

ONE WAGE CAMPAIGN

SUBMISSIONS REGARDING NATIONAL MINIMUM WAGE

PARITY FOR DOMESTIC WORKERS, FARM WORKERS

AND EPWP WORKERS

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A INTRODUCTION

1. These submissions are made on behalf of the One Wage Campaign in the interests of domestic workers, farm workers and Expanded Public Work Program ('EPWP') workers. They motivate the demand of the One Wage Campaign that there should be national minimum wage ('NMW') parity for all workers. At present these workers are treated differently and less favourably to all other workers. Where the NMW for most workers is R20 per hour, the law currently permits these workers to receive sub-minimum wages. The NMW is R18 per hour for farmworkers, R15 per hour for domestic workers and R11 per hour for EPWP workers. Not only are these NMWs less than the full NMW but they are not a living wage.
2. The One Wage Campaign is a coalition of workers rights organisation, unions, and civil society members who have united in favour of a living wage and against the exclusion of certain sectors of workers from the full NMW. One of the Campaign's objectives is to achieve national minimum wage parity in terms of which all workers including domestic, farm and EPWP workers receive the full NMW. These submissions specifically address that objective.
3. The Campaign currently has the following member organisations, and is constantly growing: Community Emergency Response Team (EPWP workers, Ekurhuleni); Dahlak Exchange; Izwi Domestic Workers Alliance; General Industries Workers Union of South Africa (GIWUSA); Lungile Mtshali Sanitation Workers (EPWP WORKERS, Ekurhuleni); Khanyisa Education and Development Trust; Oxfam South Africa; Pietermaritzburg Economic Justice and Dignity Group; Rural Legal Trust; South African Domestic and Allied Service Workers Union (SADSAWU); Sundays River Valley Farmworkers Forum; Support Centre for Land Change; United Domestic Workers of South Africa (UDWOSA) and Women on Farms.
4. These submissions have been prepared on behalf of the One Wage Campaign by counsel Susannah Cowen SC, Carol Makhajane and Lucelle Buchler¹ instructed by Sanja Bornman from Lawyers for Human Rights. They are lodged with the National Minimum

¹ Counsel are members of the Johannesburg Society of Advocates and have chambers at Thulamela Chambers in Sandton, Johannesburg.

Wage Commission (**‘the Commission’**) for purposes of its reviews contemplated by section 4(2) and section 6 of the National Minimum Wage Act 9 of 2018 (**‘the NMW Act’**).

5. The submissions are structured as follows:
 - 5.1 First, we set out the core submissions of the One Wage Campaign (Section B – Core Submissions.)
 - 5.2 Second, we set out the material provisions of the NMW Act governing the tiered NMW system and its review. We do so in light of the purposes of a NMW in international law and domestic law. (Section C – Legal framework regulating NMW and its review)
 - 5.3 Third, we explain how and why the tiered system was introduced in the NMW Act. We explain that it was by a flawed process, with an absence of consultation with the specifically affected sectors as is required by law. We refer to the formal justification for the differential and less favourable treatment of each sector to the limited extent to which it can be discerned. (Section D – Background information – A flawed process of exclusion)
 - 5.4 Fourth, we submit that the economic evidence shows that tiering is not needed. In this regard, we refer to a report prepared by economists Dr Gilad Isaacs and Pamela Choga of the Institute for Economic Justice supplied herewith (**‘the economic report’**). (Section E – The Economic case for NMW Parity)
 - 5.5 Fifth, we draw the Commission’s attention to the lived realities of the affected sectors. The lived realities of the sector highlight the stark indignity of the inequality experienced by these sectors and must, in terms of the Constitution, inform the Commission’s deliberations. (Section F – The lived realities of tiered workers)
 - 5.6 Sixth, we explain, legally and with reference to Constitutional Court case law, what rights are violated by the tiered system focusing on the right to dignity and

equality and more particularly race, gender, sectoral and class discrimination. We also explain why the discrimination is unfair and that the rights violations are not reasonable or justified as contemplated by section 36 of the Constitution. (Section G – Tiering limits constitutional rights)

- 5.7 We conclude by making submissions on how the Commission should exercise its powers under the NMW Act in order to protect rights in the Constitution. (Section H – Conclusion)

B CORE SUBMISSIONS

6. The NMW of R20 per day translates into a monthly wage of approximately R3500 per month for workers who work a full 45 hour work week. This is not a living wage. It is well below the current working poor line as the economic report explains. With high levels of casualization and part time work many workers will not even earn this. This means that farm-workers, domestic workers and EPWP workers are earning sub-minimum wages under a system of legislated tiered poverty. The endurance of such a system cannot survive scrutiny under the Constitution. It breaches the rights to equality, dignity and fair labour practices and perpetuates the existence of sub-classes, members of whom have been historically discriminated against and whose work is treated as less worthy than that of others. These sectors have historically earned lower wages than other sectors.
7. The history of domestic work and farm work in South Africa is steeped in colonial and apartheid history and ultimately slavery. The history of work in these sectors is characterized by pernicious power relationships and denial of access to basic resources. Black workers were treated as instruments to serve the interests of the white minority population. The history of work in these sectors is also inextricably linked to the history of the former homeland system, land deprivation, migrant labour and apartheid town planning and urban control. While political and economic circumstances have changed much since 1994, it is ultimately this shameful history that still explains why these sectors earn less than other sectors and why their vulnerability is still so stark.

8. EPWP workers are workers who work in the Expanded Public Works Programme which was established in the post democratic era as a poverty alleviation measure. While intended to provide temporary relief for those in poverty, training and a step up into possible employment, it has unfortunately largely become an exploitative system where the State uses the services of hard-working workers who, though doing equal work to those in full State employment neither receive equal pay nor the benefits of full employment security. The NMW disparity for this sector ultimately serves to legitimize, indeed legislate, public service inequality.
9. South Africa is one of the most unequal societies in the world. The NMW Act is meant to alleviate poverty and redress wage inequalities and thereby restore dignity where it has been lost. It must not perpetuate poverty and entrench inequality. In order to meet these objectives and protect constitutional rights, it is imperative that national minimum wage parity be achieved for all sectors.
10. The ongoing exclusion of domestic workers, farm workers and EPWP workers from the full NMW cannot be justified. There is no economic evidence that requires or warrants disparity to endure. On the contrary, the Constitution requires that the disparity be eliminated. Indeed the economic evidence supports national minimum wage parity.
11. The Commission is obliged by the end of 2019, a few short weeks away, to make recommendations to the Minister about adjustments to the NMW. The One Wage Campaign submits that these adjustments should now result in NMW parity.

C THE LEGAL FRAMEWORK REGULATING THE NMW AND ITS REVIEW

12. In this section, we set out the applicable legal framework in greater detail. We deal first with the NMW Act and its purposes generally. We then deal with how the NMW Act treats different sectors differently and the review processes the Commission must follow in respect of each.
13. The NMW Act was promulgated on 27 November 2018² and it came into force on 1

² Government Gazette 42060, Vol 641, No 1303.

January 2019.

The purpose of a national minimum wage

14. The purpose of a NMW in the Act should be considered in light of the purposes of national minimum wage fixing in international law. This can be gleaned from various ILO instruments. Importantly, a NMW is intended to protect disadvantaged group of wage earners against unduly low wages.³ It must serve as an effective instrument of social protection.⁴ The level at which a NMW must be set must serve to protect the needs of workers and their families in light *inter alia* of the cost of living.⁵

15. According to the Bill's memorandum its main object is '*to provide for a national minimum wage in order to advance economic development and social justice by improving the wages of lowest paid workers, protecting workers from unreasonably low wages and promoting collective bargaining and supporting economic policy.*' According to its preamble, the Bill seeks to redress disparities in income in South Africa, one of the most unequal societies in the world. The preamble further recognizes the critical need to eradicate poverty and inequality and proclaims a commitment to promote fair and effective competition in the labour market, labour market stability and to promote and, importantly, fulfil the right to fair labour practices.

16. Its purposes are set out in section 2 and are, broadly, to advance economic development and social justice by improving the wages of lowest paid workers, protecting workers from unreasonably low wages, preserving the value of the national minimum wage, promoting collective bargaining and supporting economic policy.

The tiered NMW system

17. In section 4(1), the Act provides that the NMW is the amount stated in schedule 1 as adjusted annually in terms of section 6. The amount in schedule 1 is R20 per hour⁶ and we refer to it as the full minimum wage. It translates into approximately R3500 per

³ ILO C131 Minimum Wage Fixing Convention 1970 Appendix 2. Preamble and Article 4

⁴ Minimum Wage Fixing Recommendation, 1970, R135. Appendix 3, preamble and Article 13.2

⁵ ILO C131 Minimum Wage Fixing Convention 1970 Appendix 2. Preamble and Article 4.

⁶ Schedule 1. item 1

month where workers work a full 45 hour week. However, separate and lower NMWs are determined for farm workers (R18 per hour), domestic workers (R15 per hour) and workers employed on an expanded public works programme (R11 per hour).⁷

18. The Act thus creates a tiered NMW that treats farm-workers, domestic workers and EPWP workers differently and less favourably than all other workers. However, each worker is entitled to receive the national minimum wage within their tier as a minimum wage.

Annual review of the NMW in terms of section 6

19. Each of these NMWs is subject to annual review by the Commission⁸ which makes recommendations to the Minister who may effect an annual adjustment to the NMW. Any adjustment takes effect on a date to be determined by the President by Proclamation in the Gazette in terms of section 6(1).
20. The annual review is conducted in terms of section 6⁹ and 7¹⁰ of the NMW Act. In

⁷ Item 2(a) (Farmworkers) , item 2 (b) (domestic workers) and item 2(c) (EPWP workers).

⁸ The review is conducted in terms of section 6 and 7 of the Act.

⁹ **6 Annual review**

- (1) The Commission must review the national minimum wage annually and make recommendations to the Minister on any adjustment of the national minimum wage, which minimum wage must commence on a date fixed by the President by proclamation in the *Gazette*.
- (2) The review report to the Minister must reflect any alternative views, including those of the public, in respect of any recommendations made in terms of subsection (1).
- (3) The Commission must forward the report on its review and its recommendations for the next year to the Minister on a date fixed by the President by proclamation in the *Gazette*.
- (4) If the Minister does not agree with, or requires clarity in respect of, the report and recommendations, the Minister may, in the prescribed manner, refer the report and recommendations back to the Commission to clarify or reconsider its recommendations.
- (5) The Minister must, by a date fixed by the President by proclamation in the *Gazette*, determine the adjustment to the national minimum wage, and by notice in the *Gazette*, amend the national minimum wage contained in Schedules 1 and 2.
- (6) The Minister must, within seven days of the publication of the amended Schedules in the *Gazette*, table the amended Schedules 1 and 2 in Parliament and publish the final report of the Commission in a prescribed manner.

¹⁰ **7 Conduct of annual review**

For the purposes of conducting an annual review and recommending adjustments, the Commission must-

- (a) promote-
 - (i) the medium term targets referred to in section 11 (d);
 - (ii) the alleviation of poverty; and
 - (iii) the reduction of wage differentials and inequality; and
- (b) consider-
 - (i) inflation, the cost of living and the need to retain the value of the minimum wage;

terms of section 6, the Commission is obliged to submit its review report containing its recommendations to the Minister, and reflecting alternative views including from the public. The review must be submitted on a date fixed by the President by proclamation in the *Gazette*. To our knowledge, the President has not yet fixed such a date. However, in order for all of the functionaries to act lawfully and reasonably within the annual review period, it is crucial that the review process be finalised to enable an adjustment to be implemented if not on 1 January 2020, as soon thereafter as reasonably possible. Once the Minister has received the Commission's recommendations and clarified or reconsidered any issues arising, the Minister must determine an adjustment to the NMW.

21. The factors that are relevant to the review process are wide-ranging and are set out in section 7. For present purposes we highlight that they include the alleviation of poverty and the reduction of wage differentials and inequality. They also include the cost of living and the need to retain the value of the minimum wage. Importantly, they include all relevant factors. Both the detailed factors and the catch-all requirement of 'all relevant factors' implicate constitutional rights and values in important ways. In short, the Commission and in turn the Minister must consider all relevant rights implicated by the Bill of Rights, which we deal with below.

The special review of the NMW for farm workers and domestic workers – s 4(2)

22. For farm workers and domestic workers, the Act expressly contemplates that the tiered system should not endure beyond a two-year period for farm workers and domestic workers. After the two-year period, it is contemplated that the NMW for domestic workers and farm workers will have been brought to the level of the full NMW or as close thereto as can be justified through a review process. This may be regarded as a 'phase-in' period.
23. The review process for the farm workers and domestic workers is set out in section

-
- (ii) wage levels and collective bargaining outcomes;
 - (iii) gross domestic product;
 - (iv) productivity;
 - (v) ability of employers to carry on their businesses successfully;
 - (vi) the operation of small, medium or micro-enterprises and new enterprises;
 - (vii) the likely impact of the recommended adjustment on employment or the creation of employment; and
 - (viii) any other relevant factor.

4(2) of the Act in terms of which the Commission must, within 18 months of the commencement of the Act, conduct a review of the NMW contemplated in items 2(a) and 2(b) of Schedule 1, in other words the NMW applicable to farmworkers and domestic workers. Practically, this means that the review should be conducted by no later than the end of June 2020. The objectives and factors that must inform this review are the same as those that inform the review under section 6, namely those set out in section 7 of the Act referred to above. It is important to note too that practically, the two processes – though legally distinct – would need to ensue in parallel and are informed by the same considerations.

24. Section 4(2)(a) contemplates that the review should result in recommendations being made to the Minister on the adjustment of the NMW for domestic workers and farmworkers, which recommendations must, subject to the findings of the review contemplated in this paragraph, reflect an adjustment that is equivalent to the NMW contemplated in item 1 of Schedule 1 or as close to that amount as the Commission's findings allow. We submit that there is simply no reason for the Commission not to recommend NMW wage parity at this juncture.
25. Section 4(2)(b) of the Act requires the Minister, *within* (ie no later than) two years of the commencement of the Act, taking into account the recommendations of the Commission, to determine an adjustment of the national minimum wage for domestic workers and farm workers in accordance with the process contemplated in section 6. In effect, the Minister should determine the adjustment by no later than the end of 2020. It is important to stress that he is not obliged to wait for two years and may act earlier should this be justified. We submit it is. The Minister is constitutionally enjoined to act very swiftly given the constitutional violations that are currently being perpetuated.
26. We conclude this section by pointing out that at least for domestic workers and farmworkers, there is an *imminent* duty on the Commission to review their NMW with the express purpose of eliminating NMW disparity and achieving wage equality. Absent very compelling justification and we are aware of none, the NMW wage disparity must, under the Act, be wholly eradicated as soon as possible and no later than the end of 2020.

Review of NMW for EPWP workers

27. Although the Act does not expressly contemplate wage parity for EPWP workers within two years, as it does for agricultural workers and domestic workers as a result of section 4(3), the Commission is required under the Act to deal with their plight too. The issue of wage disparity for EPWP workers is a critical one as these workers' wages are well below the full NMW.
28. EPWP workers are workers on expanded public works programmes which are defined in the Act as programmes '*to provide public or community services through a labour intensive programme determined by the Minister in terms of section 50 of the Basic Conditions of Employment Act and funded from public resources*'. This means that the basic conditions of employment of this sector are different to those under that Act and are determined by the Minister of Labour together with the Minister of Public Works. The applicable conditions of work are determined in Ministerial Determination 4: Expanded Public Works Programmes¹¹
29. The NMW Act regulates how the NMW for EPWP workers may be increased. Section 4(3) provides as follows: '*The national minimum wage in respect of workers in the extended public works programme as contemplated in item 2 (c) of Schedule 1 must be increased proportionately to any adjustment of the national minimum wage as contemplated in section 6.*'
30. It is at least reasonably, if not highly, arguable that, properly interpreted, this means that the section 6 review process must yield an increase for EPWP workers that *at least*, or *at a minimum* results in a proportionate increase to any adjustment of the NMW.¹² If correct, this means that the Commission has the power in terms of section

¹¹ Published under GN R347 in GG 35310 of 4 May 2012

¹² The applicable interpretive principles are those articulated by the Constitutional Court in *Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd: In Re Hyundai Motor Distributors (Pty) Limited v Smit N.O.* [2000] ZACC 12; 2001 (1) SA 545 (CC); 2000 (10) BCLR 1079 (CC); and *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another* (CCT78/07) [2008] ZACC 12; 2009 (1) SA 337 (CC); 2008 (11) BCLR 1123 (CC) (25 July 2008).

6 to recommend and the Minister, in turn, the power to adjust the EPWP NMW to reduce the NMW disparity and ultimately eliminate it. But in any event the Commission has the duty to assess the position of EPWP workers during its section 6 annual review process as the sector is highly impacted by its decisions. The Commission is, furthermore, empowered under the Act to advise the Minister in respect of their position and recommend wage parity for this sector to the Minister in terms of section 11((e). Whatever the correct legal position is, the implications for the Commission are substantially the same. The Commission must consider the plight of EPWP workers when conducting its section 6 review and this should entail a recommendation in respect of EPWP workers and wage parity. We submit below that ongoing wage disparity for this sector is exploitative on the part of the State, discriminatory and deeply unfair to affected workers.

D BACKGROUND TO THE NMW ACT – A FLAWED PROCESS OF EXCLUSION

31. In this section, we explain how and why the tiered system was introduced in the NMW Act in respect of farmworkers and domestic workers on the one hand and EPWP workers on the other. We deal both with the procedural history and substantive justifications in respect of the tiering of these sectors.
32. We deal with the procedural history to show that the tiered system was arrived at by a flawed process, with an absence of consultation with specifically affected sectors as is required by law. The absence of adequate or full consultation with sectors specifically affected by the exclusions is highly problematic. First, it is a breach of international law. In this regard, the Minimum Wage Fixing Convention 131 of 1970 contemplates that there be full consultation with the representative organisations of workers concerned, where these exist in determining the groups of wage earners to be covered.¹³ Where no such organisations exist, it is still necessary to engage representatives of the workers concerned.¹⁴ Second, it is a breach of the duty not to consult with affected parties under South African law. This duty binds the legislature¹⁵

¹³ Article 1.2, Article 4.2

¹⁴ Article 4.2.

¹⁵ *Doctors for Life International v Speaker of the National Assembly and Others* (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) (17 August 2006).

and the Department of Labour.¹⁶

33. It is vital that the Commission and in turn the Minister, who are similarly bound by these requirements,¹⁷ do not make the same procedural mistakes that were made during the legislative process. This means that when they exercise their powers under the NMW Act and during the review process, there must be ongoing and active engagement of the specifically affected sectors. The One Wage Campaign represents significant parts of these sectors. The consultative process must, nevertheless, be an open and inclusive one that secures maximum and broad participation.
34. In this section, we also refer to substantive justifications for the differential and less favourable treatment of each sector to the limited extent that they can be gleaned. The Campaign submits that the justifications that can be gleaned from official documentation are either non-existent or are very weak and do not pay sufficient regard to empirical evidence, constitutional values and rights that are implicated by the tiered system. In any event, there is no justification to ongoing disparity which must now be brought to an end.

General legislative history and matters

35. The introduction of a national minimum wage system was the product of an initiative of President Cyril Ramaphosa that commenced in 2014 when he was Deputy President. However, the issue has been driven centrally by Nedlac. The background apparently is that the issues of wage inequality and the length and violence of strikes had prompted President Zuma to urge Nedlac to address the state of labour relations. This led to the Ekurhuleni Conference and Declaration, which in turn led to the establishment of a Committee of Principals. The Nedlac partners were represented on this committee. One of its subcommittees was the Wage Inequality Technical Task Team, which focused on establishing a NMW for the country. A Panel of Experts was

¹⁶ *Electronic Media Network Limited and Others v e.tv (Pty) Limited and Others* (CCT140/16; CCT141/16; CCT145/16) [2017] ZACC 17; 2017 (9) BCLR 1108 (CC) (8 June 2017).

¹⁷ *Promotion of Administrative Justice Act 3 of 2000*; sections 3 and 4 in particular which impose duties of procedural fairness whenever decisions are made with the potential to affect rights of any person (section 3) or the public (section 4). To assist the Commission in understanding its obligations, these sections are extracted and attached hereto as Annexure A.

appointed to assist, advise and report.¹⁸

36. Nedlac plays a very important role in labour matters in the process of policy and law making. This is because the National Economic Development and Labour Council Act 35 of 1994 that establishes Nedlac, confers on it the duty to seek to reach consensus and conclude agreements on matters pertaining to social and economic policy and to consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament.¹⁹
37. It is important to highlight, however, that Nedlac, is, self-consciously, not representative of all sectors in the work-force either as a matter of law or as a matter of fact. As a matter of law, and as ‘labour representatives’ it only includes members who represent ‘organized labour’. As a matter of fact, the One Wage Campaign contends that its constituencies are not in fact adequately represented by the organized labour representatives in Nedlac. Indeed, for the most part they are only represented to the extent that they are members of Cosatu and most are not. EPWP workers have no representation. As the economic report explains, just a little over 6 % of farmworkers are unionized and only slightly more than 0.5% of domestic workers are unionized. In these circumstances, the Campaign submits that the Labour constituency of Nedlac, let alone Nedlac as a whole, is in no position to represent the workers affected by tiering during any consultation process.

Legislative history relating to the farmworkers and domestic workers’ exclusion

38. The proposal to introduce a tiered phase in NMW for farm workers and domestic workers was an approach advised by the Panel of Experts and agreed to by the social partners at Nedlac in February 2017. Troublingly, the consultation process that led to this arrangement did not include affected sectors and the rationale for the approach is difficult to discern from publicly available records.²⁰ Nevertheless, despite these profound flaws, there is broad agreement even amongst those who were consulted that the tiered system should not endure for more than two years.

¹⁸ ‘A national minimum wage for South Africa: Recommendations on Policy and Implementation’. National Minimum Wage Panel Report to the Deputy President.

¹⁹ Section 5(1)

²⁰ The economic report supplied herewith provides some insight into this issue.

39. In its report, the Expert Panel explains that it had extensive engagements with all four Nedlac constituencies: Organised Labour, Organised Business, Government and Community. It does not refer to any other relevant consultations.

40. The Expert Panel report refers to the arrangements for the farm worker and domestic worker sectors as ‘transitional arrangements’ and records as follows (albeit in circumstances where it was contemplated that the Act would be introduced at an earlier stage):

‘A phase in period is recommended for workers in agricultural and domestic work, We recommend that transitional arrangements be put in place for phasing-in (with a tiered NMW) for a maximum period of 24 months from the date of implementation, as follows:

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

The Panel strongly believes that any transitional arrangements should have effect until 2019 at the latest. ...’

41. The issue came before Nedlac which reached an agreement in February 2017. The agreement records without explanation or elaboration:

‘The social partners have agreed that when the NMW is introduced, domestic workers will be paid 75% of the NMW and agricultural workers will be paid

90% of the NMW. It is proposed that these sectors will be brought up to the NMW level within 2 years pending research by the NMW Commission on this timeframe.'

42. The Minimum National Wage Bill was introduced in Parliament in November 2017. When introduced, it contemplated a tiered system but there were no phase-in provisions for domestic workers and farmworkers. By this we mean the phase in process contemplated by the section 4(2) review referred to above. However, in March 2018, and during the Parliamentary Process, the Nedlac Community Constituency addressed the Portfolio Committee on Labour on the issue of tiering stating:

'We further affirm that it was agreed to in the negotiating process that the introductory discounted tier for domestic workers and farm workers would only be valid for two years whereafter it would fall away. We believe that this exemption process has the potential to be challenged constitutionally on the grounds of gender discrimination, given that the vast majority of domestic workers are women and do not believe that this is a position that can be supported for any longer than as agreed to in negotiations.'

43. The need for the legislation to reflect the Nedlac agreement that NMW wage parity be achieved within two years was also raised by other stakeholders who participated in the parliamentary process.²¹ It is apparent that as a result of public submissions, the Bill was ultimately amended to incorporate the agreement reached at Nedlac that the tiering for these sectors should if possible be phased out within a two-year period via the section 4(3) review.
44. It is very troubling that it is so difficult to discern from public documents the actual basis upon which the exclusions were sought to be justified either by Nedlac or by Parliament. There is no explanation for the proposal in the Nedlac agreement. Similarly there is no explanation for the proposal in the Explanatory Memorandum that accompanied the Bill when it was introduced in Parliament. The thinking is most clearly articulated in the Expert Panel report, which highlights the fact that the

²¹ This included the IEJ.

domestic and agricultural sectors are the two lowest paid sectors with the vast majority of workers in both sectors earning below R3500 per month.²² The concern appears to have been that setting the NMW at that level for these sectors might have posed a risk for loss of jobs.

45. The economic report supplied herewith provides some further context to why the tiering system might have come into being. But importantly, ultimately the decision appears to have been motivated by an economic risk assessment that is driven by caution rather than any evidence of likely harm. As explained in the report, when considered carefully, however, the economic evidence does not justify the conclusion that job losses *will* occur if there is NMW parity. On the contrary, the evidence supports the case for NMW parity not least at this stage. The need for parity becomes overwhelming when consideration is given to the impact of ongoing disparity on constitutional rights which do not appear to have been given any adequate consideration.

The EPWP sector's exclusion: procedure and substantive justification

46. According to the Expert Panel report, *'The EPWP was launched in 2004/2005 and is one of the responses of the Government to the high levels of poverty and unemployment in the country. It aims to (temporarily) alleviate unemployment through the provision of short-term, low-paid, labour-intensive work opportunities.'*²³ The report also states: *'The aim of the EPWP, governed by the Department of Public Works, is to work with communities to provide work opportunities (temporary work and income relief) for the unemployed.'*
47. There is scant information to hand about the history of exclusion of EPWP workers. In this regard, the Panel was aware that EPWP workers are a vulnerable class of workers and was aware of the ILO imperative to keep exclusions to a minimum. However, the Panel recommended their exclusion at least as a short-term measure.²⁴ The reasons are not explained.

²² The report notes at p 39 that a wage level of R3500 a month falls above the pay of 6.2 million workers or 47.3% of the workforce, including 90.7% of domestic workers and 84.5% of agricultural workers.

²³ See p 51.

²⁴ See p75, para 5.4.8

48. They are, moreover, difficult to discern when regard is had to the nature and scope of the EPWP which is defined in Ministerial Determination 4 as ‘a programme to provide public or community assets or services through a *labour intensive* programme initiated by government and funded from public resources.’
49. The following programmes constitute Expanded Public Works Programmes:
- (a) Environment and culture sector programmes including: Working for Water, Working on Fire, Working for Wetlands, People and Parks, Working for Energy, Working for Woodlands, Working for the Coast, Landcare, Working on Waste, Working for Tourism, Investing in Culture Programmes.
 - (b) Infrastructure sector programmes and projects declared part of EPWP which may include the construction, rehabilitation and maintenance of: rural and low-volume roads, storm-water drains, water reticulation, basic sanitation, footpaths, sidewalks, bicycle paths, schools and clinics.
 - (c) Social sector programmes including early childhood development, home, community based care, community safety and other community based programmes.
 - (d) All projects and programmes accessing the EPWP wage incentive including those implemented by non-governmental organisations (NGO) and community based organisations (CBO) and the Community Works Programme.
 - (e) Any other programme deemed to be part of the EPWP as determined by the Department of Public Works.
50. The conditions that are set out in the determination apply to the EPWP elementary work which means ‘any occupation involving unskilled or semi-skilled work.’ The determination contemplates that workers are employed on a temporary or contract basis. The conditions are set out in Annexure A to the determination which regulates matters such as hours of work, meal times, rest periods and so on. Hours of work are

at least comparable to basic conditions.²⁵ And importantly, while EPWP workers have temporary contracts, the work is usually not temporary.

E THE ECONOMIC EVIDENCE

Introduction

51. The economic report was commissioned by Lawyers for Human Rights for the One Wage Campaign and is supplied herewith. As indicated above, it was prepared by Dr. Gilad Isaacs²⁶ and Pamela Choga²⁷ of the Institute for Economic Justice.

52. The report ultimately concludes that:

'It is our opinion that no compelling evidence exists to maintain the wages of domestic workers, farm workers and EPWP workers at a lower level than the overall NMW. In fact, given the current position of these workers there are compelling reasons to ensure that their wages and working conditions continually improve.'

53. The economic report speaks for itself and we refer to its detailed content in full. Certain features are highlighted below merely to illustrate its force.

²⁵ 3 Normal Hours of Work

3.1 An employer may not set tasks or hours of work that require a worker to work-

- (a) more than forty hours in any week;
- (b) on more than five days in any week; and
- (c) for more than eight hours on any day.

3.2 An employer and worker may agree that a worker will work four days per week. The worker may then work up to ten hours per day.

3.3 A task-rated worker may not work more than a total of 55 hours in any week to complete the tasks allocated (based on a 40-hour week) to that worker.

²⁶ Dr Gilad Isaacs, the primary author, is the Co-director of the Institute for Economic Justice ("IEJ"). He is an economist based at the University of the Witwatersrand, where he also coordinates the National Minimum Wage Research Initiative ("NMW-RI") and lectures. Isaacs has a PhD and MSc in economics from SOAS, University of London, and a MA in political economy from New York University ("NYU"). He has worked as a consultant for the International Labour Organization ("ILO") and Global Labour University and published on the topics of macroeconomic policy, financialisation, labour market policies, and employment policies.

²⁷ Pamela Choga, a contributor to the submission, is a researcher at the IEJ. Choga holds a LLB degree and Master of Laws in International Economic Law, both from Wits University. She previously worked as a legal researcher at SECTION27.

International support for a unitary NMW

54. The economic report records the ILO's preference for a unitary NMW. A unitary NMW that covers all workers is easier to enforce and does not set lower minima for sectors with high proportions of vulnerable workers (as has been shown to occur under differentiated systems). Furthermore, a NMW can be set to take account of broad policy objectives such as reducing inequality, and economy-wide economic impacts rather than only narrow sectoral considerations.
55. The reports shows that the rate of compliance is relatively high among countries with simple and more broadly applicable minimum wages when compared to those with complex sectoral wage systems.
56. Importantly, the report confirms that the ILO recommends against tiering of these sectors because it not only creates a fragmented system that is more difficult to enforce but it also has the effect of discriminating against these lower income earners who are disproportionately women. The vast majority of countries with NMWs do not have tiered systems that affect farmworkers or domestic workers. Only a small minority do. The international trend is towards systems that have few exclusions and exemptions and to phase out any tiering as soon as possible. The report refers to Chile as an example that successfully increased the NMW for domestic workers over three years from 75% in 2008 to 100% in 2011. Portugal, Guatemala, Bolivia and Paraguay are also cited as having recently successfully phased out a tiered system.

Farmworkers and domestic workers

Fear of job losses

57. Farm and domestic workers together make up 22.8% of the total full-time working poor. The report illustrates that 89.4% of farm workers and a sobering 95.3% of domestic workers earn below the poverty line level of R5 126 ("the working poor"). It adds that women in both sectors are more likely to be part of the working poor than their male counterparts. Black and coloured farm workers are far harder hit than their white counterparts. In the domestic sector, all racial groups earn below the working

poor line.

58. As explained, the reason why farmworkers and domestic workers have been subjected to NMW disparity and tiering and receive a sub-minimum wage purports to be grounded in economics, and relates to a fear about job losses. The economic report explains however that the international literature shows that the aggregate effect on employment is shown to be only marginally negative or neutral, and sometimes statistically undetectable at all. It refers to Schmidt who has noted that: *‘The weight of that evidence points to little or no employment response to modest increases in the minimum wage.’*²⁸
59. The economic report explains that the modest effects on employment are because firms and economies adjust to higher minimum wages in a number of ways. The most important channels of adjustment are productivity increases due to organisational efficiency and increased effort by workers (‘efficiency wages’), reductions in wages of higher earners (wage compression), and small price increases. In addition, the boost to aggregate demand from higher wages can counteract negative pressures on employment levels; while raising wages may place pressure on individual businesses it can be beneficial to businesses overall. The level at which the NMW is set strongly influences the manner in which firms and the economy adjust. We emphasise that the NMW of R20/hour is still well below the poverty line or a living wage.
60. The economic report references a study by Borat, Kanbur and Stanwix that indicates that a small decline was shown in the agricultural sector in South Africa – a fall in employment but also in hours of work. However, there was a significant increase of non-wage benefits, as measured by having a written contract, and average wages, with the latter increasing by approximately 30%, and farm workers were overall either *equally or better off*.
61. As to the apparent decrease in employment, the report points out that a reduction in employment rates, might well be inaccurate due to methodological problems that were adopted in the study and the slight decline in employment may in fact not be due to

²⁸ ‘Why Does the Minimum Wage Have No Discernible Effect on Employment?’ (Center for Economic and Policy Research, 2013), 2, Availability Note: Information provided in collaboration with the RePEc Project: <http://repec.org>.

the MW at all but due to a variety of other factors that are more likely to have accounted for the decrease including the drought at the time. Furthermore, constant rapid technical change and mechanisation in the industry sometimes results in displacing labour. Other studies such as by Murray and van Walbeek (2007) indicate that no decline in employment could be attributed to the MW in the agricultural sector.

62. The report cites Budlender who has noted in her prolific work in the domestic work sector in South Africa that: '*Analysis by several researchers since 2002 has found little or no evidence of any decrease in employment as a result of the introduction of the sectoral determination.*'²⁹ Dinkelman and Ranchhod also show no negative impact on employment or hours worked for domestic workers but there was strong evidence of an increase in wages.³⁰ Hertz finds a marginal fall in employment, a small decrease in hours worked but an approximate 20% rise in average wages.³¹ Borat, Kanbur, and Mayet also found no clear evidence of disemployment effects in this sector.³² They did observe that hours of work were slightly reduced, but the increase to wages outweighed this effect at the aggregate level so that the overall gains were positive. On aggregate, employment in the sectors studied rose over the period studied (DPRU 2010).

Positive impact of raising real wages

63. The report explains that a boost to real wages and household incomes raises household consumption expenditure and ultimately stimulates economic output, which leads to an increase in GDP growth rates and productivity. The results show a modest but important decline in inequality and a significant fall in the poverty headcount.

EPWP workers

Working conditions

²⁹ Debbie Budlender, 'The Introduction of a Minimum Wage for Domestic Workers in South Africa', November 2013, 26.

³⁰ 'Evidence on the Impact of Minimum Wage Laws in an Informal Sector: Domestic Workers in South Africa', SALDRU Working Paper (Southern Africa Labour and Development Research Unit, University of Cape Town, 2010), <https://ideas.repec.org/p/ldr/wpaper/44.html>.

³¹ 'The Effect of Minimum Wages on the Employment and Earnings of South Africa's Domestic Service Workers', Working Paper (University of Cape Town, Development Policy Research Unit, 2005), <https://ideas.repec.org/p/ctw/wpaper/05099.html>.

³² Borat, Kanbur, and Mayet, 'The Impact of Sectoral Minimum Wage Laws on Employment, Wages, and Hours of Work in South Africa'.

64. The economic report refers to the poor working conditions of these workers. The work itself is often arduous, involving cleaning; maintaining roads, schools and the like; carried out predominantly by women. The work is also precarious in nature and workers are denied job security – when a project comes to an end or simply stops due to apparent budget constraints, the workers are released, not knowing when or whether they may be recalled.
65. The work is notoriously characterised by low wages, no benefits, a lack of contracts, and no unionization to protect and represent workers’ interests. Consequently, in addition to being poor and at the mercy of state projects and funding for projects, workers are also unable to demonstrate stability and thus unable to access secured credit. In the absence of standardized health and safety precautions, workers’ health and safety is also not guaranteed. A lack of funding is most often cited as the reason for not training and ‘upskilling’ these workers as planned. The report also refers to research that points to the fact that many municipalities use these workers in order to avoid employing permanent employees to perform the same jobs.

Inequality

66. According to the report, there are two measures through which inequality manifests in this category of workers, both of which could be addressed by implementing NMW parity across-the-board.
67. The first is wages. The second clear indication of the high level of inequality that marks this sector is the fact that these workers appear to be doing the same or substantially similar work to their permanently employed public sector counterparts. The report references Hlatwayo’s study which noted that these workers work alongside the permanent employees; and observe them doing the same work but for more money and benefits, and job security.
68. The authors of the report observe that the criticism that the use of EPWP workers has created a two-tiered labour system within the public sector is justified. It creates a cheap labour pool and allows different levels of government to circumvent hiring

employees on a permanent basis to do the same work. The report correctly refers to the exclusion of EPWP workers from the NMW and other conditions of employment as disgraceful.

Impact on the national fiscus of increasing the NMW for EPWP workers to parity level

69. The report notes the uniqueness of the impact of an increase in EPWP wages given that it is the public rather than the private sector that would bear the increased cost. It goes on to note that the three biggest fiscal challenges faced in South Africa currently are: unsustainable debt of SOEs (especially Eskom); the crisis within SARS that undermines capacity to raise revenue; and the sluggish economic growth that weighs negatively on tax revenue.
70. However, it points out that contrary to much public rhetoric, South Africa's debt-to-GDP ratio (excluding the contingent liabilities) is almost exactly the average of emerging markets and its net asset position is strong. National Treasury nevertheless announced an accelerated austerity approach which the report says is sure to undermine economic growth and have disastrous effects.
71. Against this background, the Commission may be tempted to situate its recommendation regarding EPWP within the current fiscal approach set by National Treasury. However, the report cautions against this approach, saying it would be a mistake for a number of reasons.
72. The first is that the NMW Act does not instruct the Commission to consider the particular policy framework of one government department, nor to consider 'fiscal sustainability' in general, which is more of a specialist field.
73. The second is that it would be false to consider austerity as the only viable option currently available to the state. The report references that international evidence in fact makes it abundantly clear³³ that what is required is a large state-led stimulus.

³³ UNCTAD, 'Trade and Development Report 2019'.

74. Thirdly, an increase from the fiscus to increase low-wages means these low income earners will earn more but, being poor, they also spend all their money in order to survive, and the increased spending has shown to stimulate economic growth.³⁴
75. Fourth, the report notes that the fiscal implications of increasing the EPWP NMW level is not insurmountably large. In this regard, the former DDG of Treasury, Andrew Donaldson wrote in May 2017:

'It has been recommended that the EPWP and similar programmes, such as the Community Work Programme, should be exempt from the minimum wage. This is morally cynical and institutionally impractical. If there is a socially agreed-on minimum wage, then the government must lead by example.'

'It is mistakenly thought that the minimum wage would be "unaffordable" for EPWP projects — in fact, current levels of EPWP participation are still well below what they should be, and the costs of phasing in compliance with a R20 an hour minimum wage by 2019 are modest. This would send a clear message of the government's intent to respect the new standard.'

76. The report also notes that the challenges associated with attempting to quantify the actual amount spent on EPWP wages each year, mainly because some EPWP expenses are not wage expenses, and other departments also contribute funds towards EPWP projects.
77. Relying on the most recent data on the EPWP (2018/19 financial year), the report details the total cost of EPWP workers' wages as approximately R10.9 billion. Assuming the average daily wage was increased from R117.40 to R180 (the 2019 level of the overall NMW), and assuming that all other factors such as the length of projects remained the same, the total cost would have been R16.7 billion, an increase of just under R6 billion.
78. The report notes that in the greater context of the fiscus, this is not a significant amount of money and notes that the Commission (although it is not its main concern) could

³⁴ UNCTAD.

take account of the fact that the funding could come from a number of sources, tax reform being the most obvious. By way of illustration, tax breaks on pension funds and medical aid for higher-income earners are more than 10 times this amount. A further example is VAT. According to the report, a VAT rate of 25% on luxury items has been estimated to raise up to R 9.6 billion.³⁵ Another of many other viable alternatives would be to leverage the Unemployment Insurance Fund (“UIF”), which currently holds a surplus of at least R 138 billion³⁶ and has also been tapped as a funding source for a work-seekers grant or guaranteed work scheme.

Conclusion

79. The report illustrates the dire predicament in which these three vulnerable categories of workers find themselves – poor working conditions, low wages, no bargaining power and high levels of job insecurity. This predicament could not be resolved by minimum wages fixed in the respective sectoral determinations. The report notes that the NMW and the Act present as the alternative. However, the starting point in remedying what the sectoral determinations could not is to put in place NMW parity across-the-board.
80. The report also demonstrates that there is no conclusive evidence that wage parity in these sectors will have any adverse effects. Quite the contrary in fact given the considerable evidence of the significant positive effect on workers’ incomes, poverty and inequality.
81. Furthermore, the report concludes that not only must the NMW be implemented uniformly but in order for it to achieve its intended goal of reducing poverty and inequality, the general or overall should moreover be increasing to beyond simply the rate of inflation. Indeed, it is submitted in the report that the Commission ought to be recommending an increase of at least CPI + 3%. The economists conclude finally that while there may be some uncertainty regarding what will happen if parity is implemented, what is certain is that these vulnerable and exploited categories of

³⁵ IEJ (2018) *Mitigating the impact of the VAT increase: can zero-rating help?*

³⁶ Figure cited at the Jobs Colloquium by Neva Magketla. Department of Labour Unemployment Insurance Fund (UIF) Annual Report 2017/18 states that reserves (net assets) in 2016/17 were R133.3 billion, and total assets managed by the PIC were R138,95 billion, indicating that in 2017/18 the surplus will certainly be over R140 billion.

workers will stand to benefit significantly from higher wages and parity.

F THE LIVED REALITIES OF THE AFFECTED GROUPS

82. During the review procedure, the Commission must remain ever mindful that the task before it centrally concerns the livelihood of human beings. It is the lived realities of many people that are profoundly affected by the decisions that will be taken during the review process. In this regard, Courts – when assessing the constitutional validity of law and conduct, consider the impact of laws on the people affected and their vulnerability. Indeed, these realities and lived vulnerability go to the heart of constitutional adjudication.

83. We have sourced accounts of the realities of those living on the sub-minimum wage contemplated by the NMW Act and which starkly reveal the unfairness and indignity that those subject to the tiered system are subjected to as a result of the law as it stands. We have protected the identities of those who spoke to us due to a fear or potential of victimization.

84. One of the domestic workers when asked how does she feel about the minimum wage she earns said:

‘It makes me feel like a useless parent there is nothing that I can afford as the money is mainly for food and kids transport. That is not even enough for buying clothes even when you are sick you can't go to the doctor we go to clinic and they always don't have medication. We can't eat healthy. It is sad to go borrow money every month to cover for family needs.’

85. Another one said:

‘Only God knows how Domestic Workers manage to survive with that minimum wage true. Cost of living is skyrocketing. Even the basics it's hard to afford them with this so-called minimum wage. Domestic workers are doing a lot for their bosses. We are housekeeper, nannies, cooks and we also guard their premises during their absence but still they don't appreciate all that. We are treated as if we are slaves. The government must have mercy on domestic

workers. When you leave work you become a beggar cause you not given anything and there was nothing to serve during your working years due to peanuts which we are paid. It's painful'.

'I am paying rent which is R900 per month. I have two kids and taking care of three orphans. I have to take 3 taxis to work every day. I survive through borrowing from friends and when I have to pay back, it is double. Every month you have to pay mashonisa and every month you have to say, can you borrow me again money for transport'

86. In a commonly felt narrative, one domestic worker said *'Because we are domestic workers, they think we are nothing. They see us as trash.'* And another said she felt she was not seen as a worker and that her work is *'not decent work'*.

87. A farm worker who lives with 13 family members, husband, grandfather, grandmother, uncle, aunt, children said:

'I am the only one who gets a wage, other only receives a child grant for the children. I earn R2 200 per month. We have to buy our food on credit in the shop that is owned by the farmer. This cost us R1000 so we end up with R1 200. We use up the R1 200 for other groceries outside the farm. We do not have any money left for other costs, such like shoes for the children, trips at school. All this force us to take the loan. In December we have to take a loan to be able to celebrate Christmas then it takes us the whole year to pay it back'

88. One farm worker says:

'It makes me feel like I am worth less within the economy in South Africa, while the agricultural sectors is providing a lot to the economy. But I know the reason for the low wage is the history of the agricultural sector with all its oppression. And that is why we don't have land.'

89. An EPWP worker gave us the following account:

'It is an insult to be paid such a wage or shall I say a stipend, although we work hard long hours, sleepless nights. Sometimes we wish the government should interfere'

'I feel depressed and discouraged everyday as much as I love my job but it is not fair to be paid money that only lasts 30 minutes on groceries and paying money to people. I have landed money from which I still fall short on paying them. I feel very useless and taken advantage of because of our desperate needs of supporting our families. I do not know the feeling of being permanent but I am sure my life will change and a permanent person is able to afford few things'.

90. When asked how long they have been part of the EPWP program, this is what he said:

'In our case we have a seven years contract with this company and that says we are no longer EPWP. There are people who have started with this company back in 2005 and till today they are still fire fighter and want wages and even those who are coming behind us it will be the same thing to them'.

91. What is clear from these narratives is the human reality of being involved in work that is not properly valued and remains exploitative despite the Constitution's promise of dignity and equality. There are multiple narratives of this sort. We ask the Commission to read the full content of Annexure B hereto to hear the voices of some of those affected. We also ask the Commission to remember that these are but a few. The indignity spreads to many thousands of people.

G A TIERED SYSTEM BREACHES CONSTITUTIONAL RIGHTS AND IS UNFAIR, UNJUSTIFIED AND UNREASONABLE

Introduction

92. The Preamble to the Constitution provides an important reminder of the history that South Africa seeks to leave behind and the future it seeks to build. It is worthwhile recalling the precise wording at this juncture of the four goals the Constitution proclaims for our democracy:

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to

- *Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;*
- *Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;*
- *Improve the quality of life of all citizens and free the potential of each person; and*
- *Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.*

93. It reminds that we must honour those who suffered for justice and freedom and respect those who have worked to build and develop our country. The Constitution enjoins us to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights. We must improve the quality of life of all citizens and free the potential of each person. These are the imperatives that must guide the Commission when it reviews the NMW and the tiering system. With these at the forefront of its mind, the inevitable conclusion must be that NMW parity is the only outcome that is consistent with these constitutional principles and objectives.
94. These objectives find further resonance in section 1 of the Constitution which sets out the founding values of South Africa which includes human dignity, the achievement of equality and the advancement of human rights and freedoms and non-racialism and non-sexism. The tiered system profoundly implicates these values and serves as a barrier to their realization.
95. It is not only values at stake. It is constitutionally protected rights. We explain below how these rights are limited by the tiered system for domestic workers, farm workers and EPWP workers. The Commission, and in turn the Minister, are obliged when making their recommendations and determinations to ‘respect, promote and fulfill the rights in the Bill of Rights.’³⁷ They must do so both because the Constitution requires

³⁷ Section 7(2) of the Constitution.

it of them and because the legislature seeks to give effect to the rights concerned in the NMW Act itself.

96. The right to dignity is protected in section 10 of the Constitution: Everyone has inherent dignity and the right to have their dignity respected and protected. The right to dignity has a special place in our Constitution. The Constitutional Court has held that *‘recognising a right to dignity is an acknowledgement of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern. This right ... is the foundation of many other rights that are specifically entrenched in ... the Bill of Rights.’*³⁸ It has held further that *‘the constitutional protection of dignity requires us to acknowledge the value and worth of all individuals as members of our society’*.³⁹ The right to dignity has also been inextricably linked to work: *‘The absence of adequate housing for the Respondents and any subsequent eviction, will drive them in a vicious circle, to the deprivation of their employment, their livelihood, and therefore their right to dignity, perhaps even their right to life. The right to work is one of the most precious liberties that an individual possesses. An individual has as much right to work as the individual has to live, to be free and to own property. To work means to eat and consequently to live.’*⁴⁰
97. In our submission, there can be no real debate that a law that subjects farm workers, domestic workers and EPWP workers to a tiered NMW system limits their right to dignity. It treats them and their work as less valuable and less worthy of respect. That they are currently receiving a subminimum wage that is not a living wage makes the limitation acute.
98. The right to human dignity is closely related to the right to equality, which is protected in section 9 of the Constitution. Section 9(3) provides that the State ‘may not unfairly discriminate *directly or indirectly* against anyone on one or more grounds, including

³⁸ S v Makwanyane 1995(3) SA 391 (CC) par 144 per O ‘Regan J

³⁹ National Coalition for Gay and Lesbian Equality v Minister of Justice 1999(1) SA 6 (CC) para 28.

⁴⁰ *City of Johannesburg v Rand Properties (Pty) Limited and Others* (10330/04 , 10331/04 , 10332/04, 10333/04, 24101/03 , 13835/04) [2006] ZAGPHC 21; 2007 (1) SA 78 (W); [2006] 2 All SA 240 (W); 2006 (6) BCLR 728 (W) (3 March 2006)

race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. Under section 9(5), discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that it is fair.

99. There can be no serious debate that the tiered system discriminates against domestic workers, farm workers and EPWP workers directly on the grounds of sector, and indirectly on grounds of race, gender and class.⁴¹ These are intersecting grounds, and the cumulative impact of the discrimination is material. It is important to remember that the Courts acknowledge that persons who confront multiple grounds of disadvantage through law or conduct will suffer disproportionately marginalizing impacts. The tiered system for domestic workers and farm workers is a classic case for caution in this regard given the history of the sectors.

100. Domestic workers are largely women and so the tiering operates to differentiate, albeit indirectly, between this category of largely women workers and all other workers. Due to our invidious history, domestic workers are also largely black South Africans or migrants from other African countries. They will invariably be poor and will often rely on their employers for access to accommodation.

101. Farm workers are also one of the most vulnerable work sectors. The reasons for this are wide-ranging and include a recent trend towards casualization of the work force. Food insecurity amongst farmworkers is startlingly high which is troubling given these workers' involvement in food production.⁴² The farm work force is also highly gendered but in a different way to domestic workers. Women farmworkers often rely on seasonal work. Also due to our history including of land dispossession, farm workers on commercial farms are largely black South Africans who will invariably be poor. They will also often have precarious tenure.⁴³

⁴¹ It is not only listed grounds that matter. Discrimination may occur on other grounds too which the Court will recognise if they are 'based on attributes or characteristics which have the potential to impair the fundamental dignity of persons as human beings or affect them seriously in a comparably serious manner.' *Harksen v Lane* NO 1998(1) SA 300 (CC) at para 46

⁴² 'The farmworkers who produce our food are the most vulnerable to hunger' Stephen Devereux, Ruth Hall, Colette Solomon Opinion, Mail and Guardian 08 Oct 2019 accessed online.

⁴³ A useful source of detailed information about the demographics of the farm worker population can be found in 'Farm Workers' Living and Working Conditions in South Africa: key trends, emergent issues, and underlying and structural

102. EPWP workers are, by definition, a highly vulnerable group who are dependent on the EPWP for access to employment and to be lifted out of poverty. The EPWP sector is also gendered in its structure. As the Expert Panel report points out, the programme is particularly ‘responsive to the needs of vulnerable women – a group particularly negatively impacted by poverty, unemployment and HIV’.⁴⁴ In 2014, the majority (68%) of EPWP workers were women across sectors including infrastructure, environment and culture, social sector, community works and non-profit organisations. In some sectors, women constituted the vast majority such as the social sector (86%) and community works (78%). In others, the proportional representation was high but less stark, such as infrastructure (61%). But while the programme is responsive to women, conversely this means that the *tiered* NMW is disproportionately harsh on women with the result that it constitutes indirect discrimination on grounds of gender.
103. A further instance of discrimination suffered by EPWP workers flows from the equal pay for equal work principle. This principle is recognised in the Employment Equity Act’s Code of Good Practice: Equal Pay for Work of Equal Value, and the Code is in line with the ILO’s convention regarding equal remuneration⁴⁵. It is discriminatory to pay people differently for the same work.
104. Also implicated is the right to fair labour practices protected by section 23(1) of the Constitution. In short, where workers are treated as a lower or lesser tier in law, they become vulnerable to exploitative practices.

Tiering is unfair discrimination and is not saved by the limitations clause

105. The tiered system will not pass constitutional muster in view of the justifications offered for it, not least if not phased out now.⁴⁶ In order to pass muster, discrimination must be fair, and rights limitations must be reasonable and justifiable as contemplated

problems’, a 2015 report prepared by Visser and Ferrer commissioned by the Pretoria Office of the ILO accessed online at https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_385959.pdf

⁴⁴ See p 51

⁴⁵ Equal Remuneration Convention No. 100 of 1951

⁴⁶ E.g. *Harksen v Lane NO* 1998(1) SA 300 (CC) and *Khosa and others v Minister of Social Development and others; Mahlaule and others v Minister of Social Development and others* 2004 (6) SA 505 (CC)

by section 36 of the Constitution.⁴⁷

106. In evaluating the fairness or otherwise of the tier system or more specifically the failure to phase it out by 2020 as contemplated by the NMW Act, courts will essentially make an inquiry of the nature set out below.

The test for unfair discrimination

107. Courts will consider whether the act of differentiating the affected category of workers from other workers by paying them less than the national minimum is based on one of the “listed grounds” in section 9(3) of the Constitution (e.g. race, gender). If so, a rebuttable presumption is created by section 9(5) that says the discrimination is then unfair. Discrimination on unlisted grounds that have the ability to impact adversely on the dignity of the affected group will also constitute discrimination under section 9(3), but unfairness will not be presumed. In this case, the primary discrimination is sector, or occupational category, the type of work done, which is not a listed ground. Once discrimination is established, on an unlisted ground, Courts will then consider whether it is *unfair* to discriminate on the relevant ground.
108. In considering the unfairness of the discrimination, the determining factor is its *impact on the person or class of persons discriminated against*. Courts will here consider factors such as the position of these workers in society and whether they have suffered in the past from patterns of disadvantage; the nature of the provision or power and purpose sought to be achieved by it; the extent to which discrimination has affected rights or interests of complainants and whether it has led to impairment of fundamental human dignity; or constitutes an impairment of a comparably serious nature.
109. These factors do not constitute a closed list and it is their *cumulative effect* that must be examined and in respect of which a determination must be made as to whether

⁴⁷ Limitation of rights. Section 36(1) provides that ‘rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose.

discrimination is unfair.

Domestic workers and farm workers

Discrimination

110. The wording of the tiering provisions expressly differentiates between occupational categories or sectors. Domestic and farm workers are assigned a different minimum wage compared to the rest of workers. The result is that they are worse off than their counterparts in the labour market. The reason for this is a pernicious history that undervalues the work entailed. This distinction constitutes discrimination.
111. While the wording of the provision does not overtly refer to one of the grounds listed in section 9(3) and is *prima facie* neutral, the net effect of excluding these categories of employees amounts to indirect discrimination based on race and gender. More than 75% of all domestic workers in South Africa are female and the racial distribution of domestic workers is highly uneven, the great majority (91%) being Black and the remainder Coloured.⁴⁸ The demographic profile for farm workers is similar, especially among seasonal farmworkers who are black women.
112. In assessing the fairness of discriminating against these occupational categories, regard is had to the position of the person or class of persons by considering whether, for example, they belong to a ‘vulnerable group’ that have endured unfair discrimination in the past. Even a cursory glance of the historical context indicates that these workers demonstrably and unequivocally belong to a vulnerable class that have systematically been abused for centuries.

History of abuse and dehumanisation

113. The demand for NMW parity must be understood in the context of hundreds of years of what can only be described as a system approximating institutionalised slavery, a system that dehumanised and condemned black workers and their dependants to abject poverty for generations to come. Apartheid stripped black workers of equality, and

⁴⁸ ILO global and statistics report, 2013.

their humanity and dignity and paved the way for ultra-low wages for black workers. The Apartheid regime advanced its goal of white supremacy by ensuring that black people were granted limited access to education, curtailed the acquisition of skills and restricted job opportunities.⁴⁹

114. As noted by Ncube, referenced in Saldru and Borat,⁵⁰ *‘the pass laws curtailed the free flow of African labour and served as an auxiliary weapon in the migrant labour system, forcing many workers to take whatever jobs were available, thus weakening their bargaining power and trapping many in low-wage sectors such as agriculture and domestic services (Ncube 1985:17)’*. Labour laws such as the Masters and Servants Act of 1856, introduced after the freeing of large numbers of slaves under the slavery regime that accompanied the Dutch settlers to South Africa, were still structured for the gross exploitation and oppression of black workers. The Industrial Conciliation Act of 1924 reserved jobs for white workers and allowed them collective bargaining and other labour rights but excluded black workers who were regulated by Native Labour Regulation Act. The Wage Act of 1925 doubled down on job reservation for white workers and granted them still better wages; and the Wage Amendment Act of 1930 actually set a minimum wage for black workers but for the purpose of preventing white workers’ pay and rights from being negatively affected.⁵¹
115. When women began entering the labour market in South Africa, the segregationist and apartheid policies that prevailed at the time made it possible for white women to be given preference for jobs. This left black women to contend with taking over the domestic work previously performed by those white women in their households. It was one of the few sectors that came to provide unskilled black women with both work as well as a ‘permit’ to live in urban areas, without which they were returned to the less

⁴⁹ See for example “Sectoral Determination 7 of Domestic Workers: A catalyst for change?” accessed at <https://www.polity.org.za/article/sectoral-determination-7-of-domestic-workers-a-catalyst-for-change-2013-11-21>

⁵⁰ DPRU Working Papers: The Present as a Legacy of the Past: The Labour Market, Inequality and Poverty in South Africa (Servaas van der Berg and Haroon Borat), p.4; accessed at http://www.cilt.uct.ac.za/sites/default/files/image_tool/images/36/DPRU%20WP99-029.pdf

⁵¹ See for example Du Toit 2006: 7; Godfrey *et al* 2010: 46 in “The Constitutional Right to Fair Labour Practices: a consideration of the influence and continued importance of the historical regulation of (un)fair labour practices pre-1977”, by M. Conradie (Fundamina, Volume 22, Number 2, 2016) pp 163-204; accessed at <http://www.scielo.org.za/pdf/funda/v22n2/01.pdf>

developed Bantustans designated for black people⁵².

116. Du Toit captures the history of domestic work in South Africa as follows⁵³:

‘Domestic work in South Africa has its roots firmly embedded in a history of colonial oppression, racial segregation and exclusion of domestic workers from legal protection. Domestic labour has traditionally been performed by unskilled, mainly black women for middle class, mainly white families. Because black labour was so cheap, the practice was widespread and even many working class white households could afford domestic ‘help’. Against this backdrop many domestic workers found themselves in a position of virtual servitude in the homes of their ‘masters’, trapped in paternalistic relationships based on the perception that they are not really ‘employees’.

117. Despite various ILO instruments and the suite of South African labour laws that slowly followed with democracy to include domestic workers, it is evident that these attitudes and the perception that domestic work is not perceived as employment in the broad sense, persist. A similar argument applies to farm work which still suffers from the stereotype of unskilled manual labour performed by the poor. There remains a deep-seated prejudice against manual labour generally⁵⁴.

118. As reported throughout this document, farm and domestic workers are widely recognised as two of the most vulnerable occupational groups in South Africa. As noted by the economic report for example, little has changed for many domestic and farm workers who continue to endure intolerable conditions with shockingly low wages, no formal contracts and even less security of employment.

119. In anticipation of passing the Sectoral Determination for Domestic Workers, the Investigation into Minimum Wages and Conditions of Employment of Domestic Workers⁵⁵ reports that black women are still primarily responsible for carrying out

⁵² “Sectoral Determination 7 of Domestic Workers: A catalyst for change?” accessed at <https://www.polity.org.za/article/sectoral-determination-7-of-domestic-workers-a-catalyst-for-change-2013-11-21>

⁵³ *Exploited, Undervalued - and Essential: Domestic Workers and the Realisation of their Rights*; Darcy du Toit (ed), 2013, Pretoria University Law Press, p5

⁵⁴ Ali Khan “The Dignity of Manual Labor”, *Columbia Human Rights Law Review*, 2001, accessed at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=936890

⁵⁵ Government Gazette No. 22453, 10 July 2001

domestic work in South Africa and it expressly acknowledges them as a particularly vulnerable category of worker. It recognises, as does the ILO regarding domestic work the world over, that such work remains an undervalued activity with little economic value and almost no social recognition, performed almost exclusively by people from disadvantaged groups.

120. The ILO has stated that:

*'...paid domestic work remains virtually invisible as a form of employment in many countries. Domestic work does not take place in a factory or an office, but in the home. The employees are not male breadwinners, but overwhelmingly women. They do not work alongside other co-workers, but in isolation behind closed doors. Their work is not aimed at producing added value, but at providing care to millions of households. Domestic work typically entails the otherwise unpaid labour traditionally performed in the household by women. This explains why domestic work is undervalued in monetary terms and is often informal and undocumented. It tends to be perceived as something other than regular employment, as not fitting the general framework of existing labour laws despite the fact that its origins go back to the 'master-servant' relationship. As a result, the domestic employment relationship is not specifically addressed in many legislative enactments, thus rendering domestic workers vulnerable to unequal, unfair and often abusive treatment.'*⁵⁶

121. Domestic workers are frequently unable to vindicate their legal rights often through lack of awareness of those rights but largely because of the fear of reprisal and dismissal⁵⁷. This is equally applicable to farm workers.

122. The violation of these workers' rights is closely related to the 'intimacy' and privacy of the workplace and the power imbalance of employer and worker, behind closed

⁵⁶ International Labour Organisation (ILO) *Decent work for domestic workers* Report IV(1) to the International Labour Conference, 99th session, Geneva (2010) 1 (ILO Report), p1

⁵⁷*Domestic work, wages, and gender equality: Lessons from developing countries*, accessed at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_430902.pdf

doors as the ILO put it. Consequently these workers were and continue to be subjected to high levels of control because of the very personal and individualised nature of their employment and their workplaces. They are often also forced into a regimented lifestyle, forced to comply with certain rules that limit their freedom of movement in their workplaces. They are also often isolated, especially if they live on their employer's premises. As a result, by virtue of the very nature of their workspaces, they may lack privacy, again especially among those that 'live-in', where the employer as homeowner may feel entitled to inspect the living area and monitor free time. As noted in the economic and ILO reports, these categories of worker often endure poor working conditions, have little prospect for upward mobility, do not enjoy benefits such as medical and retirement assistance, and are frequently unable to accumulate pension and savings or attain property.

123. As is evident throughout this document, the wages for these categories of workers are notoriously low in exchange for long hours and heavy workload, aggravated by the fact that these sectors are characterised by low levels of organisation leaving them with little power to bargain collectively. The economic report noted that these sectors have the lowest rate of unionisation by far: only 6% of farm workers and 0.5% of domestic workers say they belong to a trade union. As the report indicates, it is precisely because of these staggeringly low figures of representation that the NMW Act is a critical mechanism for setting MW's in these sectors.
124. Domestic work is one of the oldest and most crucial occupations and is essential for the economy to function yet it remains undervalued. These workers make it possible for men and women to be gainfully employed and to attain fruitful and dignified lives for themselves and their families. Yet domestic work is still largely seen as "women's" work, based on innate skills and competencies rather than acquired capacity. The ILO has said that the plight of these workers will not improve without concerted action to improve the legislative framework. A similar argument holds true for farm work which is viewed as unskilled manual work performed by the poor.
125. As noted in the government's *Sectoral Determination for Domestic Workers, the Investigation into Minimum Wages and Conditions of Employment of Domestic Workers* referred to above, domestic workers are often forced by factors such as

unemployment and poverty to accept employment at any cost; and quite often offers an opportunity for accommodation among the poor and homeless. The same Investigation describes their vulnerability in *society*, perceived as unskilled and not serious contributors to the economy; as well as in the *law*, with little being done to enforce compliance of even the most basic terms and conditions of employment afforded them in law. The tiered system of the NMW Act that ranks them below other workers is another way that the law is failing them.

Tiering is not reasonable or justifiable – the limitations clause

126. Establishing a uniform NMW is a key means of ensuring workers' rights to decent work, a decent life and dignity. And yet no adequate reason has been offered for the discrimination based on 'sector' or class of work, gender or race. The real explanation is the fact that it has historically always been the case that domestic and farm works have been singled out (to their detriment).
127. The ILO's Minimum Wage Policy Guide says *'Domestic workers should not be discriminated against. They should enjoy minimum wage coverage equivalent to that provided to other workers generally...A minimum wage recognises the value and social contribution of these workers and is a key means of ensuring the principle of equal pay for work of equal value'*⁵⁸. Article 11 of Convention 189 recognises that remuneration must be established without discrimination based on gender. The Guide dispels the perception that the processes and criteria used to set minimum wages for domestic workers should be different from that used for other workers. It recognises that tiering may be necessary for an interim period if previously excluded from minimum coverage but it says wages should be increased to equal the NMW level. Similarly, annual adjustment of minimum wages for domestic workers must be based on the same factors used for all categories, which generally involves considering changes in the needs of workers and their families and economic factors.
128. The risk of unemployment is commonly cited as an argument against a NMW and, by

⁵⁸ Accessed at <https://www.ilo.org/global/topics/wages/minimum-wages/domestic-workers/lang--en/index.htm>

extension, having a standardised minimum wage⁵⁹. But there is no legitimate reason for excluding farm and domestic workers from the group of workers that enjoy the higher wage. The common argument is that the employers are private persons and pay what they can afford according to their own incomes. If confronted with a legislated minimum wage, they may be forced to cut back on their use of domestic or farm workers; they may somehow replace workers with machinery or employment agencies where possible, and even penalise workers by reducing their hours of work.

129. The Expert Panel itself offers no compelling justification for the continued differentiation and subjection of these workers. In fact, it dispenses with the need for tiers in a few lines, based entirely on the fact that ‘*A number of countries have set lower minimum wage rates for a few sectors, such as agricultural workers or domestic workers, or for some selected group of workers...*’⁶⁰. That is not good enough, especially in light of the historical treatment of these categories of workers in South Africa. Furthermore, the global trend is in fact in the opposite direction, with very few countries differentiating in this way. [See in this regard the economic report.]
130. The Expert Panel acknowledges that concerns have been raised about indirect discrimination against women in countries that have set different minimum wages for sectors or occupational categories where women have tended to be over-represented which is recognised to be in violation of the ILO principle of equal pay for work of equal value. As noted in Section C above, the Expert Panel – and the NMW Act – also acknowledge that the tier system cannot legitimately be sustained. The inclusion of an initial transitional period is hard to justify as it is but it cannot be permitted to continue beyond the stated date of 2020.
131. It is worth interrogating a further popular argument which is levelled in the domestic and farm-worker sector (and indeed implementation of a NMW generally) that relates

⁵⁹See for example: *Setting a minimum wage will lead to more unemployment* by Ann Bernstein, accessed at <https://www.cde.org.za/setting-a-minimum-wage-will-lead-to-more-unemployment/>; and *The introduction of a minimum wage for domestic workers in South Africa* by Debbie Budlender accessed at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_465069.pdf

⁶⁰ P. 23

to productivity, namely that increases in the real level of a NMW will affect the price of labour and thus productivity levels. The apparent concern is that a NMW will artificially set the price of labour above its value and thereby decrease the level of productivity. That notion has also been dispelled given that many employers continue to *underpay* workers despite increases in productivity and profit, which is how they have been able to maintain the cheap labour system inherited from Apartheid⁶¹. The ILO has in fact noted that employers actually tend to use workers more *efficiently* when labour costs increase and that increased wages moreover lead to improved morale which has the effect of enhancing productivity overall⁶². In consequence, NMW parity may well have the effect of forcing employers to draw up written contracts that set out reciprocal rights and obligations, the worker's duties, performance, and the like, all of which have the added benefit of formalising employment rather than perpetuating the current state of casualised and informal labour.

132. To the extent that the Commission may be concerned about affordability, this does not justify the setting of low wages. Domestic and farm work have historically been poorly paid regardless of affordability. Domestic workers enable families to participate in the economy for the benefit of those families and their children. The same applies to farm workers who work for pitiful wages to enrich farmers and place them among the wealthiest in the country yet they, too, are still grossly underpaid. The economic report confirms that there is no conclusive evidence upon which to base the concerns of disemployment effects if the domestic worker and farmworker NMW is brought on par with other workers. These workers are indispensable to many households and farmers. There is no rational or justifiable reason for paying them less than the NMW.
133. Employers that are genuinely financially stretched have the option to reduce the total cost of wages by decreasing the number of hours worked without resorting to job losses. As noted in the economic report, a reduction in working hours simultaneously provides additional time for domestic workers to explore other additional sources of income, to take care of their own households, and contributes to their work-life balance.

⁶¹“Towards a South African National Minimum Wage”, ILO (2015), accessed at <http://www.lrs.org.za/media/2018/2/f06ac094-fd58-4e9c-9bdb-7440a774d60c-1518619496429.pdf>

⁶² *Ibid*

134. It is noteworthy that while the BCEA ultimately adopted a maximum of 45 hours of work, Schedule 1 thereof indicates a *commitment by government* to pursue the reduction of ordinary weekly hours to 40 per week. A reduction in working hours would therefore in any event ultimately be in line with government's commitment to create further opportunities for employment, economic efficiency and the health, safety and welfare of employees. It follows therefore that farm and domestic workers could ultimately end up being paid the same or more but be required to work less. They would not be worse off financially and stand to benefit from an improved quality of life while the employer would pay a wage he or she could afford. A reduction in working hours would also require employers to better organise the work required to be done in order to accommodate reduced hours on the part of these workers.
135. The NMW Act also permits employers to apply for an exemption from the full rate in the case of true unaffordability. Applications will be tested against the employer's affordability, elements of profitability, liquidity and solvency to determine whether they can genuinely not afford the increase.⁶³
136. It must again be emphasised that while NMW parity is an important step in the right direction, R20 an hour is recognised as still being inadequate for workers and their families to attain an acceptable standard of living. The Pietermaritzburg Economic Justice and Dignity Group's monthly "Household Affordability Survey" found that in June 2019, it cost R2,422.78 to feed a household of four a basic nutritious diet. The survey reports that a worker who earns a total of R3 500 a month (40 hours of work a week at R20 an hour) would likely spend 70% of their monthly income on food directly, leaving a little more than R1,000 for other essential costs such as rent, school fees, healthcare, transport, etc. And because housing for the poor tends to be located far away from economic opportunities, another legacy of apartheid, poor people often find themselves caught in a poverty trap in which they are either confined to residence in areas least likely to provide them with the opportunity to get a job, or they are compelled to spend much of their wages on transport.

Conclusion

⁶³ See for example: <https://nmw.labour.gov.za>

137. The main goal of a NMW is to protect the most vulnerable categories of workers from exploitation. No apparent or legitimate objective exists to justify paying domestic and farm workers a lesser NMW than others. To the contrary, there is ample evidence to explain why NMW parity is necessary.
138. We must now leave behind us the archaic and paternalistic notion that domestic and farm work is somehow unique because of the ‘intimate’ nature of the work and workplace as a means for treating these workers less favourably than other sectors. Such work must be recognised and treated like any other sector. Indeed, it is precisely because of this ‘intimacy’ that domestic and farm workers are made more vulnerable to abuse and exploitation and are largely dependent on the ‘goodwill’ of their employers for their livelihoods.
139. In conclusion, the tiering system constitutes a breach of dignity and unfair discrimination and it cannot be saved by the limitation provisions. The offending legislative provision of NMW tiering is neither reasonable nor justifiable in an open and democratic society based on human dignity, equality and freedom
140. If confronted with the problem, Courts will probably find that the tiering provision which gives specifically vulnerable categories of workers a lower NMW compared to other workers not only has no rational and legitimate purpose in our democratic society, but in fact perpetuates abhorrent inequalities of the past rather than redresses them as the Constitution demands.

EPWP workers

Introduction

141. EPWP policies confirm that the target group is poor and unemployed South Africans willing and able to work at the wage rate offered. The target group is further disaggregated, with predetermined targets for women, youth and persons with disability. As indicated above, this programme was intended to provide temporary poverty relief through short-term jobs. Participants were to obtain additional skills training to enable them to advance to better jobs after their EPWP contracts had ended.

142. Instead, many have found themselves ‘permanent casuals’, trapped in low-paid contracts and without any power to bargain collectively over their wages, working conditions or health and safety.
143. The economic report has noted that the reality of these workers is that they are for all intents and purposes performing the same work as their full time employed peers in the same sector, the only discernible difference being that they are specifically selected from the most vulnerable groups of people in civil society.

Unfair discrimination and violation of the right to equal pay for work of equal value

144. No justification is advanced by the Expert Panel or the NMW Act for paying these workers at the lowest end of the tiered minimum wage other than the fact that they are paid from government funds and would presumably otherwise strain the fiscus. The implication is that some pay is better than no pay. That is no justification. The state is the employer and is obliged to heed the equal pay for equal work legislation. The state must lead by example.
145. With effect from 1 January 2015, the internationally recognised principle of equal pay for work of equal value was enacted as part of the Employment Equity Act in the form of the Code of Good Practice on Equal Pay for Work of Equal Value. It was adopted in accordance with South Africa’s compliance with the ILO’s Equal Remuneration Convention No. 100 of 1951. The failure of the state to remunerate this class of workers who perform much of the same or substantially the same work as ‘formal’ public sector employees constitutes unfair discrimination.
146. The law provides that a difference in pay of employees performing work of equal value will only constitute unfair discrimination if the differences are based directly or indirectly on race, sex, gender, disability or any other grounds listed in section 6(1) of the EEA, including on any arbitrary ground. The singling out of these workers is discriminatory based not only on an arbitrary ground but it also constitutes *indirect* discrimination based on race and gender given that the profile of these workers are by and large black women. It is also discrimination on grounds of disability where

disabled workers have been selected from the target pool.

147. The Godfrey Report⁶⁴ refers to the previous long-serving Deputy Director-General of Treasury, noting that the proposition that a standard NMW to EWPW workers would unduly strain the national fiscus was rebutted. It is said that the cost of phasing in the NMW to the EPWP by 2019 would at best be “modest”. This is borne out by a budget analysis: the 2017/18 estimated EPWP expenditure was R2,407,583,000 not all of which goes towards EPWP stipends. Accordingly, even a *doubling* of the wage level would have only modest fiscal implications. The economic report estimates that, based on the most recent wages paid to these workers, it may cost closer in the region of almost six billion rand. That too is not unduly high when viewed in context. Raising the NMW of these workers to the level of all other workers could well also result in government and municipalities employing these workers into their permanent workforces.
148. Both the Godfrey and the economic reports have also noted that if the NMW levels for EPWP workers are not kept in line with the NMW, there exists potential for abuse of the scheme in order to circumvent the NMW. In the same vein, Konopelko and the economic report have noted that a tiered NMW has all the potential for bureaucratic maladministration and lack of enforcement.

Conclusion

149. The failure to raise the NMW for EWPW workers constitutes unfair discrimination, in violation of the Equal Pay for Work of Equal Value laws. The state as an employer cannot continue to sanction a system whereby a sub-class of state employees is created. The cost entailed, viewed in perspective, is necessary to achieve equality, dignity and the upliftment of amongst society’s most marginalised. The state must take the lead and set the example in the process of restoring the dignity of these workers, and indeed the dignity of all black South Africans.

⁶⁴ Shane Godfrey, *An Examination of How the National Minimum Wage Can Be Optimally Accommodated by the Existing Labour Legislative Framework* (Labour and Enterprise Policy Research Group), University of Cape Town, 16 August 2017

H CONCLUSION

150. Domestic workers, farm-workers and EPWP workers are amongst the poorest of the poor, the most discriminated against and vulnerable.
151. The tiered NMW system is neither fair nor reasonable and it is not justified. At the very least, the system must be phased out without delay, by no later than the legislated date of 2020, via the Commission's processes.
152. The NMW Act recognises upfront in its preamble that South Africa is one of the most unequal societies in the world, with startlingly huge income disparities, and notes the need to eradicate such poverty and inequality. The economic report states that our country's Gini coefficient (the most commonly cited measure of inequality) is approximately 0.66, where on a scale of 0 to 1, 0 represents perfect equality and 1 is the ideal of perfect inequality. South Africa reportedly has the highest Gini coefficient in the world. The issue of a uniform NMW (that is still far below a living wage) must be considered in context of the sombre fact that South African has an extremely high level of income inequality.
153. It is the state's responsibility to protect vulnerable workers. A tiered system of minimum wages sends the message to these vulnerable categories that they are still somehow lesser than others where the truth is that they are the most deserving of protection. It decimates their rights to equality and to dignity. The Commission simply cannot permit this to endure. It has been bestowed with specific powers to change it and it must do so urgently.
154. Section 7 of the NMW Act enjoins the Commission in its annual review of national minimum wages to promote the alleviation of poverty, the reduction of wage differentials and inequality. These are urgent imperatives that can and should be addressed immediately by abolishing the tiered system. The Commission must resist temptation to delay and languish in an old and broken system merely because of the fear that there may be a financial implication which has been described to be modest at best.

155. The Commission is further obliged in its review to consider certain relevant factors set out in section 7(b). With regard to wage levels and collective bargaining outcome⁶⁵, the economic report has illustrated that these sectors of workers are the most unrepresented and historically have no bargaining power to negotiate better wages and conditions of employment. The report further suggests that the NMW Act is the ideal mechanism for increasing the minimum wage of these vulnerable groups. Left to their own, these sectors would not be in a position to attain wage parity. It is thus vital for the Commission to comply with the Constitution and serve the interests of these workers by recommending that their NMW be raised to achieve across-the-board parity.
156. The Commission is also required to consider productivity⁶⁶ and the likely impact on employment⁶⁷. The economic report confirms that a NMW (in general) is in fact likely to yield *improved* productivity and that there is little to *no negative effect* on employment. It also indicates that an NMW increase would in fact stimulate economic growth.
157. The One Wage Campaign therefore calls on the Commission to make recommendations necessary to remove the tiered system and to give effect to the intended purpose of the NMW Act, to eradicate poverty and inequality. While only a first step, it is a step towards realising a society that is based on democratic values, social justice and fundamental human rights, and the improvement in the quality of life of the most historically disenfranchised of all.

⁶⁵ Section 7(b)(ii)

⁶⁶ Section 7(b)(iv)

⁶⁷ Section 7(b)(vii)

ANNEXURE A

EXTRACTS FROM THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT

3. Procedurally fair administrative action affecting any person

(1) Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

(2) (a) A fair administrative procedure depends on the circumstances of each case.

(b) In order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4), must give a person referred to in subsection (1) –

(i) adequate notice of the nature and purpose of the proposed administrative action;

(ii) a reasonable opportunity to make representations;

(iii) a clear statement of the administrative action;

(iv) adequate notice of any right of review or internal appeal, where applicable; and

(v) adequate notice of the right to request reasons in terms of section 5.

(3) In order to give effect to the right to procedurally fair administrative action, an administrator may, in his or her or its discretion, also give a person referred to in subsection (1) an opportunity to –

(a) obtain assistance and, in serious or complex cases, legal representation;

(b) present and dispute information and arguments; and

(c) appear in person.

(4) (a) If it is reasonable and justifiable in the circumstances, an administrator may depart from any of the requirements referred to in subsection (2).

(b) In determining whether a departure as contemplated in paragraph (a) is reasonable and justifiable, an administrator must take into account all relevant factors, including –

(i) the objects of the empowering provision;

(ii) the nature and purpose of, and the need to take, the administrative action;

(iii) the likely effect of the administrative action;

(iv) the urgency of taking the administrative action or the urgency of the matter; and

(v) the need to promote an efficient administration and good governance.

(5) Where an administrator is empowered by any empowering provision to follow a procedure which is fair but different from the provisions of subsection (2), the administrator may act in accordance with that different procedure.

4. Administrative action affecting public

(1) In cases where an administrative action materially and adversely affects the rights of the public, an administrator, in order to give effect to the right to procedurally fair administrative action, must decide whether –

- (a) to hold a public inquiry in terms of subsection (2);
- (b) to follow a notice and comment procedure in terms of subsection (3);
- (c) to follow the procedures in both subsections (2) and (3);
- (d) where the administrator is empowered by any empowering provision to follow a procedure which is fair but different, to follow that procedure; or
- (e) to follow another appropriate procedure which gives effect to section 3.

(2) If an administrator decides to hold a public inquiry –

(a) the administrator must conduct the public inquiry or appoint a suitably qualified person or panel of persons to do so; and

(b) the administrator or the person or panel referred to in paragraph (a) must –

(i) determine the procedure for the public inquiry, which must –

(aa) include a public hearing; and

(bb) comply with the procedures to be followed in connection with public inquiries, as prescribed;

(ii) conduct the inquiry in accordance with that procedure;

(iii) compile a written report on the inquiry and give reasons for any administrative action taken or recommended; and

(iv) as soon as possible thereafter –

(aa) publish in English and in at least one of the other official languages in the *Gazette* or relevant *provincial Gazette* a notice containing a concise summary of any report and the particulars of the places and times at which the report may be inspected and copied; and

(bb) convey by such other means of communication which the administrator considers effective, the information referred to in item (aa) to the public concerned.

(3) If an administrator decides to follow a notice and comment procedure, the administrator must –

(a) take appropriate steps to communicate the administrative action to those likely to be materially and adversely affected by it and call for comments from them;

(b) consider any comments received;

(c) decide whether or not to take the administrative action, with or without changes; and

(d) comply with the procedures to be followed in connection with notice and comment procedures, as prescribed.

(4) (a) If it is reasonable and justifiable in the circumstances, an administrator may depart from the requirements referred to in subsections (1)(a) to (e), (2) and (3).

(b) In determining whether a departure as contemplated in paragraph (a) is reasonable and justifiable, an administrator must take into account all relevant factors, including –

(i) the objects of the empowering provision;

(ii) the nature and purpose of, and the need to take, the administrative action;

- (iii) the likely effect of the administrative action;
- (iv) the urgency of taking the administrative action or the urgency of the matter; and
- (v) the need to promote an efficient administration and good governance.

ANNEXURE B

ONE WAGE VOICES

The tables below capture some One Wage workers' responses to questions posed about their experience of being excluded from the National Minimum Wage. Each quote is verbatim, and unedited.

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Domestic Workers, on being asked what being excluded from the National Minimum Wage means to them.			
"We can't send our kids to school, and we don't have enough food due to the little money we make."	"My family depends on me how will I leave the job.will be stuck with no choice."	"Because we are domestic workers, they think we are nothing. They see us as trash."	"This is not fair to us coz it looks like we are not important or that our work is not important."
"The challenges are so many we can't even start to mention them. And even if when we mention, some bosses or people will be like, its not your employers problem."	"It is not fair at all cz we know their House's/kids more than them, we work hard."	"It's a big challenge cause we have to pay rentals to where we renting, These days most of the landlords charge R1500 to R2500 per room.Transport mostly it's around R1000 +and groceries. It's worse if you are a single mom cause you need to take care of yr kids. it's painful true. Groceries you have to buy only needs no wants."	"Its so paining cz we r one of e workers who r covering a lot of work at their houses bt se earn nuts"
"We are facing a lot of challenges. This money is like we are working for a hand to mouth. Some are being abused emotionally, verbally,	"True this is too much we have to unite for our voices to be heard enough is enough."	"Domestic workers feel like not seen as workers and their work is not decent work."	"Most of domestic workers are bread winners and they support 5 to 6 family members."

<p>etc. There are a lot of insults emakishini from bosses, even from kids.”</p>			
<p>“We feel isolated from other workers,yet we are.”</p>	<p>“it make sad and useless everyday while am working very hard while am getting small money every month no increases. it is so difficult to work for only food and rent I can't even buy clothes, shoes even pay school fees very very difficult get paid today tomorrow no money its finished. I support my family back home my mother's sister plus my sister and cousin almost I borrowed money every month to cover all my expenses and not just money but matchonisa now days no one can't just borrow money even your boss nothing it's very hard with this small small money iish”</p>	<p>“To me its like killing ,because at first why did they select me (us) as domestic workers to be the ones who are supposedj to get the lowest wages ,which method did they used to. we are not having enough meals per day ,we don't have enough money to buy it and with that little money we get we buy poor quality food and that food is getting us sick ,and final we go to hospital to pay again the little we have ,back at work I my boss is deducting the money for those days I'm absent.</p>	<p>“It’s very painful to be earning a lower wage cause we all have responsibilities and it’s hard to try and stretch that little you earn. its actually disheartening but we hold on so as not to lose that little half bread. rentals,school fees and food. I support my parents,granny and my kids. Sometimes I get a call from my kids school at home that they need this and that mostly during the month then I have to go and borrow from a loan shark. Now it gets one into debts cause you have to pay the loan shark from that little you got.its just painful”</p>
<p>“I agree with all these comments, domestic and nanny are 2 different things but instead we getting peanuts for nanny and domestic, we risks our lives taking care of their homes, we are teachers, nurses, cleaners, domestic, aupair but they cant even think abt us all those services we earn nuts,they will tell you teach their kids,look after them wem they sick giving them medicine,do everything but wen come to mntjend we end gng to machonisa to get money fr transport food e.t.c,its rilly hurting this thing”</p>	<p>“Before they agree on this so called minimum wage there were suppose to sit down and draft a budget for food,transport,rents,sch fees,medical aid then they anounce it,they killing us seriously,we dnt talk abt cloths,we dnt know the doors of the shops but kwadunusa”</p>	<p>“it make me feel sad and angry and I feel like lm not wealth , and feel like l don't deserve more than what lm getting.It is so hard to manage with my wage to buy my on clothes, food ,medical ending up owing people and l have 6 family members that are relying on me. Sometimes l find my self into debt even if l try to ask for help from my boss she will say l should learn to budget”</p>	<p>“Earning small salary its very difficult it makes me feel so sad.the sad part is that you do all households with all your heart but at end of the day the boss they don't care. The sad part is im a single parents who has 2 kids I have to support them ther all in high school and my parent back at home iv to look after her rent,transport food its very expensive with the little I earn. In order for me I end up komashonisa bcz I cant afford</p>

			everything with the money I earn its so difficult. I have two sisters mother and 2 kids I have to support so yea its very difficult”
“We can't afford to pay school fees for higher studies, as a mother of 4 kids it's very hard to survive with this wages.”	“It make me sad to see that our government doesn't notice our hard work ,to give us same minimum like other working department. it's a difficult time when I'm paid month end but it's like I didn't get paid , because of my small wage I have get can't cover all my expenses. I have 7 family members who depend on my salary”	“I am so stressed because I can't even meet basic needs.Children are failing to go to school but iam a working mother. I have 4 kids of my own then extended family. iam trapped in debts & loans trying to make ends meet & I even fail to pay back”	“Too many debts..cant even buy brand new clothes for myself.Its very painfull..Im earning 2500 and I have 3 family members to take care of”
“its painful if our children can't go to school while we are working my schools fees is more than what I get in a month. I have 2 kinds my mother and father but I can't buy for for them I'm father is now old I can't but any pills for him when he is sick but I'm working its painfull. I can't sleep at night when I think of my debts cz I don't have a soliting but I'm working”	“Lower minimum wage does not work for us, we are also human we want to eat and cloth our kids how are we going to do that with lower wage that can't even take me to work for the whole month, now you have to credit money to push until monthend, when monthend comes now you pay Dept's you end up with nothing, so my point is we leaving in depth with this lower minum wage it does not work for us”	“it makes me feel bad or think that im a looser who can't even provide basic needs for my children.i can't even take them to better schools so that they get good education.”	“Our children will suffer like us they won't get better education which is so bad”
“It is feel so so bad,,, am a single parent no one help me to look after my family,,, am only earning net 2000,, and am working 24/7,, this money i can even meet my needs,,, i work hard for nothing,,, working 24/7,,, IZWI please help us out,,,”	“The difficult thing is when you have worked more than 15 yrs and not registered under UIF and can't claim your money.when they decide to hire a new person and you go empty handed and can't claim anywhere you loose everything.when their	“As we all know that most homes are without father's, mostly single mom's are carrying the burden of raising children on their own and of we get underpaid the burden becomes worse, we stress and end up being sick. Its not easy	“We are not regarded as people with responsibilities yet we work long hours under pressure, some of us without contracts of employment. We only manage to squeeze serious needs when buying food, we end up in

	<p>kids get to university they say you can only work two days coz the job is less.this is when you realise you worst your time for nothing.after all you still have nothing of your own .no home ,no money you left to die like a dog.it's really painful”</p>	<p>sending kids to school and making sure that they are fed and dressed, plus we must budget transport on the same salary. We end up going to machonisa which makes our lives difficult because when we get paid that means we have to settle the debt. Life leaves us with no choice when we are paid because seeing your kids lack bread in the house is the hardest thing that any parent can go through, that's why we end up going to borrow, so yes we end up in debt because we get we can not budge on a small salary”</p>	<p>debt trying to balance our needs”</p>
<p>“I'm a mother of four children,I struggle to buy them a lunch box, even a school uniform, stationery, now I'm out patient when I go to hospital I have to pay now my debts at hospital. I think we should fight for one minimum wage for all.”</p>	<p>“I have 5 kids going to school and now im worried about my salary. I'm just getting 2700 / month and some children are going to school. And my mother is looking after my children. My children at school they need money for school fees I don't manage to do all these things; where I stay I pay rent, so with my salary I can't manage my life. I have my sisters' daughter and sons who passed away, I am looking after orphans, so that's too hard for me to make them go to school. They are children who are just staying at home because I don't manage to support my family. That's so serious for me to live in this kind of job, but</p>	<p>“Its really even sad to think about this minimum wage. First of all, its your transport coming to work. Secondly, its your kids. Some kids must go to creche, some go to school. Third its your rent. Your rent is half your pay. Fourth is your food, the food you eat with your kids. And then, these medication we know now and then people get sick. I don't want even to mention entertainment, the things that makes you happy, that makes your kids happy. We don't attend those things. So With this minimum wage, really, they must think again. That's my opinion. They must think again. Because</p>	

	<p>without a choice. I'm still living here for just to eat, not to do anything else. That's hard for me I don't know what to do know. I'm crazy in my head. I don't know what to do. Food, school fees, clothing, that costs I don't manage to do them. I have to take some peoples money for covering here and there, but at the end of the month I'm crazy in my mind, I don't know what to do. That's so bad for me. That's painful. I don't know what to do but I'm just doing that for me to have somewhere to stay, paying only my rent, not managing to do other things."</p>	<p>to them their cell phone numbers, their cell phone, I don't think monthly they use this amount they are paying [to us] per month on their cell phone. They use more than that. You have a phone also. You have to talk to people, there are emergency things. I don't know how they think we do survive. I don't know."</p>	
<p>"In my opinion, I think we as DWs we are experiencing hard times, whereby we leave early in the morning, maybe 05:30 you leave your house. You catch transport, maybe twice, let's say, I've like been working at Northcliff, I'll leave at 05:20, in my house, go to the taxi rank at Randburg. At Randburg you take another taxi to Cresta, then another taxi to Northcliff. It was too much for me. I ended up quitting my job. With that R15 per hour, it's not enough for us, because what we are doing is too much for us as DWs, if I can say like, to be a president, you're going through your domestic worker. It is I, a domestic worker, who makes that president to be smart, I'm looking after his house and his kids, and taking care of everything, and being a security in his home. It is I the DW, who is taking care of his home, who is making him smart, who is making his kids smart, who is taking care of those kids. Everyone in the office, I'm the one who is coming first, but I'm not recognised as a DW, because I'm earning less, which I spend for transport. When I'm supposed to leave the house in the morning, I have to count how much I'm going to pay for my transport for that day. So for that R15 per hour, it's not enough for the job that I'm doing. I'm doing more, through hygiene, we are the ones, domestic workers. Because without us there is nothing. We are ones keeping the bosses' place clean, their kids smart, their food we cooked. We clean everything. Some of our bosses they don't even know how to clean their homes, or how to bath their babies, or how to wash their laundry. It's I, domestic worker, who is going to do that. We clean their homes, we do the ironing, the laundry, we bath the babies, we take care of them, we give them medicine when they are sick, we are looking after them. After school, we have to go for walk, take care of those kids, you take them for study, and after that you have to cook, for R15 per hour. In those 9 hours I'm working, I even count how much per day I have to pay for transport back, and I feel so pity that I've worked for transport, maybe, and it's loss of bread for my kids. But I have nothing to do with that, because I have to earn that, and put on the table for my kids. I don't talk for my own family. It's hard for me to support my kids and my family, for I have got two kids. I've got 3 orphans. I'm from Zimbabwe. I'm earning less, R3000. I'm paying rent, which is R900 pm, and my transport also, and I have to feed myself, and I have to get clothing for my kids and I also. When it comes to December time, it is also hard for me as a domestic worker, because I have to work hard, to keep the bosses house clean till I come back, and I count the work that I'll get when I come home. Since December till I come back, no one will be cleaning that house till I come back, it will be my duty also. And on my back</p>			

I'll be thinking of my kids, they will need school fees and I didn't even leave a cent from home, just to travel, to pay forward. Maybe when I get to Johannesburg then I'll work on Monday, then I'll pay you. You have to look for someone whom you know, who is going to talk to the taxi driver to take you to home first and then you pay later. So that month end you have to pay back. So every time, even from friends, can you borrow me R20, can you borrow me R50, and when you pay it back it's double. Because even that person is struggling like you also. They are also trying to feed their kids, through us. Every month you have to pay the mashonisa, and every month, you have to say, can you borrow me again money for transport, R500 or R1000 for transport, and then you have pay back that money at the end of the month and you are left with nothing. Your kids are hungry. You need to go back to work. We are experiencing difficulties on the back of ourselves as DWs, can the government recognise how hard we work? We are the housekeepers and doctors, and if there were not DWs, there would be no doctors, and no presidents. We are doing a big job."

Farm Workers, on being asked what being excluded from the National Minimum Wage means to them.

<p>"It makes me feel like I am worth less within the economy in South Africa, while the agricultural sector is providing a lot to the economy. But I know the reason for the low wage is the history of the agricultural sector with all its oppression. And that why we don't have land."</p>	<p>"The biggest part is buying food. Biggest part of our income is for food. For the other things we need, we sometimes have to take it on credit sometimes by the farmer himself, that gives him more control. There was a shop on the farm. But when we joined the union, the farmer stopped the shop. Now we have to get credit on worse conditions somewhere else."</p>	<p>"We are 4, my girlfriend, me and our two children. My girlfriend does not have a wage work. The farmer does not want to employ woman workers. Our problem is also: even if the wage rises, inflation rises quicker."</p>	<p>"We even have to take food on credit sometimes. We take credit from another person in town. No matter what amount of interest, we have to take it."</p>
<p>"As a mother and wife I can't talk about a national minimum wage. We work for less hours and then the farmer also deduct money for rent and electricity. We already pay R200 for 70 units. Food prices is always on the increase, so tell me what use is R18 per hour for me and my family if it's just taken away from us again."</p>	<p>"We a big family in the house and every week I worry about what to put on the table, because there is nothing. The R18 per hour did not improve my home. I still go hungry. Farmers deduct money from my salary and in the end I'm left with R2000 per month. I have to make debts for food. I have little to spend on food and in the end I go back to the money lenders."</p>	<p>"It is shocking me that this decision was made, that we as farm workers are seen as a class to earn less then others. It puts us in a difficult situation, we have our family members that we have to take care of. When you buy electricity, you are not asked which class of workers we are. We all have to pay the same"</p>	<p>"It is even worse for us farm workers. We have to pay a rental on our farm, the farmer is the one who sells electricity, we have to pay for our transport to go to work. By the time the wages reaches us, all the things are deducted. We have to pay extra to the farmer to keep our livestock on the farm. IN addition to that we have to cover transport costs for our children to go to schooAlso</p>

	The farmers is still winning, because in the end he just get his money back from all the deductions. We left with nothing, but work like slaves to fill his pockets. We want a living wage not a slave wage”		medical costs are very high. The most difficult thing with all these costs is: I would want my child to a better school, but because of all these costs ”
“In our house there are 13 people: me, my husband, grandfather, grandmother, uncle, aunt, children. I am the only one who gets a wage. Others only receive the child support grant from the state for 5 children. I earn 2200 Rand per month after the deductions.”	“We have to buy our food on credit in the shop that is owned by the farmer. This costs us another 1000 Rand . So we end up with 1200 Rand. We use up the 1200 Rand for other groceries outside the farm. We do not have any money left for other costs, such like shoes for the children, trips at school. All this forces us to take a loan. In December we have to take a loan to be able to celebrate Christmas. Then it takes us the whole following year to pay back.”	“As a mother and wife I can't talk about a national minimum wage. We work for less hours and then the farmer also deduct money for rent and electricity. We already pay R200 for 70 units. Food prices is always on the increase, so tell me what use is R18 per hour for me and my family if it's just taken away from us again.”	“We a big family in the house and every week I worry about what to put on the table, because there is nothing. The R18 per hour did not improve my home. I still go hungry. Farmers deduct money from my salary and in the end I'm left with R2000 per month. I have to make debts for food. I have little to spend on food and in the end I go back to the money lenders. The farmers is still winning, because in the end he just get his money back from all the deductions. We left with nothing, but work like slaves to fill his pockets. We want a living wage not a slave wage”

Expanded Public Works Programme workers, on being asked what being excluded from the National Minimum Wage means to them.

“It is an insult to be payed such an wage or shall i say a stipend , although we work hard long hours ,sleepless nights . Some times we wish the government should interfere .”	“We are in debt deeply as we speak because we want to make a better life for our families we cant just sit while our families suffer”	“It feel so bad and demoralizing at the Sam tym”	“I feel so bad cz we work hard for a pinats n even if we get injured they did not take care of us we need to take ourselves to doctor.we as fire fighter we r the ones who make money in the company bt we r the one who pinats.”
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<p>“Every fire fighter borrow money for basic needs everytym and go to the loan sharks for borrowing money and we are all in big debts tht we can't get our self out of them and other have lost they furniture and other goods to the loan sharks because we can pay them.”</p>	<p>“due to the low amount I get i find it very difficult to support myself nd my fam”</p>	<p>“we always made a loan cz imali esiyifumanayo ayizoneli ineed zetu.so sipela sisiba namatyala esingakwazi ukuwabatala cz asiboleki kwindawo enye.”</p>	<p>“We fill very bad about this matter of earning lower wagers and this thing also created anger amoung our self and we are just going to work simply because the is no where we can find job and we are wrking very hard for other ppl to get salaries and we only get wages.”</p>
<p>“this money is not enough to cover all my family members that is why I ended up in to debts”</p>	<p>“it is unfair,because we are working in risky and hazardous conditions”</p>	<p>“we feel very bad and small coz we do the same work but defer in wages”</p>	<p>“the money is lower than my expenses and the vat increase but not concerned in our wages”</p>
<p>“unhappy because we working under hazardous conditions.”</p>	<p>“Make me sooo crazy because we are doing the same job but the money are not the same ..worse our supervisor getting 50 pr perday 400 us per hr 11.22 pr day 93 the supervisor ddnt do nothing only caring their bags nd gave us the registers to signed thats all our coleags passed away under this situation also we demand our 40rnd as frm our diffrent years up until nw they promise us to pay us on june until nw”</p>	<p>“even nw im under pressure ihave been lending money fr mi son taxi fare to attend the classes at the collage nw im deep down to the mud he ddnt get the busary nw”</p>	<p>“We as [sanitation] workers as we are also doing same job as workers of Ekurhuleni ,we can appreciate at least R8500 per month as a living wage”</p>
<p>“What is this that makes me different from other workers,I also feel undermined by my colleagues and the municipality by being under paid”</p>	<p>“I feel depressed and discouraged everyday as much as I love my job but it is not fair to be paid money that only lasts me for 30 minutes on groceries and paying money to people I've landed money from which I still fall short on paying them. I feel very useless and taken advantage of because of our desperate needs</p>	<p>“Defenately doesn't seat well with as if they can afford to hire others permanently what's stopping them from hiring all of us, second permanent employment would mean a better wages for thus resulting in better leaving”</p>	

	<p>of supporting our families. I do not know the feeling of being permanent but I am sure my life will change and a permanent person is able to afford few things.”</p>		
<p>“I don’t know why they call it National Minimum Wage, as it excludes other people – the Domestic workers, the farmworkers and the EPWP workers. If you can look at the people who were excluded from this R20, they are very important people in our community. It’s just that they downgrade them and take them for granted. So we are calling on our government to say discrimination is a sickness. They are discriminating [against] the people who are raising this country. The domestic workers are people who are very very important in our country. They produce the presidents, they produce the revolutionaries. They produce teachers, even the bosses that are treating us badly. [...] The farmworkers are treated very very badly in their workplace – they deserve to be on that R20 rate. We know that R20 is almost an insult to all of us, as workers. So we are supporting the campaign of one minimum wage. So we say, Let’s support this cause, cause at the end of the day it is going to make us economically well.”</p>			