

## **Report of the Portfolio Committee on Labour on the workshops and public hearings held on the national minimum wage, dated 8 March 2017**

The Portfolio Committee on Labour, having conducted a series of workshops and the public hearings on the National Minimum Wage, reports as follows:

### **Executive Summary**

The Diagnostic Overview of the National Planning Commission identified poverty, inequality and unemployment as the major challenges facing the country. The overview found that the Gini coefficient, which is a measure of income inequality, was 0.67 in 2005. This measure placed South Africa as one of the most unequal societies the world over. The overview further noted that the poorest 20 percent of the population earned about 2.3 percent of the national income, while the richest 20 percent earned a disproportionate 70 percent. In response to this high level of inequalities, the governing party undertook to investigate the modalities for the introduction of a national minimum wage as one of the key mechanisms to reduce income inequality (2014 Election Manifesto). In his State of the Nation Address, the President committed the Government to investigating the possibility of a national minimum wage. Accordingly, the Portfolio Committee on Labour initiated its own process of information gathering on the subject of the national minimum wage. The information gathering process was divided into two phases, namely the workshops where stakeholders were invited to share their views on this subject matter and the public hearings.

Twelve organisations presented before the Portfolio Committee on Labour in the first round of the workshops, which was between 20 August and 19 September 2014. Four of the organisations were academic based institutions viz, Development Policy Research Unit (University of Cape Town), Social Law Project (University of the Western Cape), PLAAS (University of the Western Cape) and Professor Neil Rankin (representing University of Stellenbosch Faculty of Economics). Seven organisations were employers' associations. viz. AgriSA, Black Management Forum (BMF), Business Unity South Africa (BUSA), National Employers' Association of South Africa (NEASA), SANTACO and the Chamber of Mines. The Progressive Professionals Forum (PPF) is the new non-aligned organisation that also presented before the Committee on this subject.

The second round of the workshops was held between 23 and 24 June 2015. Nine organisations, which comprised organised labour, organised business and small individual businesses presented before the committee during this round of the workshops. The organisations that presented were AHI Business Network; South African Domestic Services and Allied Workers' Union (SADSAWU); Mamiya Travel Tours; Confederation of South African Workers (CONSAWU); National Union of Metal Workers of South Africa (NUMSA); South African Chamber of Commerce and Industry (SACCI); and COSATU, FEDUSA and NACTU who made a joint presentation.

Most of the presentations reflected on the South African situation and were based on the studies conducted on the impact of Sectoral Determinations (SD). Some of the interesting findings were:

- The impact of introducing the SD on employment levels in Retail, Domestic, Forestry, Taxi and Security sectors was insignificant.
- An increase in working hours was recorded in sectors where there were job losses as a result of the introduction of the SD. In sectors where employment continued to grow after the introduction of the SD, there was a decrease in working hours.
- The Agricultural sector recorded a 45 percent non-compliance to the SD.
- Minimum wages lifted the working poor from extreme poverty.
- In the clothing and textile industry, rapidly rising minimum wages in the non-metro areas drove many low wage more labour intensive producers out of business, whilst the DTI subsidies helped the high end fashion producers.
- The minimum wage had a negative effect on vulnerable workers such as mine workers and farm workers.
- An increase in the minimum wage that is not accompanied by an increase in productivity would result in job losses.

- The sectors that are exposed to high international competition and where cost increases cannot be passed on to customers could be negatively affected.
- The national minimum wage could address the existing wage fragmentation by way of uniform coverage.

Most presenters expressed support for the national minimum wage but cautioned that it must be set at a reasonable level so as to avoid job losses.

The workshops were followed by the public hearings, which were conducted in all nine provinces of the country. The Committee resolved to conduct public hearings as an initiative to test public opinion on the introduction of a national minimum wage.

Public hearings were conducted across the country starting in the Western Cape on 7 November 2014 and ending in Mpumalanga on 25 April 2015. The work background of participants varied and included domestic workers, cleaners, farmworkers, security guards, community work project workers, public service workers, mineworkers, workers in the steel industry and the unemployed. The public hearings' section of the report is presented as oral submissions per province and follows a chronological order. In addition to the main theme, which was the national minimum wage, other themes that emerged were temporary employment services (labour broking), unemployment, skills development, salary disparities, gender discrimination at workplaces, low wages and its attendant problems, lack of enforcement of labour laws and victimisation of employees who stood up for their rights. Members of the public were advised to submit grievances unrelated to the national minimum wage to the table reserved for that purpose. It is worth noting that the summary of submissions does not seek to provide a verbatim account of oral inputs.

NB: This Report must be read in conjunction with the following NEDLAC Reports, which are available on the Parliamentary website:

- Agreement on the Introduction of a National Minimum Wage
- Declaration on Wage Inequality and Labour Market Stability
- Engagement on the National Minimum Wage

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## 1. 1. Introduction

The Committee resolved to convene a series of workshops as an initiative to gather information on the introduction of a national minimum wage as one of the key mechanisms to reduce income inequality that needs to be investigated. In his state of the nation address, the President stated, that the social partners need to deliberate on wage inequality. He committed the government to the investigation into the national minimum wage which was identified as an income inequality reduction mechanism. He informed the nation that the Deputy President will convene the social partners' dialogue within the ambit of NEDLAC to deal, *inter alia*, with this matter.

The workshops were conducted aimed at gathering information from the various academic, business and labour organisations on the topic of national minimum wage. The workshops were followed by the public hearings, which were conducted in all nine provinces of the country. Accordingly, the report was divided into two sections viz. section A and section B, which covered the workshop presentations and public hearings submissions respectively.

## 2. Section A

### 3. 2. Presentation by the Development Policy Research Unit (DPRU) of UCT (20 August 2014)

The DPRU started by reflecting on the economy and the labour sector of the country as follows:

- South Africa recorded significant job losses in the 2008-2009 period as a result of the global financial crisis.

- The manufacturing sector, which is a driver of economic growth and development in other countries, contracted from 19 to 17 percent of GDP between 1993 and 2012, respectively. The mining industry contracted from 11 percent to 6 percent during the same period. The sector that registered significant growth as a percentage of GDP was the financial sector, which expanded from 17 to 24 percent.
- The only sector that reflected employment growth above the GDP was the Community Service, which include the Public Sector. It grew from 17 to 22 percent share of the labour force between 2001 and 2012, respectively. The financial sector, which comprises mostly labour brokers, grew from 9 to 13 percent during the same period.
- Employment was driven by the economic growth of 2001 to 2008. The global financial crisis of 2008 led to significant job losses in the primary sector (Agriculture and Mining).

The DPRU conducted a study to assess the impact of the introduction of the SD in the Retail, Domestic, Forestry, Taxi and the Security sectors. The study made the following findings:

- The impact of introducing SD on employment levels in the five studied sectors was statistically insignificant.
- There was significant increase in wages in the Taxi, Domestic, Security and Retail sectors as a result of the introduction of a SD.
- There was a change in working hours as a result of introduction of SDs. The working hours increased from 42 to 49 hours per week in the Agricultural sector between 2002 and 2003. In the sectors where employment continued to grow after introduction of SD (Retail and Security), there was reduction in the usual number of weekly hours.
- Agriculture sector specific findings were:
  - In areas where the wage gap was higher before the introduction of the SD, there was decrease in employment after it was implemented.
  - The farmworkers who kept their jobs received a significant wage increase of close to 18 percent.
  - A move away from non-permanent workers was recorded.
  - The number of workers with a written contract of employment increased to reach 57 percent in 2007.
  - Employment level fell significantly in response to introduction of the SD.
- Non-compliance to the SD was recorded at 45 percent. There was a dramatic shift towards compliance in the Agricultural sector. Western Cape and Gauteng were the best performing provinces in terms of partial compliance in Agriculture.

The DPRU study experienced the following challenges:

- The data used covered the period between 2000 and 2007.
- The study did not look into the impact of minimum wage on income inequity.

The following recommendations came out of the DPRU study:

- Decision to be made on choosing the single or split minimum wage.
- Inspection and Enforcement Services will have to be capacitated to ensure high levels of compliance.

#### **4. 3. Presentation by the Black Management Forum (BMF) – (03 September 2014)**

As an introduction, the presenter provided the following information:

- In South Africa, inequality as measured by the Gini coefficient increased from 0.64 in 1995 to 0.69 in 2005, but improved to 0.65 in 2010/11. The share of wages in national income has been decreasing from just below 55 percent in 1994 to a low of 49 percent in 2008. It then increased to 51 percent in 2012. The average income for females remains less than their male counterparts. In 2012, the median income for an African household was under R3 000. The median income for Coloureds and Indians was over R7 000, while for whites it was around R20 000. (20 Year Review)
- There is growing inequality within the black community.

- It is possible for the country to seriously address inequality through coming up with targets that the country can use to evaluate if it is making progress or not on this pressing social challenge.
- The national minimum wage is undoubtedly one of the most effective mechanism through which inequality could be addressed.
- Since 1999 detailed minimum wages schedules have been developed covering eleven sectors of the economy, which include agriculture, domestic, clothing and textiles, etc. (Ben Stanwix:2013)
- The mandated wage can vary by occupation type, number of hours worked, geographic location, etc.
- The subject of discussion was about taking the minimum wage discourse to a national level.
- The investigation into the national minimum wage should take into consideration a number of issues namely:
  - The rationale behind the minimum wage;
  - Harmonisation of national minimum wage with sectoral minimum wages;
  - The impact of the national minimum wage on poverty alleviation and reduction of inequality;
  - The impact of national minimum wage on the country's industrial relations system;
  - Trade-offs that often have to be made between employment levels and minimum wages;
  - In any policy choices, there are costs and benefits, advantages and disadvantages, winners and losers; etc.

According to the presenter, all these facts need to be factored into the final research that will form the basis for the decision on minimum wages.

The presenter provided the following facts on SDs, which are a form of minimum wage:

- Minimum wages lift the working poor from extreme poverty.
- When minimum wages were introduced in the agriculture sector, aggregate employment on farms fell by 13 percent in the 4 years after 2003 (Ben Stanwix:2013).
- In the clothing & textile industry, rapidly rising minimum wages in the non-metro areas have driven many low-wage, more labour intensive producers out of business whilst subsidies from the Department of Trade and Industry (DTI) has helped higher end fashion producers. (Nicoli Natrass: 2014).
- Further, the clothing and textiles factories that survived between 1995 and 2014 did so because they were non-compliant with the minimum wages extended by the Minister of Labour.

The BMF shared the information on the case studies conducted in Indonesia and Brazil.

## **5. Indonesia**

In Indonesia, the minimum hike in national minimum wage had a modest impact on the conditions of the Indonesian labour market.

- Average wages increased by 5-15 percent.
- Urban wage employment decreased by 0-5 percent.
- The impact of minimum wage hike varied according to the size of the enterprise: employment in small enterprises decreased substantially, whilst in large firms, it increased. (Matjeke: 2011)

## **6. Brazil**

The study of the national minimum wage in Brazil that was conducted by J Berg: 2014, made the following findings:

- In Brazil, an increase in minimum wage led to a rise in income, not only for wage earners but also for pensioners and the unemployed, whose benefits were linked to the national minimum wage.
- The minimum wage contributed to reducing income inequality between men and women and between white and black workers.
- The Gini index dropped from 0.56 in 2000 to 0.53 in 2007.

- The number of workers whose income were below the poverty line fell from 23 percent in 1999 to 14 percent in 2006.
- The minimum wage also served as a benchmark for social security benefits.
- One of the main factors contributing to economic growth in the period 2005-2008 was the growing domestic market. The minimum wage valuation process played a key role.
- Employees and employers often negotiated wages using national minimum wage as a benchmark
- The national minimum wage played an important role on the redistribution of income particularly for the disadvantaged and vulnerable members of society.
- It also played a distributive role among workers with an income.
- The national minimum wage contributed to the reduction of the Gini index by 44 percent.

The BMF made the following recommendations:

- It is important that the private sector be brought on board.
- The summit that the Deputy President should convene with social partners should be preceded by the research/investigation. This should be an open process.
- The social partners should negotiate principles and applications emanating from the research.
- South Africa has a higher unemployment rate compared to BRICS partners, which is a contributor to inequality. Unemployment rate in the BRICS is as follows: Brazil 4.3 percent, Russia 4.9 percent, China 4.05 percent, India 3.8 percent and South Africa 25 percent. It is therefore recommended that SA addresses the challenge of unemployment as another mechanism for reducing inequality.
- It is recommended that a ceiling on executive pay be considered as part of the process of narrowing the wage gap.

#### **7. 4. The presentation by the Business Unity South Africa (3 September 2014)**

As an introduction, the presenter pointed the following:

- Business Unity South Africa (BUSA) is committed to participating constructively in the deliberations on national minimum wage.
- BUSA is in the final stages of research into the national minimum wage, which will inform its mandated position.

However, BUSA have sought guidance from the International Labour Organisation (ILO) and the International Organisation of Employers (IOE) and have some preliminary comments, which are elaborated upon in the following section.

BUSA made the following general comments:

The preliminary comments are informed by the ILO Convention 131 and Recommendation 135. The purpose of the Convention was to give wage earners necessary social protection regarding minimum permissible levels of wages. The Convention required full consultation between employer and employee or employee representative.

The criteria to determine minimum wages (Article 3) included:

- 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.
- Economic factors including the requirement of economic development, levels of productivity and desirability of attaining and maintaining high level of employment.

The Basic Conditions of Employment Act [Section 54(3)] provides:

- When advising the Minister on the publication of sectoral determination, the Commission must consider in respect of a sector and area:
  - Ability of employers to carry on their business successfully.
  - The operation of SMMEs and new enterprises.
  - The cost of living.
  - Alleviation of poverty.
  - Conditions of employment.

- Wage differentials and inequality.
- Impact of proposed condition on employment or health, safety and welfare of employees.

Therefore, South Africa has a functioning system of sectoral minimum wages through SDs, which provide for minimum wages per job category. In accordance with section 55(8) of the Amendment Act, the Minister may publish a SD that applies to employers and employees who are not covered by other SDs. There is therefore already a provision for a default minimum wage.

Therefore, it appears that the problem is not the regulation of the labour market, but the enforcement of the available regulations. The problem of enforcement has to be innovatively tackled in order to impact unemployment, inequality and poverty.

On Unemployment, Inequality and Poverty, BUSA commented as follows:

Significant progress has been made in the fight against poverty, which need sustaining.

These include:

- 10.2 million people living in extreme poverty in 2011, down by 20.2 percent from 2006.
- 23 million people living in moderate poverty in 2011, down by 45.5 percent from 2006.
- Self-reported hunger dropped from 30 percent in 2002 to 13 percent in 2011.
- Social grants recipients rose from 2.5 million in 1998 to 16.5 million in 2014/15.

To sustain social grant support, more people have to be in employment (currently the tax payer base sits at about 5 million people.) If the minimum wage is set too high, it can push more people into informality. The IOE stated that particularly low skilled workers and youth are negatively affected if the minimum wage is set too high. The level at which the minimum wage is set is therefore crucial in its success.

On minimum wage setting, BUSA made the following comments:

Minimum wage setting consists of three aspects, namely:

- Remuneration for work performed
- Basic income
- Cost of production

National minimum wage should be set relative to:

- Employment rates, productivity, employment of vulnerable groups, inflation, tax and social contributions.
- Differentiation and decentralisation via a sectoral system is important to take into account different costs of living in different areas, productivity levels and employer's ability to pay (particularly small business).

BUSA made the following recommendations:

- The mistake from the Agriculture wage setting at 52 percent, which resulted in about 73 000 job losses must not be repeated.
- The current system must be strengthened and compliance improved through effective enforcement.
- Strike a balance between protecting vulnerable workers and limiting potential negative economic consequences.
- Consider regulatory impact assessment once the Bill is referred to the Committee.

## **8. 5. The presentation by the Freedom Market Foundation (5 September 2014)**

As an introduction, the presenter (Mr Loane Sharp) briefed the Committee on the history and philosophy of the Free Market Foundation (FMF). According to Mr Sharp, the philosophy of FMF is political and economic freedom. He then took the members through the history of labour market development in South Africa from discovery of gold in the Witwatersrand through the Rand rebellion up to the current labour dispensation. He implored the Committee to consider the historical context when engaging on the national minimum wage. He warned that the national minimum wage must be evaluated on consequences, as opposed to intentions. He pointed out that the possible consequences of the national minimum wage are

lay-offs of workers who are less productive and not hiring of new workers who are not productive.

In response to questions raised, the presenter asserted that the national minimum wage affects the workers in most vulnerable sectors such as mining and agriculture. He articulated that the outcomes intended by the introduction of NMW can be achieved through education and training, skills development and acquisition of experience. According to the presenter, lack of these requirements expose the workers to vulnerability as is the case with the youth who lack qualifications, skills and experience. He pointed out that setting of the minimum wage at high level will exclude new entrants into the labour market thus excluding competition.

- The presenter denied that FMF represent employers. He identified beneficiaries of NMW as organised labour and large businesses, which employs nine percent of the national workforce. Large business, according to the presenter, support NMW to drive out competition from Small Micro and Medium Enterprises (SMME).

The presenter advised the Committee to, on receipt of Nedlac report, request independent Regulatory Impact Assessment (RIA). However, the presenter was informed that all Bills that were processed by the Committee were assessed through RIA before they were forwarded to the Presidency.

#### **9. 6. The presentation by the National Employers' Association of SA (5 September 2014)**

The Chief Executive Officer of the National Employers' Association of South Africa (NEASA) introduced his presentation by saying that nobody could be against the principle of proper remuneration and honest reward for an honest day's work or with remuneration arrangement which could improve the standard of living for workers. However, he raised the following questions:

- Will a national minimum wage come at the price of jobs?
- Will it reduce inequality or enhance it?

He acknowledged that all parties agree on challenges facing the country but differ only on how to address them. According to him, the challenge is finding a balance between protecting vulnerable workers without the negative consequences of increased unemployment.

NEASA is of the view that a wrong minimum wage approach will destroy jobs, increase unemployment and consequently increase inequality. The presenter stated that they would not be opposed to a national minimum wage that is on a level which is not harmful to employment levels.

The presenter argued against the income lead growth approach by pointing out that the minimum wage, in the short term, will increase employers' wage bill without being met by the same increase in demand for produced goods. According to him, there is no guarantee that increased pay would be met by increased productivity. This will drive up cost and will have a negative effect on consumer spending which ultimately leads to job losses. He cautioned that the sudden introduction of an unrealistic minimum wage and the potential increased demand would be too far apart, resulting in jobs being shed during that period.

According to NEASA, the question is not whether wage increases which are not accompanied by increased productivity and increased demand of products will destroy jobs, but how many jobs will be destroyed and how to weigh up the cost of job destruction and unemployment against the benefits of higher wages for those employed. Further, they believe the moral principle which needs to be addressed is the unacceptability of higher wages for those few who are fortunate to be employed versus the alternative of higher employment but at a lower wage. They conclude that the consequence of a model of high wages and low employment is that ultimately consumer spending power is limited because of the dependency of a large number of persons on the income of a few employed persons.

The presenter argued that that the higher the statutory wage, the less accessible the labour market will be for the unskilled work seekers. He went further to cite the metal and

engineering as well as the clothing and textile industries as examples where wages were set high by the bargaining councils as a result putting companies out of business and workers out of jobs. He advocated the market as the only institution that can establish a sustainable wage.

NEASA made the following recommendation:

- “A national minimum wage has to be fixed at a level where new entrants to the labour market can be absorbed at an affordable and sustainable cost and that a healthy trade-off between a minimum wage and employment be maintained at all times.”

#### **10. 7. The presentation by the SANTACO (10 September 2014)**

In his introduction, Mr Buthelezi provided information on the taxi industry in general and SANTACO in particular. He told the Committee that SANTACO comprise 100 000 members representing over 90 percent of taxi operators and is the only industry body recognised by government. According to him, the organisation subscribes to corporate governance principles and standards, which includes full annual audits and accountability procedures.

Economically, the organisation has 65 percent public transport market share transporting over 15 million commuters daily. It contributed 3.4 percent to the GDP and employed 600 000 workers. SANTACO owned approximately 200 000 taxis valued at approximately R18 billion. It had a buying power close to R34 billion.

SANTACO expressed the following views on national minimum wage: SANTACO was involved in the process that led to the development of the first taxi SD and has been involved in subsequent review processes. Therefore, SANTACO supports the initiative to set up the national minimum wage. However, it cautioned that due consideration be given to various options available to achieve an ideal level while ensuring mass employment. The presenter pointed out that the industry is already paying taxi drivers far above (81 percent) the SD wage.

SANTACO recommended as follows:

- There must be collaboration to ensure that the industry is capacitated for purposes of compliance to the labour legislation framework such as the Labour Relations Act, Basic Conditions of Employment Act, Unemployment Insurance Fund Act, Compensation for Occupational Injuries and Diseases Act, Taxi SD, etc.
- An enabling environment has to be collectively created to ensure smooth enforcement of policies.
- The taxi industry has to be fully engaged in determining a suitable and sustainable minimum wage.

#### **11. 8. The presentation by Professor Rankin of the University of Stellenbosch (10 September 2014)**

Professor Rankin provided the following overview as an introduction to his presentation:

- Firms choose different inputs and technologies which differ across a number of dimensions, particularly firm size.
- There is empirical evidence that larger firms pay higher wages, smaller firms hire people with lower skills and that wage share is a higher proportion of costs for smaller firms.

He went further to outline the impact of the binding minimum wage on the above observations.

The presenter outlined the impact as follows:

- Reduction in employment, the magnitude of which will depend on the sensitivity of employment to wages.
- It will raise the wages of the lowest paid (lowest skilled) thus making it relatively more expensive to hire them.
- The firms that employ more lower skilled and lower paid workers as well as with the larger relative wage share will be most negatively affected.

- The sectors that are exposed to high international competition and where cost increases cannot be passed on to customers will be negatively affected.

The presenter provided a brief review of some research conducted on the impact of minimum wages (SDs and sectorally bargained wages) in South Africa:

- According to the study by Borat et al (2012, 2014), wages for those who remained in employment increased by about 17 percent but employment probability in agriculture (tradable) fell by 13 percent. The non-tradable sectors (retail, taxi, security, and domestic workers) were less affected.
- Centralised bargaining agreements are found to decrease employment in an industry by 8-13 percent, with losses concentrated among small firms (Magruder: 2012).
- Smaller firms in sectors with active Bargaining Councils that face high imports are more likely to exit. Also labour-intensive firms with higher ratios of unskilled labour are negatively affected. Binding bargaining council agreements mean that small firms which cannot pay the higher wages and cannot upgrade their capital exit the market (Edwards, Rankin and Stijns: 2014).
- There were no net new jobs created between 2005 and 2011 in firms with fewer than 500 employees (Kerr et al: 2014).

The above findings reflected an increased concentration of jobs in bigger firms which are not constrained by wage floors. According to the presenter, these bigger firms may actually set higher wages in bargaining councils to drive out competition from smaller firms. The findings further reflected that smaller firms which survived chose capital-intensive high skilled production technology. There is also a shift in jobs away from tradable sectors to non-tradable (tertiary/ service) sectors as a response to restrictions and trade competition. The presenter cautioned that growth strategies that rely exclusively on domestic demand eventually reach their limits since the home market is usually too small to sustain growth for long and it does not give an economy the same freedom to specialise in whatever it is best at producing.

The presenter concluded by noting that:

- A change away from collective bargaining at a sector level and extension of collective agreements to non-parties may lead to higher employment but this will depend on the level of the wage and the institutional process in determining it.
- Social transfers have to be considered in a fight against poverty but this requires tax revenue, which is dependent on the level of employment.
- The introduction of the national minimum wage will probably result in loss of jobs and the burden of reduced employment chances is likely to fall on lower skilled, smaller firms, youth and tradable sectors. These are precisely the types of jobs the country need to be creating for the unemployed to fill.
- Other policies such as earned income tax credit similar to that in the United States, are better at increasing incomes without the same negative effects as the national minimum wage.
- The key issues to think about are the correct level of the national minimum wage, linkages between wages and productivity, how does the national minimum wage affect SDs and collective bargaining structures as well as who decide what the national minimum wage should be.

## **12. 9. The presentation by Social Law Project of the University of the Western Cape (12 September 2014)**

As an introduction, the presenter put the discussion on the national minimum wage in context of high levels of inequality and poverty between population groups with racial, gender and age dimensions resulting in African women being the most vulnerable group. The Organisation for Economic Cooperation and Development (OECD) put South Africa as amongst the countries with highest levels of inequality in the world with a Gini-coefficient of 0.69 (2011). According to the OECD, the richest 20 percent consume 61 percent and the bottom 20 percent consume 4.5 percent. The total of 23 million people or 45.5 percent of the population is classified as poor. The country is among those with highest levels of unemployment in the world at 25.2 percent. It is second in the Medium Developed Group of countries after Kiribati in the Pacific islands which stands at 30.6 percent. There is lack of social cohesion, which is evidenced by high levels of public protests and strikes. However, in addressing these glaring inequalities, constitutional as well as legislative framework has to be taken into consideration.

The presenter located the discussion on constitutional imperatives, which include human dignity; protection against unfair discrimination; freedom of expression and association; fair labour practice; right to organise and bargain collectively; as well as access to social security including social assistance.

He called on the members of the Committee to consider the national minimum wage within the legislative framework, which include the Labour Relations Act and Basic Conditions of Employment Act.

Finally, the Committee members were asked to consider the country's international law obligations as espoused in the International Labour Organisation's (ILO) Decent Work Agenda. According to the Country Programme agreed at Nedlac, there is: "Urgent need for national consensus on what constitutes a minimum wage and minimum level of living sufficient to meet the Constitutional guarantee of life and dignity and the need to develop wage policy on this basis." The value of work was introduced as a guiding concept where: "...work is valued for multifaceted reasons and serves multifaceted functions, some of which are clearly economic (understood in a restrictive sense of value added and remuneration) and many of which are not. It is in this range of values and functions, both economic and social, that we must seek to understand the place of employment within human development." (Fischer: 2014, p4). With regard to the value of work, while there is a view that domestic work must be excluded from the national minimum wage, the Social Law Project is of the view that it must be included and properly valued.

Social Law Project propagates for the national minimum wage based on the following reasons:

- It contributes to reducing inequality and poverty.
- It addresses existing wage fragmentation by way of uniform coverage.
- It provides protection to vulnerable workers.
- It is simple and easy to understand and enforce.
- It serves as a foundation for improvements to employment conditions through collective bargaining.

Social Law Project made the following recommendations:

- Public consensus on the concept of national minimum wage should be fostered including how a figure is to be determined. Much work has already been done in this regard through institutes like the Study of Poverty and Inequality Institute (SPII).
- A wage policy should be developed as part of Decent Work ILO programme.
- The national minimum wage has to be located within the overall wage framework.
- A new collective bargaining model is proposed, which includes:
  - Coherent demarcation of sectors.
  - Greater state support for Nedlac, statutory and non-statutory bargaining fora, better equipped inspectorate etc.
  - New section 55(8) – Minister can be supportive of establishing a forum "for employees and employers who are not covered by any other sectoral determination".
  - Unpacking of bargaining levels to permit some issues to be bargained at workplace level.
  - Moving collective bargaining beyond the existing coverage of "standard employees".

### **13. 10. The presentation by Professor Hall of the Institute for Poverty, Land and Agrarian Studies at UWC (12 September 2014)**

Professor Hall provided statistics that show a decrease in the number of farms and an increase in the area per farm between 1918 and 2008. The statistics also showed that labour costs were less than materials and capital costs in agriculture between 1945 and 2010. There was also gradual decrease in employment while wages steadily increased between 1971 and 2007. She referred to the findings of the study that was conducted by Department of Labour in 2001, which found as follows:

- Children living in commercial farms were more likely to be stunted and underweight than any other children-almost one in three. Only one in four children on commercial farms are “food secure”.
- A minimum wage was needed to provide a floor for wages.
- Job losses would likely affect unskilled workers, women and youth.
- A minimum wage is one contribution towards taking people out of poverty. It cannot be expected to achieve this by itself.
- A minimum wage would lead marginal businesses only viable through exploiting workers to exit the sector, making way for others.
- Best justification for minimum wage is to reduce inequality between sectors.

The SD of 2003 resulted in an average percentage increase of 4 to 44 percent. There was no ability or attempt to determine affordability. The rankings by districts were merged into a single national minimum wage for agriculture in 2009.

The presenter provided statistics to the effect that the agriculture industry employed 589 000 workers in 2008. The number decreased by 78 000 to 510 000 in 2011. It came up by 9.7 percent to 613 000 during the first two quarters of 2013. The reasons for the bounce back was reported to be mostly due to good commodity prices and higher exchange rate. PLAAS pointed out that the attribution of job losses in agriculture to the introduction of the sectoral determination is weak. The presenter referred the Committee to a study conducted by the Bureau for Food and Agricultural Policy of the University of Pretoria. The study found that most farms could not afford even a R20 increase in wages. It also found that R69 per day does not allow even a single worker to achieve food security, let alone a household.

The study showed that many farmers could not afford any increase above R10-R20 per person per day and predicted major job shedding and economic decline should a wage be imposed. It indicated that even R105 was too much for farmers. It also showed that even with substantial increases in wages, worker households would unlikely be able to afford sufficient nutritious food. It indicated that even R150 was too little. The BFAP report looked at R105 as an example close to the mid-point between R150 demand (unaffordable) and then existing R69 level (politically untenable). The new minimum wage was finally adopted with effect from March 2013.

Most farmers absorbed the minimum wage of R105 but R2 billion was added to the wage bill and 26 000 jobs (3.5 percent) were lost in March-June 2013. However, according to Professor Hall, the drop in employment was very small given the magnitude of the numbers and the size of the increase in the minimum wage. It is reported that there is a long term trend of steadily rising employment in agriculture since June 2011, along with a large shift from casual and seasonal to permanent employment.

The agricultural economists explain the above-mentioned phenomenon as follows:

- There is a growing demand for labour, especially higher skilled labour in more precision-based farming.
- Labour-substituting mechanisation has been largely achieved and therefore there is not much further scope.
- More marginal farm enterprises have already retrenched workers or gone under.
- Farms need to retain labour force in order to retain production levels.
- Farmers have been able to adjust production systems to make the new wages affordable-structural adjustments.

In essence the argument of PLAAS is that the job losses in agriculture are as a result of deregulation and liberalisation policies. They are also not in favour of a special dispensation for agriculture as proposed by the DPRU of UCT. Their argument is that the social wage, in which DPRU based its proposal, is shrinking anyway and there is difficulty in quantifying, monitoring as well as enforcing it.

PLAAS made the following conclusions:

- Macro-economic policy is the primary cause of the decline of employment in primary agriculture.

- This is closely associated with the trend towards consolidation of farm ownership and enterprises up and down the value chain,
- Rising cost of intermediate goods rather than labour, land or capital, plus growing power of downstream intermediaries and retailers, are the main explanatory factor in the cost-price squeeze in agriculture, not labour costs.
- Wage determinations have modestly increased real average wages and the overall wage bill, while the decline in employment has tapered off and the numbers of workers per farm is stable.

#### **14. 11. The presentation by the Progressive Professionals Forum (12 September 2014)**

After a brief overview of the organisation, the presenter outlined the socio-economic conditions confronting the country post 1994. Among the challenges facing the country, the presenter mentioned extreme inequality with 10 percent owning more than 68 percent of the total income; failure to transform apartheid labour structure, particularly cheap labour and income distribution; high unemployment rate; and transformation in education not addressing real needs. However, there were also positive developments mentioned such as the phenomenal growth for the black middle class.

The PPF is supportive of the introduction of a national minimum wage whose aim must be to ensure that vulnerable workers are guaranteed a minimum income. This minimum wage should apply to the minority of workers not covered by the sectoral collective bargaining agreements. The national minimum wage will lift the working poor from extreme poverty and facilitate the redistribution of wealth in an unequal society. PPF is of the view that this is a positive step towards achieving a decent working class environment.

However, PPF caution that the national minimum wage should not be a quick fix or done in isolation of other laws governing poverty alleviation. It advised that further research be conducted in order to understand the complexities which could exist around employment conditional benefits, payroll tax and the like. The organisation states: "The PPF are cognisant of the claims of some critics that job losses or severe damage to the economy may occur, however US economists including 5 Nobel Prize Winners state that there will be improvement in the lives of the low income workers and a positive spin off for their families."

The PPF cited Business Process Outsourcing (BPO) as the sector that requires regulation in the form of the national minimum wage. It is said to be the only sector to have grown by 37 percent during the recession and growing year on year. The sector has a demand for 15 000 jobs over the next 3 years. According to PPF, the high performance of the sector is a result of South Africa's unique customer services ethos and English language capabilities compared to countries such as India and the Philippines. The sector has an annualised attrition rate of 52 percent and therefore the national minimum wage will formalise the sector and reduce labour disputes thereby creating a professional image, which is long overdue.

The PPF calls for a more realistic basket to measure GDP in order not to disadvantage the poor. It also calls for an improvement in productivity to ensure the revenue line is more sustainable to fund a decent wage. The PPF called upon economists to compute and publish the multiplier effect of the introduction of the national minimum wage.

In conclusion, the PPF proposes that exemptions of the informal sector, small businesses employing less than 50 employees and industries where sectoral determination already exists be considered.

#### **15. 12. The presentation by the Agri SA (17 September 2014)**

Agri SA welcomed the opportunity to address the Portfolio Committee on Labour regarding a possible national minimum wage. It acknowledged the important role that farm workers play in the sector. It pointed out that the agricultural sector is unique in the sense that a farm is a place where farm owners, managers, workers and their families live and work together on the same property. In many instances, close relationships existed between farmers and workers for generations. Sound relationships ensure a harmonious and productive workforce.

However, Agri SA is of the view that the introduction of a national minimum wage at a higher level than what is currently applied in agriculture will result in unintended consequences such as job losses and competitive advantage for neighbouring countries.

Agri SA referred to the National Development Plan's (NDP) objectives in respect of Agriculture. They point out that a policy environment that is supportive for job creation is needed to achieve the NDP goals. They also noted that the NDP's assumptions were based on a lower minimum wage of R67 per day which was applicable at that stage.

Agri SA took the Committee through an overview of the sector including the diversity of the sector in terms of labour intensity, a 32 percent decline in the number of farming units between 1993 and 2007 (1993: 57 980 and 2007: 39 982) as well as a decline in employment from 1 million in 1993 to 796 806 in 2007. As a result 20 percent of commercial farms are responsible for 80 percent of SA's total production. This reflects an increase in mechanisation as wages rise which is expected to continue to result in a lower number of jobs but increased employment opportunities for staff with higher skill levels and higher levels of remuneration.

Agri SA referred to statistics from the Department of Agriculture, Forestry and Fisheries, which showed that the wage bill amounted to approximately R14.5 billion or 13.3 percent of total cost in 2013/14. They further argue that the situation could be worse if the social wage is factored in. They cautioned that the ability of farmers to pay higher wages should be considered against the backdrop of a sector that is a price taker not a price maker. The presenter referred to a study by DPRU of UCT which found that the introduction of a sectoral determination in the agricultural sector resulted in a 17 percent decline in employment in the first year after implementation.

The presenter also quoted statistics to the effect that significant increase of 52 percent in the minimum wage in 2013 had a major impact on the sector. Statistics South Africa recorded 73 000 job losses in the second quarter of 2013/14 year-on-year.

Agri SA argued that the higher national minimum wage could be highly attractive to foreign workers resulting in an increase in foreign workers entering the country for better economic prospects. Further, they argued that it will most probably enhance the attractiveness for South African farmers to invest in neighbouring countries where vast comparative advantages existed in terms of cost and quality of land, water and labour. Agri SA also predicted a substitution of local production by imports from foreign countries if the minimum wage is set higher than the current applicable one.

Agri SA submitted that the following factors be taken into consideration when deciding on the national minimum wage:

- Adjusting minimum wages or wages in general will, if not accompanied by productivity improvements, aggravate the challenges, i.e. lack of investments, balance of payment pressure, cost of doing business and high levels of unemployment which the economy is already facing.
- Lack of competitiveness will ultimately defeat the noble goals of social upliftment and employment creation if minimum wages are set out of context.
- Ranking of South Africa by the world rating agencies such as the World Economic Forum in its Global Competitiveness Report.
- Sectoral considerations, rural vs urban labour characteristics, skills availability, employer contribution to the social wages and differing minimum wages currently will have to be factored into a national minimum wage to avoid unintended consequences.

Agri SA concluded that a minimum wage set at a higher level than the current wage determination for agriculture will result in more structural adjustments to accommodate the higher wages. These adjustments include the shedding of jobs, increased mechanisation and the consolidation of farming units endeavouring to maintain competitiveness and profitability.

## **16. 13. The presentation by the Chamber of Mines of SA (19 September 2014)**

The presenter took the Committee through an overview of the mining industry and the wage negotiations in the gold sector. Unlike in the platinum sector, negotiations in the gold sector took place at a central level under the auspices of the Chamber of Mines (COM) as the employers' representative. The employees were represented by four unions namely National Union of Mineworkers (NUM), Association of Mineworkers and Construction Union (AMCU), United Association of South Africa (UASA) and Solidarity. All unions with organisational rights, regardless of their representativity have access to negotiations e.g. Solidarity represents two percent of employees. The bargaining unit is representative of categories four to eight employees, which comprise miners and artisans as well as officials. The total number of employees represented at the bargaining unit is 90 000. The outcome of the negotiations was a two year agreement concluded in 2013, which would expire in June 2015.

The presenter reported that over the past decade, the average basic wage increase had been above the consumer price index (CPI). The trend had been towards the sliding scale where lower category employees received a higher proportion of increase than the higher categories. This was done purposely to address wage inequality in the gold sector.

The Committee was informed that the gold sector is also addressing the issue of employee indebtedness and employee accommodation. Further, the issue of employees living in informal settlements was attributed to the living-out allowance introduced ten years ago at the request of unions being used to augment the disposable incomes instead of renting decent accommodation.

As an attempt to improve the conditions of entry level employees and close the wage-gap, the presenter informed the Committee that categories one to three were rolled up, hence the entry level is now category four. The sector had also put a provision in service contracts that requires contractors to offer their employees wages as well as terms and conditions of employment that are not less favourable than those offered by mines to their employees.

The Committee was also told that the sector introduced employee benefits to address inequality. The mineworkers provident fund was established after the 1987 gold strike and the employers were contributing 15 percent of the basic salary while employees contributed eight percent. There was free health care for employees or medical aid for employee, spouse and children on a 50:50 contribution basis. The companies contributed 60 percent for first time members.

In order to address legacy issues that exacerbated inequality, the Committee was told that the industry introduced the living out allowance; was working on housing, including home ownership; was working on transforming the migrant labour system; and was also working on addressing employee indebtedness.

The COM expressed appreciation of the value of the minimum wage in addressing income inequality but suggested that it be explored collectively by all stakeholders. Some of the issues they suggested be taken into account include the meaning of a minimum wage, whether it refers to an actual wage, included social wage, basic salary or basic salary plus benefits. They also pointed out that a minimum wage was but one of a range of mechanisms to address inequality and that it might be inappropriate to implement it across all industries as it will not necessarily take into account realities within different industries such as skills levels required, geographic spread, labour intensiveness, size of business and economic realities of each industry. For the same reasons, they argue that a national minimum wage for an industry as a whole and with no distinction between different sectors might also be inappropriate. An example is the difference between the gold sector that is more labour intensive deep level mining as opposed to coal sector that is mechanised open cast mining.

COM suggested that a national minimum wage be pegged at a level which does not threaten existing jobs or job creation, undermine the sustainability and competitiveness of a business and leads to informalisation. They pointed out the difficulty in enforcement of a national minimum wage, particularly in the informal sector. COM also enquired as to what was going to happen to existing minimum wage agreements concluded through voluntary collective bargaining process and the existing SDs made by the Minister of Labour.

COM concluded by stating that the national minimum wage is a complex issue that should be explored collectively by stakeholders in the spirit of putting South Africa first and finding ways to address inequality.

**17. 14. The presentation by AHI Business Network (23 June 2015)**

The presentation focused on the importance of entrepreneurship as well as small and medium enterprises in job creation. The presenter used the metaphor of a human organism to describe how different aspects of business are organised to form a functioning entrepreneurial entity. The presenter provided statistics on contribution of private entrepreneurs and government to Gross Domestic Product (GDP) and job creation respectively. His statistics reflected that entrepreneurs' contribution amounted to 83 percent of the GDP while the state contribute 17 percent. Entrepreneurs contributed 72 percent to job creation while the state contributed 18 percent. The presenter also highlighted the high level of unemployment in the country in general and more particularly among the youth.

The presenter identified the minimum wage as a human development and economic imperative. However, he cautioned against a "one size fits all" approach in the South African context given the already high unemployment rate and the low levels of anticipated economic growth. He proposed that:

- The level at which minimum wages are set should take into account the likely negative effects on employment.
- The wage regulations should focus on sectoral minimum wages.
- The determination of minimum wage levels should be a matter of sectoral research and bargaining.

During engagement on his presentation, the presenter pointed out that his organisation supported the sectoral approach to minimum wages. When asked about his proposal on level of minimum wage, he conceded that his organisation has not done research on minimum wage levels.

**18. 15. The presentation by South African Domestic Services & Allied Workers Union (SADSAWU) (23 June 2015)**

SADSAWU's presentation was premised on the working conditions and wage level of domestic workers as stipulated in the sectoral determination. The presenter was of the opinion that the sectorally determined wage of R2 067 did not meet the basic expenses of workers, which amount to R4 750 according to statistics that she provided.

The presenter proposed a national minimum wage of no less than R5 000 as a requirement for making a difference in quality of life. However, she acknowledged that consideration should be given to the current economic situation of the country and more specifically the high unemployment rate.

**19. 16. Presentation by Mamiya Travel Tours (23 June 2015)**

The representative of Mamiya Travel Tours' presentation focused on employment equity, which he said was not being observed in the travel industry.

It became apparent that the presenter had not prepared a presentation on national minimum wage. He did not propose any level of the minimum wage. When probed by Committee members, he informed the meeting that tour guides and drivers are paid on day-to-day basis.

**20. 17. Presentation by Confederation of South African Workers (CONSAWU) (23 June 2015)**

CONSAWU's presentation focused on vulnerable sectors, which include farming, contract cleaning and domestic sector. The presentation included a table outlining average earnings and average expenses for essential goods. The presenter estimated the average earnings to

be R2 500. She included amongst other essential goods travelling; rent; electricity; water; and medicines which she costed at R500; R300; R200; R200; and R100 respectively. The presenter also outlined the average prices for VAT free food items. She estimated that approximately two million workers lived in poverty. However, she acknowledged that the study she was referring to was not scientifically based.

CONSAWU contended that a national minimum wage must address both the achievement of substantive equality as envisaged under section 9 and 27 of the Constitution, with a specific aim of reducing poverty levels in the country. The suggestion was that a national minimum wage would have to be supported by other measures such as social security to ensure a more holistic approach to poverty reduction and improved standards of living.

The presenter welcomed the promulgation of sectoral determinations as a major step in regulating the wage of the working poor. However, she cautioned against setting the minimum wages too high as it might lead to loss of jobs in vulnerable sectors given the current state of the economy. She pointed out the discrepancy between the median wage of R2 800 and the average of R14 911, which reflects the disparity in wages. The presenter suggested an increase in the household income requirement for qualification for social grants so that those who receive these grants do not lose them as a result of increase in their wages.

CONSAWU proposed that as a first step, cognisance should be taken of provisioning of the following basic amenities in communities:

- The qualitative provisioning of no fee schools that must be located in communities where the needs are greatest in improving access to education.
- Improved access to primary health care centres that provide services which take into account family health, primary health, family planning, voluntary counselling and testing services and mental health. Progressive reduction of doctor-to-patient and nurse-to-patient ratios to ensure timeous treatment and qualitative service delivery.
- Provision of child/ youth care community centres that provide sport, guidance and counselling, library facilities, crèche facilities that reduce the burden of after school care on working parents. It proposed that early childhood development be one of the focal areas of attention at such centres. The intention and purpose of such centres should be to promote healthy life styles and choices for the youth while providing a safe haven for children when parents/ guardians/ siblings are at work.

CONSAWU did not make any proposal on the level of the national minimum wage. It suggested that before making such a pronouncement, a qualitative and quantitative needs analysis be conducted on the impact of state sponsored social assistance on the reduction of poverty. The analysis should not only focus on the employed but also in households where no one is employed. CONSAWU also proposed an assessment of the needs of communities with regard to the provisioning of basic utilities and services. Further, they proposed the development and creation of a social security fund that offers long term relief for the unemployed.

## **21. 18. Presentation by the National Union of Metal Workers of South Africa (NUMSA) (24 June 2015)**

The NUMSA presenter introduced his presentation by reflecting on the Freedom Charter clause that deals with the national minimum wage. He also reflected on the economic context of the country. More specifically, he reflected on the high unemployment rate (35 percent), high level of inequality (0.63), the proportion of people living below the food poverty line (over 20 percent) and the small proportion of workers who are covered by bargaining councils (9 percent). Approximately 30 percent of working South Africans belonged to trade unions, according to the presenter. NUMSA supported the call for a national minimum wage and submitted that it was a requirement for workers to cover their cost of living. The presenter provided some statistics to highlight the level of income inequality. According to him, half of the working South Africans earned a monthly salary of less than R3 033 per month while the average monthly salary is R15 000. He estimated that approximately 12 million working South Africans need the national minimum wage and proper unemployment benefits to support

themselves. The presenter also reflected on sectoral determinations for the 2014/15 financial year.

NUMSA proposed that South Africa should adopt and implement a national wage policy based on:

- Abolishing the apartheid wage gap.
- Abolishing all conditions which impede the development of trade unions and the rights of all workers to organise in trade unions; to bargain for wages and conditions of employment; and to strike.

NUMSA also proposed that South Africa should adopt an industrial strategy that focuses on job creation in sectors with higher wages; and growth in sectors that can contribute to increased domestic demand and benefit from it. According to NUMSA, restructuring of the economy must include:

- More government investment;
- Lower interest rates;
- Preferential financing for chosen industries that applied the national minimum wage;
- Limiting financial market speculation;
- Stopping companies from illegally exporting profit, which is estimated at between 10 and 20 percent of GDP; and
- Radical wealth distribution.

NUMSA proposed that the national minimum wage would have to be legislated and annually adjusted to the inflation level. It further proposed that the legislation must have built-in enforcement mechanism; ensure no job losses; and ensure that the existing sectoral determinations are adjusted upwards. NUMSA cautioned against the national minimum wage becoming the maximum wage.

NUMSA proposed that the national minimum wage must be part of a comprehensive social security system, which must include:

- A grant for the unemployed or a living allowance for the unemployed in the form of grocery vouchers and/or travel coupons;
- Improved retirement contribution by employers;
- Improved UIF contribution by employers; and
- Improvement in the quality service delivered by the state.

## **22. 19. Presentation by South African Chamber of Commerce and Industry (24 June 2015)**

The South African Chamber of Commerce and Industry (SACCI) was of the view that the sectoral determinations that covered 4.5 million workers and the existence of the Employment Conditions Commission together offer the requisite social protection of workers and avoidance of exploitation. In SACCI's opinion, the introduction of a national minimum wage at this time might prove to be an impediment. According to SACCI, the plight of millions who are stricken by poverty will receive little or no benefit from the introduction of a national minimum wage. In SACCI's view and under current circumstances, it is less about whether people in employment earn more or less, than it is about getting far more people into employment and that will be achieved only if there is an aggressive focus on creating the conditions in which the economy can grow at least 3 to 4 times faster than it is at present.

SACCI referred to research on sixteen different countries where minimum wages were implemented. According to the afore-mentioned research, six countries had positive outcomes for the economies as well as employment, while the other six experienced a decline in the number of jobs and the rest appeared to have no apparent effect one way or the other. SACCI cautioned against taking minimum wage initiatives out of context of the countries' economic and social circumstances as what may work well in one country might not in another.

SACCI attributed Brazil's positive experience to considerable growth in the economy in respect of production resulting in business prosperity of unprecedented proportion. In the

wake of this, the rate of job creation was complimented by the rate at which people gained relief from poverty. Therefore, according to SACCI, the national minimum wage was a useful tool by which enhanced prosperity could be managed so that it was more widely distributed than might have been the case otherwise. On the other hand, the Thailand Development research Institute found that the small and medium businesses of the country would be adversely affected by the national minimum wage. Productivity would have to increase by eight percent to mitigate the extra employment costs.

SACCI is of the view that the influence of consumption relative to production is already far too high and unsustainable going forward. According to SACCI, an increase in GDP based on spending is not what the country needs, particularly when there are too many circumstances stacked up against meeting any additional product demand. Further, they are of the view that the correlation between consumerism and importation is too high.

SACCI believed that the fear that the introduction of a national minimum wage will inhibit employment was well founded. They estimated that 49 000 SMEs growing at 20 percent each year will be required to enable South Africa to meet the NDP target of 11 million jobs by 2030.

### **23. 20. Joint presentation by COSATU, FEDUSA and NACTU (24 June 2015)**

The presenter introduced the joint submission by contextualising the debate on the national minimum wage. The context was that of excessive levels of income inequality, working poverty and high unemployment rate despite the achievement of democracy in 1994. The labour federations proposed the transformation of the apartheid wage structure and introduction of a coherent wage solidarity policy. Among the challenges that they identified was that the collective bargaining system was under attack and that the minimum wages in sectoral determinations and many bargaining councils agreements were way below the minimum living level (about R4 500 to R5 500 per month).

The presenter summarised the proposals of the labour federations as follows:

- Adoption of a legislated national minimum wage;
- Introduction of new collective bargaining strategies to reconfigure the wage structure based on the comprehensive centralised bargaining;
- A campaign for comprehensive social protection;
- Connection of the strategy to appropriate economic strategies aimed at promoting industrialisation; and
- The national minimum wage combined with restructured collective bargaining system should consciously be designed as part of a South African wage solidarity model to:
  - Progressively increase real minimum wages and reduce gaps in overall wage levels; and
  - Improve pay for all those in the bottom half of the wage structure.

The presenter quoted the statistics from Statistics South Africa, which showed that a worker supporting four dependents in 2014 needed to earn R946 per family member or at least R4 730 per month to save his or her family from poverty. However, he outlined the snapshot of working poverty as follows:

- In 2014, 50 percent of all South African employees earned below R3 033 per month (Quarterly Labour Force Survey), indicating a drop of more than 10 per cent in real terms from 2012;
- In 2014, 50 percent of women workers earned below R2 600 per month;
- In 2014, 50 percent of African workers earned below R2 800 per month;
- In 2013, 50 percent of workers in the formal non-agricultural sector earned below R4 333 per month; and
- In February 2014 the average wage for all workers in the formal non-agricultural sector was R14 731 (Quarterly Employment Survey).

However, there was concern amongst researchers that QLFS figures may under report real wages by at least 40 per cent.

The huge gap between the average wage in the formal non-agricultural sector of R14 731 and the median wage in that sector of R4 333 was a reflection of massive inequalities in wage

structure. Internationally, the minimum wage was 40 percent of the national average. In South Africa it was about 20 per cent, in current prices.

The wage gap between the top and bottom earners in South Africa was increasing at an alarming rate, according to the presenter. In 2010, the top 5 percent earned around 30 times more than the bottom 5 percent of employees. By 2014, the gap had increased to almost 50 times. The two thirds of workers covered by sectoral determinations in 2007 were living in poverty (DPRU). The presenter quoted statistics to the effect that remuneration has lagged behind productivity and labour had received a decreasing portion of national income over the last 20 years.

The presenter quoted statistics from other countries, which point at mounting evidence that moderate minimum wages can do more good than harm. He also pointed out that low and declining wages do not create employment as there is evidence that real wages of low skilled workers have fallen since the 1990s but jobs for the low skilled have shrunk by nearly a million. Yet 2.5 million jobs have been created for higher paid higher skilled workers over the same period, despite large increases in real wages.

The presenter also pointed to low levels of salaries that were collectively bargained in bargaining councils in the fourth quarter of 2014. Only 8.6 percent of salary increases were negotiated through bargaining councils.

With regard to the minimum wage level, organised labour proposed the needs based approach driven partly by the assertion by workers themselves as to what constituted their basic needs combined with objective scientific surveys. They also proposed a medium term strategy or road map for transforming the wage structure in a managed way as opposed to minimalist or maximalist approach. This would be achieved by starting with a level of the national minimum wage which significantly improves the income of low paid workers, progressively increasing the value of the national minimum wage in line with achieving the average wage and minimum living level targets within a reasonable time. Another proposal was to have one national minimum wage complementing a system of compulsory centralised bargaining or at least promotion of comprehensive collective bargaining. Finally, they proposed the capacitation of inspectorate services of the Department of Labour and publication on a year-by-year list of non-compliant employers on a name-and-shame list.

## **24. 21. Overall Findings of the Committee on Workshops' presentations**

After listening to all the presentations, the members of the Portfolio Committee on Labour made the following findings:

- The impact of introducing the SD on employment levels in the Retail, Domestic, Forestry, Taxi and Security sectors was statistically insignificant.
- There was significant increase in wages in the Taxi, Domestic, Security and Retail sectors as a result of the introduction of the SDs.
- There was a change in working hours as a result of introduction of SD. The working hours increased from 42 to 49 hours per week in the Agricultural sector between 2002 and 2003. In the sectors where employment continued to grow after introduction of SD (Retail and Security), there was reduction in the usual number of weekly hours.
- Agriculture sector specific findings:
  - In areas where the wage gap was higher before the introduction of the SD, there was decrease in employment after it was implemented.
  - The farmworkers who kept their jobs received a significant wage increase of close to 18 percent.
  - A move away from non-permanent workers was recorded.
  - The number of workers with a written contract of employment increased to reach 57 percent in 2007.
  - Employment level fell significantly in response to introduction of the SD.
- Non-compliance to the SD was recorded at 45 percent. There was a dramatic shift towards compliance in the Agricultural sector. Western Cape and Gauteng were the best performing provinces in terms of partial compliance in Agriculture.

**25. Section B**

The public hearings were commenced in the Western Cape in November 2014 and finalised in Mpumalanga in April 2015.

**26. 22. Public hearings held in the Western Cape**

**27. 22.1. Gugulethu Sports Complex (7 November 2014)**

The delegation at Gugulethu Sports Complex included the following Members of the Committee:

Ms LE Yengeni, Chairperson and leader of the delegation (ANC)

Ms FS Loliwe (ANC)

Ms PT Mantashe (ANC)

Ms SR van Schalkwyk (ANC)

Mr D America (DA)

Mr IM Ollis (DA)

Mr MA Tlouamma (AgangSA)

The members of the public who attended came from different parts of the residential areas surrounding the Cape Town metropole, including Gugulethu, Heideveld, Langa and Khayelitsha. The work background of the speakers varied from domestic workers to cleaners, security guards, community work project workers, public service workers and the unemployed. Their views on the national minimum wage and related issues also varied and are thematically reported below.

On the theme of the level at which the national minimum wage must be set, the majority of speakers supported R5 000 per month. Higher amounts of R5 500, R7 000 and R20 000 were also proposed. However, two speakers cautioned that setting the level at R5 000 or higher could lead to job losses and to employers opting for foreign nationals who were prepared to settle for less. These two speakers proposed that the level be set at R2 500. This was also the lowest proposal that came out of this session. The minimum salary levels of R3 500, R4 000 and R4 500 per month were also proposed. Another proposal was that the salary level be set according to the level of education. For example, employees with grade 12 should be paid R12 000 per month and R15 000 for employees with tertiary qualifications.

**28. 22.2. Paarl-East Thusong Centre (8 November 2014)**

The delegation at Paarl-East Thusong Centre included the following Members of the Committee:

Ms LE Yengeni, Chairperson and leader of the delegation (ANC)

Ms FS Loliwe (ANC)

Ms PT Mantashe (ANC)

Ms SR van Schalkwyk (ANC)

Mr D America (DA)

Mr IM Ollis (DA)

Mr MA Tlouamma (AgangSA)

The Paarl leg of the public hearings was attended mostly by farm workers from the farms surrounding the area. Nevertheless, most speakers raised complaints about conditions of service on the farms rather than the issue at hand. The delegation was familiar with the issues that were raised as the Committee has conducted oversight in Western Cape farms. The Chairperson and other members of the delegation had to intervene on several occasions to remind the members of the public about the purpose of the hearings.

The majority of the speakers proposed a daily wage of R250. This proposal translated to R5 000 per month for an employee who worked 20 days per month. Therefore the majority proposal of Paarl was similar to that of Gugulethu even though the speakers came from different backgrounds. Other proposals included R150, R200 and R225 per day translating to R3 000, R4 000 and R4 500 per month respectively. Of concern was also the issue of exemptions of some employers that apply to the sectoral determination on farm workers. One of the speakers requested that exemptions should not apply to the national minimum wage.

The workers also raised complaints about victimisation by the farm owners after the revision of the sectoral determination subsequent to the Western Cape farms strikes. The alleged victimisation included charging for services that were freely provided before the revision of the sectoral determination, e.g. transport, accommodation and electricity.

Other issues raised included non-compliance with labour laws such as the sectoral determinations; long working hours in contravention of the Basic Conditions of Employment Act; protective clothing not provided; no deductions in lieu of the Unemployment Insurance Fund; paid sick leave and double pay for working on public holidays not adhered to; and poor working conditions such as workers transported by trucks constituting an occupational hazard.

**29. 23. Public hearings held in the North West**  
**30. 23.1. Klerksdorp-Matlosana City (25 November 2014)**

The delegation at Klerksdorp-Matlosana included the following Members of the Committee:

Ms LE Yengeni, Chairperson and leader of the delegation (ANC)  
Ms FS Loliwe (ANC)  
Ms SR van Schalkwyk (ANC)  
Ms PT Mantashe (ANC)  
Mr IM Ollis (DA)  
Mr M Bagraim (DA)

Members of the public comprised union representatives, mine workers, domestic workers and ward committee members. Ward committees are structures through which community participation in local governance is facilitated. The majority of the speakers were ward committee members followed by mine workers. Several speakers made sector-specific proposals, e.g. R9 500 for underground mine workers, R1 500 for ward committee members, R2 500 for those employed in shops owned by foreign nationals (in particular Chinese and Pakistanis), R4 500 for municipal field workers and R4 000 for liquor stores workers. General minimum level proposals ranged from R4 500 to R9 500. Other amounts mentioned were R5 000, R5 500 and R6 000. The most common justification for the proposals was to keep up with inflation.

Other issues that were raised were around the conditions of employment such as non-compliance with labour laws such as the sectoral determinations, racial discrimination in the workplace, disparities between executive and entry level salaries, long hours of work in contravention of the Basic Conditions of Employment Act, low salaries for Extended Public Works Programme (EPWP) workers and no tools of trade for ward committee members.

**31. 23.2. Rustenburg Civic Centre (26 November 2014)**

The delegation at Rustenburg included the following Members of the Committee:

Ms LE Yengeni, Chairperson and leader of the delegation (ANC)  
Ms FS Loliwe (ANC)  
Ms SR van Schalkwyk (ANC)  
Ms PT Mantashe (ANC)  
Mr IM Ollis (DA)  
Mr M Bagraim (DA)

The majority of the speakers were mine workers. Other members of the public who attended were domestic workers, construction workers and workers from postal services. Their proposals on the level of the national minimum wage were sector specific. Some of these proposals were R3 000 for domestic workers; R8 500 and R16 000 for general mine workers; R9 500 to R10 000 for underground mine workers; R4 000 for security personnel; between R6 000 and R7 000 for vulnerable workers; R6 500 for construction workers; R8 000 for surface mine workers; R7 000 for postal services workers; and R6 500 per month for employees of Mr Price. The mine specific proposal was that every worker should earn R12 500 three years from then.

Other complaints were similar to those raised at the Matlosana City hearings, e.g. protective clothing not provided for EPWP workers, long working hours for domestic workers and non-compliance with sectoral determinations. The public also raised concern at losing their jobs as a result of demanding a national minimum wage and wanted to know what the government would do to protect them against such dismissals. The issue of discrimination was raised with regard to only black workers working underground while white workers worked on the surface in offices. Disparities in salaries for the EPWP workers was raised as a cause for concern. There was also a proposal for the abolition of sectoral determinations based on the view that the system was not enforced.

**32. 24. Public hearings held in Gauteng**  
**33. 24.1. Johannesburg City Hall (3 February 2015)**

The delegation at Johannesburg City Hall included the following Members of the Committee:

Ms LE Yengeni, Chairperson and leader of the delegation (ANC)  
Ms FS Loliwe (ANC)  
Ms SR van Schalkwyk (ANC)  
Mr D America (DA)  
Mr M Bagraim (DA)  
Mr PG Moteka (EFF)

The Gauteng leg of the public hearings was well attended by members of the public. The majority of those who made oral submissions were representatives of organised labour.

The submissions varied from a sectoral minimum wage to general national minimum wage. The sectoral submissions ranged from R4 000 to R24 000. For example, one submission proposed R4 000 for ward committee members. The motivation was that since the project started in 2010, workers had been earning R600 per month. This category of workers was well represented and their grievances appear to be national since similar problems were also raised in other provinces. Another sector-specific proposal was the minimum wage for domestic workers. An organiser for the Domestic Workers Union complained of exploitation of domestic workers. She mentioned that the sectorally determined R2 080 - the actual amount was R2,065.47 for domestic workers who worked more than 27 ordinary hours per week in urban areas - was insufficient for meeting the needs of domestic workers. The proposal was R4 000 for those residing at their workplaces and R4 500 for those who travelled to work on daily basis. A chemical worker reported that she earned R4 992 per month and felt that this was not sufficient when considering the hazardous nature of her job. She proposed a raise of R1 000 to R5 992 per month. Other sector-specific proposals included R8 500 for hospitality (hotel) workers, R15 000 for steel workers, R16 000 for tour guides and R24 000 for cash-in-transit personnel and truck drivers.

The general national minimum wage proposals ranged from R4 500 to R20 000 per month. The more common figures were R7 000, R12 500 and R15 000 per month. Motivation for the national minimum wage included: vast income disparities between Chief Executive Officers and ordinary workers; on average one worker supported 10 dependents, the national minimum wage would revive the economy of the country through stimulating demand and it would address issues of inequality and poverty.

**34. 25. Public Hearings held in the Free State**  
**35. 25.1. Bloemfontein City Hall: (4 February 2015)**

The delegation at Bloemfontein City Hall included the following Members of the Committee:

Ms LE Yengeni, Chairperson and leader of the delegation (ANC)  
Ms FS Loliwe (ANC)  
Ms SR van Schalkwyk (ANC)  
Mr D America (DA)  
Mr IM Ollis (DA)

Mr PG Moteka (EFF)

Some members of the public who made oral submissions in the Free State province stated that they were from Kimberley.

Some of the oral submissions were sector-specific while others were more general. The most dominant sector-specific submission was the proposal for R12 500 per month for mine workers. Other proposals included R8 500 per month for motor industry workers; R7 000 per month for security personnel; R5 000 per month for cleaners, petrol attendants, farm workers and foundation level educators; R4 500 per month for farm workers; and R180 to R200 per day for EPWP workers, which translated to R3 600 to R4 000 per month.

The general submissions ranged between R7 000 to R20 000 per month. A proposal of R8 500 featured more prominently. One unique submission proposed a minimum wage of R8 500, a medium wage of R15 000 and a maximum wage of R30 000. However, the presenter did not go into details on the method used to arrive to these figures or motivate for the aforementioned amounts

**36. 26. Public hearings held in the Eastern Cape**  
**37. 26.1. Port Elizabeth, New Brighton – Nangoza Jebe Hall (5 February 2015)**

The delegation at Port Elizabeth included the following Members of the Committee:

Ms LE Yengeni, Chairperson and leader of the delegation (ANC)  
Ms FS Loliwe (ANC)  
Ms SR van Schalkwyk (ANC)  
Mr D America (DA)  
Mr M Bagraim (DA)  
Mr PG Moteka (EFF)

The Eastern Cape session of the public hearings was well attended by members of the public. Over 40 per cent of those who made presentations were ward committee workers. Their grievances were similar to those raised by ward committee members in other provinces.

The representative of the ward committee members gave a background to their grievances. He informed the parliamentary delegation that they were sworn-in in June 2014 by the former MEC. He further said that they were promised a stipend of R1 000 per month and some tools of trade such as cell phones. However, they only received R2 000 in December 2014, while ward committee members from other municipalities had been receiving stipends since 2011. He also complained of not being provided with proper identification tags to be identifiable when visiting communities. He proposed a minimum wage of R5 000 per month, which was supported by most of the ward committee members present. The ward committee members also demanded that they be paid equally regardless of the municipality they assist. Other complaints included not being paid when they did not attend council meetings despite having conducted door-to-door community visits. Other ward committee members came with different proposals such as R2 500 per month and R7 000 per month.

Other sector specific submissions came from EPWP workers. Their proposals ranged from R1 500 to R7 000 per month. One EPWP supervisor proposed R4 500 per month for supervisors and R1 500 for ordinary workers. There was also a proposal for extension of contracts for EPWP workers. Currently, the EPWP workers were reported to earn R600 per month for working two days in a week. There was also a proposal for Assistant Councilors to earn R20 000 per month. One speaker proposed that the salaries of cooks for school children be raised from R700 to R2 000 per month. The recommended stipend for community police forums volunteers was R5 000. A presenter who said that she is working as a 20/20 volunteer proposed that their salaries be increased from R1 500 to R3 500 per month. The motivation was that they buy their own protective clothing and are exposed to health hazards like contaminated waste.

The general national minimum wage proposals ranged from R4 500 and R12 500 per month. However, the figure that was most common was R7 000 per month.

**38. 27. Public hearings held in KwaZulu-Natal**  
**39. 27.1. Pinetown Municipal Hall (6 February 2015)**

The delegation at the Pinetown Municipal Hall included the following Members of the Committee:

Ms LE Yengeni, Chairperson and leader of the delegation (ANC)  
Ms FS Loliwe (ANC)  
Ms SR van Schalkwyk (ANC)  
Mr IM Ollis (DA)  
Mr PG Moteka (DA)

The KwaZulu-Natal public hearings' meeting was well attended. The targeted audience for this leg of the hearings was the clothing and textile sector workers. The Chairperson and other members of the Committee had to intervene on several occasions as the speakers were raising issues related to conditions of employment rather than minimum wage proposals.

The submissions comprised a few broad national minimum wage proposals and other sector-specific proposals. The broad proposals ranged from R3 500 to R6 000. A COSATU representative referred to research that found that R5 500 was sufficient income for a family of five. However, he pointed out that most workers supported extended families. He recommended comprehensive social security to address the high unemployment rate and poverty. He also suggested an extension of the time for the hearings until 14h00. The Chairperson explained that there were still going to be workshops where union federations would have an opportunity to make their inputs. She also referred to the NEDLAC process in which organised labour was participating.

The sector-specific proposals ranged from R4 000 to R7 000. There was a proposal of R200 to R250 per day (R4 000 – R5 000 per month if working 20 days) for EPWP workers. Submissions for domestic workers ranged from R3 000 to R8 000. The speakers for the domestic worker sector complained about long working hours and verbal abuse by their employers. One speaker who introduced himself as a shop-steward made a submission in support of R7 500 for workers in the clothing and textile sector. His motivation was that the clothing and textile sector was the lowest paid sector. An amount of R5 500 was proposed for community workers. A proposal was put forward for the stipend to start at R4 500 per month. Another stipend-related proposal was that they (stipends) be banned. A ward committee member complained that they earned only R1 000 per month from which they had to buy food and make phone calls. They proposed R6 000 per month for ward committee members. One speaker who introduced himself as the security officer complained of poor working conditions and a low salary of R3 000. He proposed R7 000 per month for the security sector.

**40. 28. Public hearings held in Limpopo**  
**41. 28.1. Ga-kgapane Sasko Hall (14 March 2015)**

The delegation at Ga-Kgapane-Sasko Hall included the following Members of Committee:

Ms LE Yengeni, Chairperson and leader of the delegation (ANC)  
Ms FS Loliwe (ANC)  
Ms TMA Tongwane (ANC)  
Mr D America (DA)  
Mr WM Madisha (COPE)  
Mr MA Tlouamma (AgangSA)

Farm workers comprised the majority of those who made oral submissions during the Limpopo leg of public hearings. The Chairperson had to intervene after the fourth speaker to remind the members of the public about the subject of the public hearings. The majority of speakers proposed R5 500 as the national minimum wage applicable to all workers. This was followed by a proposal of R5 000, which was submitted by two speakers.

The motivation for the submissions were, amongst others, to be able to support extended families, educate their children, afford health care for themselves and their families and to afford travelling expenses for those workers who are not provided with farm accommodation.

Other grievances raised were similar to those of farm workers in other provinces. Some farm workers complained of being paid less than the stipulated sectoral determination. One farm worker reported that he earned R900 per month and from this amount he had to use R300 for transport. He was then left with only R600 for other monthly expenses such as groceries. This was not sufficient for him to take care of himself, not to mention his family. There was also a complaint of farm workers being forced to buy some goods from the farmer. This practice resulted in a reduction in take-home pay of workers as a result of deductions of money owed to the employer. The new amended labour laws prohibit this practice. Some workers also complained of being expected to buy their own work clothes. There was also a complaint of unequal pay for work of equal value. The new labour law amendments also prohibit this practice except under exceptional circumstances, e.g. differentiation based on length of service. The issue of labour brokers was also raised and the lack of capacity of the Department of Labour to conduct regular inspections.

**42. 29. Public hearings held in the Northern Cape**

**43. 29.1. Hartswater Town Hall (28 March 2015)**

The delegation at Hartswater Town Hall included the following Members of the Committee:

Ms LE Yengeni, Chairperson and leader of the delegation (ANC)  
Ms FS Loliwe (ANC)  
Ms PT Mantashe (ANC)  
Ms SR van Schalkwyk (ANC)  
Mr D America (DA)  
Mr MA Tlouamma (AgangSA)

The majority of those who made submissions during the Northern Cape leg of the public hearings were mostly farm workers. The target audience for this leg of public hearings was farm workers, implying the targeted sector was reached.

A proposal of R5 000 was made by the majority of those who made oral submissions. The predominant motivation for this amount was the rising cost of living. The highest amount proposed was R10 000. The motivation was that it was sustainable for raising families and paying for children's education. A representative of Agri-Northern Cape proposed R2 606 as per the sectoral determination, and the motivation was that it would prevent further job losses in the sector as it had happened in 2011/12. The COSATU representative proposed R250 to R300 per day to keep up with rising cost of living. He also cautioned that the national minimum wage must not replace sectoral determinations and collectively bargained wages. He also advised that farmers who pay incentives as per profit must be encouraged to continue doing so. One worker from the Department of Agriculture proposed R6 600 per month or R300 per day. He also cautioned that the national minimum wage must consider issues such as salary deductions for electricity bills and transport. He also advised that working hours have to be monitored since employers have a propensity of increasing hours when forced by regulations to increase wages.

Other issues raised that were not directly relevant to the national minimum wage were salary disparities based on race and sex, lack of death benefits, poor working conditions, indefinite employment on a temporary basis, the requirement of documentary proof for death benefits and non-adherence to government regulations such as the sectoral determinations

**44. 30. Public hearings held in Mpumalanga**

**45. 30.1. KaMhlushwa in Nkomazi Municipality, Ehlanzeni District (25 April 2015)**

The delegation at KaMhlushwa Community Hall included the following Members of the Committee:

Ms LE Yengeni, Chairperson and leader of the delegation (ANC)  
Ms FS Loliwe (ANC)

Ms PT Mantashe (ANC)  
Ms SR van Schalkwyk (ANC)  
Mr D America (DA)  
Mr MA Tlouamma (AgangSA)

The focus of the Mpumalanga leg of the public hearings was on farm workers. The attendance of the hearings also reflected the purpose as the farm and related industry workers were well represented. This is also reflective of the economy of the province since agriculture is the key sector. The majority of participants proposed R5 000 as the national minimum wage. The highest amount proposed was R15 000 for sugar cane harvesters.

Other observations were that there is a lack of information among workers on Basic Conditions of Employment Act and that workers are not organised into labour unions. Participants also expressed feelings of being discriminated against, safety standards not being adhered to and that they were being paid less than the statutory requirement.

#### **46. 31. Overall findings of the Committee on Public Hearings' submissions**

After considering all the oral submissions, the Committee made the following findings:

- The majority of participants were consistent in proposing R5 000 per month as the national minimum wage sufficient for them to provide for their basic needs.
- Some employers who were operating in sectors covered by sectoral determinations as provided for in Chapter 8 of the Basic Conditions of Employment Act were paying below the stipulated wage.
- It was apparent during the public hearings that except for unionised workers, the majority of the public was not aware of the proposal for the national minimum wage.
- The views of the majority of the participants were informed by their specific workplace experiences and therefore sectoral in nature.
- One of the labour representatives proposed that a living wage should rather be looked at than the national minimum wage.
- Some of the issues addressed to the members of the Committee could have been better handled by union representatives.
- Most workers were still subjected to poor working conditions that are in contravention of labour legislation such as the Basic Conditions of Employment Act.
- Wage discrimination was still based on race and sex in some sectors of the economy such as the agricultural sector.
- Some farmers provided protective clothing for farmworkers but deducted the amount from the wages of workers or workers had to buy the protective clothing for themselves at some farms.
- Human rights abuses such as beatings of workers by employers still occurred in some sectors such as the agricultural sector.
- Most workers felt that they were not adequately represented.
- Some workers were employed on temporary basis for indefinite periods.
- Most workers seemed unaware of worker rights as enshrined in the Bill of Rights and other pieces of legislation such as the Basic Conditions of Employment Act and the Labour Relations Act.
- There was a general complaint about poor enforcement of labour laws.

#### **47. 32. Conclusion**

The Committee noted all the presentations made by organisations and individuals' submissions. The Committee agreed that the inputs will definitely assist it when deliberating on the National Minimum Wage policy.

## THE NATIONAL MINIMUM WAGE: INTERNATIONAL PERSPECTIVES

Compiled by: Sindisiwe Mkhize (Researcher) and Sibongiseni Ngcobo (Content Advisor)

Date: 13 February 2015

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### 49. INTRODUCTION

In his State of the Nation Address (SONA) that was delivered after the 2014 general elections, the President raised concern about the level of inequality in the country. He committed the government to the investigation into a national minimum wage, which was identified as an income inequality reduction mechanism. He assigned the Deputy President to lead the project within the ambit of NEDLAC to deal, *inter alia*, with this matter.

The Portfolio Committee on Labour decided to conduct workshops which were aimed at gathering information from the various academic, business and labour organisations, on the subject of national minimum wage. The workshops were followed by public hearings which were conducted throughout the country to test the public opinion on this matter. The Committee planned to embark on a study tour as part of its investigation into a national minimum wage.

The purpose of this study is to assist the Committee in deciding on the country to visit as part of its investigation. It starts by outlining the general background to the subject of minimum wages and then focuses on the South African context. Further, it examines the different types of minimum wage fixing procedures. Finally, it explores the approaches adopted by countries in all continents in implementation of minimum wages.

### 50. BACKGROUND

The unequal distribution of income and wealth has been one of the key characteristics of economic growth in most countries of the world during the last decades. This not only undermines justice and endangers social coherence, but has also become a limiting factor for development and employment. Numerous scholars have come up with answers as to why wage structure is uneven and unjust. However, based on various literature, it depends on institutional factors, the relative power of the different groups in the labour market and government policies and not simply on (marginal) productivity<sup>1</sup>

In the emerging economies, income inequality is a persistent problem. According to the Organisation for Economic Cooperation and Development (2011), income inequality has decreased in Brazil in the last 15 years, but it has risen in China, India and the Russian Federation. The South African case also confirms the persistence of income inequalities

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<sup>1</sup> Levy, F.; Temin, P. (2010)

despite the interventions by the democratically elected government: when the apartheid regime collapsed, the Gini coefficient registered was among the highest in the world. Despite vociferous calls for redistribution in the post-apartheid period, according to official statistics, inequality continued to rise considerably in the following decade – from 0.56 in 1995 to 0.72 in 2005–06, where it continues to hover.<sup>2</sup>

In many countries government policies have allowed uncertain working conditions with low wages and have actively encouraged a low-wage sector (OECD, 1994). For example, in the OECD countries, policies to protect regular workers have not changed much, but protection of temporary workers has declined drastically in 11 of the 23 countries, where dual labour markets with precarious and usually badly paying jobs have been created. At the lower end of the wage scale, a key policy has been to keep minimum wages low. In Australia, Belgium, Czech Republic, Ireland, Netherlands, Poland, Spain and the United States minimum wages have declined in relation to median wages. Statutory minimum wage levels are particularly low in Canada, Japan and the United States, at around or below 40 per cent of the median wage.<sup>3</sup>

As soon as a less regulated sector develops in the labour market – for example for temporary workers – there is a high incentive to outsource production or certain tasks to this unregulated sector or to substitute irregular workers for regular ones. Moreover, certain jobs originally held by employees are offered to the self-employed. It is obvious that these developments lead to higher wage dispersion and more inequality in general. Regulatory arbitrage (taking advantage of different salary rates in hiring of labour) leads to an accelerating erosion of the regulated sector of the economy, as firms have an incentive and are driven by competition to use the deregulated sector of the economy to an ever-increasing extent.<sup>4</sup>

On the other hand, compensation for management in general and more specifically in the financial sector has shot up spectacularly since the 1970s via wage increases and bonus payments. Superstars in sports, cinema, television and fashion also earn incomes unimaginable 30 years ago due, in many cases, to the new technologies of mass communication. The income of top managers and celebrities has most likely changed the perception of what constitutes a fair wage.<sup>5</sup>

Hence some have called on governments to intervene through wage policies in closing the wage gap. A statutory minimum wage can directly compress wage dispersion from below and is an effective instrument which *can* be used by governments. The best way to fix minimum wages is through negotiation at the national level by a tripartite body. A possible model is the Low Pay Commission (LPC) in the United Kingdom, composed of worker and employer representatives together with independent experts, where each group has one-third of the members in the Commission. The LPC recommends a certain increase in minimum wages; however, the Government has the last word. The number of minimum wages in a country should ideally be as small as possible to avoid ambiguities; adjustments should be made annually to appropriately reflect changes such as macroeconomic productivity developments or strategies to realise a certain relation between minimum wages and median or average wages. Furthermore, it is advisable that a minimum wage should not be automatically linked to pensions and social transfers to avoid budgetary constraints. A percentage of median or average wages seems to be a better anchor for determining the level of the minimum wage than reference to a basket of goods which can never be defined in a satisfactory way.<sup>6</sup>

Wage determination involves an evaluation of the contributions of employees in order to distribute fairly direct and indirect, monetary and non-monetary rewards within an organisation's ability, pay and legal regulations. A minimum wage legislation is a very important criterion in the payment of wages. The fixing of minimum wage prevents the exploitation of weak, ill-informed or isolated groups of individuals. Minimum wage affords such

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<sup>2</sup> Leubolt, B. 2013

<sup>3</sup> Gallas, A., Scherrer, C. and Williams, M. (2014)

<sup>4</sup> Ibid.

<sup>5</sup>

<sup>6</sup> Herr, H. and Kazandziska, M. (2011)

people a more comprehensive protection than is available through existing voluntary bargaining machinery. Minimum wage is a universal practice. It is practiced in countries across the globe. The International Labour Organisation (2008) affirms that presently, there is legislation or binding collective bargaining regarding minimum wage in more than 90 per cent of countries of the world. One argument is that the fixing of minimum wage affords workers a reasonable income to meet their basic needs and raise their standards of living. Another argument is that by the introduction of minimum wage, employers are not only hindered from using unreasonably cheap labour; they are encouraged to use human resources more efficiently and therefore, raise productivity. However the success of minimum wage in its intended goal will depend apart from the criterion used, on the level at which it is fixed.

The ILO (2009) observed that ultimately, the impact and usefulness of a minimum wage policy depends on whether minimum wages are paid. This in turn depends on the effectiveness of the enforcement mechanisms. Penalties for violators, adequate compensation for workers whose rights have been violated and suitable resourcing of the enforcement authority are all crucial factors. The active involvement of social partners in both the design and operation of minimum wage enforcement regimes is essential to enhance its impact.

There is a variety of minimum wage fixing procedures adopted by different countries and two interdependent factors play a vital role in the establishment of these procedures. These factors are the state of collective bargaining and the use by governments of the minimum wage as a tool for economic policy. Where collective bargaining is not well developed, the influence of a statutory minimum wage system is more pronounced. On the contrary, a well-established collective bargaining process results in government intervention being excluded or limited to the protection of the lowest-paid wage earners.<sup>7</sup>

## **51. BASIC TYPES AND COMBINATIONS OF MINIMUM WAGE FIXING PROCEDURES**

According to the International Labour Organisation (ILO), types and combinations of minimum wage fixing procedures can be classified into four categories based on the actors involved and the number of minimum wage rates.

- One base rate for the whole country or per region, with the State as the key decision-maker.
- Multiple rates that vary by sector and/or occupation, with the State as the key decision-maker.
- One base rate for the whole country or per region, determined by collective bargaining
- Multiple rates that vary by sector and/or occupation, determined by collective bargaining.

The above-mentioned four categories of wage fixing methods are briefly discussed below.

### **51.1. Single national or regional rate set by the State or a tripartite Body**

This is the most commonly used method. Sixty-eight countries included in the ILO database (67 per cent of the total) are covered by a national or regional minimum wage rate."<sup>8</sup>

There is a strong relation between minimum wage fixing mechanisms and the degree of development of collective bargaining. In some countries bargaining is sufficiently structured and institutionalised to play a pivotal role in wage determination, limiting the function of minimum wage fixing to the protection of the lowest-paid workers or even totally absorbing this function. In other countries, however, the state-dominated process of minimum wage setting is the only institutional framework available for wage bargaining.

This category has two sub-categories: countries with a single national rate and those with regional rates. The most obvious reason for the minimum wage to be set at regional level is

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<sup>7</sup> International labour organisation (2005).

<sup>8</sup> International Labour Organisation (2005)

the administrative and political structure of the country. This method is often used in federal systems where a country's individual states or regions maintain a certain degree of autonomy. The second reason is to allow for differences in living standards between regions. The negative effect of regional rates to the country is that it contributes to the depopulation of regions with lower minimum rates as people move to regions where minimum rates are higher.<sup>9</sup>

### **51.2. Multiple rates set by public authorities**

This is the second most commonly used method. Multiple minimum rates are fixed under the authority of the government or a tripartite committee by sector and occupation. This system exists in 29 countries included in the database (28 per cent of the total) and applies to a large variety of situations. This system is generally combined with minimum wage fixing through collective bargaining for sectors with well-organized trade unions. In countries such as Botswana, Malaysia and South Africa collective bargaining is an integral part of the minimum wage fixing system.

In South Africa, well organised sectors of the economy determine their minimum wages through collective bargaining. The government set wages for the vulnerable and less organised sectors through sectoral determinations made by the Minister of Labour after consultation with relevant stakeholders. The South African minimum wage fixing is discussed further in paragraph five below.

### **51.3. Single national rate set through collective bargaining**

Very few countries have a single national rate set through collective bargaining. Of all the countries studied only two - Belgium and Greece - belong to this category. As in countries where a single national rate is set by the government, there are sectoral and enterprise-level agreements. Indeed, collective bargaining establishing sectoral and enterprise-level wage rates is beyond the legal framework relating to the minimum wage as such.<sup>10</sup>

### **51.4. Multiple rates set through collective bargaining**

In countries without a centralised minimum wage fixing system, this role is fulfilled by sectoral agreements. It is the network of collective agreements that makes up the minimum wage fixing system. This model is found in several European countries, including Germany and Italy, and one African country, Namibia.<sup>11</sup> However, Germany has introduced the national minimum wage effective from 1 January 2015. This wage will be reviewed annually from 1 January 2018.

In view of the statement made by the President in his State of the Nation Address, the above-mentioned minimum wage fixing methods are worth considering in addressing the high levels of inequality in South Africa.

## **52. INEQUALITY IN SOUTH AFRICA**

Whilst the first decade of democracy can point to a decline in national poverty levels in both absolute and relative terms, the trends in terms of income inequality are more worrying. Rising income inequality is a key challenge for South Africa that adversely impacts economic development; socio-political stability; and also impedes the progress of health and education. Despite the end of apartheid in 1994, [South Africa has the highest income inequality in the world](#) measured by the Gini Index – a level that has remained relatively unchanged between 1990 and 2011. This is one of the biggest challenges facing the country and has a detrimental impact on the country's economic development and business environment.

Real GDP growth in South Africa averaged 3.6 per cent between 2000 and 2011 – this was on par with the average global growth for the same period. Despite gains in economic growth, the country has the most unequal income distribution in the world with a Gini Index of 63.6 per

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid

<sup>11</sup> Ibid

cent in 2011, relatively unchanged from 63.5 per cent in 2000.<sup>12</sup> The income gap between the poorest 10 per cent of households (decile 1) and richest 10 per cent of households (decile 10) has widened between 2000 and 2011. During this period, the average household disposable income (constant US\$) of the poorest 10 per cent of households and richest 10 per cent of households recorded a real increase of 14.4 per cent and 26.8 per cent respectively to reach US\$427 and US\$80,880 respectively by 2011.<sup>13</sup>

When commenting on the National Development Plan (NDP), Professor Adam Habib argues that based on the Plan's recommendations on the economy to expand livelihood opportunities at the lower end of society through a series of reforms: a new industrialisation plan targeting employment, expanding educational opportunities, and financing new entrepreneurs is required. While these are important to expand employment and lift people out of poverty, they will not address inequality. "The essential problem is that even if we get livelihoods growing at the bottom end of society through employment, financial support for new entrepreneurs and the like, the incomes of those at the upper end of society are likely to grow even faster. This is because the rich have assets – property, stocks, bonds – and it is these assets, which the poorer do not have, which will ensure that the incomes of the rich will grow faster. The net effect is that even if poverty erodes, inequality will grow faster. This is essentially what happened in South Africa, Russia, India and China in the last 20 years. And it is the fundamental challenge of our time".<sup>14</sup>

The high levels of inequality has ignited the debate on a national minimum wage for South Africa. This debate has to be viewed in the context of the current system of minimum wages in South Africa.

### **53. MINIMUM WAGES IN SOUTH AFRICA**

There is no statutory national minimum wage in South Africa. However, the Basic Conditions of Employment Act (1997) empowers the Minister of Labour to set minimum terms and conditions of employment, including Minimum Wages. The Sectoral Determinations cover areas of economic activity where labour has been deemed vulnerable, such as in the following sectors:

- Domestic work
- Contract cleaning
- Private security
- Wholesale and retail
- Farm worker
- Forestry
- Taxi sector
- Learnerships
- Children in the performance of advertising, artistic and cultural activities
- Civil and Engineering
- Hospitality<sup>15</sup>

The sectoral determinations are reviewed at predetermined periods to ensure that they are aligned to the cost of living.

The sectors which are organised determine their minimum wages through collective bargain. The Labour Relations Act (1996) set the framework for collective bargaining. Once a collective agreement is reached through a bargaining process, it becomes binding to all employers who fall under that particular bargaining council. Organised labour in a bargaining

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<sup>12</sup> The Gini index is the standard economic measure of income inequality varying between 0 per cent (perfect equality) and 100 per cent (perfect inequality);

<sup>13</sup> Euromonitor International (2012)

<sup>14</sup> Habib, A. (2014)

<sup>15</sup> Department of Labour (2014)

council may apply to the Minister of Labour to have the collective agreement extended to non-parties who fall under the same sector.

The current minimum wage system has not adequately addressed the high levels of inequality in South Africa as reflected in paragraph four above. This has necessitated an investigation into the national minimum wage. In deciding on the approach to be adopted by South Africa, it is essential to review the methods used to implement minimum wages in other countries.

#### **54. A CASE STUDY: THE NATIONAL MINIMUM WAGES IN THE UK**

The National Minimum Wage (NMW) Act was passed in 1998 under the Labour government. It established the minimum wage at the national level, without sectoral or regional distinctions. However, there are three different minimum wage rates according to workers' age. The lowest rate is for workers under 18, followed by the wage rate for workers between 18 and 21 years old; the adult rate starts at 21. Wage increases are made every year by the Secretary of State following the recommendations of the Low Pay Commission (LPC), which consults workers' representatives, employers and other actors who are directly affected by the changing rates of the NMW.

The LPC is an independent public body constituted by three members with union background, three members with employer background, two labour economists, and the chairman. The task of the LPC is to monitor the implementation and the impact of minimum wage, and to deliver policy recommendations to the government (Low Pay Commission 2010).

When first introduced, the NMW was set at £3.60 an hour for those aged 22 and over. Over the years it has increased in nominal value, reaching its current £6.31 an hour in October 2013, an increase of 75.3 per cent since 1999. This increase is similar to the increase in nominal Gross Domestic Product (GDP) over the period, and significantly more than the increases in average earnings.<sup>16</sup>

The introduction of minimum wages was estimated to affect almost 2 million workers in 1999. According to the LPC, in 2008 there were 1.13 million minimum wage jobs, which made up 4.3% of the labour market. The LPC also reported that the real and relative value of NMW has increased over years: between 1999 and 2009, the adult rate increased by 61 per cent, which is higher than both the average earnings increase (48 per cent) and the price increase (21-31 per cent depending on the index used). Different studies have found that low paid workers have experienced higher wage increases since the introduction of the NMW and that the latter has had a positive impact on income distribution.<sup>17</sup>

According to the LPC, it has commissioned over 130 research projects that have covered various aspects of the impact of the NMW on the economy. In that period the low paid have received higher than average wage increases but the research has, in general, found little adverse effect on aggregate employment; the relative employment shares of the low-paying sectors; individual employment or unemployment probabilities; or regional employment or unemployment differences. The research suggests that employers have coped with the minimum wage by adopting a combination of strategies. Pay structures may have been adjusted or non-wage costs reduced. There may have been small reductions in hours worked and increases in productivity.

The LPC highlighted the fact that the introduction of a minimum wage in 1999 had the greatest impact on reducing male-female pay inequalities since the Equal Pay Act was adopted in 1970. Within two years the spread in pay according to sex fell by two percentage points for full-time workers, reaching 82 per cent in the year 2000.

The research conducted in the UK on the effects of minimum wages on employment levels found little adverse effects on aggregate employment. This finding is corroborated by, among others, the study done by Development Policy Research Unit of UCT on the effects of the

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<sup>16</sup> Low Pay Commission (2014)

<sup>17</sup> Butcher, K.; DiNardo, J. (2002)

introduction of sectoral determinations in five sectors (Retail, Domestic, Forestry, Taxi and Security) of the South African economy. The study found the impact of introducing sectoral determinations in these sectors to be statistically insignificant.<sup>18</sup>

## **55. A CASE STUDY: THE NATIONAL MINIMUM WAGE IN BRAZIL**

### **7.1. Historical Background**

The Brazilian minimum wage was adopted in the late 1930's (other research say in 1940). It defines the floor for formal wage-earning work, in both the private as well as the public sector. It therefore does not apply to informal work. It also serves as a benchmark for social security benefits. During economic crises and in periods of high inflation in the 80s and 90s, the amount of the minimum wage dropped significantly, contributing to the rise in poverty and inequality throughout the country. In 2006, the government coordinated negotiations with representatives of unions, employer organisations and organisations of retirees and pensioners. The outcome was an annual adjustment policy based on the rate of inflation and growth of GDP per capita, in effect until 2011.

In 1 January 2003 the Workers' Party (PT) won the presidential elections for the first time in the history of Brazil. This ushered Luiz Inácio Lula da Silva into the presidency of the country. President Lula kept the presidency for two consecutive terms, which was 2003 to 2006 and 2007 to 2010 respectively. In its first term, the Lula government effected a 19 percent real increase in the minimum wage. A much more impressive increase of 31 percent was implemented during the second term in office.<sup>19</sup>

Contrary to conventional economic reasoning that a large increase in the minimum wage would result in inflation explosion, inflation was kept under control during both terms of Lula's presidency. Conventional economics also argue that you cannot create formal jobs without cutting labour rights - that the existence of a huge informal sector is evidence of excessive labour rights and regulation. However, the Lula administration created millions of jobs and, simultaneously, changed the ratio of formal to informal jobs in favour of the former. This was done without infringing on labour rights. The unemployment rate decreased from 12.3 percent in 2003 to 6.7 percent in 2010.<sup>20</sup>

### **7.2. Benefits of National Minimum Wage in Brazil**

The minimum wage in Brazil is an important benchmark for the evolution of income. It fixes the income for formal workers earning the minimum wage as well as for informal workers whose wages are equal to the minimum. For example, in 2005, 20 percent of informal wage-earners were paid wages equal to the minimum. Employers and employees often negotiate wages using the minimum wage as a benchmark.

Contrary to advice of not linking a minimum wage to social security, the minimum wage is also a benchmark for social security benefits such as pensions, welfare and unemployment insurance in Brazil. Therefore any rise in the minimum wage results in raises of the above-mentioned benefits. According to a study conducted by the Ministry of Social Security, benefits paid in 2007 led to a reduction by 22.2 million in the number of persons living in poverty conditions. However, because social security benefits are linked to the minimum wage, any rise in minimum wage has a significant budgetary impact.

### **7.3. Redistributive effects of National Minimum Wage in Brazil**

Another important aspect of the Brazilian minimum wage is its effect on redistribution of income, in general terms, but also in favour of the most disadvantaged groups in society as well as in the labour market: women, blacks, young people, the undereducated, and senior citizens. Their wellbeing is most affected by changes in the minimum wage. For example, almost 30 percent of domestic workers earn the minimum wage (the sector accounts for 8 percent of total employment and 17 percent of female employment in Brazil). The rise in the minimum wage in the 2000s, especially since 2003, succeeded in improving working

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<sup>18</sup> Bhorat, H. & Stanwix, B. (2014).

<sup>19</sup> Schutte (n.d.).

<sup>20</sup> Ibid.

conditions for low-income and less-skilled male and female workers. For example, the proportion of women's wages as compared to men's wages rose from 62 percent to 71 percent between 1995 and 2007, while the proportion of black to white workers rose from 49 percent to 56 percent in the same period. These workers usually have weak bargaining power or work in job categories that are seldom unionised. Many women and blacks hold jobs of this nature; therefore, by its positive impact at the base of the wage pyramid, the minimum wage helps to reduce existing gender and racial inequality in Brazil.

Based on the *Pesquisa Nacional por Amostra de Domicillios* (PNAD-Brazilian household surveys) data, Saboia (2007) examines the effect of the minimum wage on the evolution of the Gini Index from 1995 to 2005. According to his calculations, the rise in the minimum wage was responsible for 73 percent of the improvement in income distribution among workers with an income, during that period. In terms of family income, the calculations show that the minimum wage was responsible for 64 percent of income distribution improvements, as measured by the Gini Index. Another conclusion was that the effect of the higher minimum wage on the reduction of the Gini (44 percent) was considerably higher than the effect of pensions (21 percent) on the reduction of the Gini. This comes as no surprise because income from work was, in 2005, almost four times higher than income from pensions. Furthermore, in 2006, 13.4 percent of workforce earnings equalled the minimum wage. Given the importance of the minimum wage in determining the income of a significant part of the workforce in Brazil, it is not surprising that its impact on income distribution nationwide was so significant.

#### **7.4. Lula Moment's global and domestic context**

In his article titled "A Lula Moment for South Africa: Searching for Sugar Man?", J Netshitenzhe (2013) argues that Brazil's progress towards reducing inequality cannot be divorced from the global economic context. During President Lula's second term, when most of the progress was made, the global GDP was growing at close to 4 percent on average per year. The major drivers of this economic growth, China at 10 percent and India at eight percent, were also massively consuming commodities from Brazil to fuel their industrial development. Domestically, the fiscal surplus as a result of the macroeconomic policies based on inflation targeting, primary surplus in the government's budget and the policy of floating exchange rates, enabled the Brazilian government to expand access to social grants and stimulate economic growth.<sup>21</sup>

Netshitenzhe (2013) argues that Brazil managed to avoid job losses as a result of increases in minimum wages through the holistic nature of their socio-economic policies, including the following:

- Increased aggregate demand arising out of social and minimum wage policy combined with industrial policy and a tariff regime that encouraged purchase of local goods.
- Measures to incentivise labour-absorption including lower pay-roll taxes.
- Economic and social infrastructure deliberately targeted, including massive housing construction which has a major multiplier effect, and reduction in electricity prices.
- Development Finance Institutions that play a more activist role in ensuring access to credit on the basis of a targeted sectoral and geographic approach.<sup>22</sup>

Therefore, in assessing the replicability of the Brazilian experience in the South African situation, one has to consider the prevailing global economic context. The unfavourable global economic environment, among other things, has resulted in the Brazilian economic growth dropping from 7.5 percent in 2010 to 2.7 percent in 2011 and was estimated at one percent in 2012.<sup>23</sup>

## **56. A CASE STUDY: NATIONAL MINIMUM WAGE IN THE UNITED STATES (US)**

### **8.1. Legislative framework of the NMW in the US**

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<sup>21</sup> Netshitenzhe, J. (2013)

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

The NMW in the US is regulated through an Act of Congress (Parliament) called “The Fair Labor Standards Act (FLSA) of 1938”. The first attempt at establishing a national minimum wage in the US came in 1933, when a \$0.25 per hour standard was set as part of the National Industrial Recovery Act (1933). However, it was challenged in court and the United States Supreme Court declared it unconstitutional and the minimum wage was abolished. The minimum wage was re-established in the US through the FLSA and was once again set at \$0.25 per hour (\$4.07 in 2012 dollars). It was once again challenged in court but this time the Supreme Court upheld the FLSA, holding that Congress had the power to regulate employment conditions. The Supreme Court held that the federal minimum wage is constitutional and does not exceed the scope of the Commerce Clause. Article 1, section 8 (3) of the US Constitution provides Congress exclusive power to regulate trade activities among the states and with foreign countries as well as Indian Tribes.<sup>24</sup>

Section 206 of the FLSA determines the minimum wages for employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; and agricultural employees. Subsection (d) of section 206 prohibits discrimination between employees on the basis of sex by paying wages to employees at a rate less than the rate at which employees of the opposite sex are paid in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility and which are performed under similar working conditions. Differentiation is only allowed where it is based on seniority, merit and performance. However, section 206(g) of the Act makes a special provision for newly hired employees who are less than 20 years old, which fixes the minimum wage at a lower rate. Subsection 2 of this section prohibits the displacement of other employees for purposes of hiring individuals covered by this section.<sup>25</sup>

The US Department of Labour is responsible for setting the wage and labour standards. The Wage and Hour Division (WHD) administrates the FLSA provisions. Some states, such as Connecticut and Massachusetts, have minimum wage rates that are higher than the federal minimum wage. State minimum wage laws can be very specific. For example, Illinois’ minimum wage rate is \$8.25 per hour for employers with four or more workers. Michigan’s minimum wage rate is \$7.40 per hour for employers with two or more employees. Occupations covered under the FLSA might be excluded from the state minimum wage laws, in which case the federal minimum wage would apply. Notably, although the state of Texas adopts the federal minimum wage of \$7.25 per hour, it has a minimum wage act that includes provisions for the minimum wage. For example, the act requires employers to give employees an earnings statement showing specific information about the employee’s pay. It also allows employees to bargain with their employers for more pay. Some states do not have a minimum wage act, in which case, federal law applies. The US Department of Labour notes that when both federal and state minimum wage laws apply, the employer must use the rate that gives the worker the most pay.<sup>26</sup>

## **8.2. Exemptions and penalties**

The FLSA makes provisions for Exemptions (section 213) and Penalties (section 216). Exemptions include, among others, employees employed in executive positions, administrators; professionals (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools); outside sale persons; employees employed in an establishment which is an amusement or recreational establishment; as well as employees employed in agriculture.

The Act provides for a fine of not more than \$10 000 or imprisonment of not more than six months, or both for the commission of an act prohibited by the FLSA (section 215). Imprisonment is only applicable for repeated violations of the act.

The specific provisions for the youth in the US and legislation of other countries are obviously aimed at addressing youth unemployment, which is a global challenge. Similarly, South Africa

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<sup>24</sup> Wikipedia (n.d.).

<sup>25</sup> Fair Labour Standards Act (1938).

<sup>26</sup> Grace, N (n.d.)

introduced the Employment Tax Incentive Act (2013) to encourage job creation specifically for the youth.<sup>27</sup>

## **57. A CASE STUDY: MINIMUM WAGES IN CHINA**

### **9.1. How are minimum wages set in China?**

Minimum wages were first introduced in China in 1993. As different Chinese regions have very different living standards, China does not have one national minimum wage. Minimum wages are established following a decision process involving both national and local authorities. Each province, municipality, autonomous region, and even districts sets its own minimum wage according to both local conditions and national guidelines. However, the 1993 rules did not cover migrants, and penalties in the case of non-enforcement were low. As such, minimum wages in the 1990's did not really bind in China. In March 2004, the Rules for Minimum Wages took effect. These rules extended minimum-wage coverage to migrant workers, and penalties in the case of non-enforcement were dramatically increased.<sup>28</sup>

The 2004 Rules afford Provinces, Municipalities and Autonomous Regions less wage-setting discretion in one important respect. Under the 1993 Regulations, the governmental entities responsible for setting minimum wages could do so based on the industrial sector involved. The 2004 Rules retained differential rates according to locality, but no longer explicitly allow minimum rates to be set by reference to particular industries.<sup>29</sup>

Under the 1993 Regulations all enterprises were required to pay employees a minimum wage. Because the term "enterprise" was not defined within the 1993 Regulations, employers and employees were left to speculate as to which employers or entities were required to pay a minimum wage. Moreover, the 1993 Regulations afforded Provinces, Municipalities and Autonomous Regions an overriding power to exempt employers from paying a minimum wage. Consequently, numerous employers throughout China were not subject to minimum wage rules.<sup>30</sup>

The 2004 Rules explicitly provided that all enterprises, private non-enterprise units (not for profit), sole proprietors, including state agencies, public institutions and community organisations, were required to pay minimum wages. Provinces, Municipalities and Autonomous Regions are no longer authorised to exempt employers from paying a minimum wage.<sup>31</sup> As of 1 January 2013, the minimum wages across China range from RMB 720 or \$115 in Anhui to RMB 1500 or \$240 in Shenzhen.

### **9.2. The Minimum Wage Formulas in China**

The 2004 Rules expressly provide that the appropriate authorities are required to determine and adjust the monthly minimum wage for full-time workers by reference to the following factors:

- Minimum living costs of local employees and their dependents;
- Consumer price index for urban residents;
- Social security and housing fund contributions paid by individual employees;
- Average wage of workers in the locality;
- Level of economic development (e.g. the status of the local economy); and
- employment situation.

As a guideline, the 2004 Rules provide that the minimum wage for full-time employees should fall within a range of 40-60 % of the monthly average local wage.<sup>32</sup>

Hourly minimum wage standards for part-time workers are to be determined and adjusted with reference to the factors set forth above and the following additional factors:

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<sup>27</sup> Employment Tax Incentive Act (2013).

<sup>28</sup> Mayneris, F. & Pocet, S. (2014)

<sup>29</sup> Huawei, L. et al (2004).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

- the published monthly minimum wages;
- basic pension insurance contributions payable by employers;
- basic medical insurance contributions payable by employers; and
- difference between full-time and part-time workers in terms of job stability, working conditions, and intensity of labour and welfare.<sup>33</sup>

The 2004 Rules also specify that an employee's minimum wage must not include any payments that are payable to an employee as:

- overtime pay;
- special allowances paid by reason of a particular work environment or condition (e.g. shift duties, working in mines, at high altitudes, etc.), or
- statutory employee welfare benefits.<sup>34</sup>

### **9.3. Bi-annual Adjustments**

The 2004 Rules, like the 1993 Regulations, provide for adjustments to minimum rates to reflect changes in the cost of living. Under the 2004 Rules, the time-frame for undertaking an adjustment review has been extended from one year to at least once every two years.<sup>35</sup>

### **9.4. Violations and Penalties**

Under the 2004 Rules, the labour and social security authorities are responsible for implementing and supervising the minimum wage program. In addition, trade unions at all levels have the right to supervise and report violations to local labour authorities. Disputes regarding minimum wage violations are subject to mediation or arbitration in accordance with the relevant rules governing labour disputes.<sup>36</sup>

In the event a violation is established, the authorities may order an employer to pay the difference owed to employees within a specified period, and may order the payment of damages of up to five times the difference outstanding. While the civil penalties under the 2004 Rules are more stringent than those that could be imposed under the 1993 Regulations, the new rules stop short of imposing any criminal liability on defaulting employers.<sup>37</sup>

When considering the China system, South Africa has to take cognisance of the complexity of implementing and monitoring the multiple minimum wage rate system and possible depopulation of regions with low minimum wage levels as a result of job seekers' migration to high paying regions.

## **58. A CASE STUDY: MINIMUM WAGES IN AUSTRALIA**

### **10.1. Legislative Framework**

The statutory minimum wages in Australia are regulated by the Fair Work Act of 2009. Part 2-6 of the Fair Work Act 2009 deals explicitly with minimum wages. The Fair Work Act established the Fair Work Australia that is responsible for, among other things, minimum wages. The Minimum Wage Panel resides under the Fair Work Australia (FWA) and is constituted by 7 Fair Work Australia members, which include the President and at least three Minimum Wage Panel members. The President may decide which FWA members form part of the Minimum Wage Panel. The President is responsible for managing the Minimum Wage Panel in performing its functions and exercising its powers. A decision of the majority of the FWA members of the Minimum Wage Panel prevails.<sup>38</sup>

According to section 284 of the Fair Work Act, the objective of the minimum wage is to establish and maintain a safety net of fair minimum wages, taking into account:

- the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth;

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Fair Work Act, 2009.

- promoting social inclusion through increased workforce participation;
- relative living standards and the needs of the low paid;
- the principle of equal remuneration for work of equal or comparable value; and
- providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.<sup>39</sup>

## 10.2. Current Minimum Wages in Australia

The FWA conduct and complete an annual wage review in each financial year. In an annual wage review, the FWA must make a national wage order. A national minimum wage order that is made in an annual wage review comes into operation on 1 July in the next financial year. Section 289 of the Fair Work Act provides for the FWA, in relation to each annual wage review, to ensure that all persons and bodies have a reasonable opportunity to make written submissions to FWA for consideration in the review.<sup>40</sup>

The current minimum wage as per National Minimum Wage Order 2014 is \$640.90 per week, calculated on the basis of a week of 38 ordinary hours or \$16.87 per hour. This minimum wage does not apply to a junior employee, an employee to whom a training arrangement applies and an employee with a disability. There are special minimum wages for these categories of employees. Special minimum wage 2 applies to an employee with a disability who is unable to perform the range of duties to the competence level required of an employee within the class of work for which the employee is engaged because of the effects of a disability on their productive capacity. Special minimum wage 3 applies to a junior employee and special minimum wage 4 applies to an employee who is an apprentice.<sup>41</sup>

## 59. A CASE STUDY: MINIMUM WAGES IN BOTSWANA

### 11.1. Historical Background

The minimum wages were first introduced in Botswana in 1974. The country has had differentiated statutory minimum wages since then. While the government was aware that both the employed and the unemployed had the right to be protected, to ensure that minimum wages were not set at a level that would result in the significant slowing down in the creation of employment for any category of workers, the government believed that differential statutory minimum wages should apply as a general principle. Differentiated minimum wages are more likely to take into account employers' varying ability to pay across sectors.<sup>42</sup>

Initially there were two minimum wage rates in Botswana, which covered five sectors in the economy: construction; manufacturing; road transport; trade; and hotels. Later, coverage of minimum wages was extended in 1980 to include night watchmen. Despite the extension of minimum wages to cover previously excluded sectors government persistently excluded the domestic service sector and the agricultural workers.<sup>43</sup>

### 11.2. Legislative Framework

The issue of whether to have a single national minimum rate or a series of sectoral/ regional minimum rates is a crucial one that requires careful consideration. A national minimum wage has the advantage of providing equal protection for all workers and is also much more easily monitored and enforced than sectoral rates. However, it cannot easily take into account the fact that employers' ability to pay varies across sectors. To avoid causing high unemployment in those sectors which cannot afford to pay minimum wage, a national minimum wage would have to remain low by the standards of the organised labour in the cities.<sup>44</sup>

The minimum wages in Botswana is regulated through the Employment Act, Chapter 47:01. Chapter 131 of the Act established the Minimum Wages Advisory Board, which is responsible for determination of minimum wages. Section 132 states: "Where the Minister considers it

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Annual Wage Review 2013-14.

<sup>42</sup> Sesinyi, M (1998).

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

necessary or expedient to fix the minimum wage for any category of employees in any trade, industry or section of industry specified in the Fourth Schedule, he shall refer the matter to the Board and the Board shall investigate the wages in the trade, section of trade, industry or section of industry in question and make recommendations to him as to the minimum wage which should, in the Board's opinion, be payable to employees belonging to the relevant category."<sup>45</sup>

In formulating its recommendations to the Minister, the Board takes the following into account:

- the needs of the employees concerned and their families, taking into consideration the general level of wages in Botswana, the cost of living, any social security benefits and the relative living standards of other social groups;
- the desirability of eliminating discrimination between the sexes in respect of wages for equal work;
- economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment; and
- all other relevant matters.<sup>46</sup>

The Department of Labour and Social Security is responsible for monitoring compliance to the minimum wages through inspections. The Department takes into account payment-in-kind when assessing compliance with minimum wage legislation but employees have the right to demand payment in cash. However, the inspections are not conducted as frequently as they should be due to personnel constraints. Non-compliance to minimum wages is punishable through penalties prescribed by section 151(d) of the Act, which is a fine not exceeding P2000 or to imprisonment for a term not exceeding 18 months or both.

The Botswana system is similar to the South African system of sectoral determinations as reflected in paragraph 5 but contrary to their system, domestic and farm worker sectors are covered in South Africa.

## 60. CONCLUSION

It is evident that most countries have some form of wage regulation that is either set by government or through collective bargaining. Minimum wages are set at national or regional and at sectoral or occupational level. The South African current labour legislative framework favours collective bargaining. However, it recognises that some sectors are not well organised and therefore vulnerable to exploitation by powerful employers. This has resulted to the introduction of sectoral determinations, which resides within the competency of the labour ministry. Despite these mechanisms, inequality in income distribution has persisted leading to consideration of a national minimum wage.

In its investigation into this subject, South Africa can learn from approaches adopted by the above-mentioned countries. However, the country has to customise whatever approach to the South African socio-economic conditions.

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<sup>45</sup> Employment, Chapter 47:1.

<sup>46</sup> Ibid.

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## **INTERNATIONAL COMPARISONS ON THE NATIONAL MINIMUM WAGE**

22 March 2015

There Shall be Work and Security! ... There shall be a national minimum wage....  
— The Freedom Charter: As adopted at the Congress of the People, Kliptown, on 26 June 1955.<sup>47</sup>

### **EXECUTIVE SUMMARY**

The national minimum wage is used in at least 150 countries across the world in the battle against poverty and inequality. The best known national minimum wage standard was adopted by the United States over 75 years ago. The most recent country to implement a national minimum wage was Germany – with effect from 1 January 2015.

The national minimum wage is only one of many weapons which are aimed at assisting the lowest-paid and most vulnerable sections of the workforce.<sup>48</sup>

This research paper presents possible lessons for South Africa from different countries on the "architecture" of the National Minimum Wage:

How do countries with a national minimum wage (NMW) provide for:

- Setting the scope of the NMW (who is covered, who is excluded)?
- Setting the level of the NMW?
- Enforcement of the NMW?
- Reviewing and adjusting the NMW over time?

Much of the opposition to the National Minimum Wage mixes up two questions: whether it is desirable in principle, and what the level should be.

"The main economic objection to minimum wage laws is that some workers will lose their jobs."<sup>49</sup> In terms of economic theory, minimum wages are seen as bad because if wages rise, the cost of labour increases and, all things being equal, this will lead to more unemployment as employers dismiss workers who are unable to earn the prescribed minimum.

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<sup>47</sup> Available at: <<http://www.anc.org.za/show.php?id=72>>.

<sup>48</sup> Young (1991:21).

<sup>49</sup> Kennan (1998:642); Democracy in America (column) (2014); Economist (leader article) (2013c).

But economic theory has not been simply borne out by international experience of minimum wages.<sup>50</sup> The impact that a national minimum wage will have on poverty, inequality and unemployment depends critically on the way it is introduced, enforced, reviewed and updated. There are many international studies that demonstrate the positive effect of minimum wages on the triple challenges identified in South Africa's National Development Plan. There are also studies that show that badly implemented minimum wage policies can have negative effects on marginalized workers and on development.

As with any policy, using the metaphor introduced above, the architecture of the national minimum wage can be flawed or it can be successful.

International research shows that South Africa can gain benefits from a national minimum wage, provided it is well designed and implemented correctly and sensitively. It has to be well aligned with the current socio-economic realities of South Africa's labour market, including the wide use of flexible and non-standard employment practices.<sup>51</sup>

Some successful countries do not have a national minimum wage (the Scandinavian countries are notable here) – but most do. International research shows that a positive decision can be taken to introduce a national minimum wage independently of what the level should be.

Naturally, there can be a wide difference of opinion about the level at which the National Minimum Wage should be set; the unsuitability of any particular level, however, does not invalidate the principle that there should be a national minimum wage to assure all workers of a basic minimum living standard.<sup>52</sup>

The decision on the architecture of the national minimum wage – including the determination of its level - means that there needs to be research, debate and negotiation. But it is questionable whether public hearings on the national minimum wage are to be relied upon in determining a sustainable and sensible way forward.

There is a need for leadership – for a policy decision to introduce a national minimum wage – and the details should be developed through an inclusive and representative forum (with expert advice) for political consideration. This model has proved successful in other countries. The level of the national minimum wage, international experience suggests, should not be set too high; it should be reviewed annually – and it should not be set directly by politicians (as in the case of the United States).

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<sup>50</sup> Democracy in America (column) (2014); Economist (leader article) (2013c).

<sup>51</sup> Theron (2014).

<sup>52</sup> Young (1991:9).

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### Acknowledgements:

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Mr Bertie van Eck, Librarian: Parliamentary Information Centre assisted by locating a key reference article.

The Labour Research Service in Salt River made available an archive copy of the seminal 1991 LRS Policy Paper on the National Minimum Wage by Gordon Young.

## 1. Background: The consideration of National Minimum Wage in 2015

President Jacob Zuma, in his State of the Nation Address (SONA) in June 2014, committed the government to an investigation into a national minimum wage, as an income inequality reduction mechanism. He assigned the Deputy President to lead the project within the ambit of NEDLAC.

The Portfolio Committee on Labour decided to conduct workshops to gather information on the subject of a national minimum wage from academic, business and labour organisations. The workshops were followed by public hearings which were conducted throughout the country to test the public opinion on this matter.<sup>53</sup>

An earlier research paper: *The national minimum wage: international perspectives*,<sup>54</sup> provided a valuable background on the concept of minimum wages and how the minimum wage systems in different countries are legislated and regulated. The paper discussed the different sorts of minimum wages that may accompany a national minimum wage and how variations by region and industry may be dealt with.

Protective legislation<sup>55</sup> in South Africa has outlawed child labour and established maximum working hours. It has introduced safety and health and workmen's compensation on a broad and increasingly uniform basis. This covers all formal industries, agricultural enterprises and domestic work.

In the area of wage regulation, however, there is little uniformity. The prescribed minimum levels of wages – even for the same sort of work, can vary hugely between industries, regions, and individual employers. Some of the reasons for this variation are “traditional”. Women are typically paid less than men. Enterprises evolve payment structures to suit their particular circumstances. In other cases, trade unions have organised workers to negotiate for higher wages in some sectors, but not in others. Government has introduced sectoral wage determinations in some sectors, but not in others. The Minister of Labour may extend the scope of collective agreements negotiated in Bargaining Councils to compel non-parties to the agreement to apply the same wage standards. In other cases, where Bargaining Councils are not adequately representative, non-parties may avoid statutory minimum wages. In some cases, unions seek to give statutory force to their wage agreements. In other cases, as in the huge mining sector, wages are set by formal agreement between unions and employers, but there is no statutory minimum wage level. Even where there is a legally sanctioned wage standard, it may not be properly enforced by the Department of Labour or the Bargaining Council.

The result of this situation is a very wide distribution of wage levels within the working class.<sup>56</sup> The inequality is considerably more extreme when all salaried people are included. Here the legacy of apartheid still has strong effects – high remuneration for whites and low remuneration for blacks still pertains, even if the dividing line is presented as that between skilled and unskilled.

The purpose of this brief is to supplement the earlier paper on international perspectives by providing possible lessons from different countries on the “architecture” of the National Minimum Wage:

How do countries with a national minimum wage (NMW) provide for:

- Setting the scope of the NMW (who is covered, who is excluded)?
- Setting the level of the NMW?
- Enforcement of the NMW?
- Reviewing and adjusting the NMW over time?

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<sup>53</sup> Mkhize and Ngcobo (2015).

<sup>54</sup> Ibid.

<sup>55</sup> Urofsky (2009:206 et seq).

<sup>56</sup> Kennan (1998:643) points out that “the finding of large unexplained wage variations is characteristic of many field studies of labour markets.”

Also of relevance is the relationship between the NMW and other wage setting measures. Sindisiwe Mkhize and Sibongiseni Ngcobo, in their earlier “companion piece” to this paper, make the essential point that while South Africa can usefully study lessons from the experiences of other countries, the critical requirement is “to customise whatever approach is adopted to the South African socio-economic conditions”.<sup>57</sup> This is why the contributions of South Africans – workers, unions, employers and policy experts – in the public hearings and workshops may prove to be an important part of the process.

The National Minimum Wage is just one of the measures employed by governments and societies at large to deal with inequality and the fundamental causes of low wages.<sup>58</sup> Many public interventions are needed here – from early childhood development, school education, skills training and accessible public transport to social grants and sound implementation institutions. And worker organisation through trades unions is probably the most powerful force for economic redistribution. Some commentators have argued that a NMW is an essential weapon in the fight against poverty. “Aimed at assisting the lowest-paid and most vulnerable sections of the workforce, it will also underpin the wages of all workers”.<sup>59</sup> But the NMW, by definition, can only help people who are in employment (and it may exempt small businesses and ignore the informal sector). It also only directly assists workers who are earning exceptionally low wages. Poverty and inequality are widespread across the whole of South African society, not only amongst low-paid workers.

## **2. Which countries have a legislated minimum wage that is of national application?**

The national minimum wage has become the norm across the world.

A well-referenced Wikipedia list of minimum wages by country suggests that over 80 per cent of countries in the world have a national minimum wage in force in 2015.<sup>60</sup>

Analysis of the 2015 Eurostat database shows that 76 per cent of countries in Europe have a national minimum wage.<sup>61</sup>

21 of the 28 member states of the European Union (EU) have a “universal minimum wage”.<sup>62</sup>

Amongst the BRICS countries, Brazil<sup>63</sup> and Russia<sup>64</sup> have national minimum wages. In China minimum wages are set by region<sup>65</sup>, while in India there is a huge range of minimum wages<sup>66</sup>. South Africa, of course, has no national minimum wage, although minima are set by law for nine sectors where labour is regarded as vulnerable.<sup>67</sup>

Within the 15 member SA Development Community (SADC), Namibia, South African and Zimbabwe are the only countries not to have a NMW.

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<sup>57</sup> Mkhize and Ngcobo (2015:17).

<sup>58</sup> Economist (leader article) (2013c).

<sup>59</sup> Young (1991).

<sup>60</sup> Of 195 countries, listed, 81 per cent have NMWs (159) and 18 per cent (36) do not. Wikipedia. *List of minimum wages by country*.

<sup>61</sup> Of 35 European countries, 26 had national minimum wage laws in operation. The 9 that did not were the five Scandinavian countries, Italy, Cyprus, Switzerland and Austria. Research Unit calculations from Eurostat (2015).

<sup>62</sup> Business Day (2014).

<sup>63</sup> Mkhize and Ngcobo (2015).

<sup>64</sup> WageIndicator Foundation. [Internet]. < <http://www.wageindicator.org/main/salary/minimum-wage/russia/>>.

<sup>65</sup> Mkhize and Ngcobo (2015).

<sup>66</sup> Paycheck India [Internet]. states: “There exists more than one minimum wages in India.” Minimum wages may be set at national, state, regional, sectoral and occupational or skill level. There is no national floor for this process.

<sup>67</sup> WageIndicator Foundation. [Internet]; Cosatu (2015).

Germany is the most recent country to have implemented a NMW – from 1 January 2015. The UK was a late adopter of the NMW – from 1999 and the UK's experience has been very positive.

It would be easier to identify the countries that do not have national minimum wages systems. The major exception (apart from India and China) is the Scandinavian countries. Italy, Switzerland and Austria also do not have minimum wage floors. Egypt, Ethiopia and South Africa are the only major economies in Africa that do not have a national minimum wage.<sup>68</sup>

### 3. Comparisons

#### 3.1. Country Notes

##### 3.1.1. United States – one of the longest-established NMWs

New Zealand and Australia introduced national minimum wages in the nineteenth century<sup>69</sup>, but by far the best-known example of national minimum wage legislation is from the United States.<sup>70</sup> This dates from before the Second World War at a time when people across the globe were facing the dire effects of the Great Depression. The US courts initially ruled that minimum wage laws were unconstitutional. The eventual passage of the Fair Labor Standards Act (FLSA) in 1938 was one of the crowning achievements of The New Deal,<sup>71</sup> a transformative legislative programme which ushered in a 40 year period in which inequality in the US declined and stabilised.<sup>72</sup>

The federal minimum wage “for covered nonexempt employees” has been set at \$7.25 per hour since July 24, 2009.<sup>73</sup> This is 38 per cent of the median wage and “one of the rich world's lowest”.<sup>74</sup> Many US states also have minimum wage laws. (See the map below). “In cases where an employee is subject to both the state and federal minimum wage laws, the employee is entitled to the higher of the two minimum wages.”<sup>75</sup> The federal rate covers far fewer people than it once did. In 1979, 7.9 per cent of workers earned at or below the federal minimum wage; in 2012 the figure was 2.8 per cent. In January 2014, 21 out of the 50 US states had a minimum wage higher than the federal level.<sup>76</sup>

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<sup>68</sup> See entries in WageIndicator Foundation. [Internet].

<sup>69</sup> Martin and Immervoll (2007).

<sup>70</sup> Kennan (1998:642). It has proved difficult to assemble a summary of the US experience of a national minimum wage because of all the many variations and their extremely detailed documentation. Sylvia Allegretto (2013), in a collection of papers commissioned by the US Department of Labour commemorating the 75th Anniversary of the Fair Labor Standards Act states that “The minimum wage is one of the most researched areas in labor economics with a vast body of literature that dates back nearly seventy years”. The Research Unit is able to provide answers to any further questions that may arise from the account given here.

<sup>71</sup> Kennedy (1999). Note that the New Deal permitted “an organised system of racial cruelty”. Its transformative content related to capitalism, not racism – which was concentrated in (but not limited to) the southern states. See Katznelson (2013: 14-18).

<sup>72</sup> Piketty, T. and Saez, E. (2003) The share of income of the “top 10 per cent” in the US fell from 50 per cent before the “great Crash” in 1927 to stabilize at 35 per cent between 1942 and 1982. Since then, inequality has risen, reaching its highest level (51 per cent) in 100 years in 2012. There is no suggestion this was all due to the minimum wage – the result had many causes, social and political as well as economic.

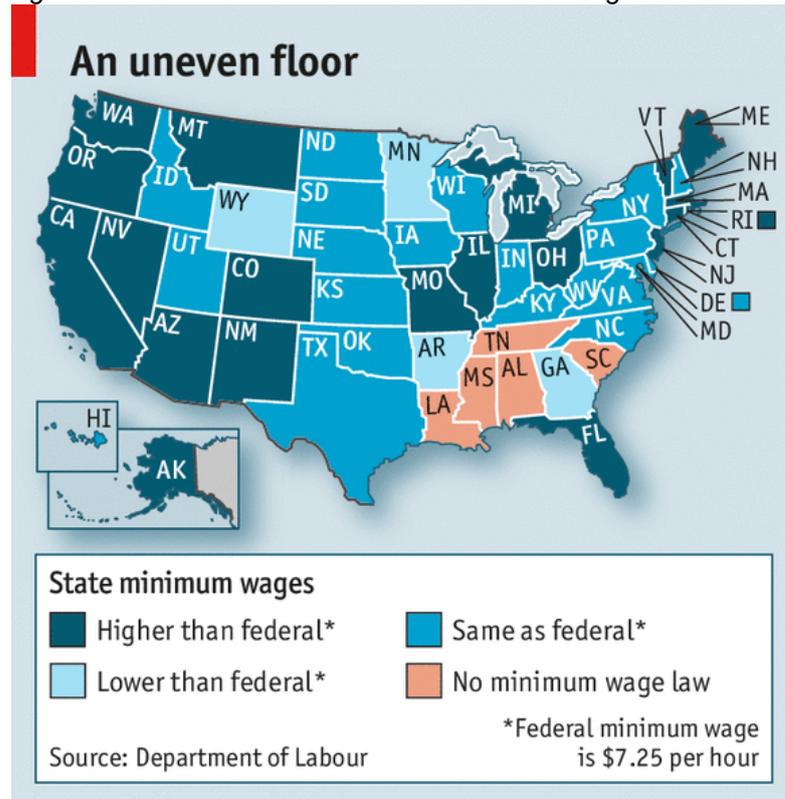
<sup>73</sup> US Department of Labor. [Internet] <<http://www.dol.gov/dol/topic/wages/minimumwage.htm>>.

<sup>74</sup> Economist (2013b); Economist (leader article) (2013c) – the date of calculation is 2012.

<sup>75</sup> US Department of Labor. [Internet] <<http://www.dol.gov/dol/topic/wages/minimumwage.htm>>.

<sup>76</sup> Economist (2013b). The highest local minimum wage noted was \$15 an hour, after a municipal vote in a suburb of Seattle, where the airport is located.

Figure 1: USA: Some states have set minimum wages above the federal minimum.<sup>77</sup>



Note: Where there is no state minimum wage law, or where the state law is lower than the federal, the federal minimum wage rate applies.

### 3.1.2. Germany – the newest NMW

The most recent country to implement a NMW is Germany. Germany introduced an across-the-board hourly minimum of €8.50 (\$11.33) from 1 January 2015. It was “one of the few big rich-world countries still without a national wage floor”.<sup>78</sup> At 62 per cent of the median wage, this is high relative to most other countries’ minimum wages<sup>79</sup>.

According to a recent analysis: “The initial rate of €8.50 per hour was agreed by the governing parties during their coalition negotiations in October 2013. Future increases in the German national minimum wage will be agreed by a statutory minimum wage commission, consisting of employers and unions only, which will convene for the first time in 2016, with changes to be recommended by 30 June 2016. The statutory minimum wage rate in Germany will be reviewed every two years and any recommendations to change it must be adopted by the majority of the statutory minimum wage commission. It must also take account of wage agreements within the previous two years; labour productivity; and the competitive context of various sectors and regions.”<sup>80</sup>

### 3.1.3. United Kingdom – the best NMW system

The UK has the best method of setting the NMW, according to the sources relied upon for this paper.

The Low Pay Commission is an independent body made up of trade unionists, academics and business people that advises the government on the NMW.<sup>81</sup> Every February, it makes

<sup>77</sup> Graphic from Economist (2013b) See current interactive graphic at US Department of Labor. [Internet]. <<http://www.dol.gov/whd/minwage/america.htm>>.

<sup>78</sup> Economist (leader article) (2013c).

<sup>79</sup> Ibid and see below: 3.3 Comparisons between minimum wage levels across countries over time.

<sup>80</sup> LPC (UK) (2015a:295).

<sup>81</sup> Low Pay Commission (UK). [Internet].

recommendations for the value of the NMW based on a careful review of evidence including economic analysis, submissions from stakeholders, research and a programme of visits. Its mandate is to advise on “the UK’s pay floor – designed to protect as many low-paid workers as possible without hurting jobs or the economy.”

Mr John Cridland, director-general at the Confederation of British Industry was quoted in 2015 as saying: “The national minimum wage has been one of the most successful policies of recent years thanks to the independence of the commission”.<sup>82</sup>

“About 5 percent of Britain's workforce is paid at or very close to the minimum wage, and almost a third of workplaces use it as a guide for setting wages, especially in the retail and hospitality sectors.”<sup>83</sup>

The Low Pay Commission published its 16<sup>th</sup> annual report in March 2015<sup>84</sup>.

While the UK was a relative latecomer to the NMW instrument, the country was a world leader in the introduction of minimum wage laws, beginning with the Trade Boards Act in 1909<sup>85</sup>. The welfare state in Britain developed in the wake of the 1930’s depression, World War 2 and the continued rationing after the war.

The welfare state after 1950 did not impose a national minimum wage. Instead, it provided poor families with support in the form of minimum benefit standards – for unemployment (the “dole”); child, disability and old-age benefits; food and housing subsidies; universal education and free health care, through the National Health Service.<sup>86</sup> Benefits have not always been unconditional. Time limitations, age limitations and ‘workfare’ requirements were imposed to deal with poor people who were branded as malingerers and “welfare scroungers”<sup>87</sup>.

The national minimum wage in the UK was grafted onto an existing structure of comprehensive welfare support when it was introduced after 1998.

When the British government set up the independent Low Pay Commission, its aim was to have “NMW rates that helped as many low-paid workers as possible, while making sure that we do not damage their employment prospects”. As the economy continues to recover, following the setbacks of the 2008 economic crisis, the Government’s ambition is to increase the real value of the NMW.

In 2014, it asked the LPC to:

- monitor, evaluate and review the levels of each of the different NMW rates;
- make recommendations on the levels which should apply from October 2015;
- consider whether (as concluded in the previous 2014 Report), the UK is entering a new phase where real increases in the NMW can be afforded;
- review the conditions that need to be in place to allow the value of the minimum wage to increase in real terms;
- update previous advice on the future path of the NMW.

The LPC states: “Our recommendations are once again based on extensive examination of the evidence.” This has included:

- meetings with employers and workers, including in low-paying sectors and small firms<sup>88</sup>;
- a programme of commissioned external research;
- detailed in-house analysis of labour market data; and

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<sup>82</sup> Durham (2015).

<sup>83</sup> Durham (2015).

<sup>84</sup> LPC (UK) (2015a).

<sup>85</sup> Tawney (1915). According to Martin and Immervoll (2007), the UK has implemented a NMW before.

<sup>86</sup> Timmins (1995).

<sup>87</sup> Shildrick, T. (2012).

<sup>88</sup> Oral and written submissions are accepted by the LWC.

- detailed in-house analysis of other economic data.

The recommendations are assembled by experts – “technocrats” – and conclusions are based on internal debates and evidence. The LPC does not set the wage levels by votes or because of lobbying. It does not use a mechanical formula to determine the NMW without reference to the wider economic context. The Government asked the LPC to take account of the state of the economy, and employment and unemployment levels, and relevant policy changes.<sup>89</sup>

The lengthy reports of the LPC explain the reasons for the Commissioners’ conclusions and recommendations. They are written in accessible language, with clear summaries and references to other evidence sources. The annual report provides, as is explicitly intended, “a valuable wider resource on the UK labour market”<sup>90</sup>, which can be used as a reference point, for example for wage bargaining or other economic decision making. In 2015, the conclusions and recommendations represented the unanimous views of all Commissioners.

Nine commissioners have been appointed in terms of the National Minimum Wage Act 1998. Three are trade union officials, three are business people, two are professors of economics and the Chairperson is a university-linked head of a non-governmental organisation (NGO). The commissioners are supported by a secretariat of seven people. Detailed account is given of the way in which they work in the LPC reports.

The UK Government considers the LPC recommendations every year in February. Since the minimum wage was introduced in 1999 there have been annual upratings<sup>91</sup>.

The LPC reports that it has experienced “significant overseas interest in particular features of the National Minimum Wage including how the Low Pay Commission has achieved unanimity in its recommendations, and flexibility to respond to economic circumstances.”<sup>92</sup> In 2014 alone, the Commission met with representatives from a number of other countries, including Germany, the Republic of Ireland, South Korea and New Zealand to discuss the operation of the NMW and to spread knowledge and best practice. Having seen the success of the UK system, other countries were interested to learn about how the UK had introduced and operated its minimum wage since 1999.

#### **3.1.4. Sweden – no NMW, but low inequality**

Sweden has the best history to illustrate the positive effects of ‘wage solidarity’ – the philosophy that underpins the principle of minimum wages and which underlies the much lower levels of inequality in all the Scandinavian countries.<sup>93</sup>

If a company is unable to pay a minimum wage – fairly and properly negotiated - it should not be allowed to continue in existence. Such company owners are effectively kept afloat by the charity of their workers who collude in accepting lower wages, and undercut the wage standards than competing, profit-making companies have agreed to pay. The Swedish trade union federation (the LO) have explained:

“[Wage flexibility] reduces the losses of unprofitable firms and permits them to stay in business longer. They are subsidized by their employees accepting low wages. The solidarity wages policy [by contrast] forces them earlier to restructure or go out of business. This is a much more efficient way to move labour from unprofitable to profitable production. This means that labour market policy [which includes wage policy] is substituted for wage differentials as a prime mover of labour in the restructuring of business.”<sup>94</sup>

<sup>89</sup> Summary from LWC (UK) (2015: vii-viii). This is a long, detailed report of 357 pages.

<sup>90</sup> LPC (UK) (2015a: viii).

<sup>91</sup> LPC (2015a:296).

<sup>92</sup> LPC (UK) (2015a:300).

<sup>93</sup> The low levels of inequality in Sweden, Norway and Finland compared with other countries are illustrated in Wilkinson and Pickett (2010: 20, 23).

<sup>94</sup> Young (1995) citing *Solidaristic incomes policy and industrial relations*. Mimeo, LO Sweden, 1990.

But Sweden has no NMW. Its system of minimum standards has relied on collective bargaining agreements to set wage floors, covering sectors and occupations which account for a very high proportion of the workforce.<sup>95</sup>

### **3.1.5. France – high NMW harms employment**

In 2015, France had the highest minimum wage for the major economies in Europe at €9.61 (\$12.81) per hour.<sup>96</sup> This level can be compared to the €8.50 recently adopted by Germany in January 2015, which is also regarded as being high – in both absolute and relative terms. Another feature of the French minimum wage is that it sets very high minimum wage standards for young people. This has been held to be one of the factors that explains the high rates of youth unemployment in France, some 26 per cent for 15- to 24-year-olds in 2013.<sup>97</sup>

### **3.1.6. Mexico – low, ineffective NMW**

The NMW in Mexico is too miserly to have any impact on promoting development. The level in 2015 is less than \$5 per day – about 62 US cents per hour. This compares with the rich annual salary of the head Mexico's National Minimum Wage Commission (Conasami) who earned \$213,000 in 2014.<sup>98</sup>

The minimum wage “has lost more than two-thirds of its purchasing power in past decades and is inadequate to cover most basic needs.”<sup>99</sup> This flies in the face of Article 123 of Mexico's federal constitution which provides that “The general minimum wage must be sufficient to satisfy the normal material, social, and cultural needs of the head of a family and to provide for the compulsory education of his children.”<sup>100</sup> 13 percent of the Mexican workforce earn the minimum according to the government statistics agency.<sup>101</sup>

Conasami sets a minimum wage that is 10 per cent higher in metropolitan compared to rural areas (where the cost of living is said to be lower).<sup>102</sup> While there are popular pressures to increase the minimum wage substantially, now that inflation has been controlled, this is made complex by a web of legislation that sets various fines and penalties in relation to the level of the minimum wage.

This is an aspect of minimum wage architecture that South Africa should not copy!

### **3.1.7. Chile – high, ineffective NMW**

Mkhize and Ngcobo<sup>103</sup> place emphasis in their review of international experiences of the NMW, on the case of Brazil. According to the analysis of the ILO and the Economic Commission for Latin America and the Caribbean (ECLAC), Brazil's “minimum wage policy tailored to the dynamics of the domestic market is considered to be one of the factors behind an upturn in the wage share of GDP” between 2002 and 2008 (the most recent expansionary economic cycle). This positive trend reversal in wages as a percentage of GDP was particularly noteworthy in a region which “has the most unequal distribution of income in the world.”<sup>104</sup>

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<sup>95</sup> Martin and Immervoll (2007). This is the same approach used in Italy, Austria and other Scandinavian countries.

<sup>96</sup> WageIndicator Foundation. [Internet]. < <http://www.wageindicator.org/main/salary/minimum-wage/france>>. Luxembourg is higher at €11.10.

<sup>97</sup> Economist (leader article) (2013c).

<sup>98</sup> Economist (2014m).

<sup>99</sup> Harrup (2014)

<sup>100</sup> MGR (2014).

<sup>101</sup> Harrup (2014).

<sup>102</sup> WageIndicator Foundation. [Internet]. < <http://www.wageindicator.org/main/salary/minimum-wage/mexico>>.

<sup>103</sup> Mkhize and Ngcobo (2015).

<sup>104</sup> ECLAC/ILO (2012).

Chile is a second South American country that attracts analytical attention. This is because it has perhaps the highest relative minimum wage in the world at 67 per cent of the median income according to the OECD.<sup>105</sup>

In terms of currency, the Chilean minimum wage is much lower than minima in Europe and the US indicated above (except for Mexico!)

Table 1: Chile: national minimum wage in 2015 – indicators of rates in different currencies<sup>106</sup>

Category	Monthly minimum in Chilean pesos	Hourly minimum converted to US\$ / Euros at 20-Mar-15	Percent of the full time wage (45 hours per week)	Rands per month (approximation)
(a) Age 18 - 65 years	225000	\$ 1.80 / € 1.69	100%	R 4 321
(b) Age above 65 years or below 18 years	167968	\$ 1.35 / € 1.26	75%	R 3 226
(c) "non-remunerated".	145139	\$ 1.16 / € 1.09	65%	R 2 788

The minimum wage is proposed by the government for adoption by the Chilean Parliament. The Ministry of Labour and Social Welfare has recently announced that a "Technical/ Advisory Committee on Minimum Wages" will be created and that it will include representatives of workers and employers, as well as economists and academics. However, at present this will be an informal structure without statutory recognition.<sup>107</sup>

There is no formal requirement for the regular revision of the minimum wage, but the practice is for an annual adjustment in July. No formula or benchmark for setting the level of the minimum wage is provided in law, but the Chilean government has proposed that the new Advisory Committee on minimum wages to keep three key variables in mind. These are: the expected inflation rate for the next 12 months, productivity trends and a cyclical adjustment factor depending upon the level of unemployment in the economy.

Chile is described as a relatively advanced developing country, which has a high degree of administrative and bureaucratic capacity.<sup>108</sup> Academic studies of the Chilean minimum wage have however noted a significant level of non-compliance with the law<sup>109</sup>. The level of violation was found to be very different for urban and rural areas. 39 per cent of rural workers were paid below the minimum wage compared to 16 per cent of urban workers. The depth and severity of violation was higher for rural workers – and there were, in addition, significant variations in non-compliance between different regions. In a similar vein, an earlier study by ILO researchers found that the wage structure of enterprises in Chile “remained largely unchanged following the rise in the minimum wage”.<sup>110</sup> One major objective of the minimum wage policy, the amelioration of living conditions of low-paid workers, was therefore found not to have been achieved. The ILO study draws attention to the necessity of carefully designing the minimum wage fixing machinery. Adjustments were based on economic forecasts that turned out to be unrealistic and this saw the NMW in Chile rising far above the average wage, and far above productivity trends in the economy.<sup>111</sup>

<sup>105</sup> See 3.3 below

<sup>106</sup> Minimum wages from Directorate of Labour (Chile). [Internet]; exchange rates from bloomberg.com.

<sup>107</sup> WageIndicator Foundation. [Internet]. < <http://www.wageindicator.org/main/salary/minimum-wage/chile>>.

<sup>108</sup> Kanbur *et al* (2013).

<sup>109</sup> Kanbur *et al* (2013) and Wedenoja (2013).

<sup>110</sup> Infante *et al* (2003).

<sup>111</sup> Infante *et al* (2003); Marinakis (2006) and ECLAC/ILO (2012).

The Chilean minimum wage has been set at a high level in relative terms – both globally and against the medium wage in the Chilean economy. This has led to the minimum wage being less effective, because of non-compliance.

## 3.2. Architecture of the NMW

### 3.2.1. Setting the scope of the NMW

This subsection considers experiences of limiting and expanding the scope of who is covered by or excluded from the national minimum wage and measures to phase in improvements over time.

The simplest solution would be one rate and universal coverage. But this may not be a practical option for introducing a NMW. Many countries have begun with narrow coverage and some exemptions and have then worked towards the goals of universal coverage and a single rate that approaches the COSATU 1985 call for “a legally enforced national minimum living wage for all workers”.

1. When the national minimum wage is introduced, governments may limit its scope by excluding certain sectors or providing exemptions. For example agricultural workers, domestic workers and young people were initially excluded from the US Fair Labor Standards Act in 1938.<sup>112</sup>
2. At a future date, these excluded sectors may be brought within the scope of the minimum wage law. For example, in the USA, farm workers were not covered when the FLSA was passed in 1938 but amendments were made so they were covered from 1966.<sup>113</sup>
3. When the national minimum wage is introduced, it may be phased in – in some or all locations. For example, the initially proposed version of the US Fair Labor Standards Act in 1938, provided for a minimum wage of 40 cents per hour. But the legislators amended the bill to establish a minimum wage of 25 cents per hour for the first year following passage, thirty cents for the second year and 40 cents within a period of six years”.<sup>114</sup>
4. The phasing in may be applied to new industries that are added to the coverage of the national minimum wage. For example, in the USA, when the minimum wage for previously covered workers was \$1.15 an hour, the minimum for retail workers newly subject to the law was set at \$1.00 an hour, with a plan to reach parity with the national standard over four years.<sup>115</sup>
5. Enterprises that are subject to the national minimum wage may be limited to those above a certain size or turnover. For example, in the USA, farms were only subject to the minimum wages “if their employment reached 500 or more man days of labor in the previous year’s peak quarter”<sup>116</sup>.
6. The coverage of the national minimum wage may be broadened by altering the firm size or turnover threshold over time. For example, in the USA the threshold for retail trade enterprises included only those with sales exceeding \$1 million annually in 1965. Many more workers were brought under the protection of the national minimum wage by 1968, as the enterprise sales volume test was cut to \$250,000 by 1969.<sup>117</sup>

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<sup>112</sup> Kennedy (1999).

<sup>113</sup> Coverage was phased in, with parity with non-farm workers only being reached in 1977. US Department of Labor. [Internet]. < <http://www.dol.gov/whd/minwage/coverage.htm>>.

<sup>114</sup> Katznelson (2013: 270 and 583 n.196).

<sup>115</sup> US Department of Labor. [Internet]. < <http://www.dol.gov/whd/minwage/coverage.htm>>. Period 1961 to 1965. The federal minimum standard was \$1.25 in 1965.

<sup>116</sup> US Department of Labor. [Internet]. < <http://www.dol.gov/whd/minwage/coverage.htm>>. 1966.

<sup>117</sup> US Department of Labor. [Internet]. < <http://www.dol.gov/whd/minwage/coverage.htm>>.

7. Young people in certain jobs may be covered by a discounted minimum wage.<sup>118</sup> For example, in the USA, retail and service businesses (such as restaurants) “were allowed to employ fulltime students at wages of no more than 15 percent below the minimum with proper certification from the Department of Labor.”<sup>119</sup> The youth wage discount may be time limited, as it was in the US to the first 90 days of employment.<sup>120</sup> After that period, the normal minimum applies. In Australia, the NMW for young people is set at a fixed percentage of the full NMW for different ages. It rises from 36.8 per cent at age 15, by birthday steps to reach parity with the NMW from age 21.<sup>121</sup> A similar sliding scale applies to apprentices, starting at 55 per cent of the NMW in the first year to parity after four years. For trainees who are not apprentices, there is a wage scale related to the number of years of schooling completed.

### 3.2.2. Setting the level of the NMW

Some countries with a minimum wage outsource rate-setting to independent technocrats.<sup>122</sup>

For example, in the UK, the government decides on the rate, after considering recommendations made by the Low Pay Commission (LPC).<sup>123</sup> It doesn't need to get each increase past Parliament. “This is an approach we recommend for other countries.” says *The Economist*.<sup>124</sup> A similar approach – relying on expert advice before setting or adjusting the NMW has been followed at least in Australia, and Ireland is in the process of establishing a ‘Low Pay Commission’ that is modelled on the UK.<sup>125</sup>

Other countries, such as Belgium, Spain, Japan and the Netherlands (and Germany from 2016 onwards) set the national minimum based on collective bargaining agreements.

In New Zealand, the Minister of Labour changes the rates after procedures have been followed under the Minimum Wages Act 1983.

In France, the minimum wage is automatically raised in line with inflation and is subject to further increase at any time, should the government so decide.

In the USA, the federal minimum wage is set intermittently by politicians, voting in Congress.<sup>126</sup>

#### Benchmarks for the level of the NMW:

Cosatu draws attention in its 2015 *Updated briefing document on the national minimum wage (NMW)* to “two international benchmarks which are sometimes used to gauge the level at which the national minimum wage should be pitched. Namely a Minimum Living Level and the ratio of the national minimum wage to the average wage. While not cast in stone, these are

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<sup>118</sup> Also see the more comprehensive tables A3.3-5 summarizing how specific countries adjust their minimum wages for the youth, by age and for apprentices in LPC (UK) (2015a:297-99).

<sup>119</sup> US Department of Labor. [Internet]. <<http://www.dol.gov/whd/minwage/coverage.htm>>. 1961. There have also been “training discounts” of a similar size for young workers under 20 years (1989 to 1983).

<sup>120</sup> US Department of Labor. [Internet]. <<http://www.dol.gov/whd/minwage/coverage.htm>>. 1996.

<sup>121</sup> WageIndicator Foundation. [Internet]. <<http://www.wageindicator.org/main/salary/minimum-wage/australia>>.

<sup>122</sup> Economist (2013).

<sup>123</sup> Mkhize and Ngcobo (2015). The LPC is discussed in 3.1.3 above.

<sup>124</sup> Democracy in America (2014). *The Economist* opposed the introduction of the national minimum wage in Britain in 1998, because of economic theory that says minimum wages cause job losses. Now it has changed its mind: “Moderate minimum wages do more good than harm. They should be set by technocrats not politicians”. Economist (2013c)

<sup>125</sup> LPC (UK) (2015a) Appendix 3: Minimum Wage Systems in other Countries. This is the source for the summary immediately below.

<sup>126</sup> Economist (2013b).

useful benchmarks which should be considered.”<sup>127</sup> Note that Cosatu is not putting forward these measures as mechanical ways of setting the National Minimum Wage. They are correctly held up as internationally recognised *reference points* for judging the level of the minimum wage and for tracing comparative trends over time<sup>128</sup>.

### Median vs Average

What is the “median” wage?

The wage earned by the “middle” person in a sample is called the **median** wage. He or she has a wage that is less than that earned by half of the sample and more than that earned by the other half.

What is the “average” wage?

The **average** wage is calculated by dividing the total of all wages earned by the sample by the number of people in the sample.

If all people earn the same wage, the median will be the same as the average.

If most people are low earners and only a few earn high wages, the average will be above the median (because the middle-ranked person will be a low wage earner).

If most people are high earners and only a few earn low wages, the average will be below the median (because the middle-ranked person will be a high wage earner).

Given the patterns of inequality in wages, the average wage (which includes the tip top earning 1 per cent) is distorted by being made higher than what most people will actually earn. The median is a better benchmark for wage distribution than the average, because it excludes very high and very low values.

The value of the NMW relative to the median wage is termed “the **bite** of the NMW” by the UK Low Pay Commission. It was measured at 45.7 per cent on the introduction of the NMW in April 1999 and rose to its highest ever level of 53.2 per cent in October 2014 (for employees aged 22 and over). The NMW has most impact on small firms and on low-paying sectors. Here the bite was 67.2 per cent for micro firms (those with fewer than 10 employees), and just under 80 per cent in the low-paying sectors as a whole. The LPC commented that “Despite the increased level of the bite of the NMW, total employment has continued to grow in the economy as a whole and in the low-paying sectors with the year to September 2014.”<sup>129</sup>

### Below 50 per cent of the median wage seems a good starting point...

The influential *Economist* magazine opposed the introduction of the national minimum wage in Britain in 1999. But it later changed its view on the issue after a raft of convincing studies showed that there had been demonstrable benefits from the policy.<sup>130</sup> One of the reasons that is said to account for this success is that the level was not set too high. The lesson from this is that the level of the minimum wage should be set “pretty low—say, less than 50% of the median, with lower levels for less productive people such as the young and long-term unemployed.”<sup>131</sup>

### ...jobs are lost and the economy is harmed if the minimum is set too high...

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<sup>127</sup> Cosatu (2015).

<sup>128</sup> As a similar example, see how the median wage is used as a benchmark in 3.3, below

<sup>129</sup> LPC (UK) (2015a: paras 8-9).

<sup>130</sup> See Bewley *et al* (2014) for references to these studies on the positive experience of the NMW in the UK.

<sup>131</sup> *Economist* (leader article) (2013c). In the UK the minimum wage was 47 per cent of the median in 2012.

The *Economist* is of the view therefore that the new minimum wage introduced in Germany in 2015 is too high – at 62 per cent of the median wage, it risks breaking the rule that the minimum wage should be set below 50 percent of this benchmark. This suggests “that jobs will be lost, especially in the less productive east of the country.”<sup>132</sup>

The *Economist* points, in this regard, to the example of France, which has the rich world’s highest wage floor, at more than 62 per cent of the median for adults “and a far bigger fraction of the typical wage for the young”.<sup>133</sup> According to the *Economist*, “this helps explain why France also has shockingly high rates of youth unemployment: 26% for 15- to 24-year-olds”.<sup>134</sup>

### **... but the minimum wage can also be set too low...**

Minimum wages can be set too low to have any benefit at all. This seems to be the case in Mexico, where the minimum wage has declined sharply in real terms over two decades.

### Multiple inputs and reference points should be used to decide on the level of the NMW

The Labour Research Service, in a study that combines international experiences with lessons from the history of the SA labour movement<sup>135</sup>, suggests that the following factors will be useful for a “National Wage Board” to set the level of the NMW in South Africa:

- 1) the minimum basic wage needed to sustain a civilised life;<sup>136</sup>
- 2) current wage levels in the economy, including regional and industrial differentials;
- 3) the payability of companies; and
- 4) the effect of the National Minimum Wage on inflation, employment and other macro-economic indicators, and the part that wages can play in the country’s national economic development plan.

The LRS states: “None of these alone would be sufficient to guide the National Wage Board to a sensible decision. Obviously, different parties present on the Board will have divergent interests. The Board’s decisions will reflect the conciliation of these interests. Representation by worker and employer representatives, as well as government representation, ought to ensure that divergent interests are reconciled.”

“Technocrats” may put forwards a proposed architecture and way of setting the level of the NMW, but their proposals need to be subject to stakeholder comment and even negotiation before they are adopted by government.

Relevant here is another debate which had prominence in SA a decade ago regarding a universal basic-income grant (BIG), as an alternative, or supplementary instrument for building a society that is fairer and less unequal.<sup>137</sup>

### **3.2.3. Enforcement of the NMW**

Enforcement is obviously a critical concern if the NMW is to have its intended effect.

Compliant employers need to be assured that they will not be undercut by unscrupulous businesses flouting the law, and workers need to be assured that they will receive the promised wage protection, particularly those vulnerable to ill-treatment.<sup>138</sup>

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<sup>132</sup> *Economist* (leader article) (2013c). Deutsche Bank warned that up to a million jobs could be at risk. (Pannett 2015).

<sup>133</sup> *Economist* (leader article) (2013c).

<sup>134</sup> *Economist* (leader article) (2013c).

<sup>135</sup> Young (1991:16).

<sup>136</sup> The LRS recognises the methodological difficulties in applying scientific precision to this but suggests that an approximation will serve the purpose of including this consideration in determining the NMW.

<sup>137</sup> See Standing (2011) and the review in Bremer (2013).

<sup>138</sup> Direct quote from LPC (UK) (2015a:200)

In general, it is of great importance that the formal enforcement mechanisms of the state are supplemented by civil society organisations, including trade unions, who educate vulnerable workers about their rights (not only around wages) and promote their realisation.

In the USA, the U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for administering and enforcing the federal minimum wage.<sup>139</sup> Comprehensive enforcement information for the Fair Labor Standards Act (FLSA) is available online.<sup>140</sup>

In an interesting reflection on how the FLSA relates to wider campaigns for justice of behalf of immigrant, marginalised and low-paid workers, Hector Cordero-Guzman has outlined how civil society organisations called Worker Centers operate in networks to improve protection for low wage workers under the FLSA.<sup>141</sup> Despite the existence of the law and a modern enforcement capacity, studies have shown that enforcement remains particularly difficult in certain areas. For instance the rates of minimum wage violations vary by occupation and industry with apparel and textile manufacturing (43 per cent), personal and repair services (42 per cent), and private households (42 per cent) having the highest levels. In terms of occupations, the highest rates of minimum wage violations were among child care workers (66 per cent) followed by beauty, dry cleaning & general repair workers (50 per cent) and garment workers (43 per cent).

Trade unionism in the USA is extremely weak and the networks of worker centre's play a useful role by organizing and advocacy for low-wage workers in the most marginalized sectors of the labour market. "Workers that are educated about their rights, organized into collective action, and connected to community based and advocacy organizations offer the best defense against leakages at the bottom of the labor market and abuses that trickle up..."<sup>142</sup>

Even in the "developed" USA the enforcement of the protective legislation is a huge challenge.

In the UK, the Low Pay Commission reports annually on the enforcement of the NMW and conducts research to understand why certain companies choose not to comply with the minimum wage laws.<sup>143</sup>

A five-year National Minimum Wage Compliance Strategy was introduced in March 2010. This is delivered through a balance of civil and criminal action, combining reactive demand-led and more proactive work.

The NMW is unusual among UK individual employment rights in having a state body responsible for its enforcement.<sup>144</sup> This is the HMRC (Her Majesty's Revenue and Customs, the UK equivalent of the SA Revenue Service, SARS).

The key reporting mechanism is individual complaints to the Pay and Work Rights Helpline. All complaints are investigated, with a strong focus on recovering arrears for the individual worker. There is also a system for fast-tracking complaints from higher risk groups, which have been identified as apprentices, interns, and seafarers. Penalties have been increased to a fine equal to the amount of underpayment and, since October 2013, there has been an active programme to 'name and shame' offenders who owe more than 100 pounds (about R2000).<sup>145</sup> Up until January 2015, 92 offenders had been publicly named.

Alongside this largely reactive work, the strategy also provides for proactive targeted work, based on risk assessment and informed by recommendations from the LPC and others. This

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<sup>139</sup> US Department of Labor. [Internet]. < <http://www.dol.gov/wecanhelp/howtofilecomplaint.htm>>.

<sup>140</sup> US Department of Labor. [Internet]. < <http://www.dol.gov/whd/flsa/index.htm>>.

<sup>141</sup> Cordero-Guzman, H. (2013)

<sup>142</sup> Ibid. pages 157-8.

<sup>143</sup> Croucher and White (2004).

<sup>144</sup> LPC (UK) (2015a:206).

<sup>145</sup> Ibid. (p.208).

has led to interventions in high-risk sectors, such as social care and hotel cleaning. There is a continuing effort to educate employers and workers alike on the NMW and what it involves. As capitalism has changed its shape—with the increased casualisation of work, outsourcing and “zero hours contracts” (where workers are expected to be available on demand without any fixed working hours)—the challenges of implementing a measure such as a NMW take unexpected turns and require constant innovation and vigilance.

Government cannot succeed alone and the UK enforcement authorities rely on trade unions and activist organizations such as Kalayaan, a charity which works with migrant domestic workers in the UK, one of the most vulnerable categories of potential NMW beneficiaries.<sup>146</sup>

### **3.2.4. Reviewing and adjusting the NMW over time<sup>147</sup>**

#### Annual adjustments:

In the UK, the minimum wage is adjusted annually by the government, based on recommendations made by the Low Pay Commission (LPC)<sup>148</sup>. Smooth, regular and predictable increases in the minimum wage are easier for businesses to digest than the big jumps, after long intervals, that one sees in countries such as the US.<sup>149</sup>

#### Intermittent adjustments

In the US, the federal minimum wage has no current adjustment term. It was last set at \$7.25 in 2009. It had lost 5.8% of its purchasing power by 2013, when President Obama called for a major increase in the federal minimum wage to \$10.10.<sup>150</sup> This was still well below the highest ever minimum wage in real value terms, which was set in 1968. The Centre for Economic and Policy Research (CEPR), a think tank, estimated that the federal minimum wage would have reached \$21.72 if it had kept up with productivity gains in the economy since 1968.<sup>151</sup>

#### “Automatic” Inflation-linked adjustment

Some countries or jurisdictions provide for the level of the minimum wage to be adjusted to match changes in the cost of living. For example, this is the case in France.<sup>152</sup>

Eleven states and several cities in the USA index their local minimum wage rates to inflation. To cope with the political difficulty of getting agreement for increases to the federal minimum wage from Congress in the future, President Obama has proposed legislating for annual inflation-linked increases.<sup>153</sup> Neither the increase, nor the inflation adjustment, are likely to prove possible in the current political climate where Mr Obama faces knee-jerk opposition from the Republicans who command a majority in both houses of Congress. While there is precedent in the US for automatic inflation-linked adjustment of minimum wages, this is not in place at the federal level.

#### Additional Benefit of NMW review: a benchmark for collective bargaining

If the annual review of the possible adjustment of the NMW is done well, it can provide an authoritative benchmark that will influence wage setting across the economy in the year ahead.<sup>154</sup>

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<sup>146</sup> Ibid. (p.224).

<sup>147</sup> Also see the more comprehensive table A3.2 summarizing how specific countries adjust their minimum wages in LPC (UK) (2015a:296).

<sup>148</sup> Mkhize and Ngcobo (2015). The LPC is discussed in 3.1.3 above.

<sup>149</sup> Democracy in America (2014).

<sup>150</sup> Economist (2013b). It is not clear what the target date was for this level. Earlier in 2013, Mr Obama had spoken of a \$9 target for 2015. (Economist 2013a).

<sup>151</sup> Cited in Economist (2013b). The real effect is not as dire as suggested because of the offsetting effect of the earned-income tax credit, a federal subsidy for low-wage workers.

<sup>152</sup> WageIndicator Foundation. [Internet]. <<http://www.wageindicator.org/main/salary/minimum-wage/france>>.

<sup>153</sup> Economist (2013a).

<sup>154</sup> LPC (UK) (2015a).

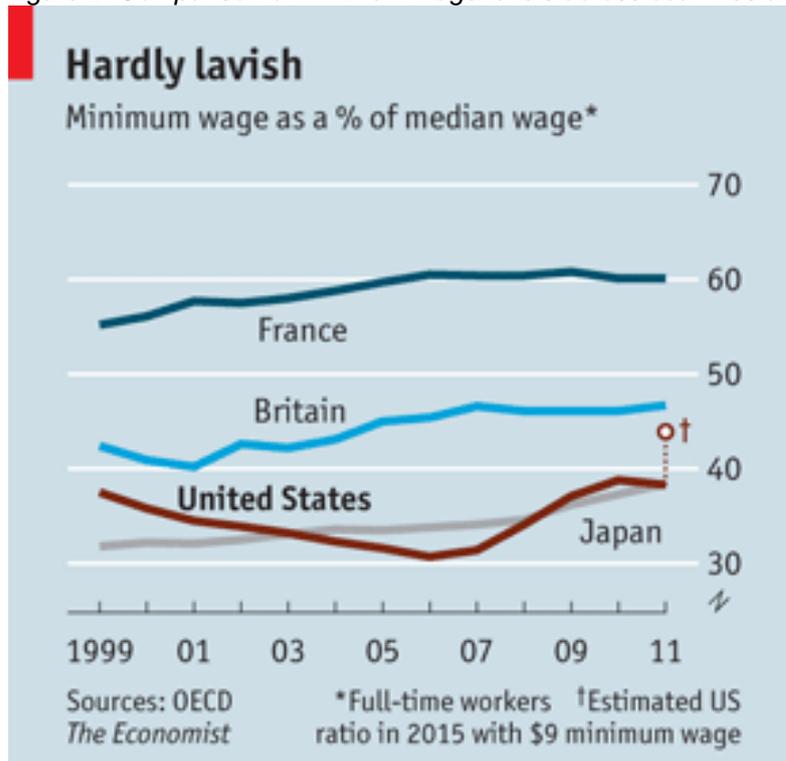
### 3.3. Comparisons between minimum wage levels across countries over time

Direct comparisons of minimum wage levels between countries in currency terms is not really meaningful as it is distorted by differences in purchasing power<sup>155</sup> and, over time, by differential rates of inflation.

One useful method of comparison, however, is to compare the minimum wage level with the average wage or, better, the “median” wage in the economy.<sup>156</sup>

The graphic below compares the minimum wages of four major developed countries:

Figure 2: Comparison of minimum wage levels across countries and over time<sup>157</sup>



As *The Economist* commented in 2013: “America’s minimum wage has long been low by international standards, equalling just 38% of the median wage in 2011, close to the lowest in the OECD. Congress changes it only occasionally, and in the interim inflation eats away its value. ... Twenty states now have minimum wages above the federal rate, compared to 15 in 2010, according to the Economic Policy Institute, a liberal research group.”<sup>158</sup>

<sup>155</sup> LPC (UK) (2015a:292) presents a comparison of selected minimum wages by country in 2014 in terms of purchasing power parity (PPP). The highest NMW is in France (£8.57) and the lowest in Portugal (£3.33), with the UK at (£6.50) and the USA at (£5.63). Also see the PPP graphic in Pannett (2015).

<sup>156</sup> Given the levels of inequality in wages, the average wage (which includes the tip top earning 1 per cent) is distorted by being made higher than what most people will actually earn. A better measure of wage distribution is to track the wage earned by the “middle” person. He or she has a wage that is less than that earned by half of the citizens and more than that earned by the other half. This useful figure is called the median.

<sup>157</sup> Economist (2013a).

<sup>158</sup> Economist (2013a).

Figure 3: Comparison of minimum wage levels across countries in 2012/13<sup>159</sup>



Britain \$ 10.40 47% of median wage  
 European Union average (21 countries with minimum wage law) \$ 6.00 47% of median wage<sup>160</sup>

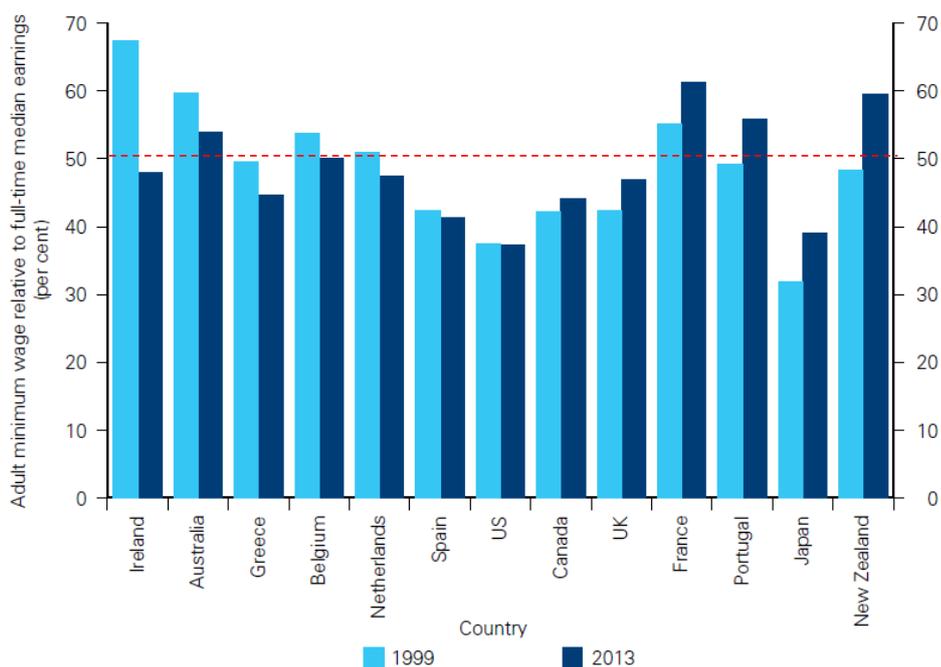
The figures represented by the bar graph above are straight currency conversions into dollars. For a useful comparison, additional account needs to be taken of purchasing power. The figure to concentrate upon in the comparison above is shown in the white boxes. This indicates how the minimum wage related to the median wage in each country in 2012. (This is the “bite” of the minimum wage, in the terminology used earlier). Relative to the wages other workers were earning, therefore, the minimum wage standards were highest for Chile and France (67 per cent and 62 per cent of the respective median wage levels). They were the lowest, in the above sample, for Estonia and the US (36 per cent and 38 per cent.)

Similar information is represented in Figure 4, below, which compares minimum wages in some OECD countries in 1999 and 2013 in terms of their “bite”:

<sup>159</sup> Economist (2013b).

<sup>160</sup> Economist (2013c). The data is for 2012.

Figure 4: Adult Minimum Wages Relative to Full-Time Median Earnings, by Country, 1999 and 2013<sup>161</sup>



Graphic copied from LPC (UK) (2015a) Appendix 3: Minimum Wage Systems in Other Countries

Source: OECD estimates based on OECD minimum wage database and median earnings for full time workers, 1999 & 2013

Notes:

- a. Average value of minimum wage in each year.
- b. Figures for Ireland are from 2000 when its minimum wage was introduced.
- c. Countries ranked according to the change in the bite of their minimum wage rates.

The dashed 50 per cent marker line has been added.

<sup>161</sup> Appendix 3 of LRC (UK) (2015a:295)

#### 4. Conclusion and considerations for Parliament

This paper has considered architectural features of a national minimum wage by drawing on international experiences. The paper begs the question of whether there should be a national minimum wage, by focusing on how to implement the national minimum wage rather than asking whether it is indeed the right policy to pursue. This answer, however, cannot come primarily from international lessons. It has to be rooted in local debates and flow from policy decisions that South Africa must make for itself.

International evidence indicates that new national minimum wage legislation in SA, however well benchmarked in international good practice, cannot be effective if it stands alone as a simple addition to present labour law. It will need to address, from the outset, the wider problems faced by “the growing number of workers who labour for persons who are not their employers, and who are not protected effectively or at all by labour legislation”<sup>162</sup>. This is part of the global phenomenon of the “fissured workplace”<sup>163</sup> and the rise of precarious part-time, and short-contract work, informal labour and self-employment even in the advanced economies.<sup>164</sup> These features of the 21st century work environment have proved a particular challenge in the enforcement of traditional national minimum wage legislation in other countries.<sup>165</sup> Research in the UK, for example, has described how these flexible employment practices are associated with a greater likelihood of non-compliance with the NMW.<sup>166</sup>

The conclusion needs to emphasise three points:

1. There are successful countries that do not have a national minimum wage. (The Scandinavian countries have no minimum wage and, in addition, have relatively low levels of inequality.);
2. Some countries that have a NMW (such as Mexico) have not used this instrument in a way that tackles unemployment, poverty or inequality;
3. Having a NMW cannot lead to success if it is the only, or even the main, instrument in place for addressing inequality. Many interventions are needed and they benefit from being carefully sequenced. The NMW may be introduced with better results at a different time from the present.<sup>167</sup>

What considerations are appropriate for Parliament to take on board even if this leads to a delay in legislating a new mechanism to introduce a NMW?

First, Parliament should not pass legislation unless it provides for a wage determining mechanism that is independent of government whim and which includes in its design and execution the perspectives of all the stakeholders. (The model of the UK Low Pay Commission stands out internationally as good practice).

Second, Parliament should not pass NMW legislation if the balance of forces is such that it is likely to lead to setting a NMW that is too high. If the particular role of the NMW in targeting low wage and vulnerable workers is not understood and accepted, this presents a danger that the NMW will be set at a level that is too high—potentially harming the economy and destroying jobs

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<sup>162</sup> Theron (2014).

<sup>163</sup> Kuttner (2014).

<sup>164</sup> Bremer 2013) and Standing (2010).

<sup>165</sup> See Chapter 5 of LPC (UK) (2015a).

<sup>166</sup> Bewley *et al* (2014).

<sup>167</sup> The legal academic and former trade union leader, Jan Theron, has convincingly argued that the daily failures of the SA labour relations system “cannot be overcome by simply amending existing legislation”. The Labour Relations Act (LRA) “and its companion laws are premised on assumptions ... that are no longer valid”. (Theron 2014). One concludes that NMW legislation could be part of “a new paradigm for labour regulation”, but it cannot succeed if it is simply grafted onto the present outdated, ineffective system of labour market regulation in SA.

There is, of course, no guarantee that a future Parliament/administration will act in a way that respects the above two considerations, but the NMW will stand a stronger chance of proving itself a useful tool of policy if it starts off “on the right foot”. The international examples provide excellent guidelines on how to do this and be confident of positive results.

There is “academic evidence showing that modest increases in the minimum wage do not necessarily destroy jobs and may in fact decrease inequality.”<sup>168</sup>

The international lesson is that the national minimum wage can be used, as President Zuma indicated in SONA 2015, as part of South Africa’s weaponry to tackle the triple challenge of unemployment, poverty and inequality.

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