50% of total costs) are understandably low – on average around R1,373 (in 2013 Rands). Ilifa Labantwana estimates that approximately half of ECD workers would lose their jobs if the minimum wage was set at R3,500. Furthermore, the quality of services would be significantly affected.

The norms and standards for ECD provide for a ratio of one practitioner to ten children. A minimum wage of R3,500 could lead to this ratio increasing to 1:19. Another way to think about this issue is to consider the total value of the difference between current levels of wages in ECD and a minimum wage of R3,500. Somebody is going to have to cover this cost in order to ensure that NPOs and NGOs can continue to provide these important services to vulnerable segments of our population. For ECD alone, Ilifa Labantwana estimates these costs to be in the order of R4.3 billion.

The ECD example is illustrative of a large and complex sector. These are essential public services which, in most developed countries and in many developing countries, are provided by government. In the South African setting, NGOs and NPOs provide these services on an agency basis on behalf of Government.

The Panel is very concerned about the impact of a national minimum wage at a level of R3,500 on this sector. In essence, Government needs to ensure that this sector is adequately funded in line with its constitutional and legal obligations. The Panel believes that it is imperative that this matter be fully investigated and that appropriate measures are instituted during the adjustment process outlined below.

#### 5.4.14. Geographical divides

The Advisory Panel considered the practice in some sectoral determinations and bargaining council collective agreements of differentiating between geographical regions. Such an approach subverts the purpose of the NMW and contravenes the equal pay principle; it is unlikely to withstand legal scrutiny.<sup>15</sup> The Panel recognises that there may be circumstances in which geographical (or other) differentiation is objectively justifiable, but opposes the idea of a “blanket” exemption for rural employers and recommends that provision be made for a case-by-case application process for an employer to deviate from the NMW. This may occur by sectoral application either as part of the transitional arrangement (in year 1 only) or by individual employer application for a temporary exemption permit.

### 5.5. Other considerations

#### 5.5.1. The minimum wage: – level or range?

Given the variation in wages across sectors, and the associated threshold effects, a key question before the Panel was whether to recommend a single minimum wage – with appropriate exclusions and exemptions – or whether to recommend a minimum wage range. One of the main arguments for a single wage level is that it makes marketing and enforcing the minimum wage much more practicable. The international experience shows that this is a very important part of a successful compliance campaign and so should be strongly considered. Furthermore, a single level will symbolise a fair and equitable minimum applicable to all workers. In this regard, a set number is more appropriate than a range.

#### 5.5.2. An aspirational wage?

A number of arguments have been made, particularly by Labour, that an “aspirational” level for the national minimum wage should be announced at the introduction of the NMW. The idea here is that policy makers should signal an aspirational level to be targeted and progressively attained over the medium term – say three to five years. The Panel debated this issue and carefully considered whether this

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<sup>15</sup> See, for example, *Duma v Minister of Correctional Services & others* (2016) 37 ILJ 1135 (LC) where the Labour Court held that the ground of geographical location per se as a basis to pay an employee less than a fellow employee performing the same work in a different location has the ability to impair the dignity of that employee.

would be appropriate for South Africa. Ideally the NMW level should be close to the poverty line in order to reduce the incidence of working poverty, which will improve the welfare of working people and their families.

In our view, the recommended level of R3,500 per month correctly balances the trade-off between addressing low wages in South Africa and ensuring that any disemployment impacts do not exceed the positive gains for low-paid workers. We believe that any adjustments to this level should be evidence-based. In other words, a sufficient period of time should be allowed to monitor the impact of the NWM at R3,500, and that the adjustments should be made after carefully considering the evidence. Thus, we believe that it would not be appropriate at this time, for us to make any recommendations on setting an aspirational level for the NMW.

## 6. Adjusting the national minimum wage

### 6.1. Introduction

Chapter 4 ended by proposing timelines for the implementation of an initial national minimum wage as well as for setting up the institutions to implement this minimum wage and administer it going forward. Chapter 6 describes this institutional framework in detail. One of the key tasks of these institutions will be to adjust the level of the national minimum wage over time. In this chapter, we address two issues regarding the adjustment of the minimum wage – the approach to adjustment that we are proposing, and the period of adjustment.

### 6.2. Overview

Immediately below, we table our broad recommendations with regard to these issues of adjustment. The rest of the chapter spells out some of the supporting details around these recommendations. In recommending a level of the NMW and associated conditions, the Panel intentionally adopted an evidence-based approach. Our approach to adjustment is consistent with this approach. We emphasise the need for continuous and diligent monitoring and evaluation of the labour market with particular attention to the impacts of the NMW.

While the Panel discussed the options for cost-of-living adjustments to the minimum wage, it was not in favour of making the processing of adjustments a formulaic one. Indeed, a crucial part of the proposed risk management process is that these adjustments be made with regard to the evidence on the impacts of the NMW as well as the prevailing situation in the labour market, the broader economy, and in household poverty and inequality.

Our recommendation is that this evidence-intensive approach should formally feed into the institutional processes of finalising any adjustments to the NMW and associated conditions. More generally, it should serve as a central plank in the communications strategy around the NMW and in promoting broader research and public engagement.

While this approach to adjustment is not formulaic, it is important that this evidence is assessed, consolidated and fed into the National Minimum Wage Expert Panel and the Decent Work Commission every year. Our recommendation is that the NMW Panel formally assesses adjustments to the level and conditions of the NMW on an annual basis.

The ILO reminds us that one cannot conduct sound social dialogue – particularly on wages and employment – without reliable statistics. The Panel’s approach is premised on putting in place a labour market information centre and serious analytic capacity to consolidate, interrogate, draw on and improve all of the labour market data that is currently produced. This data centre will also be used to stimulate national interest and capacity for research into the NWM and the labour market more generally. We conclude this chapter by addressing the data and research capacity requirements for successfully undertaking such a process. A graphic representation on how this proposed data centre will collate and analyse information is provided in Chapter 7.



## 6.3. Proposed processes for adjusting the national minimum wage

### 6.3.1.1. Learning from other countries

Chapter 2 contains a review of the variety of international arrangements for updating and adjusting the level and coverage of the national minimum wage. In Latin America, for instance, only Costa Rica and Brazil adopt a specific mathematical formula for minimum wage adjustment. The other countries in the regions do not follow this formulaic route, because they believe that a formula cannot replace social dialogue and it is very difficult to foresee all the challenges that the future might bring. This is the Panel's view as well. The approach that we find most appropriate for South Africa is based on the UK's Low Pay Commission. Therefore, it seems worthwhile to spell out this approach in some detail.

The Low Pay Commission has commissioned approximately 140 research projects since 1999 on the impact of the NMW. From the evidence they have gathered, it appears the NMW has had little adverse impact on the labour market or employment. *Setting the rate in the UK is very much an evidence-based judgement.* It is not a formula. The UK looks at a range of factors that may go into the formula, such as GDP growth, inflation and so on. However, ultimately it is a judgement based not only on the indicators, but also on the state of the economy. Factors considered in deliberations are shown in Table 25 .

Table 25: Factors considered in minimum wage setting in the UK

GDP growth	Is growth strong? Are forecasts being revised up or down?
Employment growth – low-paying sectors	<b>Is job growth strong? Any warning signs in exposed sectors? Vacancies and redundancies?</b>
Wage levels, inflation and forecasts	<b>Is wage growth strong or weak? Bargaining Council settlements?</b>
Productivity levels and forecasts	<b>Is productivity growth strong or weak?</b>
Past record	<b>What is the cumulative impact of previous increase? How does the forecasts of the impact of the previous level compare to the actual result? How precise were the previous recommendations and results?</b>
Bite (ratio of minimum wage to median wage)	<b>What has happened to the value of the NMW relative to median earnings (overall, in low-paying sectors, in SMEs, etc.)? Particularly considered in relation to employment.</b>
Coverage	<b>What is happening to coverage?</b>
Other business costs	<b>Are other costs increasing or reducing?</b>
Stakeholder evidence	<b>How strongly are stakeholders calling for/opposing increases? Issues in particular sectors, e.g., retail, hospitality, and social care.</b>

Source: Dickens, 2015

The Commission gathers evidence from stakeholders such as employer and employee representatives, site visits to low-paid workers and low-paying employers. There are also formal evidence-gathering processes

from interested parties in addition to the research that the Commission conducts in-house with the secretariat or commissions from academics. There is a particular focus on sensitive areas, such as low-paying industries and occupations: retail; hospitality; social care; cleaning; security; agriculture; hairdressing; textiles and clothing; leisure; small firms; women; part-timers; older workers; ethnic minorities; migrants; disabled people; unqualified young people; and apprentices.

Looking at the past record is key in the UK's evidence-based judgements. The Low Pay Commission looks very closely at the impact of what it has done in the past. For example, when the country was going into a recession, the Commission was worried about youth unemployment, as unemployment among young workers was gathering pace. Consequently, there was a freeze of the minimum wage and a very small increase in some years during the recession years. The Commission subsequently commissioned research to review what had happened in those sectors. That is an example of how the Commission looked back at what it had done before it proceeded.

Of course, the equivalent South African Commission will need to pay attention to the particular circumstances of South Africa and to our particular motivations for the implementation of a national minimum wage. Key areas that must be researched in assessing the impact of the NMW should focus on the needs of workers, the needs of employers and the macroeconomic environment. Each of these is discussed briefly below.

### 6.3.2. The needs of workers

- Cost of living.
- Trends in employment and in wages at disaggregated levels. As illustrated in the international literature as well as in South Africa's literature on the impact of the minimum wage for domestic workers, a very useful signal is the clustering of the wage distribution at or near the NMW and other bargained minima (Dinkelman and Ranchhod, 2012).
- Broader changes to the earnings distribution. This NMW will be the first national promulgation that covers the entire labour market. Attention has to be paid to its interactions with collective bargaining and possible cascading impacts.
- Other possible responses may occur through changes to hours of work and to the structuring of remuneration packages. These too will need to be tracked.

### 6.3.3. The needs of employers

Changes to the patterns of employment and to the earnings distribution are a consequence of responses from both employees and employers. There is a pressing need to establish how firms adjust to the NMW and to labour market conditions in general. The Panel's work was hampered by the lack of a good evidence base on inter- and intra-sectoral adjustments by firms. This has to include all enterprises, whether formal or informal. In South America, the impact of the NMW is often not reflected in the classical way in terms of direct unemployment but rather in non-compliance. A number of submissions to the Panel emphasised the importance of monitoring and understanding the extent of compliance to the NMW.

### 6.3.4. The macroeconomic environment

There is much emphasis in international examples regarding the weighting of economic indicators such as CPI, GDP, the cost of living, the poverty line, and other broader indicators of national performance and well-being, and how these might contribute to adjusting the NMW and thinking “aspirationally” about the NMW. General guidelines include consideration of the expected inflation, the macro environment and the sectoral environment (linked to productivity or growth performance of the sector), and the broader poverty and inequality situation. Specific countries have gone very different routes in terms of actual practice. A few examples will suffice:

- In 2012 Costa Rica adopted a formula that combined expected inflation plus percentage of GDP per capita as an indication of productivity.
- Comparisons between the NMW and the poverty line are also very important but very different in different contexts. In Mexico, a worker earning the NMW is living below the poverty line. In Panama, on the other hand, one worker earning the NMW can support two and a half people to live above the poverty line. The latter meshes much better with the South African situation, as our Panel was of the strong view that South Africa’s NMW should serve to pull people out of poverty.
- One of the key driving forces for minimum wage adjustments in Malaysia is the government’s resolve for Malaysia to become an inclusive, high-income nation by 2020. To give effect to this, Malaysia adjusts its minimum wage using five indicators. The base criteria are the Poverty Line Income (PLI) at that particular time and the Median Wage. The adjustment criteria are changes in Consumer Price Index, productivity growth, and the real unemployment rate.

There are a number of proposals of this sort contained in the research produced by the social partners. These emphasise the key point that it is crucial to locate the labour market in the broader macro environment. The partners also gave effect to this through their use of formal macro models.

We are not proposing a particular formal macro model. Rather, we recognise the macro models that were used in the work of the partners were very useful to the Panel and to the research going forward in spelling out which variables and adjustment processes need to be interrogated in detail. These include:

- CPI and GDP per capita at the national level but also prices and productivity at disaggregated levels;
- saving and investment patterns;
- saving and consumption patterns by income classes;
- spatial employment and unemployment patterns;
- changes to household poverty and inequality.

The analysis of the labour market and its broader context that informs the adjustment of the NMW must be tabled in a way that is broadly understandable and transparent.

## 6.4. Period of adjustment

The ILO recommends a periodic review of the minimum wage. Most countries have regular reviews, which are usually annual. In many countries inflation has been the key variable for determining the period of adjustment. Countries with low, stable inflation often have fixed periodicity, whereas countries with high or variable inflation might require additional adjustments. There are a few countries with very high

inflation who review the minimum wage on a variable basis. These include Argentina, Nicaragua, Costa Rica and Peru. However, the Panel believes that South Africa's inflation rates are stable enough to warrant a regular review period of the NMW and adjustments to the level that consider a broader range of factors than the inflation rate.

Fixed periods of adjustments do not guarantee a stable path of minimum wage increases, but variable periodicity leaves minimum wage policy very exposed to high volatility. Regular reviews and adjustments are foreseeable both for workers and employers. They also facilitate comparisons with and the use of a range of key economic variables. If the reviews are not done on a regular basis it becomes very difficult to sensibly articulate relevant variables. In addition, fixed reviews leave the minimum wage more independent of electoral cycles.

## 6.5. Required data and research capacity to support this approach

### 6.5.1. Data

As can be seen throughout this report, all parties to this Nedlac process adopted evidence-informed approaches to their submissions and proposals. Interrogating this rich evidence greatly facilitated the work of the Panel. It also highlighted clear limitations in the available evidence base and an awareness of the quality and comparability of South Africa's labour market data.

Most of the labour market evidence tabled to the Panel was drawn from competent analysis of household surveys. There are important limitations to these surveys in terms of the research needs of setting and adjusting the NMW. These include issues about accurately capturing earnings and employment in Statistics South Africa's Quarterly Labour Force Survey, the foundational source of information on wages and employment. The QLFS does not capture earnings every quarter, but only once a year. Data at the bottom end and the top end of the wage distribution, which are crucially important to any analysis of earnings inequality, are most likely to be poorly measured. In particular, research in support of the NMW needs accurate information about subsistence agriculture, the urban informal sector and, in general, the more informal end of the labour market. For example, the absence of solid empirical work constrained our deliberations on youth and labour market entrants, public works programmes and care givers working on the fringes of the public sector.

The available analysis of enterprise behaviour and the demand for labour is very weak. Particularly unfortunate is the fact that a fair amount of potentially useful data is collected by Stats SA (through the firm surveys it conducts) and SARS (through company tax data). However, at the moment, these data are difficult to access as they are not generally available to the research community. The Panel were given an illustration of the usefulness of the tax data in hearing some preliminary evidence concerning smaller firms. It is imperative that deliberations over the NMW and its impact are informed by access to these data as they underpin deliberations of firms' responses both to the NMW and to unfolding economic circumstances.

Stats SA and SARS are responsible for protecting the confidentiality of those supplying information to them. The major reasons for lack of access to these data right now are wholly legitimate concerns over this confidentiality. Although these concerns deserve full attention, internationally solutions have been found through the establishment of secure data facilities that permit access to these data for analysis under stringent controls.

A secure facility could be located inside a dedicated labour market data centre. Such a centre is necessitated by the strong need to consolidate, interrogate and integrate all of the labour market information from Stats SA (QLFS, SESE, QES), SARS (personal and company tax), the Unemployment Insurance Fund (UIF) data from the Department of Labour, as well as the administrative information on the levels and specifics of agreements arising from the work of the ECC and formal bargaining councils. It is hard to see how such integration is achievable outside of a dedicated unit of this sort.

While our narrow concern is the capacity to evaluate the impact of the national minimum wage, our terms of reference make it clear that we should locate our proposals on the administration of the NMW with regard to their implications for the existing collective bargaining institutions. We address this in detail in Chapter 7 of the Report. However, it is worth stating in the context of this section, that an integrated data centre will provide strong institutional recognition of the need to explore these institutional interactions as well as the informational basis to do this. Some of the presentations referred to weaknesses within the current institutional arrangements and in the capacity to monitor and evaluate the impact of the promulgations of the ECC, formal bargaining processes and the integrated labour regulation regime in general.

Submissions to our Panel make it clear that there is strong support for such a unit. This support is important, as leadership will be required to secure the coordination between, at least, Stats SA, SARS and the Department of Labour to give effect to such a unit.

#### 6.5.2. Research capacity

A secure data facility would need to be complemented by dedicated analytic capacity such as that supporting the work of the UK's Low Pay Commission. As this research programme monitors and evaluates the impact of the NMW, it has to be embedded as a formal part of the process of adjusting the NMW and needs to be formally linked into the engagement with the partners around the NMW. Partners have to devise communication strategies for disseminating the findings to their stakeholders as much and as widely as possible. The research provides a core platform for such engagement. The Government Communication and Information System (GCIS) in particular should, together with the economic cluster, maximise opportunities for public engagement around the NMW. In short, the overall communications strategy around the NMW should incorporate the dissemination of the research findings. An informed public is more likely to help enforce compliance.

Such a centre provides an opportunity to stimulate a broader network of researchers working on the labour market in general and the national minimum wage in particular. Special attention needs to be devoted to ensuring that this network moves beyond existing centres of excellence and includes researchers from South Africa's historically disadvantaged universities and civil society research groups. For example, social scientists could organise themselves in various provinces to be able to conduct more localised studies, which will help disaggregate the research findings. Perhaps this network can be built around workshops on how to access data and training (skills transfer) in the assessment of NMWs and labour market interventions more generally. Certainly, it would be crucial that the data centre is set up in a way that ensures that it is available to the broad research community in all South African research institutions. Possible institutional models for the research centre could include a combination of in-house research leadership and a research team that is effectively part of the secretariat of the NMW setting body and a partnership between Government, academics and corporate institutions. This public-private partnership would need to ensure that research is commissioned in a responsible and transparent manner.

## 7. Recommendations for the institutional set-up of the NMW system

### 7.1. Introduction

The purpose of this chapter is to provide recommendations on an appropriate institutional and legal framework for the national minimum wage. Here we consider the principles that inform the optimal design for an NMW system.

### 7.2. Recommendations

- A “Decent Work and National Minimum Wage Act” (“the NMW Act”) be enacted to establish the NMW system and to introduce an NMW Rule.
- An independent authority (an “NMW Expert Panel”) be established as part of a consolidated “Decent Work Commission”.
- The unifying principle of “decent work” be used to consolidate existing institutions (such as the ECC and the Commission for Employment Equity, CEE),<sup>16</sup> and that the NMW Expert Panel be included in the consolidated institution – the Decent Work Commission (see section 7.3 for details).
- Specific recommendations on the NMW Rule in this chapter include:
  - the institutional framework for setting and adjusting the level of the NMW;
  - the pay reference periods and how wages must be calculated in order to comply with the NMW Rule;
  - the principle of universality, with limited (specified) permissible exclusions and exemptions from this principle; and
  - enforcement and the resolution of disputes relating to the NMW.

Finally, the chapter emphasises the importance of public campaigns, a positive public discourse on the NMW, and responsive and accountable governance to ensure the successful implementation of the NMW system.

Additional measures on wage policy and social protection that should support an NMW Rule to reduce wage inequality and working poverty are considered in Chapter 8.

### 7.3. Considerations informing the optimal design for an NMW system

Diverse minimum wage systems exist around the world. A key feature is the participation of social partners.<sup>17</sup> The ILO indicates that, in practice, the most frequent way of achieving such participation is

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<sup>16</sup> Other possible institutions that may ‘find a home’ in the Decent Work Commission include the authorities established in terms of the Employment Services Act 4 of 2014 and related statutes.

<sup>17</sup> See Minimum Wage Fixing Convention, 1970 (No. 131), which South Africa has not yet ratified (Appendix 2). In terms of the machinery for fixing and adjusting minimum wages, Article 4 requires that “[p]rovision be made ... for

through institutions such as tripartite or bi-partite wage commissions, boards or similar bodies with competence for economic and social affairs. ILO Recommendation No. 135 confirms that “[t]he minimum wage fixing machinery ... may take a variety of forms”.

Recent ILO research, including legal information from over 150 countries in all regions of the world, indicates the following four most common forms of minimum wage fixing machinery:

Slightly less than half of the countries surveyed globally (46%) have legislation that provides that the government set the minimum wage following consultation or recommendation of a specialised body. The legislation in a tenth (10%) of countries permits the government alone to set the minimum wage. Specialised bodies legally determine wages in just over a tenth of countries (11%), which is slightly more than are determined through collective bargaining (9%) (ILO, 2013: 58).

Of these four – (1) government alone; (2) specialised body alone; (3) government after consultation with or recommendation of a specialised body; and (4) collective agreements – the NMW system that the Panel is recommending for South Africa falls into the third category. That is, Government should set a national minimum wage after recommendation by a specialised body. The approach the Panel recommends is categorised by the ILO’s Committee of Experts on the Application of Conventions and Recommendations as a tripartite minimum wage fixing machinery. As the ILO explains:

In some States, in the case of differences of views between the government and the wages council, the latter may also be invited to reconsider its recommendations. However, if the wages council retains its position and the disagreement persists, the wages council has the last word and the government is bound to set the minimum wage in line with the council’s conclusions. For this reason the Committee [of Experts] has classified procedures of this type in the category of tripartite minimum wage fixing machinery (ILO, 2014a:54).

One of the options for an NMW system that was considered by the Advisory Panel was to use the existing BCEA framework to introduce a national minimum wage as a sectoral determination. Section 55 of the BCEA (“making of sectoral determination”) was amended in 2013 to provide for “a sectoral determination that applies to employers and employees who are not covered by any other sectoral determination”.<sup>18</sup> In light of this, the Advisory Panel considered whether the amended provision is

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full consultation with representative organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned”.

<sup>18</sup> Section 55(8) of the BCEA provides that “... the Minister may publish a sectoral determination that applies to employers and employees who are not covered by any other sectoral determination”. However, ss (8) is subject to ss (7) which provides that “the Minister may not publish a sectoral determination – (a) covering employees and employers who are bound by a collective agreement concluded at a bargaining council; (b) covering employees covered by a collective agreement concluded in a statutory council regulating any matter in respect of which that statutory council has concluded a collective agreement; (c) regulating any matter regulated by a sectoral determination for a sector and area which has been in effect for less than 12 months”.

adequate for implementing the NMW and for anchoring the design of an NMW system. The amendments do not expressly make reference to the idea of an NMW, and, notably, neither does the Explanatory Memorandum on the Basic Conditions of Employment Amendment Bill, 2010. That Bill clarifies the amendment simply to mean that “the Minister may issue an ‘umbrella’ sectoral determination covering employees not covered by any other sectoral determination or by a bargaining council collective agreement”.

Bearing this in mind, the Panel was concerned that setting and adjusting a national minimum wage through the mechanism of a sectoral determination would result in confusion and uncertainty.<sup>19</sup> This subverts the principle of a “simple” NMW and undermines compliance – and would merely extend the existing system of sectoral minimum wages, whereas consensus has been reached on the desirability of taking the evolutionary step and introducing a single NMW. In addition, the Panel was concerned that the constraints under which the ECC operates would mean that it would not be in a position to undertake timely, evidence-based decision making to mitigate any possible negative implications that may arise from the implementation of an NMW.

The second option is to establish an independent authority resourced and capacitated to monitor the impact of the NMW and to recommend adjustments to the level, as well as to advise Government on minimum wage policy. The aim would be to establish a responsive and accountable institution to mitigate the risks associated with implementing a national minimum wage.

In the end, the Advisory Panel took the view that the benefits of consolidating and revising the existing institutions and incorporating the NMW system within this consolidated structure outweighed any benefits that might be derived from “fitting” the NMW Rule within the existing system for sectoral determinations.

In terms of the framework for such an independent authority, the Advisory Panel considered two options.

In option 1 the Panel considered an NMW Commission being established as an independent public entity, adequately resourced and capacitated.<sup>20</sup> What we grappled with in this option, however, is that it would proliferate the number of Commissions that have been mandated to deal with various aspects of labour relations. After establishing an NMW Commission, there would be three operational Commissions with the Minister of Labour as the executive authority:

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<sup>19</sup> South Africa is reported as having the highest number of minimum wage rates – 124 rates – in sub-Saharan Africa (Bhorat, Kanbur and Stanwix, 2014, and yet approximately one million workers remain outside of any minimum wage protection (DPRU, 2015).

<sup>20</sup> We envisaged an independent commission, as the ECC does not have the technical and administrative capacity that is needed for an effective NMW decision-making body.



- The Employment Conditions Commission: (Since the ECC plays an important role beyond its wage-setting mandate it would not be an option to “collapse” it on establishing the NMW Commission.)
- The Commission for Employment Equity, established with a mandate in respect of matters included in the Employment Equity Act.
- The National Minimum Wage Commission.

In addition to the cost of proliferating Commissions, the Panel was are concerned about fostering fragmented and “silo” mentality policies rather than an integrated approach to decent work.

In option 2, the Panel’s preferred option, decent work is used as a unifying principle to consolidate the existing Commissions. In this regard, the Panel recommends that one Commission be established – a Decent Work Commission – with the following expert panels established within it (in addition, other existing bodies may also be consolidated as expert panels within the Commission, and the legislation should be flexible to adapt to the future needs for panel mandates to be amended or additional panels to be added), each with their relevant mandates, including:

- the Employment Conditions Expert Panel – to replace the ECC;
- the Employment Equity Expert Panel – to replace the CEE;
- the National Minimum Wage Expert Panel.

With this in mind, the Advisory Panel recommends the enactment of legislation to establish a Decent Work Commission and an NMW Rule.

The next section gives the Panel’s recommendations with regard to the decision-making and governance structures within the NMW system, as well as key elements of the NMW Rule that should be included, and clarified, in the NMW legislation.

#### 7.4. Decision-making and governance structures within the NMW system

Minimum wage systems require institutions to perform a number of functions, including: (1) to set and adjust minimum wages, based on an evidence-based approach; (2) to manage implementation of the NMW Rule; (3) to enforce the NMW Rule; and (4) to adjudicate disputes that arise in respect of the NMW Rule.

Prior to implementing the national minimum wage, we suggest a public campaign to promote understanding of the NMW system and to advise citizens of the channels available to them for engagement or to obtain recourse in the event of non-compliance. Currently, the ECC conducts public hearings so that affected sectors and members of the public can express their views; the Panel recommend that a similar programme for public hearings on the NMW system be rolled out by the Department of Labour.

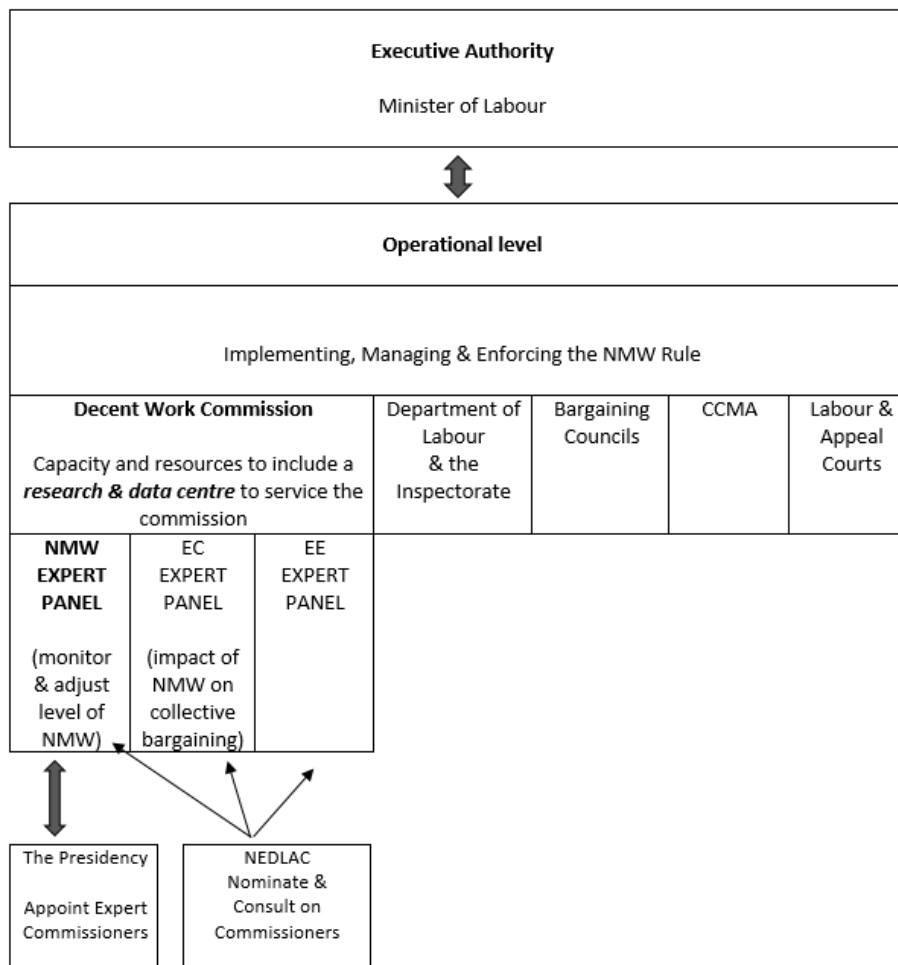
The Panel recommends that the responsibility for managing implementation of the NMW and enforcing minimum wages remains the function of the Department of Labour and its related institutions, and that a NMW Expert Panel be established to review the impact of the NMW and recommend adjustments to the level. Critically, the Panel will need to be informed on related aspects of social and economic policy and will need to have access to accurate and up-to-date data. Adequate budget for technical and administrative

support will need to be provided for the Decent Work Commission in the enabling legislation to ensure that the NMW Expert Panel can execute its mandate.

The NMW Expert Panel is expected to make a clear recommendation on adjustments on an annual basis. Government is then given an opportunity (within a stipulated time period) to consider the adjustments recommended by the Expert Panel and may give reasons why the Panel should revise its recommendation. The Expert Panel would then have to consider Government’s request before finalising and publishing adjustments to the NMW.

The NMW system that the Advisory Panel envisages is illustrated in Figure 20.

Figure 21: Decision-making and governance structures within the NMW system



To provide clarity on the processes, the Panel recommends that a Schedule be included in the NMW legislation in which the process and the timelines for adjusting the NMW level are clearly illustrated, with additional flow diagrams setting out the processes for dispute resolution. (This could be similar to the flow diagrams in Schedule 4 of the LRA.)

## 7.5. An independent authority to monitor impact and adjust the NMW

The Advisory Panel deliberated at length on the appropriate structure and composition of an authority to monitor and adjust the NMW, and on the appropriate executive authority for the Commission. The proposed model provides for some form of shared responsibility between the Minister of Labour and the Presidency. There are several reasons for this. First, the NMW is likely to play an important role in broader economic and social policy in South Africa. Second, the successful implementation of the NMW will depend on highly co-ordinated, efficient administrative and technical capacities, including monitoring and evaluation capacities involving the collection and analysis of quality data.

The Panel's recommendations regarding an independent Decent Work Commission and the composition and process of appointment to the NMW Expert Panel are:

- The Decent Work Commission be established as an independent statutory body (a “national public entity”)<sup>21</sup> in terms of Chapter 6 of the Public Finance Management Act 1 of 1999, and listed as a Schedule 3 public entity in terms of the Act; and that the expenses of the Commission be met by money appropriated by Parliament, subject to audit by the Auditor-General.
- The Minister of Labour be the executive authority for the Decent Work Commission.
- The Decent Work Commission be chaired by a full-time Decent Work Commissioner, who shall be an independent expert,<sup>22</sup> appointed for an initial term of five years<sup>23</sup> by the Minister of Labour after consultation with the Presidency and with Nedlac. The Commissioner shall have authority to appoint staff and will be the Chief Executive Officer (CEO) and the accounting authority<sup>24</sup> of the Decent Work Commission.

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<sup>21</sup> A national public entity is defined in the Public Finance Management Act 1 of 1999 as ... “a board, commission, corporation, fund or other entity ... which is (i) established in terms of national legislation; (ii) fully or substantially funded ... from the National Revenue Fund; and (iii) accountable to Parliament”. For a comparable institution that may inform the legislative provisions establishing the NMW Commission see sections 19 to 24 of the Competition Act.

<sup>22</sup> The Panel recommends that the commissioner and deputy-commissioners have knowledge and expertise in economic and social development, as well as industrial relations.

<sup>23</sup> The Panel proposes that a person may be re-appointed at the expiry of the term of office.

<sup>24</sup> In terms of s 49(2)(b) of the Public Finance Management Act, the accounting authority of a public entity that does not have a controlling body is the CEO or other person in charge of the public entity. In other words, the NMW Commission need not have a controlling body.

- The Decent Work Commissioner be an observer member of the Expert Panels, including the NMW Expert Panel.
- The NMW Expert Panel be chaired by a part-time Commissioner who will have a deciding vote in the Expert Panel in the event that the Panel cannot reach agreement on the level of adjustment to recommend.
- Ten part-time NMW Deputy Commissioners be appointed to the NMW Expert Panel, in their independent capacities as follows:
  - six Deputy Commissioners who shall be appointed by the Minister of Labour and nominated by the voting members of Nedlac as follows:
    - three representing Organised Business; and
    - three representing Organised Labour;
  - four Deputy Commissioners who shall be appointed by the Presidency, after consultation with Nedlac, who shall be persons with suitable qualifications, knowledge and experience in the fields of:
    - the labour market and labour market regulation, including the dynamics of collective bargaining and wage-setting,
    - macroeconomic and fiscal policies and public administration more generally,
    - the dynamics of the informal economy and unorganised workers and the interests of the broader community, and
    - the dynamics of poverty, inequality and unemployment.

With regard to the Mandate of the Decent Work Commission and the NMW Expert Panel,<sup>25</sup> the Advisory Panel recommends that the NMW Expert Panel be responsible for: reviewing, at prescribed intervals, the NMW level and recommending adjustments. The Panel also recommends an annual review process<sup>26</sup> (which need not necessarily result in annual adjustments), taking into account the ILO position on adjustments, and in line with the recommendations set out elsewhere in this Report.

To provide legal certainty regarding the NMW review process, the Panel recommends that the NMW Act expressly provides a schedule (or provision for regulations) detailing the review process, including dates for initiating the review process and for finalising proposed adjustments.

The Panel recommends that the Decent Work Commissioner, in collaboration with the NMW Expert Panel, be mandated to:

- Publish an annual report on the Expert Panel's analysis of relevant data and evaluation of the impact of the NMW. In addition, the Decent Work Commission, with the assistance of the Expert Panel,

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<sup>25</sup>See generally in this regard the provisions in the UK National Minimum Wage Act 1998 relating to *The Low Pay Commission* (ss 5 – 8), and referrals to the Low Pay Commission.

<sup>26</sup> Informed by Article 3 of the ILO Minimum Wage Fixing Convention, 1970 (No. 131) which establishes the criteria for minimum wage fixing and adjustments.

should host annual public consultations regarding analysis and to facilitate engagement with the public on the NMW and proposed adjustments.

- Engaging Nedlac on the NMW A process to enable the Decent Work Commissioner to engage with Nedlac should be established.
- Deliberate on broader wage policy and the data on income differentials. (This is currently the function of the ECC in terms of s 27 of the EEA. The Panel recommends that this function be moved to the NMW Commission.) Quality data on income differentials should be made available for consideration by the Decent Work Commission, and the Commissioner should be mandated (in terms of an amendment to the EEA) to make recommendations to the Minister, and to issue Codes of Good Practice for reducing income differentials between occupational levels within the workplace.
- Periodically review the NMW Act and recommend to Government improvements to the NMW system and on possible amendments to the legislation.

## 7.6. Existing labour market institutions and the NMW

### 7.6.1. The role of Nedlac in developing the NMW system

The Nedlac processes have played an important role in reaching consensus on the introduction of a national minimum wage, agreement on various aspects of the NMW Rule, setting (through the Committee of Principals) the initial level for the NMW, and consideration of draft NMW legislation. In addition, Nedlac will continue to engage with the Decent Work Commissioner and the Department of Labour on the NMW, and on appointments to the NMW Expert Panel.

### 7.6.2. Adapting the role of the ECC

The Advisory Panel recommends that the ECC be reconstituted as an Expert Panel (either an “Employment Conditions” or a “Conditions of Work and Collective Bargaining” Expert Panel) within the Decent Work Commission.

Currently, the ECC plays an important role in the sectoral determination processes that regulate conditions of employment, including minimum wages, particularly in sectors in which collective bargaining systems have not taken hold.

Once the NMW has been implemented and the transitional arrangements have run their course, one possibility for the ECC is to reprioritise its focus to the informal sector, and more specifically the provisions of the 2015 ILO Recommendation 204 on Formalising the Informal Economy.

Certainly, for the short term, the Panel recommends that the ECC should adapt its functionality to play a supporting role in the NMW system. More specifically, we recommend that the ECC (as reconstituted) be required to advise the Minister on the impact of the NMW on existing sectoral determinations and measures to replace the sectoral determination system with collective bargaining structures. The ECC should play a central role in the initial stages of rolling out the NMW, and assist with impact assessment on the sectors regulated by sectoral determination (and possibly also those in bargaining councils).

In addition, the mandate to promote decent conditions of work in vulnerable sectors, including work in the care and welfare sector and in the informal economy should fall within the mandate of the ECC.

### 7.6.3. Capacitating the Department of Labour and the Labour Inspectorate<sup>27</sup>

Currently the Department of Labour is responsible for the enforcement of basic conditions, including minimum wages, which it achieves through the Inspection and Enforcement Service (IES) programme. The IES programme ensures compliance with labour legislation by monitoring and enforcement activities, including regular inspections and audits. There are concerns, however, that the IES is under-resourced and the probability of inspection is therefore low (Bhorat et al., 2014; DPRU, 2014).

The Advisory Panel noted the arrangements in both the UK and in Germany in which the Inland Revenue and Customs and Excise department (UK) and the Customs Administration, Financial Control of Illegal Employment division (Germany) have been assigned the responsibility of state enforcement agency for the NMW. The social partners may want to look at the following:

- Why have these agencies been appointed to enforce the NMW in the UK and Germany?
- Instead of (or in addition to) the Labour Inspectorate, could the SARS Enforcement and Customs Operations be an NMW enforcement agency in South Africa?
- Are there reasons why the Labour Inspectorate should not be charged with this responsibility?

These questions aside, however, the Advisory Panel believes that it is beyond our scope to suggest that responsibility for enforcement be shifted out of the Department of Labour. We recommend that the DoL be charged with the primary responsibility for managing and enforcing the NMW Rule, together with the IES as the primary enforcement agency for processing violations in respect of conditions of employment.

### 7.6.4. Extending jurisdiction of the CCMA, Labour Court and Labour Appeal Court

We recommend that the NMW Act empower the Council for Conciliation, Mediation and Arbitration (CCMA)<sup>28</sup> to conciliate and arbitrate disputes relating to:

- unfair labour practices (including underpayment) in terms of the NMW; and
- unfair dismissal (where the reason for the dismissal relates to the NMW).<sup>29</sup>

In addition, the Panel recommends that the Labour and Labour Appeal Courts be empowered to deal with matters arising out of the NMW Act and to review CCMA arbitration awards. The Labour Appeals

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<sup>27</sup> Including the bargaining councils to the extent that they perform inspectorate functions.

<sup>28</sup> Including the bargaining councils to the extent that they perform dispute resolution functions.

<sup>29</sup> See for example s 25 of the UK National Minimum Wage Act 1998 which provides for the right of an employee not to be unfairly dismissed for reasons relating to the NMW.

Court should also deal with appeals from the Labour Court in respect of the NMW. The drafters may also want to reflect on the right to strike within the context of the NMW.

While the above covers the Panel's recommendations in respect of the various institutions that will be included within the NMW system, the section which follows contains recommendations in respect of various elements of the NMW Rule.

## 7.7. Legal and definitional issues

### 7.7.1. Recommendation: an hourly rate with variable reference periods

There is consensus at Nedlac that the NMW should be calculated hourly; the Panel proposes that tables be provided for daily and weekly and possibly monthly calculations of the NMW, based on the number of ordinary hours worked.<sup>30</sup> There is an established practice for the preparation of such tables, both within the sectoral determination schedules and in bargaining council agreements, that should serve as guidance in this regard.

As firms may adjust to the NMW by reducing the number of hours worked,<sup>31</sup> the Panel proposes that the NMW Rule provides for payment for a minimum number of four hours per day<sup>32</sup> although a higher minimum number of hours may be agreed through collective bargaining. In addition, as a form of worker protection, the Panel recommends that an "unfair labour practice" relating to the NMW be expressly provided (in s 186 of the LRA) that would prohibit any unfair conduct by the employer relating to the NMW. This would include adjustments to terms and conditions of work that would result in a position where an employee is in a worse position – for example, earns less per week – than he or she was earning prior to implementation of the NMW.

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<sup>30</sup> Consider for example the tables set out in existing sectoral determinations, such as the tables in Sectoral Determination 7: Domestic Worker Sector.

<sup>31</sup> The question of a reduction in working hours should be informed by the content of Schedule 1 of the BCEA ("Procedures for Progressive Reduction of Maximum Working Hours"). The goal of the Schedule is to reduce the working hours of employees to a 40-hour working week and an eight-hour day (whether through collective bargaining or sectoral determination), having regard to the impact of such a reduction on employment and employment opportunities. Although the Schedule required the Department of Labour to consult with the ECC and report within 18 months after the BCEA came into operation, this has yet to happen.

<sup>32</sup> Currently, for example, Sectoral Determination 7 (item 2.4) provides that "[a] domestic worker who works for less than four hours on any day must be paid for four hours' work on that day". Likewise, the Wholesale and Retail sectoral determination provides that "[a]n employee who works for less than four hours on any day must be paid for at least four hours work on that day".

### 7.7.2.Recommendation: how to calculate wages in order to comply with the NMW

A method for calculating wages is discussed in detail in Chapter 11 (Appendix 1). The Panel recommends that the NMW legislation takes into account existing principles and statutory provisions for determining wages, and that the position be clearly stated in legislation (and articulated in regulations and/or a code of practice) in a transparent and unambiguous way.<sup>33</sup>

## 7.8. Scope of application of the NMW

### 7.8.1.Recommendation: the principle of universality

Implementing the national minimum wage is intended to improve wages and conditions for the working poor. Its effectiveness in this regard will depend in large part on the extent to which all workers are covered by the NMW. The Panel recommends that the principle of universality be adhered to as closely as possible and deviations be permitted only in cases of necessity. Broad coverage can only be achieved by limiting the extent to which employers may deviate from paying the NMW.

It was agreed at Nedlac that the existing definition of “employee”<sup>34</sup> would be an appropriate tool for this purpose. In addition to this, however, the Panel proposes that the provisions in this regard be drafted to expand the definition of an employee to include forms of work such as piecework and homeworkers, part-time workers, casual workers and self-employed contractors to ensure that their services are remunerated at a rate that does not fall below the NMW.<sup>35</sup> This latter may be achieved by a provision in the legislation that requires a contractor to be remunerated at a level that is not below the NMW and which provides recourse via an effective enforcement mechanism.<sup>36</sup>

To eliminate uncertainty, the NMW Act may expressly indicate that it is applicable **to** all workers, including:

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<sup>33</sup>Section 2 of the National Minimum Wage Act 1998 (1998 Chapter 39) provides an example of a framework for regulations relating to the national minimum wage.

<sup>34</sup> Read with the presumptions in s 200A of the LRA.

<sup>35</sup> In this regard see also s 41 of the UK National Minimum Wage Act 1998 on the power to make regulations in order to apply the Act to individuals who are not otherwise “workers”.

<sup>36</sup> For example, the Independent Contractors Act 2006 in Australia regulates a contract for services to which an independent contractor is a party and provides, at s 9(1)(f) that it is an “unfairness ground if the contract [with the independent contractor] provides for remuneration at a rate that is, or is likely to be, less than the rate of remuneration of an employee performing similar work”. Note also the provision in Sectoral Determination 7: Domestic Worker Sector which provides, in item 1, that “[t]he determination applies to the employment of all domestic workers in the Republic of South Africa including domestic workers – (a) employed or supplied by employment services; (b) employed as independent contractors”.



- workers covered by the definition of an employee – the Nedlac (2016) Progress Report indicates that there is consensus that the *Code of Good Practice: Who is an Employee* should apply;
- workers who are engaged as independent contractors;
- homeworkers;<sup>37</sup>
- workers who work for less than 24 hours per week;
- employees of non-profit organisations;
- workers employed on South African registered ships;<sup>38</sup>
- persons employed at sea on ships registered to ply their trade between South African ports;
- persons employed on fishing vessels licensed to fish in South African waters;
- civilians employed in the SANDF;
- migrant and foreign workers;
- workers with disabilities.<sup>39</sup>

The Advisory Panel was not able to fully investigate the position regarding the employment of people with disabilities, and notes in this regard the sheltered employment factories scheme administered by the Department of Labour. The Panel further notes concern regarding access to disability grants in the event of a person with disabilities finding employment. The Panel therefore recommends that the position of people with disabilities be placed on the agenda of the Decent Work Commission for future reflection.)

Any employer who can show they will not be able to afford the minimum wage will be able to apply for temporary exemption.

## 7.9. Dispute resolution processes and enforcement proceedings

The institution should consider appropriate punitive sanctions for non-compliance and make these known to the public. Non-compliance will only become an issue from 2020, at the end of the adjustment period. Since small businesses will be given an extra year to adjust to the NMW, issues of non-compliance for this sector will only be considered from 2021 onwards.

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<sup>37</sup> Interestingly, in Ontario, Canada, “homeworkers receive 110 per cent of the minimum wage to take into account the costs they have to defray” (ILO, 2014a: 80).

<sup>38</sup> Note in this regard s 42 of the UK National Minimum Wage Act 1998 which provides a mechanism for extending application of the Act to “offshore employment”. An “open-ended” provision for future regulations would leave scope for future developments.

<sup>39</sup> In some countries, a legal mechanism is put in place which permits an employer to pay a wage lower than the minimum wage to a person with disabilities. The ILOs Convention 131, however, does not make provision for a different rate of pay on the basis of disability; and, if the productivity of a person with a disability is not affected by the disability, then the equal pay principle applies. In this regard, the ILO notes that “measures have been taken by the governments of several countries, including Argentina, Czech Republic, France, New Zealand and Slovakia to abolish lower minimum wage rates for workers with disabilities” (ILO, 2014a: 98, footnotes omitted).

The primary enforcement role in respect of the NMW is likely to be played by the labour inspectorate. Chapter 10 of the BCEA makes provision for monitoring, enforcement and legal proceedings. The Panel recommends that the enabling legislation for the NMW provides for the application of Chapter 10 to monitoring, enforcement and legal proceedings in respect of the NMW Rule. Doing so will have the following effect:

- In terms of s 64 of the BCEA, labour inspectors “may promote, monitor and enforce compliance with ... [the NMW Act] by –
  - (a) advising employees and employers of their rights and obligations ...;
  - (b) conducting inspections ...;
  - (c) investigating complaints made to a labour inspector;
  - (d) endeavouring to secure compliance ... by securing undertakings or issuing compliance orders; and
  - (e) performing any other prescribed function.”

Currently the inspectorate has the power to secure compliance. The introduction of an NMW may provide a good opportunity to reskill the inspectorate and improve the conditions under which inspectors are employed, as well as improving the quality (and quantity) of inspections.<sup>40</sup>

Simplified, accessible and anonymous reporting procedures will also provide scope for improving rates of compliance with the NMW Rule. Some countries have established a hotline for reporting non-compliance with the NMW. In this regard, it may be constructive to set up an NMW call centre (such as the call centre established by the CCMA for labour advice) that handles both queries on the NMW and complaints regarding non-compliance. Other examples that have been suggested for simplified reporting of non-compliance include the availability of compliance forms in post offices, which can be completed on site. Confidential online questionnaires may also be made available and may be emailed to any number of institutions, including the unions, the inspectorate, the Department of Labour and the Decent Work Commission.

Within the workplace, a number of measures may be adopted to promote compliance, including:

- a requirement that NMW posters be displayed in the workplace;
- unions and other membership-based organisations being capacitated to take up individual complaints on behalf of employees.

Dispute resolution processes should be made available in the event of a dispute relating to whether or not a person is a worker for the purposes of the NMW. The Panel recommends that the CCMA, bargaining councils and inspectors be empowered to determine this, with the Act providing a right of review by the

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<sup>40</sup> The ILO (2011: 37) points out the concern that inspectors are at risk of corruption and suggests, as a solution for this problem, that inspectors’ salaries be increased (or have a component that rewards performance). They also recommend that inspectors be accompanied by workers’ representatives. The possibility for creative public–private partnerships may also be explored to address some of the capacity concerns regarding the inspectorate.

Labour Court. In addition, the Panel recommends that Chapter 8 of the LRA be amended to make provision for:

- an unfair labour practice in the event of a contravention of the NMW legislation;
- an automatically unfair dismissal if the reason for the dismissal relates to the NMW.

The Panel recommends that consideration be given to the Government incentive policies and frameworks in relation to compliance by businesses with the national minimum wage.

Information campaigns and training will play an important role in ensuring compliance.

### 7.10. The importance of public campaigns, a positive public discourse and good governance

Raising awareness of the NMW among employers and workers will be critical for fostering acceptance and increasing the benefits of, and level of compliance with, the NMW (ILO, 2011). This may be achieved through:

- providing adequate information;
- seminars that target and educate employers as well as employees, and make compliance and enforcement simple;<sup>41</sup>
- Government campaigns aimed specifically at addressing sectors at risk and at reducing barriers to implementation;<sup>42</sup>
- minimum wage rates should be widely advertised, for example on bus tickets, in post offices and on the radio; and
- non-compliance should be communicated as a form of “cheating”.<sup>43</sup>

Ongoing communication and engagement with the public on the NMW is essential and constitutes an important aspect of the responsive and accountable governance of the NMW system.<sup>44</sup>

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<sup>41</sup> In this regard, the ILO mentions successful campaigns by the British government, by the Commission des Relations du Travail in Quebec, and by Better Factories in Cambodia (ILO, 2011: 36).

<sup>42</sup> The ILO refers to the minimum wage campaign in the hairdressing sector in the UK and the NMW Coalition campaign in the UK.

<sup>43</sup> An information campaign in the UK in 2008 declared, “Employers who don’t pay the minimum wage are not only cheating workers, they’re undercutting honest businesses” (ILO, 2011: 20).

<sup>44</sup> For a detailed account of responsive and accountable governance see United Nations Department of Economic and Social Affairs (2015) ST/ESA/PAD/SER.E/187

The importance of good governance for the successful implementation of the NMW cannot be underestimated and must be factored into the design of the system. More specifically, to ensure good governance of the system, there must be:

- public access to information, encouraging inclusive participation in identifying and solving problems that may arise in regard to the NMW;
- modernised administration and innovations in governance to increase efficiency and avoid stagnation within the system;
- customisation of global best practice to ensure optimal performance in implementing NMW policy;
- well-designed systems for the collection of data to measure performance and effectively implement policy;
- “local ownership” and systems for vertical and horizontal engagement in planning, implementing and monitoring the NMW Rule;
- ensuring that political processes are inclusive of all sectors of society; and
- the “scaling up” of good local practice relating to the NMW, which builds capacity and validates local solutions (UN, 2015: 21–2).

These good governance principles must inform each stage of implementing the NMW.

### 7.11. Legislation that may require revision

Table 26 lists legislation that may require revision in parallel with the introduction of national minimum wage legislation. (This should be reviewed in the drafting process.)

Table 26: Legislation requiring review

Legislation	Comments / considerations
Basic Conditions of Employment Act 75 of 1997	<b>General review; adjustments to accommodate an NMW and its enforcement and alignment with the NMW system</b>
Cooperatives Act 14 of 2005	<b>Review to ensure alignment with NMW system</b>
Employment Equity Act 55 of 1998	<b>General review; consider the provisions on income differentials and equal pay principle more broadly; align with NMW system</b>
Employment Services Act 4 of 2014	<b>Review to ensure alignment with NMW system</b>
Employment Tax Incentive Act 26 of 2013	<b>Review to ensure alignment with NMW system and future possibility for incentivising compliance</b>
Labour Relations Act 66 of 1994	<b>Review to ensure alignment with NMW system; possible amendments to the mandates of existing labour market institutions (CCMA, Labour Court, Labour</b>

	<b>Appeal Court, bargaining councils, etc.)</b>
National Economic, Development and Labour Council Act 35 of 1994	<b>Review to ensure alignment with NMW system</b>
Skills Development Act 97 of 1998	<b>Review to ensure alignment with NMW system</b>
Unemployment Insurance Act 63 of 2001	<b>Review to ensure alignment with NMW system</b>
Unemployment Insurance Contributions Act 4 of 2002	<b>Review to ensure alignment with NMW system</b>

## 8. Further measures to address inequality and poverty

### 8.1. Introduction

The Advisory Panel's Terms of Reference call on the Panel to make suggestions about any further measures that could be implemented alongside the NMW to address excessive wage inequality and working poverty. Given the short timeframes under which the Panel has worked, and the need to focus on the NMW issue itself, the Panel has not been able to seriously deliberate any further measures to address poverty and inequality. As such, the Panel provides in this chapter only some suggestions which the CoP can explore in further detail. These should be seen as suggestions and not recommendations.

### 8.2. Additional measures that could be implemented to reduce wage inequality and working poverty

An effective framework of labour market regulation in a modern economy is not only concerned with the regulation of wages and wage setting, but should also extend to the organisation and conditions of work, frameworks and rules governing training and the provision of employee benefits. As stated previously, the existing wage-setting framework consists of sectoral (and ministerial) determinations of “minima” and collectively bargained agreements that cover not only minimum wages, but the benefits, occupational training and conditions of work in covered sectors. The challenge, however, is that 2.35 million low-wage workers are currently excluded from sectoral minimum wage coverage (Konopelko, 2016) and collectively bargained wages. Therefore, the national minimum wage is a timely intervention aimed at addressing the challenges of workers who find themselves and their wages determined outside the wage-setting mechanisms described above.

The ILO's *2014/15 Global Wage Report* notes that minimum wages are increasingly being used by governments as a tool to effectively reduce wage inequality (ILO, 2014c). The NMW is seen as a policy instrument that can contribute to addressing wage inequality and the inherited low-wage structure, and also address, to some extent, household poverty and inequality. However, Chapter 4 showed that many of the poor rely on sources of income other than wages, and indicated the importance of policies that are complementary to a national minimum wage. This chapter discusses the issues of household poverty and inequality, although it is not a comprehensive review of policy issues that influence those issues. Rather, it is a discussion of some of the policy measures that can assist in optimising the benefits of the national minimum wage so that this intervention does not become a “blunt” policy instrument. This chapter will also discuss some of the suggested complementary interventions that emerged in the Panel's conversations with various constituencies. These complementary interventions straddle the labour market, the social wage and protection, and industrial and productivity-focused policy interventions.

### 8.3. Promoting collective bargaining alongside a national minimum wage

As stated elsewhere in this Report, collective bargaining goes further than minimum wages, which only address issues of remuneration. Collectively bargained agreements do specify minimum wages at sector, firm and plant level; however, they also cover employee benefits, occupational training and other matters related to conditions of work. Whereas collective bargaining affects the level and the distribution of wages, the effect of minimum wages tends to be limited to the bottom end of the wage distribution in the labour market.

One of the concerns that was raised is the likely impact the national minimum wage might have on collective bargaining. The fear is that it might undermine or displace collective bargaining as a wage-setting mechanism while driving real wages closer to the “national minimum”. We support the agreed national minimum wage as a wage floor below which no worker should be paid (unless excluded or exempt), and believe that collective bargaining should continue to be used to negotiate wages and conditions of work above this floor.

Designing a coherent set of wage policies for the South African labour market requires clearly articulating the envisaged relationship between the national minimum wage and collective bargaining. More importantly, this relationship should be seen as a complementary one between the two approaches. We also envisage that the introduction of the NMW should encourage greater organisation, and by extension encourage more workers and employers in vulnerable sectors to develop bargaining councils to determine non-wage aspects of work and industrial relations.

We suggest that the following measures could be implemented to strengthen collective bargaining alongside the national minimum wage:

- Strengthen freedom of association: One of the ILO’s basic principles is that collective bargaining should occur in an environment that “upholds the right to freedom of association (ILO, 2008). This is characterised by the recognition of the right of workers and employers to associate freely, without interference by the state (or any other actor for that matter), and to establish their own organisations freely. This implies that workers need to be protected from anti-union discrimination by employers and the spectre of being dismissed for union activities.
- Collecting transparent, reliable and credible wage and collective bargaining statistics: Robust data on wage levels and other relevant data emerging from collective agreements are not only useful for analysis and policy development, but are also important to create favourable consensus for social dialogue on wages. As the ILO (2008) notes, “without a shared understanding of key wage statistics, collective negotiations between workers and employers at various levels (including tripartite negotiations over minimum wages) may not be as constructive as needed.”

## 8.4. Ratify ILO Convention 131 of 1970

Convention 131, passed at the 54<sup>th</sup> session of the ILO on 3 June 1970, sets out a guiding framework for setting or “fixing” minimum wages. The Convention’s intention was to protect wage earners against unduly low wages. Aside from being used as a guide, it also places a responsibility on those who ratify it. For instance, Article 1 states that “each member of the International Labour Organization which ratifies this Convention, undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate”. At the time of writing (November 2016), South Africa has not ratified Convention 131. The Panel proposes that reasonable measures should be taken to ratify this convention.

## 8.5. Labour market policy

### 8.5.1. Wage inequality

One of the key aspects the Panel was requested to explore was the question of wage inequality, and by extension the concerns around wage compression. More consideration should be given to Section 27 of

the Employment Equity Act (EEA), which would regulate the observed ratio between the top 5% and bottom 5% of earners in all companies and institutions. We have seen voluntary cases where companies have taken this step; Pretoria Portland Cement, for example, instituted pay cuts for senior executives, which reduced the ratio between the salaries of senior management and the lowest paid workers from 1:120 to 1:40 (Klein and Masote, 2014). However, it is clear that a voluntarist approach might not be as desirable, and a regulated system could be considered that creates effective wage ceilings to reduce wage inequality. Such a regulation, as the 2013 PricewaterhouseCoopers (PwC) report on executive remuneration suggests, would monitor the pay gap ratio which is the value of the chief executive officer (or any other highest earning employee) over the average income of the lowest paid band of employees. The level observed for this ratio was 53,53 for JSE-listed entities and stood at 69,88 for the South African financial services sector (PwC, 2013). Both these figures are much higher than the ratio in China, which stands at 20,32. To drive the point home, Table 27 illustrates this using actual rand figures; for ease of reference, we assume a monthly income of R100,000 for the CEO.

Table 27: Pay ratios

Country	CEO Pay	Ave. Income of Employee in Lowest Band	Ratio
South Africa (for JSE listed entities)	<b>R100 000</b>	<b>R1 868</b>	<b>53.53</b>
South Africa (Financial Services only)	<b>R100 000</b>	<b>R1 431</b>	<b>69.88</b>
China	<b>R100 000</b>	<b>R4 921</b>	<b>20.32</b>

Regulating such ratios and placing wage ceilings can play an important role in bridging the large gap between mean and median wages over time. In this regard the Decent Work Commission and the Expert Panels tasked with the review, monitoring and adjustment of the minimum wage, might pay attention to these ratios and factors them into their work.

### 8.5.2. Social wage policy

ILO Convention 131 outlines a number of related criteria for setting, monitoring, reviewing and adjusting minimum wages. Three of these criteria require mention here – the needs of workers and their families, the cost of living and social security benefits. Beyond the “economic” or “workplace” wage provided through employment, the “social wage” provided by the Government is a crucial cog in the policy interventions aimed at improving the living conditions of poor households. The term “social wage” refers to public spending on welfare, health care, education, housing and other related amenities. Social wage policies enable and support labour market participation by narrowing the gap between wages and the cost of living of those engaged in low-waged work and their households.

Discussion should to be held around the social wage, as captured in the comprehensive social sector policy, and how this can complement the objectives of the NMW. Such an approach requires, at a minimum, a combination of an economic wage determined through existing wage setting mechanisms and the new national minimum wage, as well as a varied approach towards the social wage. This complementary approach would combine the economic and social wage to overcome working poverty.



## 8.6. Interventions targeting the cost drivers of poor households and vulnerable firms

In order to achieve industrial and economic competitiveness, South Africa needs to address the cost-drivers of poor households. Because of their peripheral position in the apartheid spatial planning legacy and higher dependency ratios, such households spend a larger portion of household income on transport, utilities and related expenditures. Research from the University of Johannesburg shows the “hidden” search costs young people face in securing employment (Patel and Khan, 2016). Similarly, forthcoming research by the Abdul Latif Jameel Poverty Action Lab (J-PAL) looking at the impact of transport subsidies on job matchmaking in South Africa, found that job seekers spend on average R105.75 each week travelling to search for work (Banerjee and Sequeira, forthcoming). This is equivalent to 25% of the weekly salary for a full-time employee earning the average minimum wage among the lowest existing sectoral determination. Such high costs may discourage the unemployed from actively searching for jobs, resulting in higher unemployment. This is one of the numerous household costs where the only regular income in many instances comes from social transfers.

## 8.7. Industrial and productivity-focused policy

All the constituencies agreed that the national minimum wage was not a silver bullet for output growth and the resolution of South Africa’s socio-economic challenges. We have discussed above some of the policy measures that can complement the NMW in addressing wage inequality and household poverty.

The low levels of employment growth in South Africa are partly the result of low levels of labour demand. Critical to addressing this challenge is the need for policies aimed at reducing industrial decline, and providing support to improve the diversification of the manufacturing sector, which has the ability to generate significant employment growth. From the perspective of minimum wages, the Labour and Community constituencies highlighted the positive benefits of a national minimum wage through improved aggregate demand due to greater disposable income. However, the Business constituency and the researchers from the University of Cape Town argued that the rise in disposable income would result in a rise in imports, due to South Africa being a net importer, with a negligible change in manufacturing or retail output. The Panel does not take a view one way or another on which of these outcomes is more likely. However, the Panel does believe that a minimum wage regime is more likely to be successful in an environment where the industrial sector is growing rather than declining, as is currently the case in South Africa. Thus, industrial policies, and more broadly, policies aimed at improving industrial performance – including trade policies, competition policy, and monetary and fiscal policies – are important considerations.

## 8.8. Prioritisation of R&D expenditure and monitoring

Much of the debate around the minimum wage has focused on the impact of higher real wages on productivity at a firm, sectoral and economy levels. Research and development (R&D) is thus important in order to develop new techniques, processes and organisational approaches that form a crucial part of industrial upgrading, operational efficiencies and firm-level structural change. South Africa spent 0.73% of national output on R&D in 2012/13 which is significantly less than its BRICS peers – Brazil spent 1.15%, Russia 1.13%, India 0.82% and China 2.01% (HSRC, 2013). This spending will have to focus on areas of latent competitive advantage. In addition to this, it may be possible to use public procurement expenditure to encourage innovation in areas of latent competitive advantage and in new technology.

Public procurement can be used to create a “learning” environment for emerging suppliers in areas of innovation, while also creating new markets (Lember, Katell and Kalver, 2013).

### 8.9. Education and investment in human capital, and physical and digital infrastructure

The conversation around productivity improvements, industrial upgrading and structural change is incomplete without a discussion of the role of education and the investment in human capital. There is a need to not only improve educational outcomes in the basic education system but also to strengthen the post-school sector in a way that aligns with the nation’s development goals. This, alongside investments in physical overhead capital (roads, ports, regional nodes, inter alia) can serve not only to reduce transaction costs but also bring in private investment. Furthermore, investments in digital innovation in the changing technology and work landscape – the shared economy, business process outsourcing and micro-work – can serve to consolidate employment in these emerging sectors, especially for the youth. The Department of Trade and Industry’s (DTI, 2015) incentive structure for the business process outsourcing (BPO) sector serves as an interesting intervention that will require regular monitoring to ascertain its impact.

## 9. Summary of the Panel's recommendations

1. The Panel proposes that the first national minimum wage for South Africa be set at R20 per hour. This is equivalent to approximately R3,500 per month.
2. The Panel suggests that this level of the minimum wage be communicated as soon as possible should the CoP approve the recommended level.
3. A critical issue that the Panel considered is the adjustment or transition period. Since the adjustment period should allow enterprises and workers to adjust to the new policy in a systematic manner and be as non-disruptive as possible, the Panel suggests the following:
  - a. The national minimum wage should be announced in December 2016.
  - b. The legislative and institutional arrangements be finalised as early in 2017 as possible. At the latest these matters should be dealt with before the end of June 2017.
  - c. The recommended level of R20 per hour should be effective as soon as the legislation is enacted – at the latest 1 July 2017.
  - d. Over the period 1 July 2017– 30 June 2019, compliance with the national minimum wage should be based on technical assistance and persuasion, rather than penalties.
  - e. Beginning on 1 July 2019 (2020 for small businesses), enforcement of the national minimum wage should be based on financial penalties for non-compliance, and the Expert Panel can consider implementing an adjustment to the level.
4. The Panel subscribes to the view of the ILO that adjustments to the national minimum wage should be evidence-based. The Panel therefore recommends that changes to the level of the national minimum wage should be based on evidence and can only be feasibly undertaken in 2020, after the initial level has been implemented and sufficient time has passed for an assessment of the evidence.
5. While the Panel believes that the system should have universal coverage, in order to reduce the risk of any negative employment impacts, the Panel recommends the following special conditions:
  - a. Small business – The Panel believes that other policies, such as taxation policies and Government procurement, are better suited to addressing the needs of small business. Furthermore, the incidence of low pay is as much an issue for large firms as it is for small business. The Panel believes that, given sufficient time, most small businesses will be able to adjust to the recommended level. The recommendation is that small businesses (those employing fewer than ten people) be given a further 12 months to adjust to the level.
  - b. Youth employment – The Panel noted there are a host of policies currently in place to encourage youth employment. There is no evidence to suggest that the introduction of a national minimum wage will have any negative impact on this sector.

- c. Vulnerable workers – The Panel recognises that these sectors are very vulnerable to disemployment and are often poorly organised, which makes them especially vulnerable. Thus the proposal is to have a longer phase-in time for certain groups of workers:
  - i. Farm workers and forestry sector workers:
 

Year 1 – 90% of NMW, with any adjustments to this being done on the basis of evidence.
  - ii. Domestic workers:
 

Year 1 – 75% of NMW, with any adjustments to this level being done on the basis of evidence.
  - iii. Welfare sector and care work:
 

A large number of workers, mainly female workers, are employed in welfare and care work, at low wage levels. At least some of this work is undertaken on behalf of Government, and the low wages are partly a result of low levels of Government subsidy. The Panel believes that an expert group should address the challenges in this sector.
- 6. Very important to note is that the Panel recommends that an exemption mechanism be built into the system. This essentially means that any employers who can effectively motivate why they are unable to meet the minimum wage level will be granted an exemption.
- 7. Furthermore, the Panel recommends that own-account workers, and paid or unpaid family workers in informal enterprises are permanently excluded from the NMW.
- 8. The Panel carefully considered what would be the most efficient and effective institutional design for the implementation and management of the national minimum wage system.
  - a. The Panel recommends that two existing bodies (the Employment Conditions Commission and the Employment Equity Commission), and a new NMW body be incorporated into one umbrella institution – the Decent Work Commission (DWC).
  - b. The Decent Work Commission will comprise three streams of work – Employment Conditions, Employment Equity and the National Minimum Wage, each undertaken by an Expert Panel.
- 9. The structure of the DWC is proposed as follows:
  - a. Independent statutory body.
  - b. The Minister of Labour is the Executive Authority.
  - c. Run by a full-time Commissioner who is an independent expert appointed by the Minister after consultation with Nedlac and the Presidency.

- d. The Commissioner who is the CEO of the DWC will appoint staff to run the three streams of work, which will each be managed by Expert Panels.
- e. The Commissioner will be an observer member of the three Expert Panels.
- f. The NMW Expert Panel shall:
- g. Comprise ten part-time Deputy Commissioners to be appointed as follows:
  - i. six Deputy Commissioners appointed by the Minister of Labour, comprising three representatives of Organised Business and three representatives of Organised Labour;
  - ii. four Deputy Commissions appointed by the Presidency in consultation with Nedlac, who will have expertise in:
    - 1. the labour market,
    - 2. macroeconomics,
    - 3. the informal economy,
    - 4. poverty and inequality.

10. The mandate of the NMW Expert Panel will be to:

- a. Review the NMW level on a regular basis and recommend adjustments.
- b. Publish an annual report analysing relevant data and evaluating the impact of the NMW.
- c. Engage Nedlac on the NMW.
- d. Deliberate on broader wage policy and the data on income differentials.

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## 11. Appendix 1: Calculating Wages

### 11.1. A basic wage: what is included?

The Nedlac Progress Report to the Committee of Principals<sup>45</sup> indicates that agreement has been reached on determining wages in respect of both inclusions for the purposes of a ‘gross (or basic) wage’ or ‘gross remuneration,’<sup>46</sup> and on the exclusion of certain items.<sup>47</sup> This aligns with the ILO position that ‘[t]he concept of the minimum wage can be defined as the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract’ (ILO, 2014:33).

On the concept of a gross (or basic) wage, the Labour constituency at Nedlac<sup>48</sup> proposes that this is prior to the following deductions -

- Prior to tax deductions,
- Prior to deductions for employee contributions to medical aid, retirement fund, and other deductions that are permissible by law.

In so far as it is possible, The Panel recommends that the current practices used in calculating minimum wages, aligned with the BCEA and the Schedule for the Calculation of Employee’s Remuneration in terms of Section 35(5),<sup>49</sup> should inform the basis for calculating wages in order to comply with the NMW rule.

Differentiating between ‘wages’ and ‘remuneration’ – payment in money and payment in kind

The following provisions in the BCEA should inform the method for calculating wages in terms of the NMW Rule, and for determining whether an employer is compliant with the law.

- ‘Wage,’ which is defined in s 1 of the BCEA as:

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<sup>45</sup> Item 2,1.

<sup>46</sup> See p. 8 of the progress report.

<sup>47</sup>The parties have agreed that the items listed in the Minister’s notice of May 2003 (GG 24889) shall not be used to calculate the NMW.

<sup>48</sup> See p. 8 – 10 of the progress report.

<sup>49</sup> Published under GN 691 in GG 24889 of 23 May 2003.

... the amount of money paid or payable to an employee in respect of ordinary hours of work,<sup>50</sup> or if they are shorter, the hours an employee ordinarily works in a day<sup>51</sup> or week

- ‘Remuneration,’ which is defined in s 1 of the BCEA as:

... any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person ...

Whereas ‘remuneration’ consists of both ‘payment in money’ and ‘payment in kind;’ the term ‘wages’ refers to ‘payment in money’ only. Strictly speaking therefore, the NMW would refer to payment in money only; and the question which arises is: can the NMW consist of both ‘payment in money’ and ‘payment in kind?’ For example, if the NMW is R20/hour, would the employer be compliant if he or she paid an employee R15/hour and accommodation to the value of R5 per hour?

The Panel recommends that any arrangements that would permit ‘payment in kind’ and would reduce the ‘money’ component payable to the employee below the NMW rate should be limited. In this regard ILO (2015) states that:

‘if the minimum wage is really to offer social protection to workers and their families, it is necessary to ensure that only benefits in kind that respond to their needs are included among the components of the minimum wage, that a reasonable value is attributed to them and that they are only taken into account up to a certain value’ (NMW RI, 2015:9).

There is a fear that employers may abuse an arrangement which permits ‘payment in kind’ and our recommendation is that limitations be put in place in respect of the maximum percentage of minimum wages that may be paid by way of ‘payment in kind: for example, a rule that a worker’s wage may be reduced proportionate to the value of ‘payment of kind’ up to 10% of the minimum wage.<sup>52</sup>

A basic wage: determined with reference to hours ordinarily work, and subject to exclusions

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<sup>50</sup>‘**Ordinary hours of work**’ ... means the hours of work permitted in terms of section 9 or in terms of any agreement in terms of section 11 or 12. ...; and in terms of s 9 ‘an employer may not require or permit an employee to work more than – (a) 45 hours in any week ...’. Note however the provisions in schedule one of the BCEA titled ‘Procedures for Progressive Reduction of Maximum Working Hours’. The goal of the Schedule is to reduce the working hours of employees to a 40 hour working week and an eight hour (whether through collective bargaining or sectoral determination) having regard to the impact of such a reduction on employment and employment opportunities. Although the Schedule required the Department of Labour to consult with the ECC report within 18 months after the Act came into operation; this has not happened

<sup>51</sup> Note that we recommend a guaranteed minimum pay of 4 hours per day, regardless of actual hours worked.

<sup>52</sup> This is the case in the domestic worker sector with a provision in Sectoral Determination 7 that: ‘[a]n employer may not make any deduction from a domestic worker’s pay except – [among others] ... deduction of not more than 10% of the wage for a room or other accommodation supplied to the domestic worker ...’

Currently, the method for the calculation of remuneration and wages is provided in s 35 of the BCEA; which specifically indicates that an employee's wage is calculated by reference to the number of hours the employee ordinarily works<sup>53</sup> (see annexure A for the application of this method to the NMW).

In addition, s 35(5) goes on to provide that 'The Minister may, by notice in the Gazette, after consultation with the [ECC] and Nedlac, determine whether a particular category of payment, whether in money or in kind, forms part of an employee's remuneration for the purpose of any calculation made in terms of this Act; and that ' the Minister may ... determine the value, or a formula for determining the value, of any payment that forms part of remuneration; [and] ... place a maximum or minimum value on any payment that forms part of remuneration.

In this regard, in terms of categories of payment to be excluded from forming part of an employee's wages, there is consensus in the WITTT that the following items (gazetted by the Minister) should not form part of employees' wages for the purposes of determining compliance with the NMW rule:<sup>54</sup>

- 'Any cash payment or payment in kind provided to enable the employee to work (for example, equipment, tool or similar allowance or the provision of transport or the payment for a transport allowance to enable the employee to travel to and from work)
- A relocation allowance;
- Gratuities (for example, tips received from customers) and gifts from the employer;
- Share incentive schemes;
- Discretionary payments not related to an employee's hours of work or performance (for example, a discretionary profit-sharing scheme);
- An entertainment allowance;
- An education or schooling allowance.

In addition, the labour constituency at Nedlac proposes that the basic wage shall **not** include the following payments that a worker may be entitled to by law or contract<sup>55</sup> –

- Productivity and performance bonuses
- Annual bonuses

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<sup>53</sup>Section 35 provides further that – (2) For the purposes of calculating the wage of an employee by time, an employee is deemed ordinarily to work – (a) 45 hours in a week, unless the employee ordinarily works a lesser number of hours in a week; (b) Nine hours in a day, or seven and a half hours in the case of an employee who works for more than five days a week, or the number of hours that an employee works in a day in terms of an agreement [s 11]; and further that 'an employee's monthly remuneration or wage is four and one-third times the employee's weekly remuneration or wage, respectively.' An additional method is provided for in the event that an employee's remuneration fluctuates from period or period.

<sup>54</sup> See p. 8 of the progress report. These are the items listed in the Minister's notice of May 2003 (GG 24889).

<sup>55</sup> In other words, these payments shall be made to the worker over and above payment of the NMW.

- Overtime payments
- Shift or night work allowances
- An employer's contributions to medical aid and retirement funds

Are tips and commission included in the calculation of wages? And how should piecework be treated?

**Tips**<sup>56</sup> - As a working paper published by the ILO indicates 'whether or not tips are included in the minimum wage is crucial, especially for workers in hotels and restaurants' (ILO, 2014:22); that said, varying approaches have been observed. 'Some countries, including Chile and Germany exclude tips and gratuities from national minimum wage calculation. ... Other countries allow tips to be calculated towards minimum wage compliance but legislate a "top-up" in instances where total earnings do not reach the minimum wage, one such example is France' (NMW RI, 2015:8). The Panel endorses the current position on tips in South Africa (Sectoral Determination 14: Hospitality Sector) which is that 'an employer must pay an employee at least the minimum wage, excluding any gratuity or tips'.

**Commission**<sup>57</sup> - In terms of commission, '[i]n most countries, including Germany, Malaysia, Portugal and the United Kingdom commissions are included in the calculations towards the NMW, but if at the end of the reference period the total value of commissions falls below the NMW level, the employer must top these up in order to meet the NMW' (NMW RI, 2015:8) Likewise, in South Africa, the Sectoral Determination 14: Hospitality Sector provides that '... irrespective of the commissioned earned; the employer shall pay such employee not less than the prescribed minimum wage for the period worked'.

**Piecework**<sup>58</sup> - A number of countries have considered the position of workers who are paid at a piece rate; and some, such as, 'Canada (New Brunswick), the Islamic Republic of Iran, Madagascar, Morocco, and Malaysia stipulate that pieceworkers' wages cannot be lower than the applicable minimum wage' (ILO, 2014:81-2). In Malaysia, if the pieceworker wage at the end of the reference period is lower than the statutory minimum, the employer must top it to meet the minimum wage' (NMW RI, 2015:8). The Panel recommends that any arrangement included in respect of pieceworkers must ensure that 'a worker with average skills and normal output [receives] a salary at least equal to that of workers paid by time performing similar work' (ILO, 2014:82).

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<sup>56</sup> 'Tips are a type of productivity or performance pay paid by the customer rather than the employer.' Policy Brief 1, at p. 8.

<sup>57</sup> 'Commissions are incentive payments related to the value or volume of sales, profit margin or the number or orders submitted to and accepted by an employer.' Policy Brief 1, at p. 8.

<sup>58</sup> 'Piecework' is defined as 'an employment arrangement where workers are paid by the piece or task completed, rather than by the time worked.' Policy Brief 1, at p. 8.

## 11.2. A premium for part-time work?

The possibility of a premium for part-time work was raised in the Nedlac discussions: for example, Sectoral Determination 9: Wholesale and Retail Sector provides that '[a] written agreement may provide that an employee who works 27 hours or less per week is employed on the following terms and conditions – (a) the employee is paid the relevant hourly wage rate ... plus 25% for any ordinary hours of work worked by the employee'. It is worth noting also that 'in Australia and Seychelles, a higher minimum wage has been introduced for casual workers' (ILO, 2014:81).

Part-time and casual work are a commercial reality; these are employees that are likely to work part-time involuntarily, not out of choice, and are more likely to be women, young (or elderly) employees and people with disabilities, and other vulnerable workers who will not have access to the benefits that are available to full-time employees. Hence the argument that workers employed on a casual or part-time basis should be compensated for the loss of benefits/conditions of work that they experience as a result. The ILO indicates that premiums up to 25% may be payable as compensation (Fagan *et al.*, 2014:32).

Currently, the position in South Africa is that a part-time<sup>59</sup> employee (earning below the BCEA threshold) must be treated on the whole no less favourable than a comparable full-time employee, and must also be provided with comparable access to training and skills development.<sup>60</sup> The LRA requires 'equal treatment' (part-time / full-time) in so far as wages is concerned: and the question which arises in this regard is whether, in so far as the NMW is concerned, the law should require the payment of a premium to part-time workers for compensation for a loss of benefits, and thus to comply with the 'equal treatment' principle.

In this regard, the Panel noted the recent emphasis on the equal pay principle and the fact that our law requires parity in conditions of work between part-time and full-time workers. Our concern is that a premium rate for part-time work may discourage employment, and discourage formalisation of informal work, and have unintended negative consequences for part-time workers (who are typically women and other vulnerable workers, although some may choose part-time work for family reasons).

The Panel, therefore would not, at this stage, recommend that a premium rate for part-time work be required and that emphasis rather be placed on the right to equal treatment (on all benefits, including pay); however, The Panel does recommend that a premium rate for part-time workers<sup>61</sup> be a matter for further bargaining between the social partners through the ordinary channels.

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<sup>59</sup> Section 198C (1)(a) of the LRA defines a part-time employee as 'an employee who is remuneration wholly or partly by reference to the time that the employee works and who works less hours than a comparable full-time employee.'

<sup>60</sup> Although employers with less than 10 employees, or that have been in operation for less than two years are excluded from the operation of this provision.

<sup>61</sup> This is currently the case in the wholesale and retail sectoral determination

## 12. Appendix 2: ILO C131 - Minimum Wage Fixing Convention, 1970 (No. 131)

Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (Entry into force: 29 Apr 1972) Adoption: Geneva, 54th ILC session (22 Jun 1970) - Status: Up-to-date instrument (Technical Convention).

### 12.1. Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-fourth Session on 3 June 1970, and

Noting the terms of the Minimum Wage-Fixing Machinery Convention, 1928, and the Equal Remuneration Convention, 1951, which have been widely ratified, as well as of the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951, and

Considering that these Conventions have played a valuable part in protecting disadvantaged groups of wage earners, and

Considering that the time has come to adopt a further instrument complementing these Conventions and providing protection for wage earners against unduly low wages, which, while of general application, pays special regard to the needs of developing countries, and

Having decided upon the adoption of certain proposals with regard to minimum wage fixing machinery and related problems, with special reference to developing countries, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-second day of June of the year one thousand nine hundred and seventy the following Convention, which may be cited as the Minimum Wage Fixing Convention, 1970:

### 12.2. Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.
2. The competent authority in each country shall, in agreement or after full consultation with the representative organisations of employers and workers concerned, where such exist, determine the groups of wage earners to be covered.
3. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under Article 22 of the Constitution of the International Labour Organisation any groups of wage earners which may not have been covered in pursuance of this Article, giving the reasons

for not covering them, and shall state in subsequent reports the positions of its law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups.

### 12.3. Article 2

1. Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions.
2. Subject to the provisions of paragraph 1 of this Article, the freedom of collective bargaining shall be fully respected.

### 12.4. Article 3

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include--

- (a) 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, and the relative living standards of other social groups;
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

### 12.5. Article 4

1. Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 thereof can be fixed and adjusted from time to time.
2. Provision shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned.
3. Wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made for the direct participation in its operation of--
  - (a) representatives of organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned, on a basis of equality;
  - (b) persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice.

### 12.6. Article 5

Appropriate measures, such as adequate inspection reinforced by other necessary measures, shall be taken to ensure the effective application of all provisions relating to minimum wages.



## 12.7. Article 6

This Convention shall not be regarded as revising any existing Convention.

## 12.8. Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

## 12.9. Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

## 12.10. Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

## 12.11. Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

## 12.12. Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations

full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

#### 12.13. Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### 12.14. Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

#### 12.15. Article 14

The English and French versions of the text of this Convention are equally authoritative.

## 13. Appendix 3: ILO R135 - Minimum Wage Fixing Recommendation, 1970 (No. 135)

Recommendation concerning Minimum Wage Fixing, with Special Reference to Developing Countries. Adoption: Geneva, 54th ILC session (22 Jun 1970) - Status: Up-to-date instrument.

### 13.1. Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-fourth Session on 3 June 1970, and

Noting the terms of the Minimum Wage-Fixing Machinery Recommendation, 1928, the Minimum Wage Fixing Machinery (Agriculture) Recommendation, 1951, and the Equal Remuneration Recommendation, 1951, which contain valuable guidelines for minimum wage fixing bodies, and

Considering that experience in more recent years has emphasised the importance of certain additional considerations relating to minimum wage fixing, including that of adopting criteria which will make systems of minimum wages both an effective instrument of social protection and an element in the strategy of economic and social development, and

Considering that minimum wage fixing should in no way operate to the prejudice of the exercise and growth of free collective bargaining as a means of fixing wages higher than the minimum, and

Having decided upon the adoption of certain proposals with regard to minimum wage fixing machinery and related problems, with special reference to developing countries, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-second day of June of the year one thousand nine hundred and seventy, the following Recommendation, which may be cited as the Minimum Wage Fixing Recommendation, 1970:

### 13.2. I. Purpose of Minimum Wage Fixing

1. Minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.

2. The fundamental purpose of minimum wage fixing should be to give wage earners necessary social protection as regards minimum permissible levels of wages.

### 13.3. II. Criteria for Determining the Level of Minimum Wages

3. In determining the level of minimum wages, account should be taken of the following criteria, amongst others:

- (a) the needs of workers and their families;
- (b) the general level of wages in the country;
- (c) the cost of living and changes therein;
- (d) social security benefits;
- (e) the relative living standards of other social groups;
- (f) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

#### 13.4. III. Coverage of the Minimum Wage Fixing System

4. The number and groups of wage earners who are not covered in pursuance of Article 1 of the Minimum Wage Fixing Convention, 1970, should be kept to a minimum.

5.

(1) The system of minimum wages may be applied to the wage earners covered in pursuance of Article 1 of the Convention either by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular groups of workers.

(2) A system based on a single minimum wage--

(a) need not be incompatible with the fixing of different rates of minimum wages in different regions or zones with a view to allowing for differences in costs of living;

(b) should not impair the effects of decisions, past or future, fixing minimum wages higher than the general minimum for particular groups of workers.

#### 13.5. IV. Minimum Wage Fixing Machinery

6. The minimum wage fixing machinery provided for in Article 4 of the Convention may take a variety of forms, such as the fixing of minimum wages by--

- (a) statute;
- (b) decisions of the competent authority, with or without formal provision for taking account of recommendations from other bodies;
- (c) decisions of wages boards or councils;
- (d) industrial or labour courts or tribunals; or
- (e) giving the force of law to provisions of collective agreements.

7. The consultation provided for in paragraph 2 of Article 4 of the Convention should include, in particular, consultation in regard to the following matters:

- (a) the selection and application of the criteria for determining the level of minimum wages;
- (b) the rate or rates of minimum wages to be fixed;
- (c) the adjustment from time to time of the rate or rates of minimum wages;
- (d) problems encountered in the enforcement of minimum wage legislation;
- (e) the collection of data and the carrying out of studies for the information of minimum wage fixing authorities.

8. In countries in which bodies have been set up which advise the competent authority on minimum wage questions, or to which the government has delegated responsibility for minimum wage decisions, the participation in the operation of minimum wage fixing machinery referred to in paragraph 3 of Article 4 of the Convention should include membership of such bodies.

9. The persons representing the general interests of the country whose participation in the operation of minimum wage fixing machinery is provided for in Article 4, paragraph 3, subparagraph (b), of the Convention should be suitably qualified independent persons who may, where appropriate, be public officials with responsibilities in the areas of industrial relations or economic and social planning or policy-making.

10. To the extent possible in national circumstances, sufficient resources should be devoted to the collection of statistics and other data needed for analytical studies of the relevant economic factors, particularly those mentioned in Paragraph 3 of this Recommendation, and their probable evolution.

### 13.6. V. Adjustment of Minimum Wages

11. Minimum wage rates should be adjusted from time to time to take account of changes in the cost of living and other economic conditions.

12. To this end a review might be carried out of minimum wage rates in relation to the cost of living and other economic conditions either at regular intervals or whenever such a review is considered appropriate in the light of variations in a cost-of-living index.

13.

(1) In order to assist in the application of Paragraph 11 of this Recommendation, periodical surveys of national economic conditions, including trends in income per head, in productivity and in employment, unemployment and underemployment, should be made to the extent that national resources permit.

(2) The frequency of such surveys should be determined in the light of national conditions.

### 13.7. VI. Enforcement

14. Measures to ensure the effective application of all provisions relating to minimum wages, as provided for in Article 5 of the Convention, should include the following:

(a) arrangements for giving publicity to minimum wage provisions in languages or dialects understood by workers who need protection, adapted where necessary to the needs of illiterate persons;

(b) the employment of a sufficient number of adequately trained inspectors equipped with the powers and facilities necessary to carry out their duties;

(c) adequate penalties for infringement of the provisions relating to minimum wages;

(d) simplification of legal provisions and procedures, and other appropriate means of enabling workers effectively to exercise their rights under minimum wage provisions, including the right to recover amounts by which they may have been underpaid;

(e) the association of employers' and workers' organisations in efforts to protect workers against abuses;

(f) adequate protection of workers against victimisation.

## 14. Appendix 4: ILO C026 - Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)

Convention concerning the Creation of Minimum Wage-Fixing Machinery (Entry into force: 14 Jun 1930) Adoption: Geneva, 11st ILC session (16 Jun 1928) - Status: Instrument with interim status (Technical Convention).

### 14.1. Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eleventh Session on 30 May 1928, and

Having decided upon the adoption of certain proposals with regard to minimum wage-fixing machinery, which is the first item on the agenda of the Session, and

Having determined that these proposals should take the form of an international Convention,

adopts this sixteenth day of June of the year one thousand nine hundred and twenty-eight the following Convention, which may be cited as the Minimum Wage-Fixing Machinery Convention, 1928, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation:

### 14.2. Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low.

2. For the purpose of this Convention, the term *trades* includes manufacture and commerce.

### 14.3. Article 2

Each Member which ratifies this Convention shall be free to decide, after consultation with the organisations, if any, of workers and employers in the trade or part of trade concerned, in which trades or parts of trades, and in particular in which home working trades or parts of such trades, the minimum wage-fixing machinery referred to in Article 1 shall be applied.

### 14.4. Article 3

1. Each Member which ratifies this Convention shall be free to decide the nature and form of the minimum wage-fixing machinery, and the methods to be followed in its operation:

2. Provided that--

(1) before the machinery is applied in a trade or part of trade, representatives of the employers and workers concerned, including representatives of their respective organisations, if any, shall be consulted as well as any other persons, being specially qualified for the purpose by their trade or functions, whom the competent authority deems it expedient to consult;

(2) the employers and workers concerned shall be associated in the operation of the machinery, in such manner and to such extent, but in any case in equal numbers and on equal terms, as may be determined by national laws or regulations;

(3) minimum rates of wages which have been fixed shall be binding on the employers and workers concerned so as not to be subject to abatement by them by individual agreement, nor, except with general or particular authorisation of the competent authority, by collective agreement.

#### 14.5. Article 4

1. Each Member which ratifies this Convention shall take the necessary measures, by way of a system of supervision and sanctions, to ensure that the employers and workers concerned are informed of the minimum rates of wages in force and that wages are not paid at less than these rates in cases where they are applicable.

2. A worker to whom the minimum rates are applicable and who has been paid wages at less than these rates shall be entitled to recover, by judicial or other legalised proceedings, the amount by which he has been underpaid, subject to such limitation of time as may be determined by national laws or regulations.

#### 14.6. Article 5

Each Member which ratifies this Convention shall communicate annually to the International Labour Office a general statement giving a list of the trades or parts of trades in which the minimum wage-fixing machinery has been applied, indicating the methods as well as the results of the application of the machinery and, in summary form, the approximate numbers of workers covered, the minimum rates of wages fixed, and the more important of the other conditions, if any, established relevant to the minimum rates.

#### 14.7. Article 6

The formal ratifications of this Convention under the conditions set forth in the Constitution of the International Labour Organisation shall be communicated to the Director-General of the International Labour Office for registration.

#### 14.8. Article 7

1. This Convention shall be binding only upon those Members whose ratifications have been registered with the International Labour Office.

2. It shall come into force twelve months after the date on which the ratifications of two Members of the International Labour Organisation have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

#### 14.9. Article 8

As soon as the ratifications of two Members of the International Labour Organisation have been registered with the International Labour Office, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of the ratifications which may be communicated subsequently by other Members of the Organisation.

#### 14.10. Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the International Labour Office.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of five years and, thereafter, may denounce this Convention at the expiration of each period of five years under the terms provided for in this Article.

#### 14.11. Article 10

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### 14.12. Article 11

The French and English texts of this Convention shall both be authentic.