

To: **The Directorate: National Minimum Wage Policy and BCEA Administration**
Department of Employment and Labour

Per e-mail: Unathi.Ramabulana@labour.gov.za

19 December 2020

Dear Mesdames / Sirs

WRITTEN SUBMISSIONS: NATIONAL MINIMUM WAGE INVESTIGATION

A INTRODUCTION

1. The attached representations are submitted on behalf of our client, the One Wage Campaign and other organisations supporting minimum wage parity, in response to the Invitation for Written Representations to the National Minimum Wage Commission's ("the Commission") Investigation Report, published in Government Gazette No. 43920 on 20 November 2020.

The One Wage Campaign

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. The attached submissions specifically address that objective.

3. The Campaign currently has the following member organisations, and is constantly growing: African Vulnerable Workers Organisation; Black Womxn Caucus; Citrusdal Workers Forum; Dahlak Exchange; International Labour Research and Information Group; Izwi Domestic Workers Alliance; Kouga Farmworkers Re-Union; Migrant Workers Union of South Africa; Pietermaritzburg Economic Justice and Dignity Group; Rural Legal Trust; Sundays River Valley Farmworkers Forum; Support Centre for Land Change; West Coast Food Sovereignty and Solidarity Forum.
4. The following organisations which are not members of the One Wage Campaign are also endorsing this demand for minimum wage parity and the supporting submission: General Industries Workers Union of South Africa; Hlanganisa Institute of Development in Southern Africa; Socio-Economic Rights Initiative-SA; Solidarity Center; South African Domestic and Allied Service Workers Union; United Domestic Workers of South Africa; and University of the Western Cape Social Law Project.

Background

5. On 20 November 2019, the One Wage Campaign submitted to the Commission written representations, accompanied by an economic report, calling for the abolition of the tiered NMW system and for NMW parity across the board. Those representations were accompanied by a request to make oral submissions and to engage meaningfully with the Commission as it embarked on its review contemplated by section 6 of the National Minimum Wage Act (“the NMW Act”). The Commission eventually advised that the One Wage Campaign would be afforded an opportunity to do so in due course, together with the public at large. It is apparent that the Commission has not had regard to the original written representations submitted on behalf of the One Wage Campaign. Moreover, since the original representations were submitted, the country has faced the challenges of the COVID-19 pandemic, which has had a stark impact on the sectors represented by the One Wage Campaign. In the result, the One Wage Campaign considered it necessary to prepare a supplementary submission to deal specifically with the impact of the COVID-19 pandemic on the call for NMW parity.

6. We accordingly attach the following consolidated written representations on behalf of the One Wage Campaign and other civil society organisations:
 - 6.1 Submissions Regarding National Minimum Wage Parity for Domestic Workers, Farm Workers and Expanded Public Works Program Workers (“EPWP”) (originally submitted to the Commission on 20 November 2019);
 - 6.2 Report on National Minimum Wage Parity, dated October 2019, by G. Isaacs and P. Choga of the Institute for Economic Justice (which the IEJ is satisfied addresses the submissions and recommendations in the Commission’s Investigation Report without the need for a supplementary report);
 - 6.3 Supplementary Submissions Regarding National Minimum Wage Parity on the impact of COVID-19; and
 - 6.4 The results of a survey conducted by Izwi among domestic workers in April 2020.

B SUMMARY AND RECOMMENDATIONS

7. While the Commission’s recognition for the ideal of a NMW for all employees is laudable, the One Wage Campaign takes issue with the delayed equalisation for domestic workers in 2022 only, for the reasons set out more fully in the attached submissions, and summarised below.

The tiering system is unconstitutional

8. The introduction of a tiered phasing in of NMW for farm workers and domestic workers by the Panel of Experts and agreed to by the social partners at Nedlac in February 2017 is in and of itself highly problematic. The consultation process that led to this arrangement failed to include affected sectors; and the rationale for the approach remains difficult to discern from publicly available records. In either event, despite these serious flaws, there is broad agreement even amongst those who were consulted that the tiered system should not endure for more than two years. No compelling justification exists for NMW disparity, and certainly not beyond 2020.
9. The tiered system clearly discriminates against domestic workers, farm workers and EPWP workers directly on the grounds of sector, and indirectly on grounds of race, gender and class. The cumulative impact of the discrimination on these intersecting grounds is material. Our

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 colonial and apartheid history of these sectors.

10. The tiered system of NMW's endorsed in the NMW Act breaches constitutional rights and is unfair, unjustified and unreasonable. The tiered system will not pass constitutional muster, not least if not phased out by the end of 2020.
11. In this regard, we draw to the Commission's attention a recent significant decision from the Constitutional Court being the decision of the Constitutional Court in *Mahlangu and Another v Minister of Labour and Others* (CCT306/19) [2020] ZACC 24 (19 November 2020) which was delivered a mere two days before the publication of the Commission's report. In that case, the Court upheld as unconstitutional the exclusion of domestic workers from the general protections of the Compensation for Occupational Injuries and Diseases Act 130 of 1990.
12. We attach hereto for ease of reference the judgment and draw the Commission's specific attention to paragraphs 95 to 120 in which the Court traverses the treatment of domestic workers under apartheid, a history marked by precarity, marginalisation, indignity and discrimination suffered by domestic workers, to ultimately conclude that the limitation of the rights of these workers is egregious and far-reaching. The Court said that "[117] *Unquestionably, the right to equal protection of the law, the right not to be discriminated against unfairly and the right to dignity are of singular importance in our constitutionalism*" and that the intersectional discrimination could not be objectively justified by the state on any criteria.
13. The *Mahlangu* judgment represents a significant precedent, one which the Commission is bound to consider in its deliberations and ultimate recommendations to the Minister. In an analogous context, it confirms what is stated in the main submissions made on behalf of the One Wage Campaign, that there is simply no reasonable and justifiable motivation for continuing with wage disparity beyond 2020, and that the tiering system will not be saved by the limitation provision contemplated in section 36 of the Constitution. We reiterate that there is an imminent duty on the Commission to eliminate NMW disparity and to achieve wage equality for all workers by the end of 2020. This is a constitutional imperative.

Not a living wage

14. It must be emphasised that while NMW parity is an important step in the right direction, R20,76 an hour is recognised as still not constituting a living wage, and is inadequate for workers and their families to attain an acceptable standard of living. A NMW of R20,76 translates into approximately R3 600 per month. The Commission has in its Investigation Report itself noted that the food poverty line is approximately R2 050 for an average sized household of three to four members; with the lower poverty line of R3 000 per month; and the upper-bound poverty line at R4 438.
15. An increase for domestic workers in 2021 to only R18,68 per hour as currently recommended by the Commission yields a salary of approximately R3 200 per month, which is only marginally above the lower poverty line of R3 000 per month. The vast majority of monthly income is spent on food directly, leaving very little for other essential costs such as rent, transport, school fees, healthcare, and the like.
16. With high levels of casualization and part-time work in these sectors, many workers will not even earn this. This means that farmworkers, domestic workers and EPWP workers are earning sub-minimum wages under a system of legislated tiered poverty.
17. The endurance of such a system cannot survive scrutiny under the Constitution. As indicated, the tiering system breaches the rights to equality, dignity and fair labour practices and perpetuates the existence of sub-classes, members of whom have historically been discriminated against and whose work is treated as less worthy than that of others, and who have historically earned lower wages than other sectors.

Mitigation of impact of increase

18. As noted by the Commission in its report, employers who are unable to pay the proposed adjustments are urged to utilise the exemption procedures. We submit that this applies equally to employers who are unable to pay the full NMW for domestic workers in 2021. The NMW Act

indeed permits employers to apply for an exemption from the full rate in the case of true unaffordability and that there is no justifiable reason for not increasing the NMW of domestic workers to the full rate in 2021 as well.

19. Furthermore, employers who are genuinely financially stretched have the option of reducing the total cost of wages by decreasing the number of hours worked without resorting to job losses. As noted in the attached economic report commissioned by the One Wage Campaign, 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 work-life balance.

Impact of Covid-19

20. Based on current national and international research conducted in the height of the pandemic, the supplementary submissions provide an overview of the intersection between the COVID-19 crisis and the existing gender gap in employment, social protection and gender-based violence for domestic and farm workers.

21. It is submitted that the effects of the COVID-19 pandemic on domestic workers and farmworkers are not only devastating in themselves but add urgency to the need for the Commission to remedy the current NMW disparity without further delay, and certainly not beyond 2020.

22. The value that farm workers and domestic workers have contributed to our society through providing essential services and working in risky environments was highlighted during the pandemic. The profound unfairness and indignity of the second tier status afforded to farm workers and domestic workers due to the tiered NMW system was similarly starkly manifested. NMW parity is the starting point to not only help cushion the economic blow sustained by these workers but to grant them the dignity of acknowledging their value in society.

23. The tiered system is reflective of the relative informality of these sectors within our economy and system of legal regulations; and the pandemic also highlighted the harsh consequences that flow from this, such as non-registration for unemployment insurance and protection against occupational disasters and hazards. The creation of equality through the NMW is a critical step in

engendering equality in treatment and before the law generally, which will in turn remove the damaging consequences of informality.

24. The disproportionate impact of the pandemic on women, especially women of colour, has set South Africa back years, if not decades, in realising gender equality. Ongoing wage disparity – even until 2022 as currently proposed by the Commission - will continue to entrench this now heightened inequality. The Commission has the power and is indeed mandated, as a simple starting point, to address the imbalance by equalising NMW's for all workers. Wage parity is a paramount step in the right direction and will have real, meaningful and material consequences that go a long way toward finally ending the indignity of this shameful feature of our colonial legacy, and to building a more equal, inclusive and resilient society rather than simply repeating past policies.

C CONCLUSION

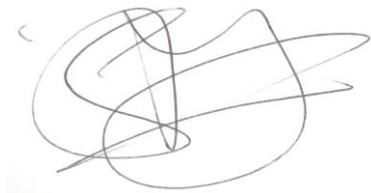
25. Establishing a uniform NMW is a key means of ensuring workers' rights to decent work, a decent life and dignity. It is the state's responsibility to protect vulnerable workers and not to perpetuate a tiered system of minimum wages that sends the message to these vulnerable sectors that they are still somehow lesser than others when they are in reality the most deserving of protection. It decimates their rights to equality and to dignity and the Commission cannot permit this to endure. It has been bestowed with specific powers to change it and we call upon the Commission to do so urgently.

26. The One Wage Campaign and other civil society organisations therefore appeal to the Commission to make recommendations necessary to remove the tiered system, to ensure that all workers receive the full NMW in 2021, and to give effect to the intended purpose of the NMW Act, which is the eradication of poverty and inequality. NMW parity for all in 2021 represents a key 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.

27. We request that you confirm receipt of these submissions and that they will be duly considered prior to the finalization of the Commission's recommendations to the Minister.

Yours faithfully

LAWYERS FOR HUMAN RIGHTS

A handwritten signature in black ink, appearing to be 'S BORNMAN', written over a faint circular stamp or watermark.

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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 Borhat, 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.

Contents

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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>	
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"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

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>			

REPORT
NATIONAL MINIMUM WAGE PARITY

OCTOBER 2019

DR GILAD ISAACS
PAMELA CHOGA

INSTITUTE FOR ECONOMIC JUSTICE

BACKGROUND AND INTRODUCTION

1. Lawyers for Human Rights, representing the One Wage Campaign (“OWC”), requested Dr Gilad Isaacs to prepare a report in respect of national minimum wage parity for domestic workers, farm workers and expanded public works programme (“EPWP”) workers (as defined in the NMW Act). In the opinion of the authors, increases in the legislated national minimum wage (“NMW”), as per Schedule 1 of the National Minimum Wage Act (“NMW Act”), of domestic workers, farm workers, and EPWP workers, should be effected to achieve parity with the overall NMW level.
2. 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”).
3. 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.
4. The NMW-RI is a research project within the University of the Witwatersrand. The NMW-RI was instrumental in the successful implementation of a NMW in South Africa. The NMW-RI provided extensive academic research in support of a carefully-crafted NMW. This was done through six research reports, seven policy briefs and three submissions to parliament. The NMW-RI also identified critical weaknesses in the legislative framework governing labour standards, including improvements that need to be made to the NMW and ways that the NMW and BCEA Acts can be leveraged to improve the wages and conditions of workers. This research was drawn upon by constituencies within the National Economic Development and Labour Council (“NEDLAC”) NMW negotiations. The Deputy President’s Expert Panel, amongst others, made findings very similar to the key arguments proposed by the NMW-RI.
5. The IEJ is an economic policy think tank that builds off and institutionalises work undertaken by the NMW-RI. The IEJ’s core objective is to provide policy makers and progressive social forces in Africa with access to rigorous economic analysis, and well thought through policy options, as a basis for advancing systemic change.
6. The opinion expressed here is that there is no compelling evidence in favour of maintaining the wages of domestic workers, farm workers and EPWP workers at a lower level than the overall NMW. Given the current position of these workers there are compelling reasons to ensure that their wages and working conditions continually improve.

THE PURPOSE OF THE NMW

7. Minimum wages are a common labour-market policy tool with over 90% of International Labour Organization (ILO) member states having some form of minimum wage system.
8. Minimum wages, according to the ILO's resolution No. 135, are "one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families". Further, the "fundamental purpose of minimum wage fixing should be to give wage earners necessary social protection".¹ More recently the ILO has stressed the importance of "adequate protection in accordance with the Decent Work Agenda" and noted that for a minimum wage to be "meaningful" it must "be set at a level that covers the needs of workers and their families, while taking into account economic factors".² Minimum wages are also seen as a means through which to reduce inequality and encourage labour productivity.
9. The NMW Act notes the need to "eradicate poverty and inequality". Such emphasis on the NMW as a tool to tackle poverty and inequality was present throughout the negotiation and drafting processes. This was articulated as early as the Ekurhuleni Declaration³ made on 4 November 2014.
10. In Section 7, the NMW Act further requires the Commission to "promote" the "alleviation of poverty" and the "reduction of wage differentials and inequality" when reviewing the NMW level and recommending adjustments. In the same section, the NMW Act also requires the Commission to "consider" a range of other economic factors.
11. The inclusion of reducing inequality as an explicit purpose of the NMW is relatively unusual internationally – with most focus internationally tending to be on fair wages and poverty alleviation – and speaks to the obscene levels of wage inequality in South Africa. Wage inequality is the biggest driver of income inequality in South Africa.⁴
12. Any adjustments to the level of the NMW must therefore – in our view, the view of the NMW Act, and the international consensus – be made with poverty and inequality at the forefront. Various economic factors must be considered, but the state has numerous levers at its disposal to ensure moderate inflation, economic growth, employment creation, etc. This is not the stated purpose of the NMW. In this context, these other considerations are most relevant to the extent to which they would impact on poverty and inequality. For example, if a NMW increase caused excessive inflation or eroded the real value of wages, including those at the NMW level, to such

¹ ILO, 'Minimum Wage Systems', International Labour Conference, 103rd Session, 2014 (International Labour Organisation, 2014).

² ILO, 'Resolution Concerning the Recurrent Discussion on Social Protection (Labour Protection)' (International Labour Office, 2015).

³ NEDLAC, 'Ekurhuleni Declaration' (National Economic Development and Labour Council, 4 November 2014).

⁴ Murray Leibbrandt, Arden Finn, and Ingrid Woolard, 'Describing and Decomposing Post-Apartheid Income Inequality in South Africa', *Development Southern Africa* 29, no. 1 (2012): 19–34.

an extent that poverty and inequality worsened, then this would obviously be counterproductive to achieving the stated objectives. This paradigmatic approach, adopted here, is, ultimately, the same order of priorities that informed the setting of the NMW in the first place.

TIERING: LOCAL AND INTERNATIONAL CONTEXT

13. The farm, domestic, and EPWP sectors were, prior to the introduction of the NMW, ultra-low wage sectors with very low statutory minimum wages.⁵ While the latest wage data is not publicly available, these workers presumably – including because of the lower NMW level – continue to earn very low wages.
14. The initial “tiering” (an overall level with lower associated tiers) of the NMW, for domestic and farm workers, was originally proposed by Organised Labour (“Labour”) within the NEDLAC process and by the NMW-RI. The Deputy Presidents’ Expert Advisory Panel (the “Expert Panel”) adopted this approach. The panel proposed the lower level for farm workers based on “the vulnerability of this sector to disemployment effects, and the evidence that previous increases in the minimum wage level have resulted in job losses”.⁶ The Expert Panel did not give a reason for the domestic work sector tier but presumably it was because of the large difference between the existing level of the sectoral determination and the level of the overall NMW and caution around potential adverse effects. Labour proposed a tiering system because it was concerned that Organised Business (“Business”) and Government would use these ultra-low wage sectors as an excuse to set a lower level for the overall NMW, thereby “dragging down” the overall level.
15. The argument for low wages under the EPWP was that it is intended to close the social security gap, rather than offer proper employment, as most of the targeted demographic do not qualify for social welfare.⁷ When the programme began, labour was originally opposed to such low wage levels but compromised as EPWP work opportunities were supposed to be supplemented by a training component that would give workers a better chance to transition to a permanent job.⁸ This has not been the case.
16. A unitary national minimum wage is the ILO’s preferred system. A unitary national minimum wage covers all workers, is easier to enforce, and does

⁵ It is acknowledged that EPWP is not really a “sector”. It is also acknowledged that prior to the NMW different mechanisms applied to the setting of wages for farm and domestic workers, and EPWP workers.

⁶ Expert Panel, ‘A National Minimum Wage for South Africa’, Recommendations on policy and implementation: National Minimum Wage Panel report to the Deputy President, 2016, 63.

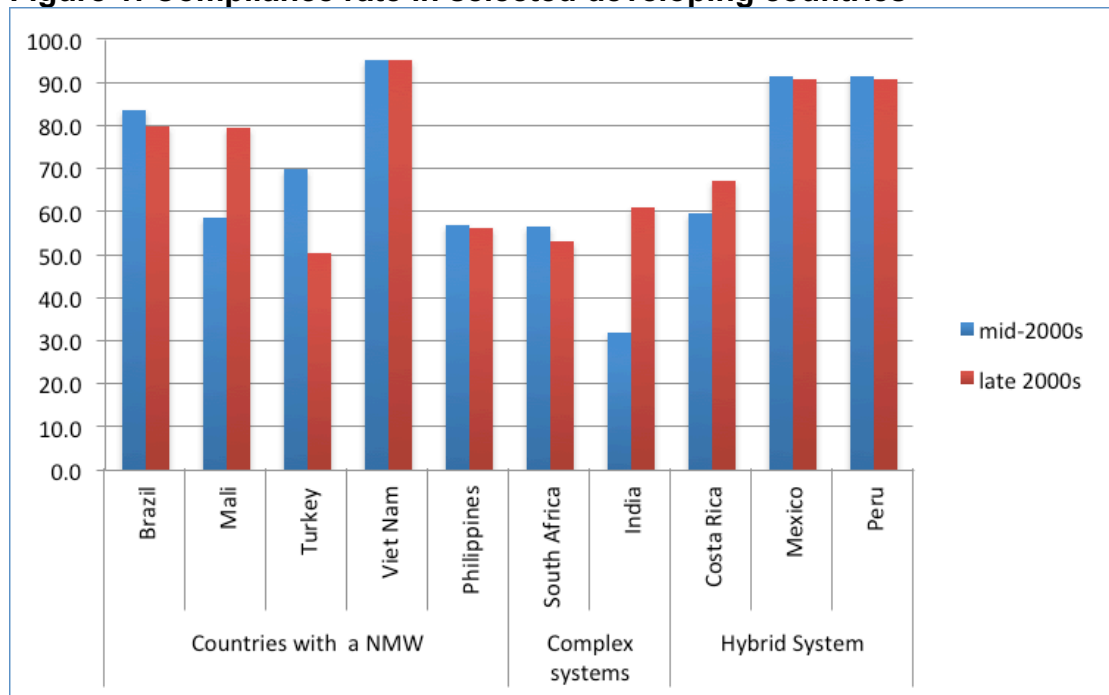
⁷ Mayibongwe Maqhina, ‘Debate over Minimum Wage for EPWP Workers | IOL Business Report’, *Business Report*, 12 February 2017, Online edition, <https://www.iol.co.za/business-report/debate-over-minimum-wage-for-epwp-workers-7723203>.

⁸ Melanie Samson, ‘When Public Works Programmes Create “Second Economy” Conditions: Part Two: Policy and Political Choices’, accessed 17 October 2019, https://www.academia.edu/1353730/When_public_works_programmes_createsecond_economyconditions_part_two_policy_and_political_choices.

not set lower minima for sectors with high proportions of vulnerable workers (as has been shown to occur under differentiated systems). Further, a national minimum wage 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. Figure 1, shows levels of compliance comparing NMW systems, complex sectorally or geographically differentiated systems, and hybrid systems.

17. In Figure 1, the rate of compliance is relatively high among countries with simple and more broadly applicable minimum wages, compared to those with complex sectoral wage systems. Vietnam for instance has a compliance rate of approximately 95% between the two periods (mid-2000s and late 2000s) whilst low levels of compliance were observed in South Africa and India, countries with complex minimum wage systems during the same period. The compliance rate is also relatively high amongst countries with hybrid systems.

Figure 1: Compliance rate in selected developing countries



Source: Rani et al. (2013)

18. Internationally, domestic and farm sectors are sometimes either excluded from the NMW or have a lower wage level set. This is however, relatively rare. As discussed below this pertains to only approximately one eighth of minimum wage regimes. The ILO strongly advances phasing these tiers out as soon as possible.

19. Rani et al. at the ILO argue that excluding high numbers of low-paid workers and other vulnerable sectors has proven to be ineffective at reducing poverty and limiting inequality.⁹

Domestic workers

20. Approximately 12.5% of countries with NMW systems exclude domestic workers. For example, domestic workers are excluded in Japan, Korea, Egypt, Nepal, China (HK), Thailand, and Lebanon.¹⁰

21. Other countries, such as the United Kingdom, exclude only those helpers that live with employers and receive accommodation and food allowances and participate in family activities – such as au pairs. According to the UK Low Pay Commission Report (2015) such an arrangement is not beneficial to stay-in au pairs, and these workers are exploited and substantially underpaid. The Report recommended the UK Government review its exception policy for people who work and live as part of the family.¹¹

22. In a small minority of cases, domestic workers' wages are set at a lower level. In Argentina, for example, five different determinations for domestic workers have been set depending on live-in/live-out condition and occupation (maid, butler, cook, etc.).¹²

23. The international norms it that domestic workers are not excluded nor set at a lower level.

Farm workers

24. With respect to the agricultural sector, again only one eighth of countries have excluded the sector, for example, in Argentina, Nigeria, Thailand, Pakistan, Bolivia, Syria, and Lebanon; particular types of farm workers are excluded in the USA, Canada, and Yemen; and a tiered-system has been created in Burkina Faso, Togo, Chad, and Morocco.¹³

25. The international norms it that farm workers are not excluded nor set at a lower level.

Public works schemes

⁹ Uma Rani, Patrick Belser, and Setareh Ranjbar, 'Role of Minimum Wages in Rebalancing the Economy', *World of Work Report* 2013, no. 1 (1 May 2013): 45–74, <https://doi.org/10.1002/wow3.37>.

¹⁰ Elena Konopelko, 'Exclusions and Exemptions from a National Minimum Wage System', Policy Brief, National Minimum Wage Research Initiative (University of the Witwatersrand, April 2016).

¹¹ Konopelko.

¹² Konopelko.

¹³ Konopelko.

26. It is exceptionally rare to exclude workers in public employment schemes. The only examples found in the literature are workers in public employment schemes in Trinidad and Tobago and the UK.¹⁴

Avoid tiering

27. Salaries in excluded sectors have been shown to grow significantly slower than salaries in national-minimum-wage-covered sectors (based on examples of Pakistan, Thailand, Vietnam, and Philippines). As such income differences and sectoral wage gaps grow, and the national minimum wage fails as a poverty reduction policy.¹⁵

28. Tiering or excluding of these sectors is, therefore, not recommended by the ILO as it creates a fragmented system that is harder to enforce and discriminates against these low-wage workers which are disproportionately women.

29. The global trend is to have fewer and fewer exclusions and exemptions. Where tiering has occurred it is recommended that it is phased out as early as possible. For instance, in 2008 the Chilean government announced the phasing-out of differentiated treatment for domestic workers over three years, by gradually increasing the minimum wage for domestic workers from 75% of the national minimum wage to 100%. Since 2011, Chile has successfully equalised the general and domestic workers' national minimum wage. Similarly, Portugal, Guatemala, Bolivia, and Paraguay have all phased out their differentiated systems in recent years.¹⁶

LEGISLATED SECTORAL MINIMUM WAGE TRENDS

30. The real value of farm work and domestic work legislated minimum wages, via sectoral determinations ("SDs") is given in Figure 2.¹⁷

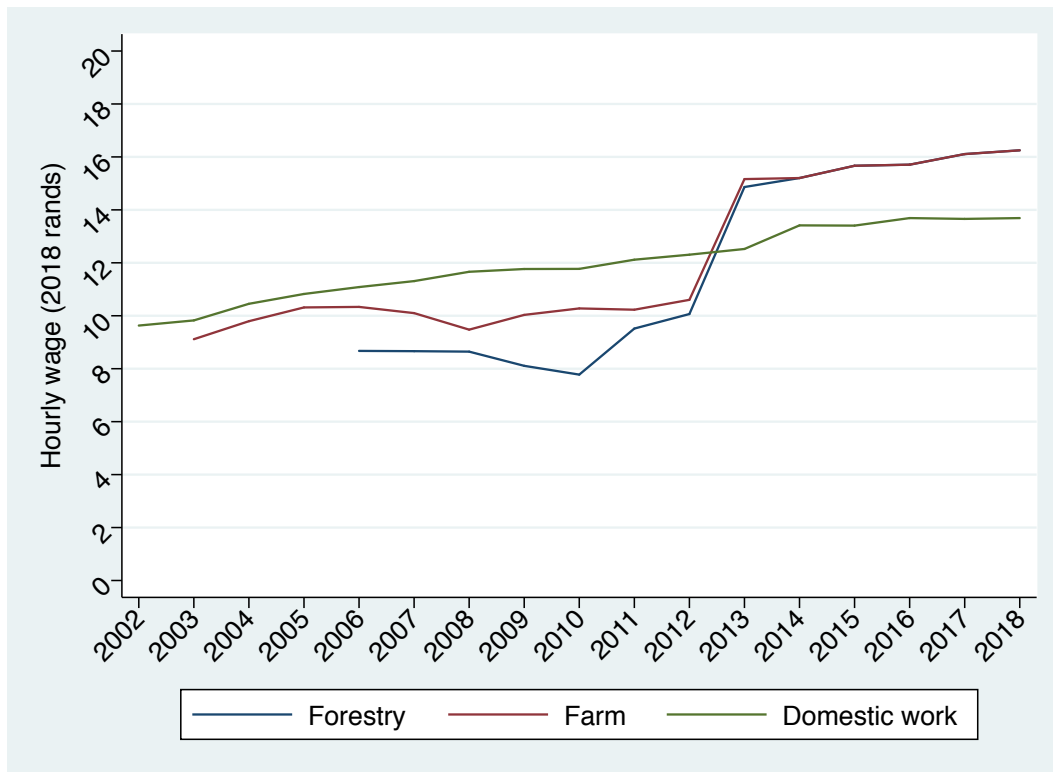
¹⁴ Konopelko.

¹⁵ Konopelko.

¹⁶ Konopelko.

¹⁷ Farm workers in the NMW Act also include forestry workers. Forestry workers were previously subject to their own SD. The stipulated minimum wage level of the farm and forestry workers were different until 2014.

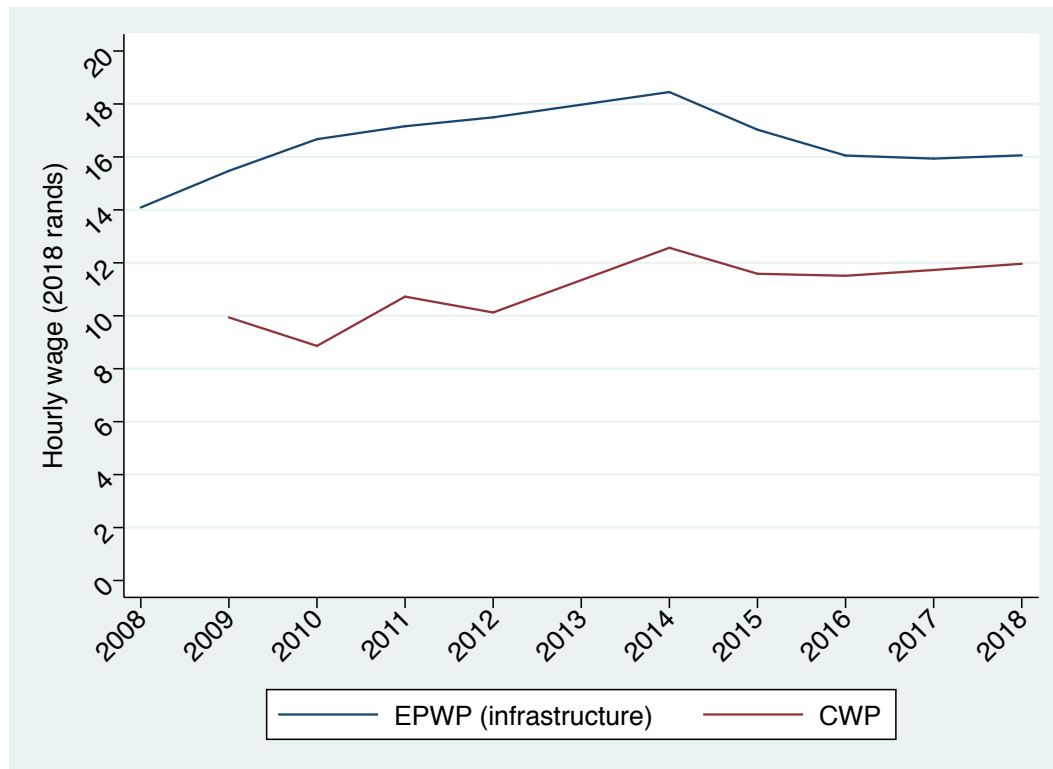
Figure 2 Real value of hourly minimum wage (2002 – 2018) (2018 rands)



Source: various sectoral determinations, own calculations

31. The real value of the average daily wage for two EPWP categories is given in Figure 3. Note, these are not minimum wages but real average daily wages as reported in the EPWP Quarterly Reports.

Figure 3 Real value of average hourly earnings (2008 – 2018) (2018 rands)



Source: various EPWP reports, own calculations

32. Three points are worth noting. First, in real terms these wages were low. Second, for farm workers, barring the increases of 2013, growth in the real value of the minimum wage was erratic and, at times, negative. For domestic workers, growth was larger and more regular. Third, and most important, the level set for these sectors under the NMW Act is not a particularly huge jump from their existing legislated minimum levels. This is important context.

33. For farm work, the SD level for 1 March 2018 to 28 February 2019 – instituted prior to the adoption of the NMW Act – was set at R16.25. Usual practice would have been to increase the level again as of 1 March 2019. Usual practice, would mean an increase of CPI + 1% or +2%.¹⁸ This would have been 5.1% or 6.1%.¹⁹ This means the farm worker SD level would have probably increased to R17.08 or R17.31 by 1 March 2019. Instead the increase as of 1 January 2019 was to R18, or a 10.8% increase. While a nominal increase of 10.8% compared to 6.1% seems like a lot, the 10.8% increase is not completely out of sync with historic increases. Even excluding the approximately 51% increase in 2013, the average nominal increase between 2003 and 2018 was 7.15%, including 2013 it was 10.09%. In 2009 it was 12.88% and in 2004, 2005, 2012, and 2017 it was between 8% and 10%.

¹⁸ CPI excluding owners' equivalent rent as released by Statistic South Africa six weeks prior to the increment date.

¹⁹ Stats SA, 'Consumer Price Index: January 2019', Statistical Release, P0141 (Statistics South Africa, 20 February 2019), <http://www.statssa.gov.za/publications/P0141/P0141January2019.pdf>.

34. For domestic work, the SD level, as of 1 December 2018 was R13.69 (Area A, more than 27 hours worked). This was only a 4.9% nominal increase over the previous level of R13.05, one of the lowest increases ever. The average nominal increase has been 7.86%. The 9.57% increase from R13.69 to R15 is thus within the historic range. The level for workers in the sector working less than 27 hours a week in Area A was already over R15 at R16.03.
35. For EPWP, outrageously, the NMW Act did not mean an increase. The minimum level for EPWP workers was already R88 per day (as of 1 November 2017), equivalent to the R11 per hour stipulated in the NMW Act (the EPWP Ministerial Determination stipulates a maximum 8 hour workday). Between 2008 and 2018, the average nominal increase for EPWP infrastructure and CWP workers was 6.5% and 5.1% respectively, broadly in line with inflation.

NECESSARY INCREASES

36. The above indicates that bringing the farm work NMW wage level to parity does not, in context, represent an unprecedented shock to the economy. This is shown in Table 1 below for two scenarios – immediate parity, and parity by 2021.

Table 1 Farm workers: nominal increases necessary to achieve parity

	2018	Nominal increase 2018/2019	2019	Nominal increase 2019/20	2020	Nominal increase 2020/21	2021
SD increased by CPI + 1%	R16.25	5.10%	R17.08				
SD increased by CPI + 2%	R16.25	6.10%	R17.24				
Current NMW level and parity in 2020	R16.25	10.77%	R18.00	19.44%	R21.50		
Current NMW level and parity in 2021	R16.25	10.77%	R18.00	13.89%	R20.50	12.20%	R23.00

Assuming inflation for 2019 and 2020 at 4.4% and 5.1% respectively and an approximate CPI + 3% increase to the overall NMW.

37. The jump for domestic work and EPWP in percentage terms is considerably larger, as shown in Table 2 and Table 3. The only precedent for such large increases is the 2013 farm and forestry worker increases. However, it should be recalled that this is occurring off a very low base and the increase in nominal terms is not particularly large.

Table 2 Domestic workers: nominal increases necessary to achieve parity

	2018	Nominal increase 2018/2019	2019	Nominal increase 2019/20	2020	Nominal increase 2020/21	2021
SD increased by CPI + 1%	R13.69	5.10%	R14.39				
SD increased by CPI + 2%	R13.69	6.10%	R14.53				
Current NMW level and parity in 2020	R13.69	9.57%	R15.00	43.33%	R21.50		
Current NMW level and parity in 2021	R13.69	9.57%	R15.00	26.67%	R19.00	21.05%	R23.00

Assuming inflation for 2019 and 2020 at 4.4% and 5.1% respectively and an approximately CPI + 3% increase to the overall NMW.

Table 3 EPWP workers: nominal increases necessary to achieve parity

	2018	Nominal increase 2018/2019	2019	Nominal increase 2019/20	2020	Nominal increase 2020/21	2021
MD increased by CPI + 1%	R11.00	5.10%	R11.56				
MD increased by CPI + 2%	R11.00	6.10%	R11.67				
Current NMW level and parity in 2020	R11.00	0.00%	R11.00	95.45%	R21.50		
Current NMW level and parity in 2021	R11.00	0.00%	R11.00	45.45%	R16.00	43.75%	R23.00

Assuming inflation for 2019 and 2020 at 4.4% and 5.1% respectively and an approximately CPI + 3% increase to the overall NMW.

DATA METHODOLOGY

38. The following analysis uses the Labour Market Dynamics in South Africa (“LMDSA”) 2017 survey that is published by Statistics South Africa (“StatsSA”). The LMDSA takes data collected through the Quarterly Labour Force Survey (“QLFS”) and averages it to cover the calendar year. The raw

data was downloaded from Datafirst²⁰ and cleaned according to the method outlined by Finn.²¹ This means the data may differ slightly from that found in StatsSA own publications.

39. All data here are deflated to represent December 2018 rands, just before the NMW would have come into effect.
40. As discussed in detail by Finn,²² there is evidence to suggest that wages in the QLFS may be reported lower than they actually are in reality (under-reported). Finn applies a 40% increase to wage levels as a proxy for under-reporting. This has two implications. First, wages may be higher than reported and so the jump between existing wage levels and the NMW level may be smaller than it appears. Second, poverty headcounts, as well as the depth of poverty, may be lower than reported.

POVERTY AND WORKING POVERTY – FARM AND DOMESTIC WORK

41. When considering the level at which wages should be set, and hence the achievement of parity for these sectors, it is important to understand the vulnerability of these sectors.
42. Table 4 and Table 5 below shows the percentage of workers in the sectors which earn below various poverty thresholds: StatsSA upper-bound poverty line, individual and household of four; Budlender et al. upper-bound poverty line, individual and household of four;²³ and working-poor line.²⁴ We show this data for all workers in Table 4 and then in Table 5 for full-time workers (derived as per Finn²⁵). This is because poverty lines reveal the monthly income needed to be above that level and it is worthwhile knowing how many full-time workers still sit below those lines despite working full time.

Table 4 Percentage of all workers below poverty measures (December 2018 rands)

Poverty line measure	Poverty line level	Economy average	Agriculture	Domestic services
Stats SA - individual	R1 205	13.2%	13.7%	26.4%

²⁰ https://www.datafirst.uct.ac.za/dataportal/index.php/catalog/727/get_microdata

²¹ Arden Finn, 'A National Minimum Wage in the Context of the South Africa Labour Market', Working Paper Series, National Minimum Wage Research Initiative (University of the Witwatersrand, 2015).

²² Finn.

²³ The Budlender et al. poverty line was developed by SALDRU at the University of Cape Town. It is considered a more accurate line than the StatsSA line. A detailed comparison can be found in the original paper.

²⁴ The working-poor line is the wage level it would take, on average, to ensure wage earners in poor households earn enough to raise themselves and their dependents above the poverty line. It takes account of dependency ratios as well as other sources of income. It uses the Budlender et al. poverty line. Full information can be found in Finn (2015).

²⁵ Finn, 'A National Minimum Wage in the Context of the South Africa Labour Market'.

SALDRU - individual	R1 589	17.3%	17.0%	38.8%
Stats SA - family of 4	R4 819	58.9%	88.8%	95.6%
SALDRU - family of 4	R6 358	65.9%	92.4%	97.2%

Source: Budlender et al. (2015), Stats SA (2018), Finn (2015), own calculations

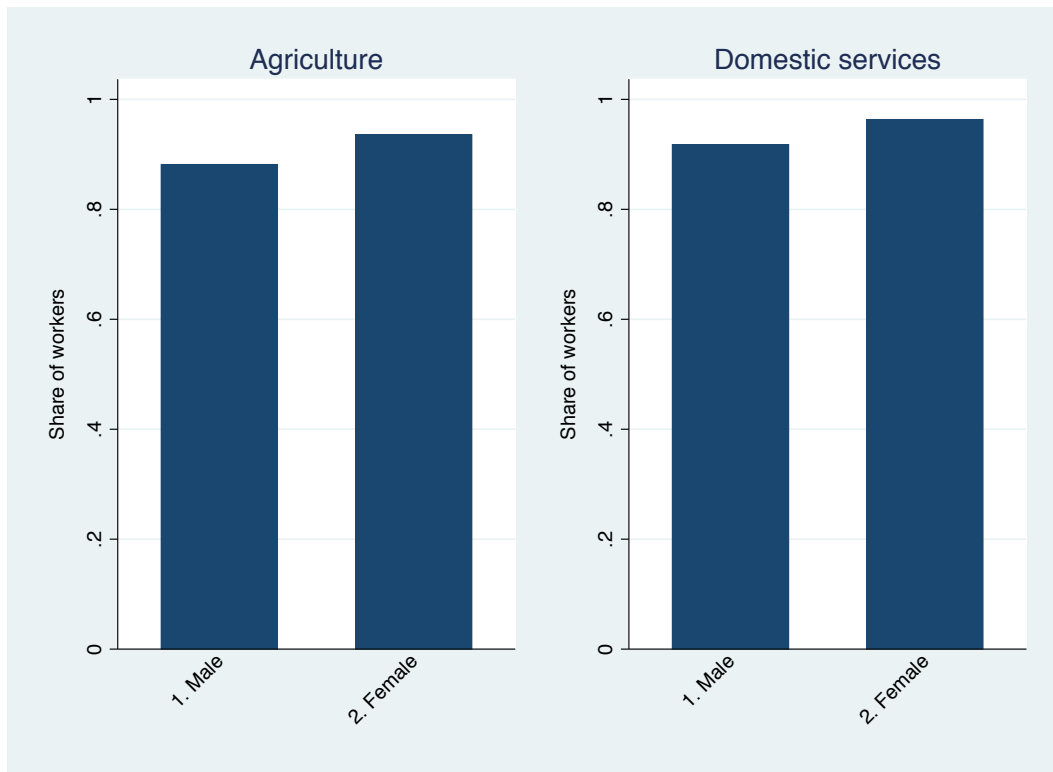
Table 5 Percentage of full-time workers below poverty measures (December 2018 rands)

Poverty line measure	Poverty line level	Economy average	Agriculture	Domestic services
Stats SA - individual	R1 205	9.3	10.8	15.3
SALDRU - individual	R1 589	12.6	13.8	25.6
Stats SA - family of 4	R4 819	55.2	88.4	94.4
SALDRU - family of 4	R6 358	92.9	92.2	96.8
Working-poor line	R5 126	57.2	89.4	95.3

Source: Budlender et al. (2015), Stats SA (2018), Finn (2015), own calculations

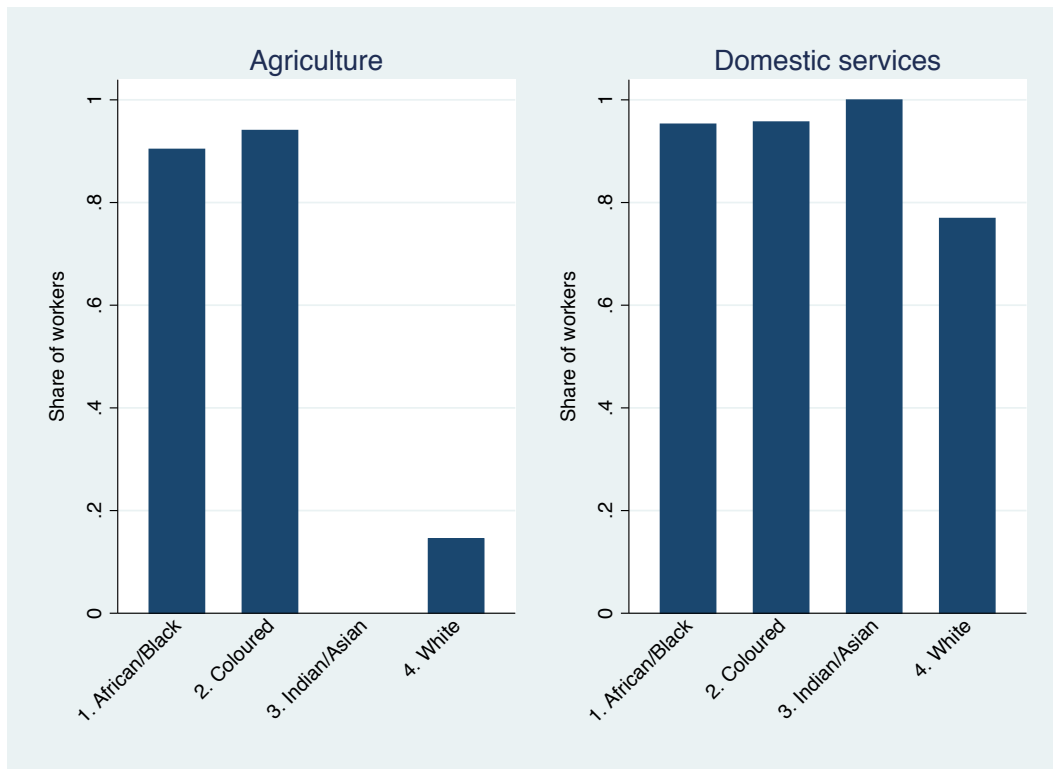
43. We observe in the tables that in general the poverty headcount in these sectors is well above the economy-wide average. We see also that poverty is most pronounced amongst domestic workers. Startlingly, just under 90% of agricultural workers and just over 95% of domestic workers earn below the working-poverty line. This is further broken down by race and gender in Figure 4 and Figure 5. As we see, women are more likely to be part of the working poor than men. We also see that white people are the least likely to be working poor, although even the majority of whites working in domestic services earn below the working-poor line.

Figure 4 Share of full-time workers below working-poor line by gender



Source: Working-poor line as per Finn (2015), Stats SA (2018), own calculations

Figure 5 Share of full-time workers below working poor line by race



Source: Working-poor line as per Finn (2015), Stats SA (2018), own calculations

44. Combined, agriculture and domestic service comprises 22.8% of the total full-time working poor.
45. It is clear that these sectors have high levels of poverty and compromise a large number of working poor. For the NMW to play an effective role in reducing poverty, the Commission should therefore be particularly cognisant of the need to raise wages in these sectors.

WORKING HOURS AND OTHER CONDITIONS OF EMPLOYMENT – FARM AND DOMESTIC WORK

46. Other pertinent considerations are the hours worked and other conditions of employment in these sectors.
47. Working hours are particularly important because employers may respond to increased minimum wages by a reduction in the number of hours worked. There is some evidence to suggest this has occurred in the South Africa context (see below). This is not necessarily a bad thing because decreased hours could mean more leisure time or the time to pursue other income-generating activities.
48. Statistics South Africa classifies “excessive hours” as a “week in which more than 48 hours are worked”.²⁶
49. Hours worked are particularly long in agriculture. Agricultural workers, work on average, just under 46 hours a week. This is the third highest, after retail and transport. A full 27.5% of agricultural workers work excessive hours. An increase in hourly wages in agriculture that reduces the number of hours worked would therefore benefit employed workers, so long as their monthly earnings remain the same or increase.
50. Domestic workers, on average, work shorter hours, 34 hours per week, and only 10% are classified as working excessive hours. However, the same logic applies.
51. Another critical variable is the extent to which these sectors are unionised. This is because unionised sectors are able to bargaining for higher wages irrespective of the level of the NMW.
52. These sectors have the lowest rate of unionisation by far. Only a little of 6% of agricultural workers say they belong to a trade union, and just over 0.5% of domestic workers!²⁷ This makes sense given the dispersed nature of the work place and the historic nature of labour relations. What this indicates is that the NMW is a vital wage setting mechanism in these sectors.

²⁶ Stats SA, ‘Labour Market Dynamics in South Africa 2017’ (Statistics South Africa, 2017), 62.

²⁷ Stats SA, ‘Labour Market Dynamics in South Africa 2017’.

53. These sectors are disadvantaged in a number of other ways with the lowest levels of medical aid and pension benefits. Barring construction workers, they also have the lowest access to paid leave. Raising the NMW would therefore also make up for the lack of other benefits received. Similarly, they have the least regular annual increases. While it is possible that they receive other forms of in-kind benefits, e.g. accommodation and food, the employer is already allowed, under the relevant sectoral determinations, to deduct up to 10% of the wage in lieu of this.²⁸ Such benefits are also notoriously unreliable and depend on the goodwill of particular employers. Increasing the wage level is therefore a far more reliable means of achieving increased overall income (in cash and in kind).

INEQUALITY – FARM AND DOMESTIC WORK

54. As noted, the NMW Act is targeted at reducing the extreme level of inequality present in South Africa. The South African Gini coefficient – the most commonly cited measure of inequality, which ranges from 0 (perfect equality) to 1 (perfect inequality) – has hovered around 0.66; by many accounts the highest in the world. Income inequality is driven by differences between earners: wage differentials account for 62% of inequality while the presence of zero earners (the unemployed) accounts for 38%.²⁹ When differentiating by income source – wages, social grants, remittances, and investment income – the relative contribution of wage income to overall inequality in South Africa was just over 90% in 2012, highlighting the centrality of wage earnings to measures of inequality.³⁰

55. Two measures of inequality are useful to our discussion here. The first pertains to the personal distribution of income – how income between earners is divided along the income distribution. The second is the functional distribution of income – how national income in the economy is split between wages and profits.

56. The levels of inequality within a sector gives us a sense of the ability for funds to be redistributed within that sector – from high to low-income earners, or from profits to wages. We can also compare inequality across sectors in order to see whether high-income earners or business owners are doing comparatively well or badly.

57. Such comparisons are only fully possible with regards to farm workers as both measures of inequality are distinguishable within the data. For domestic workers the data does not allow us to compare the wages of domestic workers to the wages of their employers; there is also no logical

²⁸ Sectoral Determination 7: Domestic Workers, Part B.

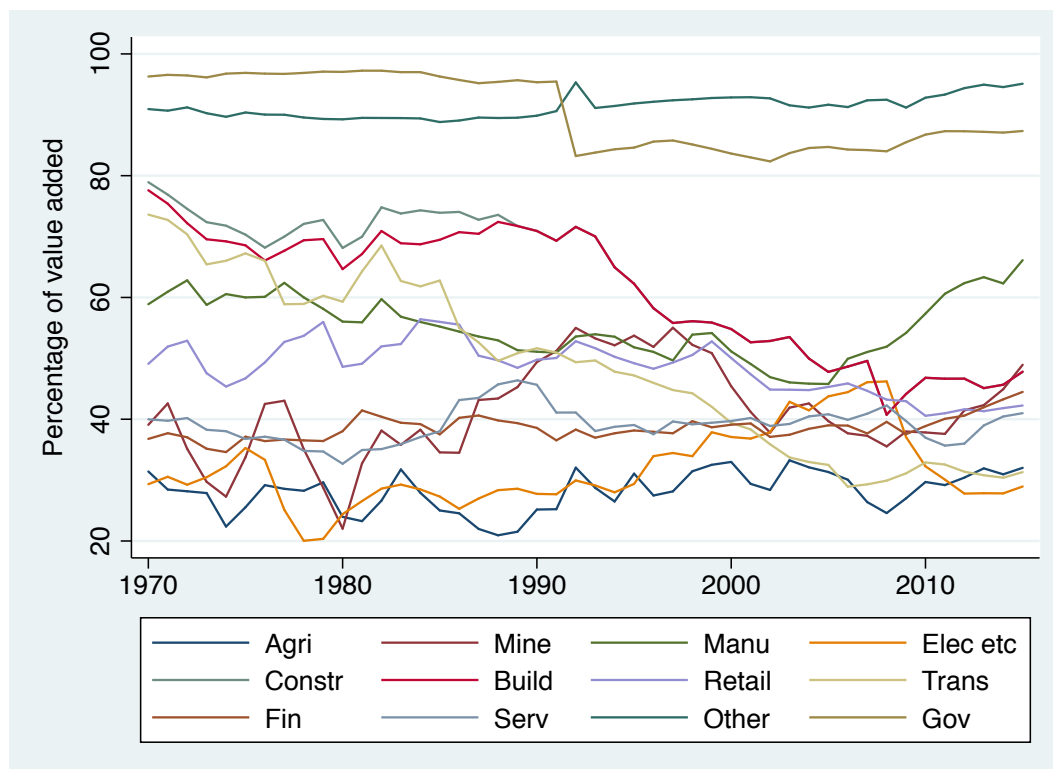
²⁹ Leibbrandt, Finn, and Woolard, 'Describing and Decomposing Post-Apartheid Income Inequality in South Africa'.

³⁰ Investment income is far more unequally distributed than wage income see Reza C. Daniels, Arden Finn, and Sibongile Musundwa, 'Wealth in the National Income Dynamics Study Wave 2', Working Paper (SALDRU, 2012), http://www.saldru.uct.ac.za/home/index.php?option=com_docman/Itemid,32/. but because wage income is a far larger share of income, its relative contribution to inequality is also much greater.

division between wages and profits. The issue of EPWP is taken up separately below.

58. Figure 6 shows the wage share – the percentage of value added going to wages as opposed to profit – for 15 different sectors in the economy between 1970 and 2015. What we see is that agriculture has, for the majority of years, had the lowest wage share. Between 1994 and 2015, the wage share in agriculture averaged at 30%. For the economy as a whole this was 51.5%. Owners of agricultural production therefore garnered 70% of value added.

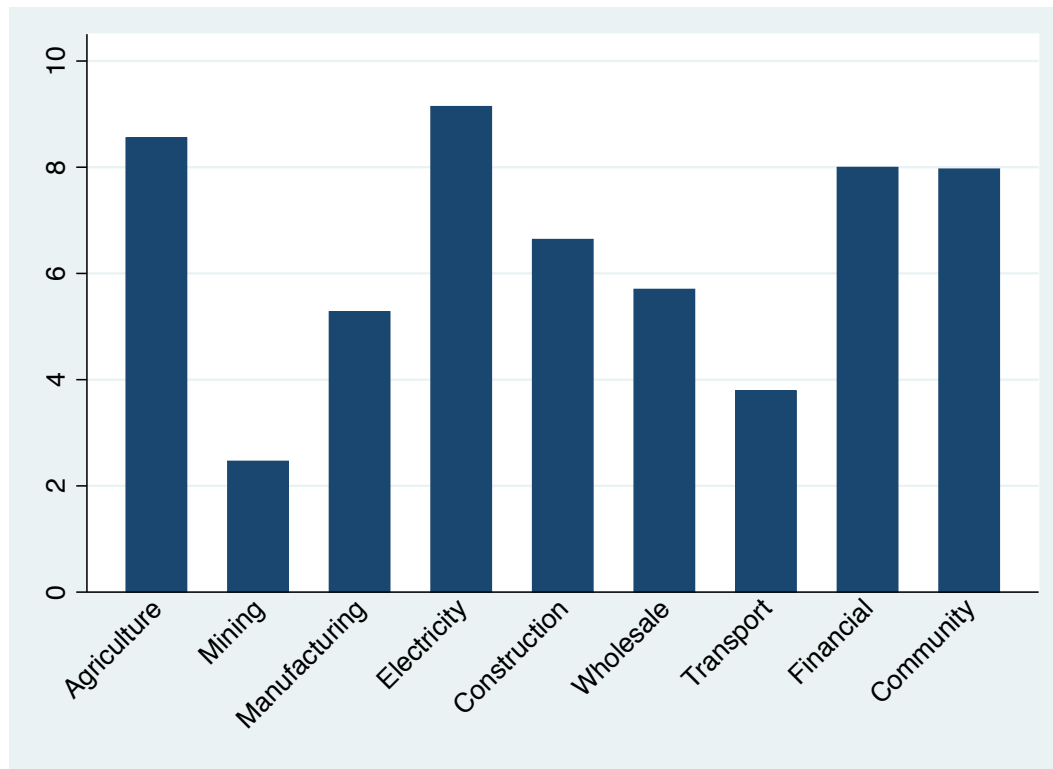
Figure 6 Wage share for different sectors (1970 – 2015)



Source: Quantec (2016)

59. Figure 7 shows the wage ratio between hourly earnings by managers and unskilled workers (“elementary workers”) in nine sectors. We see that in agriculture the average hourly wages of managers are over 8.5 times higher than the average hourly wages of unskilled workers. This is the highest in any sector bar electricity, gas and water supply. We also know, as discussed below, that one mechanism of adjustment to higher minimum wages is the redistribution of income between higher and lower earners within the firm.

Figure 7 Wage ratios between managers and unskilled workers



Source: Stats SA (2018), own calculations

60. This difference is even more stark when considering gender. Due to women's lower earnings the ratio between managers and unskilled women farm workers is 9.2.

61. Increasingly it is recognised that issues of growth and distribution should not be separated in order to understand and model the macroeconomy.³¹ Recent research led by the IMF³² finds a strong link between growth and distribution, drawing on a growing body of evidence on why inequality might be harmful for an economy.³³ The United Nations Conference on Trade and

³¹ Atif Mian and Amir Sufi, *House of Debt: How They (and You) Caused the Great Recession, and How We Can Prevent It from Happening Again* (University Of Chicago Press, 2014); for heterogeneous agent models see, for example, Per Krusell and Anthony A. Smith, 'Quantitative Macroeconomic Models with Heterogeneous Agents', in *Advances in Economics and Econometrics*, ed. Richard Blundell, Whitney K. Newey, and Torsten Persson (Cambridge: Cambridge University Press, 2006), 298–340, http://cco.cambridge.org/extract?id=ccol0521871522_CCOL0521871522A008; and for overview in a range of neoclassical models Giuseppe Bertola, Reto Foellmi, and Josef Zweimüller, *Income Distribution in Macroeconomic Models* (Princeton University Press, 2014).

³² Era Dabla-Norris, Kalpana Kochhar, and Nujin Suphaphiphat, *Causes and Consequences of Income Inequality: A Global Perspective* (International Monetary Fund, 2015).

³³ Philippe Aghion, Eve Caroli, and Cecilia García-Peñalosa, 'Inequality and Economic Growth: The Perspective of the New Growth Theories', *Journal of Economic Literature* 37, no. 4 (1 December 1999): 1615–60; Oded Galor and Omer Moav, 'From Physical to Human Capital Accumulation: Inequality and the Process of Development', *Review of Economic Studies* 71, no. 4 (October 2004): 1001–26, <http://restud.oxfordjournals.org/content/by/year>; François Bourguignon and Sébastien Dessus, 'Equity and Development: Political Economy Considerations', in *No Growth without Equity?: Inequality, Interests, and Competition in Mexico*

Development's (UNCTAD) recent Trade and Development 2019 shows that falling wage shares have been a critical economic problem in recent decades.³⁴ This indicates that policies that decrease inequality can be an important spur for economic growth. This is true of both the personal and functional distribution of income.

EXPANDED PUBLIC WORKS PROGRAMME

62. The EPWP poses a number of unique challenges. The EPWP was started in 2004 under the Department of Public Works ("DPW"). It is a means of using public works programmes to reduce unemployment and "provide poverty and income relief through temporary work".³⁵ The EPWP is not a means of providing long-term employment opportunities but is a short term measure which aims to create many jobs in response to the high unemployment rate in South Africa.³⁶

63. The EPWP is a national programme but largely implemented by the provinces and municipalities which identify labour-intensive opportunities across different sectors.³⁷ EPWP participants are employed in the following sectors: government-funded infrastructure projects (infrastructure sector); the non-state sector which provides wage subsidies to support non-profit organisations (NPOs) in their community development initiatives; public environment and culture projects funded by various government departments including the Department of Environmental Affairs and the Department of Forestry (the environmental and cultural sector); and the social sector supports public social programmes such as early childhood development.³⁸

64. The EPWP identified women, people with disabilities and unemployed youth as priorities in order to incorporate marginalised groups in community.³⁹ The

(Washington DC: World Bank Publications, 2009); Daron Acemoglu, 'Thoughts on Inequality and the Financial Crisis', (7 January 2011), <http://economics.mit.edu/files/6348>; Jonathan David Ostry and Andrew Berg, 'Inequality and Unsustainable Growth: Two Sides of the Same Coin?', IMF Staff Discussion Notes (International Monetary Fund, 2011), <https://ideas.repec.org/p/imf/imfstdn/11-08.html>; Jonathan David Ostry, Andrew Berg, and Charalambos G. Tsangarides, 'Redistribution, Inequality, and Growth', IMF Staff Discussion Note (International Monetary Fund, 17 February 2014).

³⁴ UNCTAD, 'Trade and Development Report 2019' (Geneva, Switzerland: United Nations Conference on Trade and Development, 2019).

³⁵ DPW, 'EPWP Recruitment Guidelines' (28 June 2018), accessed 17 October 2019, http://www.epwp.gov.za/documents/Final_Recruitment_Guidelines-2018-05-23.pdf.

³⁶ Miriam Altman et al., 'Framework for Evaluating the Expanded Public Works Programme' (HSRC, April 2004), <https://www.gtac.gov.za/Researchdocs/Framework%20for%20Evaluating%20the%20Expanded%20Public%20Works%20Program.pdf>.

³⁷ Daniel McLaren, 'Realising the Right to Decent Work in South Africa' (Studies in Poverty and Inequality Institute, January 2018), 39–40.

³⁸ Detailed information on sectors available on <http://www.epwp.gov.za/>.

³⁹ All EPWP implementing bodies must endeavour to meet the prevailing demographic targets namely: 55% women, 55% youth and 2% persons with disabilities. This is according to the EPWP Recruitment Guidelines. Available at <http://www.epwp.gov.za/>.

EPWP is also set up as a way to train and up skill workers so as to improve their chances of getting long term employment.⁴⁰

65. The EPWP creates what are called “work opportunities” which are defined as paid work created for an individual on an EPWP project for any period of time.⁴¹ The same person can be employed at different times on different projects, but not concurrently, and each period of employment will be counted as a work opportunity. The length of time spent on a project varies. Based on the information from the quarterly reports, a work opportunity in the infrastructure sector has an average duration of four months and in the environment and culture sector an average duration of six months.⁴² It is not clear what the average duration of time spent on a project is for the other sectors.

Stipulate wage levels

66. The minimum wage level, previously set through MDs was given above. However, average daily wages vary considerably from this. These are shown in Table 6.

Table 6 Daily Minimum Wages in EPWP Sectors

YEAR (April – September)	2014	2015	2016	2017	2018
Prescribed daily minimum wage for EPWP in MD		75.10	78.86	83.59	88.00
Average wage p/d infrastructure sector	120.49	116.26	116.51	121.81	128.48
Average wage p/d environment and culture sector	109.00	108.83	111.46	116.23	123.10
Average wage p/d social sector	79.60	100.52	92.71	102.82	117.49
Average wage p/d non-state sector: community work programme	82.07	79.10	83.54	89.66	95.71
Average wage p/d non-state sector: non-profit organisations	71.17	76.00	80.02	85.00	90.00

Source: Expanded Public Works Programme (EPWP) Quarterly Reports and Moretlwe (2015)⁴³

⁴⁰ Melanie Samson, ‘When Public Works Programmes Create “Second Economy” Conditions: Part Two: Policy and Political Choices’, accessed 17 October 2019, https://www.academia.edu/1353730/When_public_works_programmes_createssecond_economyconditions_part_two_policy_and_political_choices.

⁴¹ DPW, ‘EPWP Recruitment Guidelines’ (28 June 2018), accessed 17 October 2019, http://www.epwp.gov.za/documents/Final_Recruitment_Guidelines-2018-05-23.pdf.

⁴² Expanded Public Works Programme (EPWP) Quarterly Report: Report for the period 1 April – 30 September financial year 2017/18 Annexures A – E (Department Public Works) 27 October 2017. Available at <http://www.epwp.gov.za/>.

⁴³ Reports available at <http://www.epwp.gov.za/m&ereports.html>.

67. Besides for the very low levels, we see that sectors dominated by men – for example, infrastructure – receive higher hourly wages than those dominated by women – for example, community work programme.

Poverty

68. A critical way to measure poverty amongst EPWP would be via the household survey data. Unfortunately, participation in the EPWP is not a given variable in the standard available LMDSA dataset. We are currently waiting on the raw data from StatsSA as it does appear, from secondary sources, that this coding exists.

69. Poverty analysis can also be done through taking the daily wage and multiplying it by 5 days and 4.33 weeks per month. This gives the following levels for 2018, compared with the five poverty line measures given above. As seen in Table 7 the average EPWP worker (sitting between R1 900 and R2 800) earns, at most, just over half of the working-poverty line level (R5 126).

Table 7 EPWP average monthly wages vs. poverty lines (2018)

Sector	Average monthly wage	Poverty line measure	Poverty line level
Legislated minimum	R1 905	Stats SA - individual	R1 205
Infrastructure	R2 782	SALDRU - individual	R1 589
Environment and culture	R2 665	Stats SA - family of 4	R4 819
Social sector	R2 544	SALDRU - family of 4	R6 358
Community works	R2 072	Working-poor line	R5 126
Non-profit	R1 949		

Work conditions

70. Many EPWP work opportunities involve cleaning, the maintenance of public works, such as roads and public schools, and care work; the programme employs mostly women. The nature of the work is very precarious, with no job security, very low wages and no benefits. Workers are not unionised and cannot access secured credit due to low wages and lack of adequate contracts. Should a particular project under the programme be halted due to lack of budget, workers are let go immediately without certainty as to when they will commence the work again.⁴⁴

71. Health and safety risks on the job are not covered – there are no standardised health and safety precautions for the workers, sometimes they get protective gear and other times they do not. The number of days worked

⁴⁴ Mondli S. Hlatshwayo, 'The Expanded Public Works Programme: Perspectives of Direct Beneficiaries', *The Journal for Transdisciplinary Research in Southern Africa* 13, no. 1 (12 September 2017): 8, <https://doi.org/10.4102/td.v13i1.439>.

is not consistent, with some working only two days a week.⁴⁵ Therefore the job is not only precarious but irregular.

72. Part of the agenda of the EPWP is intended to train workers to enhance their employability and assimilated them into permanent employment. The DPW admitted to Parliament in March 2019 that it has limited funds to train all participants under this programme.⁴⁶ According to the EPWP 2018/2019 report, the 2018/2019 year saw 403 778 “person-years” of work created but only 11 101 “person-years” of training. Additionally, research conducted indicates that the EPWP has been used by municipalities to avoid employing permanent workers for the same job.⁴⁷

Inequality

73. Inequality in the EPWP sector is manifest in two ways, both of which could be, at least partially, addressed via increasing the NMW level to parity with the overall NMW level.

74. First, wages for EPWP are a small fraction of those in public, and even private, sector employment. As per paragraph 67, we are waiting on comprehensive data in this regard.

75. Second, EPWP workers have expressed discontent about the fact that they work side-by-side, doing the same tasks, with permanently employed state workers who have decent wages and benefits.⁴⁸ Hlatshwayo conducted a series of interviews with EPWP workers in 2016/17 and one EPWP worker under the “clean city” campaign in Germinston stated:

As I’m saying that we work here we don’t have benefits but there are people who work here doing the work we are doing. They have benefits but at the end of the day you find that people who work hard it’s us. Other workers who look after schools tend to have better wages and benefits, but those employed under EPWP have none of that. The people who work here at school don’t do any work at all; we are the ones who work.⁴⁹

⁴⁵ Hlatshwayo.

⁴⁶ Parliamentary Monitoring Group “EPWP Phase III job creation: Public Works briefing, with Deputy Minister” (05 March 2019). Available at <https://pmg.org.za/committee-meeting/28022/>. Only 42 761 work opportunities had training out of the 845 162 work opportunities reported at the end of the third quarter of 2018/19. This is according to the “Presentation to Public Works Portfolio Committee on Expanded Public Works Programme (EPWP) progress 5th March 2019”.

⁴⁷ Melanie Samson, ‘When Public Works Programmes Create “Second Economy” Conditions: Part Two: Policy and Political Choices’, accessed 17 October 2019, https://www.academia.edu/1353730/When_public_works_programmes_createsecond_economyconditions_part_two_policy_and_political_choices. This research was conducted in 2002 and 2003 for the Municipal Services Project and the South African Municipal Workers Union as part of a broader research project on the restructuring of waste management services, but it revealed that Public Works Programmes (PWP’s) were used to provide street cleaning services in parts of both Galeshewe township in Sol Plaatje and Soweto township in Johannesburg.

⁴⁸ Hlatshwayo, ‘The Expanded Public Works Programme’, 5.

⁴⁹ Hlatshwayo, 5.

76. In an earlier study that looked at workers providing street cleaning services in Sol Plaatje and Soweto, workers who worked alongside employees of Pikitup Waste Management would be paid far less than municipal workers. One worker noted:

We know that the government gives us R 800 which we get at R 400 fortnightly. But those people [employed by Pikitup] are getting a thousand and a couple. Ordinary people are getting a thousand and a couple.⁵⁰

77. With no viable transition into permanent jobs, many workers were aware that the programme did not improve their chances of finding permanent employment. Similar studies conducted on the EPWP programme show that EPWP workers are aware that they were receiving far less, but have little bargaining power due to the temporary nature of the work.⁵¹

78. The minimum wage for full time municipal workers, according to the South African Local Government Bargaining Council (“SALGBC”) is R 7 360.86 per month (as of December 2018). Salaries below R 9 000 increased by 7.5%.⁵²

Two-tier workforce

79. It is clear from the above that the EPWP has rightly been criticised for creating a two-tier labour system in the public sector. This allows the government to employ some in permanent positions with benefits, security and decent wages, and the EPWP to be a pool of casual, insecure, cheap labour.

80. In some instances EPWP has enabled municipalities and SOEs to hire less permanent workers. For example, in the study above, the short-term low wage labour “facilitated the maintenance of a hiring freeze, and allowed labour shortages in the Pikitup depot to be filled by cheaper, less well-protected, non-unionised, short-term workers”.⁵³

81. In short, it is quite frankly a disgrace that EPWP workers are excluded from the NMW.

Fiscal implication

82. The impact of an increase in EPWP wages is unique in that it is the public, not private, sector that would be shouldering the increased cost. South Africa finds itself in difficult fiscal terrain. The three biggest fiscal challenges faced are: unsustainable debt held by SOEs, and Eskom in particular; and

⁵⁰ Samson.

⁵¹ Samson.

⁵² South African Local Government Bargaining Council, *Salary and Wage Collective Agreement 2018 - 2021* Circular 6/2018 para 7.2.

⁵³ Samson.

the crisis within SARS that undermines revenue raising capacity; and sluggish economic growth that weights negatively on tax revenue. Contrary to much public rhetoric, South Africa's debt-to-GDP ratio (excluding the contingent liabilities) is almost exactly the emerging market average and its net asset position strong. Despite this, the National Treasury has announced a phase of accelerated austerity that will surely undermine economic growth with disastrous consequences.

83. The Commission may be tempted to situate its recommendation regarding EPWP within the current fiscal approach set by National Treasury. This would be a mistake on a number of levels. First, 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, something of a specialist field. Second, as noted above, it is false to consider austerity as the only choice open to government at present. In fact, as the international evidence makes abundantly clear,⁵⁴ what is required is a large state-led stimulus. Third, additional fiscal expenditure on low-wage workers who spend all their income – effectively a form of social transfer – has been shown to have extremely positive impacts on poverty, and is likely to stimulate economic growth.⁵⁵ Fourth, 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.

Granted the fiscal picture has changed somewhat, but the point remains.

84. It is unreasonably difficult to determine the actual amount spent on EPWP wages each year. Most pertinently this is because some EPWP expenses of the DPW are not wage expenses for EPWP workers, and other departments also contribute funds towards EPWP projects.
85. Using the latest data on the EPWP (2018/19 financial year), Table 8 shows that the total cost of EPWP workers' wages was 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

⁵⁴ UNCTAD, 'Trade and Development Report 2019'.

⁵⁵ UNCTAD.

the length of projects remained the same, the total cost would have been R16.7 billion, an increase of just under R6 billion.

Table 8 Actual and estimate cost of EPWP workers' wages (2018)

Actual total wages paid out to EPWP workers	Average daily wage rate	Estimated cost with daily wage rate of R180
R10 903 336 148	R117	R16 717 210 448

Source: Expanded Public Works Programme Report (QTR 4): Report for the period 1 April – 31 March of financial year 2018/19, own calculations.

86. In the context of the fiscus this is not a lot of money. Although it is not the primary concern of the Commission the money could come from a number of sources. Tax revenue is an obvious candidate. Tax breaks on pension funds and medical aid for higher-income earners are more than 10 times this amount. A VAT rate of 25% on luxury items has been estimated to raise up to R 9.6 billion.⁵⁶ This is just two examples. Another option would be to leverage the Unemployment Insurance Fund (“UIF”), which has also been tapped for a funding source for a work-seekers grant or guaranteed work scheme. The UIF currently holds a surplus of at least R 138 billion.⁵⁷

EVIDENCE ON THE ECONOMIC IMPACTS OF MINIMUM WAGES

87. An increase to the NMW in general, and the achievement of parity for the sectors under discussion, will have an impact on other economic variables. We explore this question via a summary of the existing local and international evidence, including *ex-post* econometric studies, which estimate the impact of an increase in minimum wages that has already occurred, and statistical models, which project what the future impact may be.

Ex-post evidence

88. Minimum wages have directly reduced inequality in the formal and informal sectors across Latin America, and in Indonesia, Russia, China, India and Europe.

89. In the developed world, the United States (“US”) and United Kingdom (“UK”) offer two relevant contrasting examples. Numerous studies show that the erosion in the real value of the NMW in the US in the 1980s and 1990s was a leading cause of the rise in inequality, with evidence that the inequality-

⁵⁶ IEJ (2018) *Mitigating the impact of the VAT increase: can zero-rating help?*

⁵⁷ 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.

inducing effects were worse for women than men.⁵⁸ By contrast, the introduction of a NMW in the UK in 1999 explains 50% of the reduction of wage inequality at the bottom half of the wage distribution between 1998 and 2010.⁵⁹

90. In the developing world, large increases in the real value of Latin American NMWs in the 2000s offer an instructive example. A comparative analysis by Maurizio and Vazquez⁶⁰ of Argentina, Brazil, Chile, and Uruguay found positive effects of minimum wages on full-time salaried workers in all four countries between 2003 and 2012. In Figure 8 we see that the ratios of earnings between low- and middle-income wage earners (p50/p10) fell dramatically, as did the Gini coefficients, in tandem with large increases to minimum wages; the p90/p10 ratio also falls but less dramatically in Brazil and Chile. In Brazil and Argentina, where minimum wages rose by 130% and 200%, respectively, minimum wages explain 85% and 32% of the decline in their respective Gini coefficients.⁶¹ In Chile, where the minimum wage rose less dramatically, the fall in the Gini coefficient was much more muted (dropping by just 6%). No negative employment effects were observed.

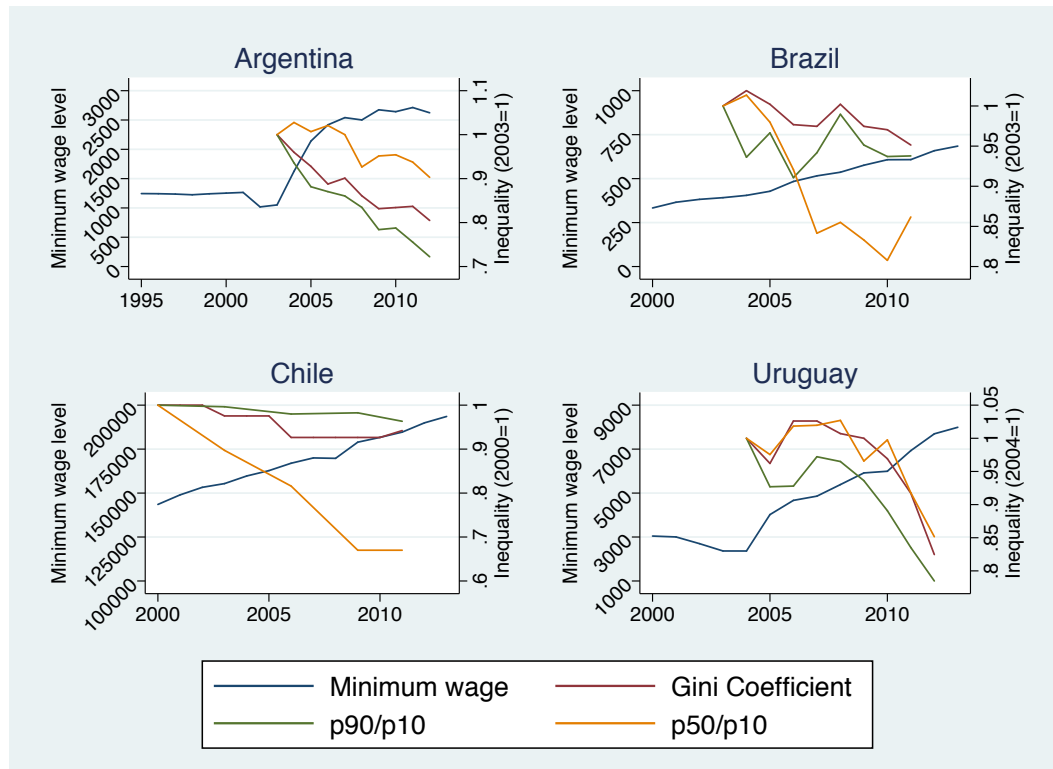
⁵⁸ David S. Lee, 'Wage Inequality in the United States during the 1980s: Rising Dispersion or Falling Minimum Wage?', *Quarterly Journal of Economics* 114, no. 3 (August 1999): 977–1023, <http://qje.oxfordjournals.org/content/by/year>; John DiNardo, Nicole M. Fortin, and Thomas Lemieux, 'Labor Market Institutions and the Distribution of Wages, 1973-1992: A Semiparametric Approach', *Econometrica*, 1996; David H. Autor, Alan Manning, and Christopher L. Smith, 'The Contribution of the Minimum Wage to US Wage Inequality over Three Decades: A Reassessment†' 8, no. 1 (January 2016): 58–99.

⁵⁹ Richard Dickens, Alan Manning, and Tim Butcher, 'Minimum Wages and Wage Inequality: Some Theory and an Application to the UK', Working Paper Series (Department of Economics, University of Sussex, 2012), <https://ideas.repec.org/p/sus/susewp/4512.html>.

⁶⁰ 'Los Impactos Distributivos Del Salario Mínimo En América Latina . Los Casos de Argentina , Brasil , Chile y Uruguay', 2015.

⁶¹ Roxana Maurizio, 'The Consequences of Minimum Wages on Inequality. Evidence for Latin America', in *National Minimum Wage Symposium and Policy Round Table* (Johannesburg: University of the Witwatersrand, 2016).

Figure 8 National minimum wages and inequality in four Latin American countries (2000-2012)



Source: Maurizio (2016)

91. The ability of the minimum wages to affect the incidence of poverty depends on the composition of the labour market and the proportion of minimum-wage earners living in poor households. Scepticism over minimum wages as an anti-poverty instrument is influenced by studies of advanced countries, where most of the poor (the jobless and pensioners) are not part of the labour market.⁶² As minimum wages and poverty lines are much closer together in developing countries and there is a large working-poor, the impact on poverty reduction can be more significant. In their classic work on minimum wages in developing countries, Lustig and McLeod⁶³ use cross-national evidence from twenty-two developing countries and find higher minimum wages are associated with lower levels of poverty. They observe that minimum wages are better predictors of change in the incidence of poverty than average wages. This is confirmed by developing-

⁶² Jill Rubery, 'Pay Equity, Minimum Wage and Equality at Work', ILO Working Paper (International Labour Organization, 2003), <https://ideas.repec.org/p/ilo/ilowps/366872.html>.

⁶³ 'Minimum Wages and Poverty in Developing Countries: Some Empirical Evidence', Paper (Brookings Institution - Working Papers, 1996), <https://ideas.repec.org/p/fth/brooki/125.html>.

country case studies in Honduras,⁶⁴ India,⁶⁵ Thailand and the Philippines,⁶⁶ and Nicaragua⁶⁷ amongst others. Whether minimum wages are poverty-reducing also depends on where poverty lines sit in relation to the wage distribution and which parts of the wage distribution are most affected by minimum wages.

92. Despite this positive impact on poverty, we should not fetishize the (somewhat arbitrary) poverty lines. The point is whether minimum wages raise wages for the lowest earning workers, not whether they move them one cent above or below a particular line.

93. Regarding the impact on employment, in the international literature the aggregate effect on employment is shown to be marginally negative or neutral, and often statistically undetectable. As Schmidt notes: “The weight of that evidence points to little or no employment response to modest increases in the minimum wage.”⁶⁸ This is confirmed in a review of the seven most recent meta-analyses (studies synthesising the large body of existing empirical research). A 10% rise in minimum wages, where there is an effect at all, leads to somewhere between a 0.003% and 0.7% fall in aggregate employment (the effect, of course, varies across country, population group, industry etc.).⁶⁹

94. 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.

⁶⁴ T. H. Gindling and Katherine Terrell, ‘Minimum Wages, Globalization, and Poverty in Honduras’, *World Development* 38, no. 6 (2010): 908–18.

⁶⁵ Patrick Belser and Uma Rani, ‘Minimum Wages and Inequality’, in *Labour Markets, Institutions and Inequality: Building Just Societies in the 21st Century* (Cheltenham, UK: Edward Elgar Pub, 2015).

⁶⁶ Catherine Saget, ‘Is the Minimum Wage an Effective Tool to Promote Decent Work and Reduce Poverty? The Experience of Selected Developing Countries’, Working paper, *Employment Paper*, vol. 13 (Geneva: ILO, 2001).

⁶⁷ Enrique Alaniz, T. H. Gindling, and Katherine Terrell, ‘The Impact of Minimum Wages on Wages, Work and Poverty in Nicaragua’, *Labour Economics*, Labour markets in developing countries, 18, Supplement 1 (December 2011): S45–59, <https://doi.org/10.1016/j.labeco.2011.06.010>; see also Carlos A. Arango and Angélica Pachón, ‘Minimum Wages in Colombia: Holding the Middle With a Bite on the Poor’, *Borradores de Economía* (Banco de la República de Colombia, 2004), <https://ideas.repec.org/p/bdr/borrec/280.html>.

⁶⁸ ‘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>.

⁶⁹ see Gilad Isaacs, ‘A National Minimum Wage for South Africa’, Summary Report, National Minimum Wage Research Initiative (University of the Witwatersrand, 2016).

The level at which the NMW is set will strongly influence the manner in which firms and the economy adjust.

95. There is limited research on the impact of minimum wages in South Africa, with six sectoral determinations studied.
96. In retail, taxi, and private security, the institution of a minimum wage had no statistically significant impact on employment.⁷⁰ Hourly wages rose in all sectors while hours worked fell marginally in retail and private security. Overall, workers were better off in retail and private security, with taxi workers left in a similar position.
97. Regarding agriculture and forestry, research has shown some decline in employment in the former but no impact on the latter.⁷¹ For agriculture the most important research is by Borhat, Kanbur and Stanwix.⁷² This shows a fall in employment and in hours work. It also shows average wages and non-wage benefits, as measured by having a written contract, increased substantially (average wages increasing by approximately 30%). Overall workers were equally well off or better off.
98. Regarding the employment impact estimation in this (and some other) studies, there are severely methodological difficulties particularly relevant in the case of agriculture. The method used by Borhat et al. is to compare changes in employment in agriculture over the period of the institution of a minimum wage, with changes in employment for a “control group” comprised of “occupations such as: street vendors, packers, construction workers, manufacturing and transport labourers, and elementary machine operators”. This method has been used in important minimum wage research, e.g. by Card and Krueger who’s seminal research comparing fast-food workers in New Jersey and Pennsylvania shifted minimum wage research forever.⁷³

⁷⁰ ‘The Impact of Sectoral Minimum Wage Laws on Employment, Wages, and Hours of Work in South Africa’, Working Paper (Cornell University, Department of Applied Economics and Management, 2013), <https://ideas.repec.org/p/ags/cudawp/180096.html>; ‘Estimating the Impact of Minimum Wages on Employment, Wages and Non-Wage Benefits: The Case of Agriculture in South Africa’, Working Paper (Cornell University, Department of Applied Economics and Management, 2013), <https://ideas.repec.org/p/ags/cudawp/180095.html>.

⁷¹ ‘The Impact of Sectoral Minimum Wage Laws on Employment, Wages, and Hours of Work in South Africa’; ‘Estimating the Impact of Minimum Wages on Employment, Wages and Non-Wage Benefits’; Chris Garbers, ‘The Impact of the Agricultural Minimum Wage on Farmworker Employment in South Africa: A Fixed Effects Approach’ (University of Stellenbosch, 21 March 2015), https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=CSAE2015&paper_id=363; B. Conradie, ‘Wages and Wage Elasticities for Wine and Table Grapes in South Africa’, *Agrekon* 44, no. 1 (1 March 2005): 138–56, <https://doi.org/10.1080/03031853.2005.9523706>.

⁷² Borhat, Kanbur, and Stanwix, ‘Estimating the Impact of Minimum Wages on Employment, Wages and Non-Wage Benefits’.

⁷³ David Card and Alan B. Krueger, ‘Minimum Wages and Employment: A Case Study of the Fast Food Industry in New Jersey and Pennsylvania’, Working Paper (National Bureau of Economic Research, October 1993), <http://www.nber.org/papers/w4509>.

99. The difficulty is that there are a number of agriculture-specific factors that would impact employment. Unlike in Card and Krueger, Borat et al. are not comparing geographically distinct workers within the same sector. This calls into question the appropriateness of the methodology for agriculture.
100. First, the minimum wage was instituted overlapping with the 2003/2004 drought. This had many consequences that could have contributed to falling employment in agriculture but not to employment in, for example, construction. This drought resulted in the lowest maize planted in 15 years by a large margin and lower production and exports; rainfall is shown to be a statistically significant factor in determining maize production.⁷⁴ By way of analogy, consider a terrorist attack, this may have a devastating impact on tourism but a far weaker impact on retail.
101. Second, processes of technical change in agriculture are distinctly different from other sectors. Agricultural production tends to undergo rapid mechanisation and increases in productivity in particular phases of development which can be labour displacing. Indeed, the trends in productivity and in the employment output ratio in the South African data differ markedly from other sectors.
102. Third, other forms of economic change impact sector differently. The exchange rate and growth in global and local financial speculation on food prices in the early 2000s, may have also had sector-specific consequences.⁷⁵ The increase in prices in the early 2000s could have resulted in a rising level of GVA concurrently with a fall in production output.
103. Fourth, other important policy changes also impact sectors differently. In agriculture, South Africa's Producer Support Estimate as a share of gross farm receipts (GFR) fell from 10.7% in 1994 to 1.9% in 2017. This compares with the OECD average of 17.9% in 2017.
104. This is not to argue that it is impossible that the minimum wage did cause a loss of employment in agriculture. However, based on the available evidence, and the fact that certain studies (for example, Murray and van Walbeek, 2007) conflict with this finding, it is not possible to say this was definitively the case.
105. For domestic work, Budlender notes 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."⁷⁶ Dinkelman and Ranchhod show no negative impact on employment or

⁷⁴ WWF, 'Agriculture: Facts and Trends South Africa', n.d.; James Blignaut, Liza Ueckermann, and James Aronson, 'Agriculture Production's Sensitivity to Changes in Climate in South Africa', *South African Journal of Science* 105, no. 1–2 (February 2009): 61–68.

⁷⁵ Wayne Devlin Austin, 'Drought in South Africa: Lessons Lost and/or Learnt from 1990 to 2005' (Master of Science, University of the Witwatersrand, 2018).

⁷⁶ Debbie Budlender, 'The Introduction of a Minimum Wage for Domestic Workers in South Africa', November 2013, 26.

hours worked for domestic workers and strong evidence of an increase in wages.⁷⁷ Hertz finds a marginal fall in employment, a small decrease in hours worked and an approximate 20% rise in average wages.⁷⁸ Borat, Kanbur, and Mayet also found no clear evidence of disemployment effects in this sector.⁷⁹ 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.

106. On aggregate, employment in the sectors studied rose over the period studied (DPRU 2010).

Statistical modelling

107. Statistical modelling is a useful way to assess the possible effects of a particular policy, although the results derived rely heavily on the architecture and parameters of the model. Macroeconomic models contain a large series of equations and coefficients. The equations mimic the interrelations between sectors within the economy, such as mining and manufacturing, and variables, such as GDP growth and employment rates. The coefficients within each equation measure the magnitude of the impact of a change in one variable upon another. When one variable is “shocked” (altered) this creates a ripple effect throughout the model economy. The benefit of macroeconomic models is that the consequences for the economy as a whole – rather just one particular sector – can be estimated.

108. Given this, the choice of model is very important. Here we only given findings from Strauss and Isaacs and Adelzadeh and Alvillar.⁸⁰ For reason given in Storm and Isaacs,⁸¹ we do not consider computable general equilibrium (CGE) models (used in other research) to be appropriate for modelling the impact of a NMW. In these CGE models economic deterioration is the only possible outcome from minimum wages, whereas in the models discussed below either a positive or negative outcome can occur.

⁷⁷ ‘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>.

⁷⁸ ‘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>.

⁷⁹ Borat, Kanbur, and Mayet, ‘The Impact of Sectoral Minimum Wage Laws on Employment, Wages, and Hours of Work in South Africa’.

⁸⁰ Ilan Strauss and Gilad Isaacs, ‘Labour Compensation Growth in the South African Economy: Assessing Its Impact through the Labour Share Using the Global Policy Model’, Working Paper Series, National Minimum Wage Research Initiative (University of the Witwatersrand, 2016); Asghar Adelzadeh and Cynthia Alvillar, ‘The Impact of a National Minimum Wage on the South Africa Economy’, Working Paper Series, National Minimum Wage Research Initiative (University of the Witwatersrand, 2016).

⁸¹ ‘Modelling the Impact of a National Minimum Wage in South Africa: Are General Equilibrium Models Fit for Purpose?’, Research Brief, National Minimum Wage Research Initiative (University of the Witwatersrand, Johannesburg: CSID, 2016).

109. The critical findings by Strauss and Isaacs⁸² is that the South Africa economy is “wage-led”. That is, shifting income from profits to wages has a stimulatory effect on the economy.
110. The most immediate consequence of a rising wage share is a strong consumption effect as income flows to those who have a higher propensity to consume. The increase in the wage share is not due to increases in the employment rate; instead, real labour compensation rises (at a faster rate than productivity growth). Private consumption rises as a share of GDP. Higher demand expands domestic output and thus growth. It is possible that rising input costs could result in falling investment, a worsening current account, rising inflation, and falling employment, thus offsetting the demand stimulus from higher consumption. While some of these variables deteriorate marginally, this is overall not the case in the South African projections. Overall, South Africa’s present economy benefits from a more equal distribution of income (a larger wage share) in line with the recent wave of international evidence on the deleterious consequences of falling wage shares. Increasing minimum wages is one means through which to increase wage shares.
111. Given the extremely low wage share in the agricultural sector, and the higher propensity to consume amongst all low-wage workers, the above supports increases to the NMW wage rates in question.
112. The second statistical modelling exercise by Adelzadeh and Alvillar allows us to directly increase the wages of workers within the economy. This model shows that increasing the NMW over time (by more than inflation) raises average wages and household income. The boost to real wages and household incomes naturally raises household consumption expenditure which stimulates economic output, mostly in the manufacturing and primary sectors. Spurred by rising total output, GDP growth rates rise and productivity increases. The net effects on employment are, in line with the international experience, slightly negative, employment is projected to be up to 0.3% lower with the institution of a national minimum wage. The sectoral impact is mixed; in particular, agriculture sees a small increase in employment, and domestic work a small decrease. The results also show a modest but important decline in inequality and a significant fall in the poverty headcount.
113. This evidence confirms the logical assumption that firms and the economy adjust to higher wage costs through a variety of mechanisms and that higher wages – particularly for low-income households – can spur a positive growth- and output-enhancing demand stimulus.

COMPLEMENTARY POLICY MECHANISMS

⁸² ‘Labour Compensation Growth in the South African Economy: Assessing Its Impact through the Labour Share Using the Global Policy Model’.

114. It is important to recall that the state has available to it a plethora of policy mechanisms, each of which have different purposes. While there is strong evidence that the reduction of poverty and inequality that can be achieved through a NMW has economic benefits, and that the impact on employment is, most often, negligible, we should recall that the state should be using other policies to grow the economy and employment. Such policies should aim to allow sectors to be able to sustain higher wages. Indeed, the path of industrial upgrading that South Africa must target should explicitly aim to achieve this.

115. While this paper cannot hope to cover the full gamut of policy options, we discuss an example of incentives that have been implemented in domestic work, and some options for the agricultural sector.

Domestic work incentives

116. An example of a successful incentive in domestic work is that which took place in France. Konopelko summarises this as follows:

France provides tax incentives for employers of domestic and temporary workers who formalise their contracts with these employees and comply with minimum wage legislation. Under the incentive, the employer has to register with the URSSAF (Agency for the Collection of Social Security and Family Allowance Contributions) and then use specially provided bank cheques to pay domestic helpers and other temporary assistants. At the end of a tax year, the employer can claim rebates from the state of up to 50% of wages paid (to a maximum of €1,830) (Gudibande and Jacob 2015). Such a system provides incentives for employers to hire domestic helpers officially and pay them salaries at or above the minimum wage. According to the available research, by 2010, over 66% of domestic workers working for individuals were employed legally (ILO 2013). The state costs of running the incentive amounted, in 2012, to €6.3bn (ILO 2013). At the same time, direct benefits to the state from the incentive amounted to €5.1bn in social insurance contributions, VAT, direct taxation and lower unemployment payouts. An additional €3.875bn was gained as indirect benefits (the study identified the reduction in the costs of supporting dependents and minding children as the biggest benefits), bringing the net gain from running this incentive to €2.6bn a year.

Agricultural sector incentives

117. Bizarrely, the South African government eschewed the implementation of incentives to encourage compliance with the NMW, despite the NMW-RI and others raising this repeatedly during the negotiations. Some incentives can help to ensure that business are able to pay the NMW. This could apply in agriculture. Some examples, quoted from Konopelko, are given below.⁸³

⁸³ Elena Konopelko, 'Incentives to Enhance Compliance with a National Minimum Wage in South Africa', Policy Brief, National Minimum Wage Research Initiative (University of the Witwatersrand, March 2016).

118. Tax incentives.

Some governments create tax incentives to motivate businesses to comply with minimum wage laws... Brazil introduced the Simples in order to promote the formalisation of small businesses. According to the programme, small companies were entitled to make a single consolidated tax payment rather than numerous contributions to different funds. They were only eligible for participation in this programme upon compliance with labour legislation and minimum wages laws. By 2012 over 9 million small enterprises had been formalised in Brazil and were paying at least the minimum wages and the rate of formal employment increased by almost 14% (ILO 2014b). Simples also led to a tax relief for small companies whose owners claimed that their effective tax rate was 20% to 50% lower since they entered Super Simples (ILO 2014b). At the same time many businesses who were previously not paying taxes, or observing labour standards, were brought into the tax and regulatory net. This scheme therefore has the triple advantage of benefiting affected workers, assisting small business, and achieving added revenue for the state. Brazil's treasury has benefitted from an additional R\$ 267 million in contributions from the 9 million businesses that joined the Super Simples system of taxation (ILO 2014c).

119. Government grants.

Another form of incentive is providing government grants, loans and subsidies to companies on the basis of minimum wage compliance. In Virginia, US, for example, companies that are located in the Virginia Enterprise Zone and pay their employees at least 1.75 times the current minimum wage could in 2014/15 qualify for a grant of up \$500 per year per position. Those who are paying twice the minimum wage qualify for up to \$800 dollars per year per position for the next five years, starting from 2014/15, provided they are compliant with the legislation and continue paying twice the minimum wage (Virginia Guide to Incentives 2014). Various other US States have similar grant incentive programmes.

Brazil is another example of a country that uses monetary incentives to promote compliance with the national minimum wage. The Brazilian Development Bank (BNDES) offers loans at heavily subsidised rates (the rates were 6.5% versus the market 14.25% in 2015) to companies who comply with minimum wage and labour legislation, environmental legislation, and pay taxes and social contributions among other requirements (Borges 2014; Reuters 2015; WSJ 2015). ...

Thailand has a policy similar to that of Brazil of providing access to state loans at a lower interest rate conditional on labour legislation and minimum wage compliance. Japan and the US have incentives that provided access to loans from export/import banks and related agencies based on legislative compliance (OECD 2001). In this latter incentive,

both countries aimed at improving compliance with environmental guidelines rather than the minimum wage but such a policy could also be used to motivate businesses to comply with minimum wages.

120. Benefits and cautions.

Generally, the benefit of using grant (and tax) incentives is the opportunity to create a targeted incentive that will result in improved minimum wage compliance. Such incentives are also intuitively very appealing, as they seem to reduce business operating costs and provide a very clear financial benefit of adhering to the legislation. However, these incentives incur costs. They will require increasing the amount of labour inspectors and/or administrative capacity to monitor compliance and the blacklisted non-compliant companies.

Moreover, the provision of grants, loans, or tax cuts could require additional spending from government budgets. However, these funds could also come from development banks and other development finance institutions and may, in the medium and long term, spur productive economic activity and increase the tax intake. Further, if they are linked to a programme of formalisation of enterprises, they have the benefit of bringing more companies and workers into the regulatory net.

In designing such incentives caution should be taken as sometimes monetary motivations may have perverse effects: for instance, providing direct monetary incentives to small businesses at times might motivate businesses to either stay small and not grow (in order to maximize gains on incentives) or can motivate businesses to undertake illegal practices in order to hide the real turnover/staff numbers (in order to capitalize on incentives) (Lawton & Pennycook 2013).

Agricultural sector policy

121. A wealth of other policy options are available to government in order to ensure that the agricultural sector can not only sustain higher wages but grow. Dr Nimrod Zalk, Industrial Development Advisor, in the Department of Trade and Industry, argues that South Africa has the “opportunity to expand the production of high-value agricultural products that are both labour-intensive and export-oriented”⁸⁴. In particular he points to the importance of:

- Long-term certainty and ‘patient capital’ are needed to establish and expand cultivation. Most fundamentally, this requires a pragmatic approach to land reform that ensures certainty of land use rights (not necessarily direct ownership) for investors to commit to the long-term investments. This is in a context where it can take four to five years to

⁸⁴ Nimrod Zalk, ‘Hiding in Plain Sight: High-Value Agriculture’s Large-Scale Potential to Grow Jobs and Exports | Econ3x3’, *Econ3x3* (blog), accessed 17 October 2019, <https://www.econ3x3.org/article/hiding-plain-sight-high-value-agriculture%E2%80%99s-large-scale-potential-grow-jobs-and-exports>.

establish an apple orchard (and even longer for avocados) during which no income is generated.

- The legacy of post-apartheid public underinvestment in irrigation, fertilisers and farm machinery needs to be reversed. This includes a huge increase in currently inadequate agricultural R&D expenditure.
- The cost and quality of rail, port and airfreight need to be addressed. High port charges, inefficiencies and backlogs are a particular constraint.
- Development finance institutions (DFIs) have a critical role to play in providing the patient capital required, particularly for infrastructural investment and emerging black farmers, given the long lead times in establishing orchards.
- Effective regulation of phytosanitary standards is required to fast track the introduction of new varieties, expand access to export markets and ensure the integrity of domestic production.
- This is, in turn, linked to the need for trade diplomacy to facilitate access, both to established high value markets such as the EU and US, and rapidly growing affluent markets in Asia. For example, South Africa has been unable to come close to matching Peruvian or Chilean access to the rapidly growing Chinese market for blueberries despite rising production within South Africa.
- Public support measures need to be closely monitored, including ensuring decent working and social conditions on farms.

122. The point here is not to solve the challenges of agriculture. Rather, it is to stress that a maintenance of an ultra-low wage approach won't get us anywhere anyway. What we need is wage policy that increases incomes, and industrial policy that expands the sector. It would be unfair to expect workers to wait indefinitely for such a wage policy.

CONCLUSION

123. This report has shown the dire situation of workers in the sectors under consideration – low wages and high levels of precarity. It has also shown high levels of inequality. Previously sectorally-set minimum wages have not been able to resolve these. The NMW offers another opportunity. For that to be realised the level of the NMW must be increased for these sectors, and it should reach parity as envisaged in the NMW Act and the prior NEDLAC agreement.

124. In order for the NMW to serve its stated purpose, the general level should increase well above inflation – if it moves in line with inflation and other wages in the economy then it will not reduce poverty or inequality. Therefore the Commission should be recommending an increase of at least CPI + 3%. Bringing the level for farm, domestic and EPWP workers to parity should not be used as an excuse by government to implement a low increase in the NMW overall.

125. The report has illustrated that there is no conclusive evidence that increasing the levels of these identified sectors will have adverse effects. The decision to implement the tier in the first place was based more on

caution than on certainty as to what the impact would be. While caution is sometimes a valid consideration in policy making, it should not eclipse all other factors.

126. The report has also highlighted that there is considerable evidence that increasing minimum wages has significantly positive benefits on workers' incomes, poverty and inequality, with the possibility of a demand stimulus in the economy.

127. We do not know what will happen after increasing the level. What we do know is that there is no conclusive evidence that the impact would be negative and that there is substantial evidence that these highly-exploited workers stand to benefit significantly from higher wages and parity.



SUPPLEMENTARY SUBMISSIONS

REGARDING NATIONAL MINIMUM WAGE PARITY FOR

DOMESTIC WORKERS, FARM WORKERS, AND EPWP WORKERS

December 2020

These submissions are endorsed by:

African Diaspora Workers Network

General Industries Workers Union of South Africa

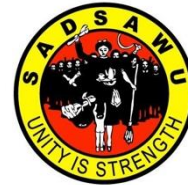
Hlanganisa Institute of Development in Southern Africa

Socio-Economic Rights Initiative-SA

South African Domestic and Allied Service Workers Union

United Domestic Workers of South Africa

University of the Western Cape Social Law Project



A INTRODUCTION

Purpose

1. These supplementary 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. We lodge them with the National Minimum Wage Commission ('the Commission') in response to the Commission's Invitation for Written Representations to its Investigation into the National Minimum Wage¹ for the purpose of the Commission's reviews as contemplated by section 4(2) and section 6 of the National Minimum Wage Act 9 of 2018 ('the NMW Act').
2. They reinforce the demand of the One Wage Campaign that there should be national minimum wage ('NMW') parity for all workers. In short, we submit that the cataclysmic effects of the COVID-19 pandemic on these vulnerable categories of workers have added urgency to the need to remedy the current NMW disparity. It bears emphasising that even if wage parity is achieved, the NMW does not yet constitute a living wage.

Background

3. On 20 November 2019, the One Wage Campaign sent to the Commission written submissions accompanied by an economic report, calling for the abolition of the tiered NMW system and NMW parity across the board. In brief, those submissions demonstrate that a tiered NMW violates the constitutional rights of the affected workers

¹ Government Gazette No. 43920, dated 20 November 2020

to dignity, equality and fair labour practices, and further entrenches discrimination on the basis of race, gender, sector and class. This constitutes unfair discrimination that cannot be saved by the limitation provisions contemplated in section 36 of the Constitution. The economic report concluded that a tiered system is not necessary, that no compelling evidence exists to pay these categories of workers below the full NMW and that there are instead compelling reasons to ensure that the wages and employment conditions of these workers continually improve.

4. The One Wage Campaign thereafter requested an opportunity to present oral submissions and engage meaningfully with the Commission. That opportunity was not afforded. In the interim, not having completed its section 6 review, the Commission proposed a nominal inflation-related increase of a few cents per hour to the NMW with effect from 1 March 2020². That increase translates into a NMW of R18.68 per hour for farmworkers, R15.57 per hour for domestic workers and R11.42 per hour for EPWP workers. The fact that these NMWs are not only less than the full NMW but fall short of a living wage to which the Commission should be aspiring, cannot be overstated.

5. Not long afterwards, the pandemic was declared a national disaster in terms of the Disaster Management Act 57 of 2002 (**‘the DMA’**). President Ramaphosa announced a national lockdown of 21 days. This was extended for two weeks. Alert level 5, being the most restrictive, was in effect from 27 March 2020 to 30 April 2020, with a move to alert level 4 which was in place from 1 to 31 May 2020. At the time of finalising these submissions, the country had entered into the second month of alert level 1, having weathered dramatic spikes in the daily rate of infections to a point of managed stability.

² Government Gazette No. 43026, 17 February 2020

Cautious optimism now prevails with an understanding that South Africa is not out of the woods yet and further waves of infections are likely to arrive before treatment or a vaccine becomes available. Indeed at the time of submission, a new wave of infections appears imminent.

6. During level 5, only essential workers and those who could work remotely were permitted to work. Essential workers included those involved in food production and supply and they, too, worked under very restrictive conditions. Farmworkers, labelled “essential workers” in this crisis, have been labouring throughout all lockdown levels, risking their lives to ensure the continued functioning of national and export food supply chains to prevent a food crisis but were lamentably still being paid less than the full NMW.
7. During Alert Level 5, domestic workers were prevented from working altogether, the very nature of their work precluding them from working remotely. During Alert Level 4, live-in domestic workers were permitted to return but if they did so, they were not able to commute home until the alert level was lowered. Domestic workers responsible for the care of children, the elderly, and persons with disabilities, physical or mental illness could also return to work under level 4. It was not until 1 June 2020 when the country entered alert level 3 that live-out domestic workers were permitted to return to work. In the face of the principle of ‘no work, no pay’, many faced retrenchment and others depended on the mercy of employers for continued payment, especially those whose employers had not registered their domestic workers with the Unemployment Insurance Fund (‘UIF’). Unregistered workers only became legally eligible for COVID-19 relief benefits after a settlement reached with government at the end of May

2020, and to date, workers are still waiting for the Department to operationalise this commitment.

8. On 3 June 2020, the One Wage Campaign’s attorneys wrote to the Commission, noting its statutory obligation (in terms of section 4(2) of the Act) to make a recommendation to the Minister regarding national minimum wage parity for domestic workers and farmworkers by end June 2020, and expressing concern that no public participation process had yet been initiated, without which the legality and integrity of the process and any ensuing recommendations would be undermined. The Commission responded to the One Wage Campaign on 15 June 2020. The One Wage Campaign was informed that the Commission would not be able to comply with the statutory deadline of June 2020 for making its recommendations to the Minister of Labour on wage parity. The Commission explained that it was conducting a research-based review that would be completed later in the year and that the One Wage Campaign would be afforded an opportunity to participate in the public process of making representations in respect of the Commission’s recommendations, all of which was said simply to have been “delayed due to the COVID 19 lockdown”.
9. The COVID-19 pandemic has clearly moved beyond a global health crisis and into a labour market, social and economic crisis, with ‘informal workers’ and low-income families being the hardest hit. It is against this background that the One Wage Campaign takes the opportunity to supplement its core submissions calling for NMW parity. While containing the spread of the virus remains a key focus, the shortcomings in employment and social protection, and the effects thereof on the most vulnerable categories of workers, have been laid bare. The pandemic has highlighted the nation’s reliance on

farmworkers and domestic workers but has, at the same time, brought to the fore the inequalities of these essential categories of workers and the precarious position they occupy.

10. These submissions provide a high level overview of the economic, social and health risks faced by many domestic and farm workers during the COVID-19 crisis and motivate why, in the face of this, the case for NMW parity is stronger than ever. In coming to this view, the One Wage Campaign has canvassed views of its members. The Campaign is alive to the understandable anxiety that exists among some members who fear now more than ever losing their jobs if they continue their fight for an equal NMW. It is nevertheless mandated by the majority of its constituents to forge strongly ahead in its struggle for equality, in part because of the pandemic which has revealed starkly the effect of the ongoing unequal treatment of these categories of workers.
11. Although there is still much to be done to address the unequal treatment of domestic and farm workers, it is submitted that as government gears up to put in place economic and social measures to mitigate and counteract the effects of the pandemic, the Commission has been presented with an opportunity to recognise the value of these workers by dignifying them with an equal NMW, upon which they depend for their very survival.
12. According to the United Nations, emerging evidence on the effect of the virus suggests that women's economic and productive lives will be disproportionately affected than men because, globally, women earn less than men, are more likely to be employed in the informal sector, with less money to save: "*The pandemic is deepening pre-existing*

inequalities, exposing vulnerabilities in social, political and economic systems which are in turn amplifying the impacts of the pandemic.”³

13. In the section that follows, we provide a brief analysis of the intersection between the COVID-19 crisis and the existing gender gap in employment, social protection and gender-based violence (**‘GBV’**) for domestic and farm workers. We conclude that, as government works toward formulating important socio-economic programmes to alleviate the fallout in the wake of the pandemic, that the structural issues facing women in these employment categories that have been exacerbated by the crisis, must be urgently addressed, starting with NMW parity for all.

B IMPACT OF COVID-19 ON DOMESTIC AND FARM WORKERS

“It is a public disgrace that many of our societies are now asking women in these low-paying service jobs...to take on risks as essential workers to keep the public fed, to care for the sick and vulnerable and to maintain clean and safe environments. In the past, the same societies and systems have denied them the dignity of a decent livelihood with a living wage and social appreciation for a worthy job done well, but they should not continue to do so in the post-pandemic future.”⁴

³ United Nations, “Policy Brief: The Impact of COVID-19 on Women”, 9 April 2020

⁴ <https://us.boell.org/en/2020/04/30/invisible-coronavirus-makes-systemic-gender-inequalities-and-injustices-visible>

Working hours, job losses and access to relief funds

14. As the International Labour Organisation ('ILO') reports in a recent fact sheet which documents the reduction of working hours and loss of jobs associated with lockdowns as governments attempt to contain the spread of the virus, the pandemic has had an especially devastating effect on domestic workers the world over.⁵ It states that while 34.6% of domestic workers in Africa were impacted on 15 March 2020, the number soared to 78.7% by 15 April 2020.

15. The report goes on to note the obvious - that registration for social security helps to minimise the impact of lockdown measures. 76% of domestic workers who were significantly affected (in the form of losing their jobs or experienced a reduction in working hours) were in informal employment inasmuch as they were not registered to social security and were thus not eligible for unemployment insurance.⁶

16. In countries that practised full lockdown (under stay-at-home orders, subjected to restrictive movement with limited or no public transport), the ILO reports that 90% of domestic workers in informal employment and 50% in formal employment were significantly impacted in the sense that they do not have access to benefits to compensate for the reduction of working hours or loss of jobs. In countries that were in partial lockdown, the ILO records that 90% of domestic workers in informal

⁵ "Impact of the COVID-19 crisis on loss of jobs and hours among domestic workers" (ILO) 15 June 2020

⁶ *Ibid*

employment and 25% in formal employment were considered as significantly impacted.⁷

17. In April 2020, while South Africa was in hard lockdown (alert level 5), Izwi Domestic Workers Alliance (**'Izwi'**), a member of the One Wage Campaign, conducted a survey of 602 domestic workers to understand the impact of the virus on their employment. That report is attached. In brief, 4% had lost their jobs as a direct result of COVID-19, 27% were on unpaid leave, less than 10% were on paid leave, with a further 27% being on paid leave but not having been told whether they would be paid for April. 37% confirmed that they were still receiving their full wages.
18. According to the latest Stats SA's latest Quarterly Labour Force Survey (29 September 2020), domestic workers were amongst the hardest hit in terms of jobs loss, noting a decrease in employment by 259 000 in Q2: 2020 as compared to the previous quarter.⁸
19. As noted by Izwi, there are more than a million domestic workers in South Africa, 95% of whom are women, among whom many are primary breadwinners. It has been reported elsewhere that more than 70% of domestic workers are single mothers, and that over 80% are primary breadwinners.⁹ The implications of not receiving an income for any period of time are devastating. It is devastating for individuals and families, and for the broader public concern for gender quality.
20. A staggering 79% of those surveyed by Izwi were not registered for UIF and a further 11% simply did not know whether they were registered, which likely meant that they

⁷ *Ibid*

⁸ <http://www.statssa.gov.za/publications/P0211/P02112ndQuarter2020.pdf>

⁹ <https://www.iol.co.za/capeargus/news/covid-19-lockdown-without-pay-could-be-catastrophic-for-domestic-workers-45582332>

were not. As also noted by Izwi, these figures accord with formal academic estimates that a mere 20% of domestic workers are registered with the UIF.

21. The few compliant employers who had registered with UIF only became eligible from 16 April 2020 to lodge a TERS (Temporary Employer/Employee Relief Scheme) claim and those who had not previously registered were permitted to register in order to become eligible. The One Wage Campaign is hopeful that such unforeseen consequences of the pandemic will instil in both non-compliant employers and the Department of Labour the critical importance of enforcing UIF registration for domestic workers, which will be a key step in formalising the domestic sector.
22. It took a protracted and unnecessary legal process culminating in an urgent application to the Labour Court at the end of May 2020 by the Casual Workers Advice Office ('CWAO'), supported by Izwi and the Women on Farms Project, for the Department of Labour to accede to amendments to the TERS directives to include as potential beneficiaries every employee whose job was affected by COVID-19, regardless of whether their employers had registered with UIF.¹⁰ Prior to that, employers that had flouted their legal obligations in terms of UIF were unable to make a TERS claim. As a result, through no fault of their own, distressed domestic and farm workers could not lodge a TERS claim, with the result that they and their families faced serious hunger and eviction crises.
23. However, even UIF and access to TERS relief funds are not a guarantee against poverty and hunger. The media is replete with accounts of employers who were paid UIF

¹⁰ <http://www.cwao.org.za/Press-release-TERS-benefit-extended.html>

benefits but which were not, in turn, paid to their workers, as well as numerous difficulties experienced by vulnerable workers and their employers in accessing the fund.¹¹ It is furthermore important to note that TERS is simply a temporary relief measure available to employees during the limited period that the domestic worker is unable to work due to short-term shutdown.

24. The ILO report further records that even domestic workers in ‘formal employment’ fell victim to job losses and reduced working hours as fears of contracting the virus, coupled with high levels of lockdown that restricted mobility, prevented domestic workers in both formal and informal employment from actually getting to work, and many households simply applied the principle of ‘no work, no pay’. It goes on to note the adverse impact on live-in domestic workers as well. While some may have retained their jobs and worked in close quarters with their employers during lockdown, many reported having to work longer hours especially due to school closures, with more demanding cleaning tasks being added to their schedules. Instances were also reported of employers having simply stopped paying live-in domestic workers during lockdown either because of their own financial circumstances or based on the disturbing belief that the domestic workers did not need their salaries as they could in any event not go out, with the devastating consequence that non-payment of wages has left the families who rely on the domestic workers’ wages at risk of still further poverty, hunger and homelessness. *“Some domestic workers have also been found in the streets, after their employers dismissed them for fear of catching the virus, putting them at risk of trafficking. These practices are demonstrative of the discrimination faced by many*

¹¹ See for example <https://mg.co.za/coronavirus-essentials/2020-05-26-workers-with-noncompliant-bosses-can-now-access-covid-19-relief-scheme/>

domestic workers” notes the ILO.¹² Restrictions on travel within and between countries has furthermore prevented ‘migrant’ domestic workers from returning home to their families.¹³

25. Similarly, in South Africa specifically, the Izwi survey records that some domestic workers have reported being forcibly separated from their families, and prevented from seeking medical care or buying groceries when needed. This has extended from the initial lockdown period; as of September 2020, many live-in workers have been essentially imprisoned in their employers’ homes for nearly six months, unable to see spouses and children, or take care of critical personal needs. Many live-in domestic workers are also not being given time off at night or over weekends and public holidays, nor paid being overtime. Many domestic workers began struggling with insufficient funds for rent and food in the early stages of lockdown, in early April already.

26. In its May 2020 brief on seasonal migrant farmworkers, the ILO records that while farm workers are critical to ensuring global and national food supply chains and have been relabelled ‘essential workers’, the pandemic has revealed that seasonal farm workers have for a long time, “*not been fully rewarded for their contribution to society in terms of earnings, social protection, and challenging working conditions, including hours of work and occupational and health protections.*”¹⁴

27. As indicated in the One Wage Campaign’s main submissions on NMW parity, the agricultural industry is characterised not only by casualisation and feminisation, but

¹² *Ibid*

¹³ *Ibid*

¹⁴https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_745481.pdf

increased job insecurity and precarity, and many do not know whether they may be employed again and for how long. The majority of seasonal workers on grape and wine farms in the Western Cape have reportedly completed the harvest season in March 2020 and most will be out of work until the commencement of the next season in October – they are therefore reliant on UIF as their main source of income until then.¹⁵ However, because all labour centres were closed due to the mandatory lockdown level 5 on 27 March 2020, many seasonal workers were unable to apply for UIF, with no alternatives having been put in place for farmworkers. Many farm workers were also not eligible for food parcels because they were deemed able to sustain themselves during lockdown simply because they were able to work in lockdown,¹⁶ without regard for the fact that there would be additional unforeseen expenses and that their NMW was in fact below a living wage.

Lived Realities

28. An important submission made in the One Wage Campaign's initial submissions, was that the Commission must remain ever mindful that the task before it centrally concerns the livelihood of human beings, that it is the lived realities of many people that are profoundly affected by the decisions that will be taken during the review process. Indeed, these realities and lived vulnerability are brought ever more to the fore during the COVID-19 crisis. As in the main submissions, the One Wage Campaign has once more sourced accounts of the realities of those struggling on the sub-minimum wage in the midst of the pandemic, and which starkly reveal the acute vulnerability of domestic workers and farmworkers and the unfairness and indignity that those subject to the

¹⁵ <https://www.groundup.org.za/article/covid-19-lockdown-threatens-women-farm-workers-access-food/>

¹⁶ *Ibid*

tiered system are subjected to as a result of the law as it stands. Where requested to do so we have protected the identities of those who spoke to us due to a fear of victimization.

“The National Minimum Wage was the national hope of workers. We thought we would be equal without being divided. Now we find we are categorised by sectors and this is discriminating. This discrimination is dividing farm workers from industrial workers and domestic workers from industrial cleaners. This is an Apartheid era system that is still operating today. The constitution promised equality for all who live in South Africa, but there is no equality for farm workers. Are we not part of this South Africa?”
Vuyie Sikani, Sundays River Valley Farmworkers Forum, 22 June 2020

“Good evening comrade, just thought I would break down the voice notes shared in the platform for our comrade who does understand the language. Basically in the first voice note, the comrade is saying the problem they have at their work is that they are not sure if they are registered or not. Their hours have been reduced so their salaries and the drivers too got their salaries reduced, even if they work more days the extra days they don't get pay for them. They were never given the increase, but the pay has been reduced, so they don't know how to go forward from here. People who don't have rights, or who have no access or don't qualify to get the money were given the money. We would like to know if we claim those funds are we going to be wrong? Overtime is not being paid and those people who received the money have been called back to work and they're working even after receiving the money. The money that we are being given is way less than for those who were given money and allowed to stay home. Thus my understanding from the voice note. So comrades can fill in where I missed out. Thank you” Voice note sent by Moses Sekobane 20 June 2020
Translated by Florence Sekolane

And the other voice note says: *“As they speak there is a new management that started January and I have worked a lot of years and they are reducing our salaries. Salaries now are no longer good. With the old management we were getting better salaries and they were not reducing our salaries even overtime was being paid fairly. With this new management they reduce our working hours and if we speak out, they don't like it or allow us to. They hire people from outside and pay them more than us. They find us working, but we get paid less. Now that it is lockdown, they are cutting down leave days. They gave us money and said it's for leave. When we were asking them about our money for all the years, they are telling us they don't care because they can do whatever they want to do. We don't know in this situation what to do, we are asking for help.”*
Voice note 2 sent by Moses Sekobane 20 June 2020
Translated by Florence Sekolane

“My name is Davine Witbooi. My organisation is the West Coast Solidarity and Food Sovereignty Forum. We are also part of the Landless Peoples Movement. The things we are facing now is about the people losing their jobs and especially the migrant workers. People that work on the farm for many years now and some of the farmers don't tell the people before that they are gonna end the jobs. They don't even want to pay the people

the wage that was set in the sectoral determination of government. So they make use of the migrant workers and pay them less money. When the people ask questions about their salaries, what they do is to just call the police and say the people don't have papers. The police come and lock the people up so they end up in jail or something for long periods. Like months in jail before they deport the people and bring some other people. People don't want to go back because of the situation and everyone knows what they are facing in their own countries. What we want to do is to protect the rights of immigrant people inside our places.

And also during lockdown chasing people away after they finished working for you is not right. How is it that now there are no jobs but last year when it was not the period of the coronavirus people just went from working tomatoes to working other crops? The farmers come with excuses to say there are no jobs. But if you go to the farms now you see the coloured and white workers, the South African citizens are working. The government needs to come in and see the situation. All the farms are claiming the social relief UIF grant, they put in people's names, but the people don't see that money. We need an investigation. The Department of Labour closed. As activists and the migrant workers we need urgent help. People have been without food for two weeks and there are lots of xenophobic attacks."

Davine Witbooi 19 June 2020

"More than 100 women contacted the Women on Farms Project (WFP) during the first two weeks of the lockdown, sharing the impact of their inability to submit their applications in order to receive their UIF benefits, which are a statutory entitlement.

Jeanette, a woman seasonal farm worker from De Doorns, said, "During this time, we seasonal workers are dependent on our UIF money. Without our UIF, we are going to go hungry, especially me who is a single parent.

Anna, a farm worker from Rawsonville, said, "We haven't got our UIF, plus many things are more expensive in the shops here in Rawsonville. How are we going to survive? The President must open the Labour Centres. He doesn't know how we are suffering."

Gina from Stellenbosch said, "Things are really difficult for us seasonal workers. We can't get our UIF money. What is going to become of us?"

Challenges arising from farm women's inability to access their UIF entitlements could have been mitigated if they at least had access to food parcels.

...

Susan from Wellington said, "We heard about the food parcels, but we don't know how to get it. Everyone here in New Rest is unemployed, so we all need food parcels".

Magda from Ceres said, “Some people asked a ward councillor how we can get the food parcel. But he didn’t know. Please tell President Ramaphosa not to forget the farm workers.”¹⁷

29. On 2 June 2020, Izwi posted the following question to its domestic worker members, via WhatsApp: *Do you think it’s a good idea to continue to push for a higher minimum wage for domestic workers, or are you worried it will cause more people to lose their jobs?* The overwhelming sentiment was that, despite the anxiety at the height of the pandemic about the loss of jobs, it was believed that some job loss was inevitable but that the fight for the right to a higher, at least equal NMW, remained vital, now more than ever in the face of the rising cost of living that can ill be afforded by this sector who already live in poverty.

Health

30. COVID-19 is a major health risk that has claimed 764 470 lives worldwide¹⁸ and over 11 566 in South Africa as at 15 August 2020¹⁹. While many South African employers heeded the president’s early call to minimise their workforce or allow employees to work remotely to try and ‘flatten the curve’, it is simply not possible for most domestic workers.²⁰ As WIEGO (Women in Informal Employment: Global and Organizing) reports, since domestic work must of necessity be carried out in their employers’ homes and often in close contact with people who may be carrying the virus, “*domestic*

¹⁷ *Ibid*

¹⁸ https://www.worldometers.info/coronavirus/?utm_campaign=homeAdvegas1?

¹⁹ <https://www.worldometers.info/coronavirus/country/south-africa/>

²⁰ <https://www.timeslive.co.za/news/south-africa/2020-03-20-if-employers-tell-domestic-workers-to-stay-home-they-must-get-paid-union-on-coronavirus/>

*workers are frontline workers in this pandemic, and at risk.*²¹

31. While COVID-19 has been declared an occupational disease for which workers in South Africa can claim from the Worker Compensation Fund, the fate of domestic workers to lay claim to benefits for contracting the virus in the workplace remained uncertain as domestic workers anxiously awaited judgment pending at the Constitutional Court, eventually decided in their favour 19 November 2020, in a judgment that recognised the “triple yoke of oppression” suffered by black women based on their race, gender and class.²² Most domestic workers do not have access to private medical coverage, and they rely on public transport to travel to and from work which also places them at greater risk of contracting the virus. With many provinces having reported their hospitals and clinics being at over-capacity, domestic workers are at risk of not having access to health services and, until very recently, without compensation should they contract the virus.

32. The role of farmworkers is critical now more than ever to put food on tables and sustain the economy. It is also not work that can be done from the safety of their homes. These workers are particularly vulnerable to the virus because of occupational hazards to the respiratory system caused by pesticides and the like. Farmworkers also often work in fields with limited access to bathroom facilities or basic sanitisation, which makes it more difficult to exercise some of the essential preventative measures such as regular washing of hands. As the ILO notes, many agricultural enterprises will need to make adjustments to workplace practices, such as how crops are picked, and how the workers

²¹ <https://www.wiego.org/domestic-workers-frontline-care-workers-face-covid-19-challenges>

²² *Mahlangu and Another v Minister of Labour and Others* (CCT306/19) [2020] ZACC 24 (19 November 2020)

live and work together while maintaining a safe distance to avoid contagion²³.

Gender-based violence

33. *“Gender-based violence (GBV), especially violence against women and girls...is quickly becoming the shadow pandemic during the COVID-19 pandemic”*.²⁴ According to the United Nations Human Rights Office of the High Commissioner,²⁵ women in abusive relationships are more exposed to greater control and restrictions by their abusers, with little or no access to help, at risk of being thrown out of their homes and exposed to infection.
34. The ongoing economic hardship due to the pandemic²⁶, state-sanctioned stay-at-home orders, isolation and social distancing to curb the spread of the virus are, perversely, conditions conducive to the perpetration of domestic violence.²⁷ South Africa saw close to 90 000 cases of GBV after just one week of lockdown,²⁸ with FEDUSA appealing to government to increase the amount of mobile clinics, both for testing of the virus and for treating victims of GBV, particularly in vulnerable areas such as densely populated townships and informal settlements.²⁹ However, such services needed by the victims, as well as shelters, police and access to health and legal resources may be deprioritised as the efforts to curb the spread of the virus take priority.³⁰

²³ https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_745481.pdf

²⁴ <https://us.boell.org/en/2020/04/30/invisible-coronavirus-makes-systemic-gender-inequalities-and-injustices-visible>

²⁵ https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf

²⁶ <https://www.wgea.gov.au/topics/gendered-impact-of-covid-19>

²⁷ https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf

²⁸ *ibid*

²⁹ <https://www.solidaritycenter.org/women-their-unions-stand-strong-during-covid-19/>

³⁰ https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf

35. According to the International Trade Union Confederation, GBV extends beyond domestic violence and into the workplace: *“Reports suggest that many essential or key workers are experiencing increased exposure to gender-based violence from employers, colleagues and/or members of the public. This includes workers in health and care services – including domestic workers - ... experiencing trauma and psychological impacts on a daily basis.”*³¹
36. International research shows the concomitant adverse effect of domestic violence on women’s ability to work and on their productivity and performance; compounded by the fact that employers may often inadvertently blame the women or even terminate their employment as a result of disruptions caused by GBV.³²
37. The grim reality of GBV, sexual violence and sexual harassment suffered by domestic workers in their workspaces in South Africa, was laid bare in a recent report compiled by Izwi and Hlanganisa,³³ and is a stark reminder of the plight of domestic workers in South Africa:

“The intersectionality of patriarchy, capitalism, racism and migration has affected DWs worst in South Africa because they end up losers in the monitoring of just and fair legislation, policy and international law/conventions. Their lived experience suggests that this intersectionality exacerbates their situation in terms of fair pay, fair labour practice, GBV, unfair dismissals, human rights, implementation of leave policy and

³¹ <https://www.ituc-csi.org/union-responses-to-gender-based>

³² <https://www.solidaritycenter.org/women-their-unions-stand-strong-during-covid-19/>

³³ http://www.hlanganisa.org.za/wp-content/uploads/2020/09/Domestic_Workers__GBV_Research_Report.pdf

*working conditions during a pandemic. Very few DWs suggest any fairness in their employment conditions.*³⁴

38. Based on its assessment of reported cases of rape, intimate partner violence and cases of femicide in South Africa, the report makes the chilling observation that the United Nations has itself recognized South Africa as the country with the worst GBV and Violence Against Women infractions in the entire world. And that it is universally acknowledged that South Africa has the worst of such cases for a country not actually at war.
39. The report goes on to confirm that women at the lower rungs of the socio-economic ladder are especially vulnerable, reluctant to report the violence, and are therefore unlikely to receive justice. Domestic workers interviewed during July and August 2020 reported that employers saw them as vulnerable because they were poor, and believed this meant that workers could be manipulated, some saying that their employers were well aware of just how desperately they needed their incomes. Many said they felt powerless in the face of the abuse.

Food insecurity and child-care needs

40. Finances are especially strained for the poor as stay-at-home measures and school closures have increased living costs in terms of groceries and unplanned expenditure for hand sanitizers, masks and other COVID-19 preventative measures. According to the UN,³⁵ due to existing gender inequalities, women and girls often bear the brunt of

³⁴ P. 6

³⁵ https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf

food insecurity where social norms dictate that they eat last and eat least, making them more susceptible to malnourishment and to contracting the virus than men and boys.

41. The closure of schools and day-care centres poses additional severe challenges especially for single parents and particularly where children relied on a school-sponsored meal. Informal care by grandparents, other family, friends or neighbours is discouraged in order to curb the spread of the virus, and single mothers are left with little alternative arrangements to continue to work, especially where work cannot be done from home.³⁶ Women have also had to take on additional unpaid care work of not only children but of older persons who are vulnerable to the virus and have no guarantee of accessing medical care by overwhelmed health services.

C COVID-19 AND THE CASE FOR WAGE PARITY

42. We submit that the effects of the COVID-19 pandemic on domestic workers and farmworkers are not only cataclysmic in themselves but add urgency to the need to remedy the current NMW disparity.

43. As the research and analysis shows, there are at least four reasons why this is so:

- 43.1. The pandemic has starkly manifested the profound unfairness and indignity of the second tier status afforded to farm workers and domestic workers due to the tiered NMW system, in view of the value that farm workers and domestic workers have given our society by providing essential services and working in

³⁶ *"The Impact of COVID-19 on Gender Equality"*, Alon et al, March 2020

risky environments.

- 43.2. The tiered system is reflective of the relative informality of these sectors within our economy and system of legal regulations and the pandemic has highlighted the harsh consequences that flow from this, such as non-registration for unemployment insurance and protection against occupational disasters and hazards. Creating equality through the NMW is a key step in engendering equality in treatment and before the law generally, which will in turn remove the damaging consequences of informality.
- 43.3. The disproportionate impact of the pandemic on women, especially women of colour, has set us back years if not decades in realising gender equality. Ongoing wage disparity will continue to entrench this now heightened inequality. Wage parity on the other hand will be a significant step to address this.
- 43.4. The pandemic has revealed the urgency of profound structural change to remedy the equality gap. It is clear that the key challenge we will face emerging from the pandemic is to put in place meaningful structural changes to realise equality and dignity for all South Africans. It is such a simple and obvious step but one that will have real, meaningful and material consequences and will finally end the indignity of this shameful feature of our colonial legacy.

D CONCLUSION

44. The pandemic has amplified existing inequalities and vulnerabilities especially among the poor and women, of which many domestic and farmworkers are both. It has also highlighted just how valuable these groups of workers are to society and the economy, yet they continue to be paid an inferior NMW.
45. An increase to the NMW is the starting point to not only help cushion the economic blow sustained by these workers but to grant them the dignity of acknowledging their value in society.
46. As noted by the UN, the response to the crisis, whether at a national or international level, must factor in the way in which the inequalities have increased vulnerabilities to the impact of the pandemic and use the momentum to rebuild more equal, inclusive and resilient societies rather than simply repeating past policies.³⁷ The challenges to eradicate the inequalities and discrimination faced by these categories of workers are many. But the starting point to begin to address these imbalances is obvious: equalise NMWs for all.

³⁷ United Nations, “Policy Brief: The Impact of COVID-19 on Women”, 9 April 2020

Domestic workers pay a heavy price for employers' noncompliance with labour law Survey results | 28 April 2019

In April 2020, Izwi Domestic Workers Alliance surveyed domestic workers to better understand how many were on unpaid leave, and how many have access to UIF relief. Results are summarized below.

As we hit month end, most domestic workers will not receive any wages, resulting in yet more hunger and evictions. Of 602 respondents,¹ only 37% can confirm they are getting full wages during the Covid-19 lockdown. Less than 10% of domestic workers are on paid leave, 27% are on unpaid leave, and another 27% are on leave but have not been told whether they will be paid for April. 4% lost their job because of Covid-19.

Other issues reported in the survey included forced separation from their families, and prevention from seeking medical care or buying groceries when needed. Of those staying in their employer's house during lockdown, most are not getting any time off for evenings, weekends or public holidays. Even in early April many were already struggling with insufficient funds for food and rent.

There are over 1 million domestic workers in South Africa, 95% of whom are women, and many of whom are primary breadwinners for families. Remarkably, 79% of those surveyed are not registered for UIF, and an addition 11% don't know if they are registered (which means they likely are not). This aligns with academic estimates that only 20% of domestic workers are registered for UIF². To date, the state has refused to include unregistered workers in the TERS wage benefit.

Most households have not registered their worker for UIF because they did not think it was worthwhile or did not want the hassle. Now domestic workers and their families are paying the price for their employers' noncompliance with labour law. Izwi is calling for the Department of Labour to compel all employers to pay domestic worker wages, regardless of their UIF registration status. Those employers who have registered can claim the funds from TERS (as is now required by law, according to 16 April Amendment to C19 TERS). Those who have not registered with UIF can be registered now or be mandated to pay regardless. Going forward, this could encourage a new standard of labour law compliance for domestic employers.

With domestic workers not scheduled to return to the economy until Level 2 restrictions are in place, many months of hunger and evictions are ahead for hundreds of thousands of women and their dependents if the Department of Labour does not act expeditiously. *For more information, contact Amy Tekie at amy@izwi.org.za | 0792779006.*

Summary of Survey Results

1. Is your employer paying you during the lockdown?

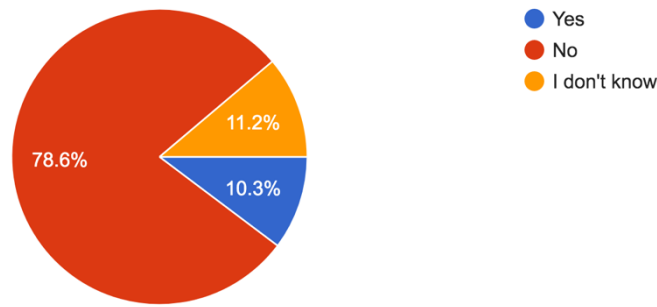
541 responses



¹ Number of responses differs per question. Survey respondents were primarily Johannesburg based, and included many foreign nationals.

² Women in Informal Employment: Globalizing and Organizing (WIEGO) and the University of Western Cape's Social Law Project

2. Are you registered for UIF?
546 responses



3. If you are not registered for UIF, why not?
442 responses



4. Are you having any other problems at work related to Coronavirus? If so please explain.
(Selected responses below)

I'm worried I want to go to clinic for my check up they are not allow me to go outside

They told me I have to work until that 21days siting with them they refused to let me go home to take care of my kids to make sure my kids are save

we are not paid we work for Sartadays,,and we dont knock off in time no overtime payed

My employer don't paid me all money

Please help me here im working during lockdown,now on the 6th of April i have to go at clinic for an appointment to fetch my medication they dont allow me to go for a checkup and medication collection i talk to them about Monday appointment they refuse,so what must i do thank.looking forwad to here your response

Will i get my UIF when i no longer want to stay here

Too much work I have seen the other side of her during this lockdown she doesn't talk to me she talks to her children she is distance nje Am even scared to make my self something to eat cause she's counting her food

They even don't allow me to go out .but them they're always go out for shopping..

Yes being small money less that r3000 and working monday to Friday

Yes, i lost my job because of this corona, my other boss went to over seas, he not coming back again

During public holidays i am working and i am not paid for working during public holidays. And i am underpaid.

Apart from that m not working not getting paid , it a problem sinse I have no money for food and electricity

I got paid on monthend, and it was my off day as usual, later that day my madam boss called and said I must go and send groceries to home for my kids. She said I am not concerned about health of her kids. That's how I was dismissed,

Assistance in anyway very hungry

I work for four different people. 2 promised to pay me during lockdown I don't know about the 2nd and I feel scared that they might not pay me and I feel like I can't ask them if they'll pay me or not.

Life is becoming hard

The employer sends me out to crowded town without a permit and any protection.

No food life is becoming hard

I am working every day no off day non stop no holidays no overtime

Due to this Corona virus, I have to work Sleep in and get paid half of the salary, I'm used to get.

White people always think blacks are the onces who bring them diseases in their home and that we all don't know hygiene

Yes coz they wanted me to work while there were not going to pay me

I am not paid for off days and holidays, i am working every day

Unfair treatment

Yes am staying at work so my family is running out of food and I cant help them yes .no food no money to pay rent .m now struggling very badly.

Unable to pay my rent, Buying food for me and my children. I am a single mum

My boss didn't pay me she said she won't be able to pay me cz she don't have an income n l'm not sure if i will get back to work after this coronavirus

I was stopped from coming to work because of corona virus until further notice. Was told to rent a place close to work so that I won't take public transport or else I look for another job.

since iam not working i don't have any other source of income to buy food.

Full results are available upon request.

Izwi is distributing food assistance to domestic workers in need. Those who want to contribute can do so through <https://www.backabuddy.co.za/champion/project/domestic-workers-solidarity-fund>.