

1. Executive Summary

1.1. Landscape and context

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

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

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

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

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

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

1.2. Why a national minimum wage?

The social partners have agreed that the implementation of a national minimum wage (NMW) provides a positive intervention in addressing this situation in our country. On its own it will not solve all of the challenges we face, but it is an implementable policy which is designed to have a measurable and concrete

benefit on the poor. The minimum wage is therefore seen as one of the tools to close the wage gap, including between the genders, and thereby to overcome poverty.

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

1.3. International experience

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

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

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

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

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

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

1.4. The Advisory Panel – process and considerations

The Advisory Panel was established in August 2016 to interrogate the current literature on the national minimum wage and to engage with the concerns and proposals of the Nedlac social partners – Organised Labour, Organised Business, Community, Government. The Panel consulted over 60 research reports and met with all the social partners and also with experts from small business, youth, care work and the informal sector.

The Panel's overarching considerations were:

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

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

1.5. The initial level for the national minimum wage

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

Table 1: The National Minimum Wage

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

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

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

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

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

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

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

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

1.6. Adjusting the minimum wage

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

1.7. Institutional arrangements for implementation and adjustment

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

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

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

- poverty and inequality.

The mandate of the NMW Expert Panel will be to:

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

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

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

1.8. Other policy issues for consideration

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

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

1.9. Summary

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

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

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

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