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**Minimum wage-setting by the
Employment Conditions Commission
in South Africa, 1999-2015**

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Minimum wage-setting by the Employment Conditions Commission in South Africa, 1999-2015

Abstract

The growing literature on the institutions that set minimum wages points to the importance of institutional design but lacks empirical studies of how and why institutions work in different ways. This paper examines the case of the Employment Conditions Commission (ECC) in South Africa between its establishment in 1999 and 2015. The ECC, comprising members nominated by organised business and labour together with government-appointed experts, set sectoral minima in low-wage sectors without strong collective bargaining. The ECC tended towards caution in setting and raising minima, for at least three reasons: concern over possible job destruction (in an economy with very high unemployment already), low baseline minima inherited from previous or other institutions, and the negotiating styles of labour and business representatives. The ECC raised sectoral minima steadily in real terms, in some cases more than doubling over about a decade. On only one occasion, under intense political pressure from the government, did the ECC recommend a major real increase. Lacking independent research capacity and hence good evidence on the size of employment effects, the ECC was vulnerable to political pressure (from the government) or criticisms (from trade unions, from 2012 onwards).

Introduction

There is growing consensus that institutional design matters with respect to setting minimum wages. The ILO, which is the foremost global advocate of minimum wage-setting, argues that ‘minimum wage systems need to be well designed’ and ‘carefully crafted’ (ILO, 2013: 45-6). Whilst there is little scholarship on the precise consequences of institutional design, several studies have found that the more authority is delegated to business and labour, the higher the level of the minimum wage (and the higher the unemployment rate). Boeri (2012) found that minima tended to be higher when governments delegate wage-setting power to organized

business and labour. Garnero, Kampelmann & Rycx (2015) compared European countries that relied on collective bargaining to set minima with countries that had statutory national minima, and found that minima set through collective bargaining tended to be higher but non-compliance and non-coverage were higher also. Corporatist minimum-setting also correlated with higher unemployment (Nattrass & Seekings, 2015). In the USA there is considerable subnational variation in the level of wage minima, but little or none in the institutional design. Increased minima seem to be related more to political factors (such as the party of the state governor and the strength of unions locally) than to economic ones (Neumark & Wascher, 2008: Chapter 8; see also Whitaker *et al.*, 2012; Pierson & Thompson, 2014). Precisely how, when, where and why institutional design matters is less clear, primarily because of the paucity of empirical studies of precisely how and why minimum-setting institutions set minima at particular levels. The only minimum-wage setting institution to be analysed in detail, at least in English, is the British Low Pay Commission, established in 1998, which has been analysed in detail by two of the academics who were appointed as commissioners (Brown, 2002, 2009; Metcalf, 1999). This paper is the first paper to examine the case of South Africa, where the Employment Conditions Commission (ECC) was established at almost exactly the same time as the LPC in the UK.

The ECC in South Africa and LPC in the UK were similar in some respects. They were both tripartite in structure, comprising members nominated by organized labour and business alongside independent experts appointed by the government; both were chaired by one of these independent experts. Both the LPC and the ECC were generally cautious in their recommendations, and both were criticized for not raising minima faster and higher. In other respects, the institutions differed. Whereas the the LPC in the UK set a single national minimum, without regional variation (but with concessions for younger workers), the South African ECC set sectoral minima, often with regional differentiation, but without concessions on the basis of age. Whereas the LPC had substantial resources with which to conduct research to inform its single recommendation, the ECC was entirely dependent on the Department of Labour (which itself has little research capacity) for the research needed to set multiple sectoral minima. The LPC's recommended minima affected directly at most 5 percent of British workers, whereas the proportion in South Africa is much higher.¹

¹ How much higher is not entirely clear. Minima set by the ECC cover sectors in which about 4 million workers are employed (see below), out of a workforce of about 14 million workers. But some of these workers are paid more than the minimum. The kernel density plots included in Borat, Kanbur & Mayet (2013) and Borat, Kanbur & Stanwix (2014) suggest sharp spikes around the minimum in all the sectors they studied. Even if only one half of the workers in affected sectors

Most importantly, perhaps, the economic contexts differed: Wage inequality was much more extreme in South Africa than in the UK, and the South African working poor population was much larger by any measure; at the same time, unemployment was very high in South Africa but remained low in the UK.

A final difference between the LPC and the ECC is the severity of criticism of their performance. The LPC has been criticised for conservatism (e.g. Manning, 2012), but the difference between the LPC and its critics remains small. Criticisms of the ECC have been much more extreme. Despite doubling, in real terms, the value of most sectoral minima over about a decade, and despite the concurrence of trade unionists on most of the ECC's recommendations, the Congress of South African Trade Unions (COSATU) began to criticise strongly the ECC from 2012. COSATU strategist Neil Coleman accused the ECC of failing workers by setting minimum wages in many sectors far below the poverty line. According to Coleman, the ECC had been captured by a combination of technocrats and business interests (Coleman, 2013; COSATU, 2015). COSATU began to push for a more centralised system for setting a single national minimum wage, in which trade unions would wield more power, and for the minimum to be set at two to three times the level of most sectoral minima (see Seekings & Nattrass, 2015).

The South African case cannot be considered typical, either globally or among developing countries specifically. Firstly, there is no typical institutional design. As the ILO has repeatedly emphasized in its reviews of the field, there has been 'little uniformity among countries in the methods they use to fix minimum wages or to decide upon the groups of workers who should receive legal protection for their wages' (Starr, 1993: 61). The ILO itself tends to favour a tripartite structure like the ECC (and the LPC), which recommends but does not determine the minimum or minima. The ILO reports that this is the most common institutional structure. But in some countries governments hand over all of the responsibility for setting minima to bipartite institutions (including only business and labour), and in some others (including the USA) governments set minima through a purely political process without any institutionalised consultation (Belser & Sobeck, 2012). Secondly, the South African context cannot be considered typical. The post-apartheid, democratically-elected government inherited sectoral wage-setting institutions dating back to the 1920s and 1930s, and chose to reform rather than transform these in the late 1990s (Seekings, 2016a). The South African labour market also has two unusual features: a large 'wage gap' between low- and high-paid workers, that even

were affected directly by the minima, the de facto coverage rate (about 15 percent) would be much higher than in the UK.

in the 2000s has a racial element to it; and very high unemployment rates (more than 25 percent using the official definition, but close to 40 percent if people who have given up looking actively for work are included). Despite these features, the case of the ECC in South Africa provides insights into how minimum wage-setting institutions go about their work in the face of both constraints and pressures.

The ECC regulated conditions of employment as well as minimum wages. This paper examines only minimum wage-setting, with occasional references to other benefits such as requirements for annual bonuses. In sectors such as domestic work that had not been regulated previously, the bulk of the ECC's work (at least at the outset) concerned conditions rather than wages (see ECC, 2002a).

The design of the ECC

In 1994, South Africa's first democratically-elected government inherited a dual system of wage-setting that dated back to the 1920s and 1930s. In sectors with strong trade unions and employers' associations, minimum wages were set through collective bargaining, with the Minister of Labour empowered to 'extend' minima to all workers and employers in the sector. In sectors without strong trade unions, minimum wages were set by a national Wage Board. Under apartheid, these institutions had generally operated so as to protect the interests of privileged white workers, discriminating against or excluding altogether black workers. By the end of apartheid, both systems had atrophied, because very few white workers were affected by minimum wages. Fast-growing trade unions representing black workers identified both systems as offering opportunities, however, and demanded their reform rather than abolition or transformation. A new Labour Relations Act (in 1995) consolidated sectoral collective bargaining, whilst a new Basic Conditions of Employment Act (1998) reformed wage-setting for 'vulnerable' workers, replacing the Wage Board with a new ECC.

The design of the ECC reflected both the legacy of its predecessor, the Wage Board, and the circumstances of the 1990s (Seekings, 2016a). Like the Wage Board, the ECC was required to recommend sectoral minima. There had been demands from some trade unions and allied non-government organisations for a national minimum wage, but this provoked strong opposition within the labour movement on a variety of grounds. Some opponents worried that the minimum would be set too high for low-wage, labour-intensive sectors (including clothing manufacturing as well as agriculture and domestic work), and would destroy jobs. Other opponents worried

that a low national minimum would erode the unions' legitimacy and weaken their campaigns for 'living wages'. Many worried about that a national minimum would undermine collective bargaining, shopfloor-based union organisation and unions' independence from the state. COSATU and most allied intellectuals eventually decided to endorse continued sectoral wage-setting.

Unlike the former Wage Board, the ECC was tripartite, with members nominated by organised business and labour along with independent experts nominated by the government. The ECC recommended minima to the government, but the legislation required that the Minister of Labour detailed reasons if he or she did not accept the ECC's recommendations. The composition of the ECC reflected the general post-apartheid labour dispensation, structured around "social partnership". The government insisted on retaining a major role because, in the words of the Minister of Labour, of the imperative of representing "the millions of unemployed" and small business, "whose voices are not heard loudly enough through the medium or organized business and labour".² Retrenchments and rising unemployment left even unions at least as anxious to create jobs as to raise wages. The ECC was explicitly required to take into account risks of job destruction in its recommendations.

A fundamental difference between the Wage Board and the ECC was the explicit abolition of any sectoral exemptions from wage-setting.³ The Wage Board had not been empowered to set minima for either farmworkers or domestic workers. Regulating these sectors was, in contrast, an explicit priority for the ANC-led government. Between 1998 and 2001 successive Ministers of Labour instructed the ECC to recommend Sectoral Determinations (SDs) in eleven distinct sectors: Contract cleaning, civil engineering, private security, clothing and knitting (outside of the districts regulated through collective bargaining), domestic work, agriculture, wholesale and retail trade, forestry, fishing, taxis, and 'hospitality' work (i.e. hotels and restaurants). The formation of a bargaining council in the fishing sector meant that the ECC did not need to complete its work on this sector. The ECC recommended SDs in the other ten sectors. The ECC was also instructed to recommend SDs for learnerships (under the Skills Development Act) and the unusual category of children working in advertising and cultural activities. Only four of these sectors had been regulated (even in part) by the old Wage Board.

² Tito Mboweni (Minister of Labour), Address to the Labour Law Conference, Durban, 1994 (included in Kalula and Woolfrey (1995), 2-4).

³ The ECC did recommend, and the Minister gazetted, a Ministerial Determination that exempted small businesses in all sectors from a range of requirements concerning conditions of employment, but not wages.

The total number of workers in sectors regulated by the ECC is not entirely clear. By 2005, ‘approximately 3.5 million workers’ were reportedly covered by SDs (Godfrey, Maree & Theron, 2006: 88). This figure, apparently based on the ECC’s own reports, included about one million domestic workers, one million workers in wholesale and retail trade, just under one million workers in agriculture, and about 0.5 million workers in other sectors. In addition, a small number of workers on public works programmes was covered by a ‘Ministerial Determination’ (rather than an SD) recommended by the ECC. After 2005, SDs were gazetted in the forestry and hospitality sectors, which the ECC reported employed close to 0.7 million workers (ECC, 2006b, 2007), and an unknown number of workers subject to old ‘Wage Determinations’ (under the Wage Board) converted into SDs under a 2002 amendment to the Basic Conditions of Employment Act. An analysis of data from 2000 concluded that 3.8 million workers had then been working in sectors covered by SDs gazetted up to 2008 (DPRU, 2008: 19). In 2014 the Department of Labour estimated that somewhere between three and five million workers were covered by SDs (South Africa, 2014).

In 2014-15 the ECC itself began to investigate new SDs to cover sectors that were not yet covered. The largest such sector was the building industry (apart from road construction and other work covered in the past through the ‘civil engineering’ SD), with small sectors including funeral undertakers and gardening services. Precisely how many low-wage workers were in unregulated sectors remains unclear. In 2013, the Basic Conditions Amendment Act⁴ provided for the Minister of Labour to ‘publish a sectoral determination that applies to employers and employees who are not covered by any other sectoral determination’ (or bargaining council collective agreement).⁵ This provision was not used in 2014-15.

Over its first fifteen years, the ECC met approximately monthly to discuss the various investigations on its agenda, usually together with staff of the Employment Standards Directorate in the Department of Labour. ECC investigations are initiated by the Minister of Labour, who gazettes an instruction to investigate a sector and recommend a Sectoral Determination. (Occasionally, the Minister instructs the ECC to conduct some other kind of investigation). Some of the ECC’s investigations have been protracted. SD 12, covering forestry workers, was finally gazetted in 2006, five years after the original instruction to the ECC (in November 2001). SD 14, covering hospitality workers, was gazetted in 2007, eight years after the original instruction to

⁴ Act 20 of 2013, effective from September 2014 (Government Notice 654, Government Gazette 37,955 (29th August 2014).

⁵ Section 8 (f) of the Basic Conditions of Employment Amendment Act, revising section 55 of the original Act.

the ECC in 1999. Once a SD is in place, the ECC conducts regular reviews, primarily to reset sectoral minimum wages. In two instances, these led to new SDs (SDs 6 and 13), but in all other cases the ECC recommended and the Minister gazetted amendments to the existing SDs. In the clothing sector there was no need for any subsequent review because a national bargaining council was established under the LRA. The result was 14 distinct SDs (in 12 sectors) by the end of 2007 (see Appendices 1 and 2) and a total of about 35 reviews of SDs by the end of 2014. In total, therefore, the ECC completed about 50 reports by the end of 2014.

The ministerial instruction to the ECC to investigate a sector has always been accompanied by a call for written submissions from interested parties and the announcement of public hearings. The legislation proposed that the Department of Labour organise the hearings and incorporate the findings of written and oral submissions, together with other research conducted or commissioned by the Department, into a report with recommendations submitted to the ECC. The ECC would then debate this report and write its own separate report for the Minister. This procedure seems to have been followed with respect to the first ECC sectoral investigations (although in only two cases – the initial investigations of domestic and farm workers – was the Department of Labour’s report published. Once the ECC settled into more of a routine in the early 2000s, the process seems to have been streamlined, with the Department drafting a composite report and then revising it in discussion with the ECC. Although the Department of Labour stopped producing separate reports, the composite reports generally distinguished between the Department of Labour’s recommendations (to the ECC) and the ECC’s recommendations (to the Minister).

The process left the ECC heavily dependent on the Department of Labour. The ECC had no research or administrative capacity of its own. All research was conducted or commissioned by the Department. In practice, the Department of Labour itself had limited capacity (including to archive documents or post them on the internet, as we shall see below). Each ECC report was the responsibility of one of the staff in the Employment Standards Directorate in the Department of Labour. Many commissioners were critical of the quality of the writing and arguments made in draft reports by Department of Labour staff, and individual commissioners themselves often edited or rewrote the reports. Department of Labour staff argue that they have not had the expertise – for example, the economic expertise – required to write large sections of each report. In about 2010 the procedure was therefore modified so that one commissioner was charged with responsibility for each report, especially for the chapter in which the ECC explained how its recommendations took into account the

criteria stipulated in the Basic Conditions of Employment Act, including the ability of employers to pay and possible negative effects on employment.

The absence of research capacity was a serious constraint. None of the commissioners, nor the relevant personnel at the Department of Labour, had experience of wage-setting prior to South Africa's democratisation in 1994. The ECC may have been a reformed version of the old Wage Board, but there was no continuity of personnel.⁶ In practice, the ECC invented itself. Like many institutions in newly-democratized South Africa, it regarded research as a necessity. Almost immediately after being appointed, ECC members and Department of Labour personnel went on a study tour to the ILO (in Geneva) and the newly-established Low Pay Commission (in London) (ECC, 2003: 5). The team visited the ILO in the expectation that the ILO would be able to help benchmark domestic workers' wages. But, one commissioner recalls, they were 'very surprised to find that the ILO had no idea' what to do. Indeed, they learned, 'we in South Africa were the only people thinking about domestic workers' wages'. In London, the team were impressed by the extent to which the Low Pay Commission's decisions were informed by solid evidence.⁷ The ECC and Department of Labour had no such capacity. The Department of Labour contracted out research to a variety of institutions. For its SD for domestic work, for example, research was commissioned from an academic research institute and surveys were conducted to ascertain the distribution of existing wages and employment conditions. One commissioner recalls the Department of Labour insisting that that 'we must get as much evidence as we can; I was impressed by the effort they put into it'. The initial SD in agriculture was also based on solid research. But the research was not subject to rigorous public scrutiny or debate. When research was not commissioned, Department of Labour staff had to do the best they could, usually through internet-based searches, to draft the relevant sections for ECC reports.

Research was more thorough on existing wages and conditions of employment (and the cost of living) than it was on the affordability of increased minima and their effects on employment. Labour commissioners reportedly pointed to the lack of data on affordability, suggesting that increases were more affordable than sceptics imagined. Business representatives pointed to the lack of data on employment

⁶ It is not clear why the chair of the interim Wage Board, Dudley Horner, was not appointed to the ECC.

⁷ A key Department of Labour official, Virgil Seafield, reportedly went on a study tour to the USA also. Later, in about 2008, commissioners (Kalula, Bhorat and Ntshalintshali, as well as about-to-be appointed commissioner Woolard), and Department of Labour personnel again visited the UK Low Pay Commission.

effects, suggesting that complacency was misplaced. In practice, research on affordability and employment elasticities was, at best, suggestive, easily dismissed when inconvenient, sometimes misused, and generally used to legitimate decisions rather than actually inform them.

Given the paucity of support in terms of both research and writing, individual commissioners exerted considerable influence, especially when they had the authority of expertise. The ‘independent’ experts appointed by the government were all either lawyers or economists with expertise in labour law or economics. The first Commission was appointed in 1998 and began its work in 1999. It was chaired by Edwin Molahlehi, a labour lawyer (and ANC leader from the West Rand). Evance Kalula (a prominent scholar of labour law in Southern Africa, from the University of Cape Town) and Debbie Budlender (an independent researcher with a background in economics and close ties to the trade unions) were appointed as the two other independent commissioners. Molahlehi chaired the ECC for one term only, before he was appointed as Director of another new institution, the Commission for Conciliation, Mediation and Arbitration (and later still became a Labour Court judge). When the second Commission was appointed in 2002, his place was taken by Dr Zavareh Rustomjee (an economist and former Director-General in the Department of Trade and Industry), whilst Kalula took over as chairperson. In 2005, Haroon Bhorat, an economist from the University of Cape Town, replaced Rustomjee. All three serving ‘independent’ commissioners stepped down in 2008. They were replaced by economists Ingrid Woolard (from the University of Cape Town, as chairperson) and Imraan Valodia (then at the University of KwaZulu-Natal), and legal academic Adriaan Van Der Walt (from the University of Port Elizabeth). These three commissioners were reappointed in 2011. In 2014, Woolard stepped down. Van der Walt took over as chairperson, and another economist from the University of Cape Town, Cecil Mlatsheni, became the third ‘independent’ commissioner.

All of these commissioners saw themselves as ‘progressive’. They saw their research or legal work as a contribution to poverty-reduction, and all had close ties to the ANC and/or the post-apartheid state government departments. Whilst few (if any) of them had close ties to business, few had close ties to trade unions. Insofar as it is possible to generalise, the predominant approach was to balance the need to protect ‘vulnerable’ workers (who lacked trade unions) from exploitation with the imperative of preserving and creating employment.

For almost the entire period organised labour was represented by the deputy general-secretary of COSATU (Tony Ehrenreich from 1999 to 2002, then Bheki Ntshalintshali). In 2003 ‘alternate’ business and labour members were appointed,

ostensibly to stand in for the full members when the latter were absent. From 2008, the alternative member from the unions was Jane Barrett, a long-serving union official. In practice she served thereafter as the primary labour representative. The longest serving commissioner nominated by organised business was Kaiser Moyane, who served initially as alternative member (2003-05) and then as full member.

For at least the first half of the ECC's history strong efforts were made to ensure that the commissioners reached consensus over a single report. Commissioners shared a broad concern with the protection of low-paid, 'vulnerable' workers and were steeped in the ideology of 'social dialogue' and 'partnership' emphasised by the first ANC Minister of Labour, Tito Mboweni. Business and labour were supposed to negotiate and, guided in this case by independent commissioners, to reach agreement. The legal backgrounds of the first two ECC chairpersons – Molahlehi and Kalula – suited this approach. Very rarely, if ever, did commissioners submit minority reports. This approach suited labour, whose representatives were typically experienced and pragmatic negotiators whose goal was to secure slightly higher real wage increases. Business representatives, also, preferred to avoid confrontation. There were clear disagreements between some of the commissioners, but the outcome was usually compromise. According to one advocate of higher minima: "I pushed as hard as I could" but "I was compromising all the time" and "I never signed a minority report"; the low minima were "distressing" but "it would have been worse without me".

It became harder to maintain this consensus in the 2010s. Labour representatives began to push more aggressively, business representatives felt a need to resist what they saw as excessive real increases in the minima, and the commissioners who chaired the ECC found it harder to persuade all commissioners to compromise. This reflected in large part a less conciliatory broader political context. The result was a flurry of minority reports. It is difficult to say precisely how many, because no one seems to keep a complete record. Minority reports are sent to the Minister, but there was no requirement that they be sent to other commissioners, and the signature sheet for each report was not circulated, so not even the chairperson of the ECC necessarily knew whether other commissioners signed off on the main report or submitted minority reports. It seems, however, that somewhere between five and ten minority reports were submitted in the early 2010s, mostly by the business representative(s), but perhaps some by the labour representative(s).

Even in the 2010s, however, divergent views were sometimes accommodated within a composite report. The ECC's 2013 report on farmworkers – discussed in detail below – recorded that both labour and business representatives dissented from the majority view. The 'Labour Commissioner' argued 'strongly' that the majority

recommendation of R105/day was ‘nowhere near a decent living wage’ and thus ‘unacceptable’, whilst the business representative proposed a minimum of about R95/day. Labour opposed recommendations for three years, whilst business opposed the recommendation that wages in the second and third years increase by more than the inflation rate. All of these dissenting views were recorded in the main report (ECC, 2013a).

This uncertainty over who had submitted what minority reports reflects a broader problem of record-keeping. The Employment Standards Directorate in the Department of Labour has served as the secretariat for the ECC. There appear to have been no standard procedures for the archiving of ECC reports (and minority reports). In the early years, Department of Labour personnel apparently resisted the publication of reports. In the 2010s, however, many (but not all) reports were posted online, on the Department of Labour’s website. Appendix 1 lists the ECC reports that are available and those that are presumed to have been completed but are not available. Not only are some reports not available, but it is not possible to find online (either through the Department of Labour’s website or through the online search engine for the Government Gazette) all of the changes in minimum wages gazetted in the form of amendments to SDs.⁸ Individual personnel in the Department of Labour may have the information, but it is not readily available to the public. The ECC did briefly publish annual reports. The first ‘annual’ report covered the first four years of the ECC’s operation to early 2003 (ECC, 2003). Copies have survived of annual reports for 2005-06 and 2007-08 (ECC, 2006a, 2008). If any other annual reports were published, they do not appear to be accessible, even within the Department of Labour.

At the beginning the new Commission proceeded very cautiously in terms of setting wage minima, before settling into more of a rhythm.⁹ Most of its fifty-odd investigations over the period 1999-2014 entailed a broadly similar process. In practice, lacking really thorough research, the ECC first sought a relevant baseline

⁸ Typically the ECC would recommend minimum wages over a three-year cycle, indicating that the minima should be raised in years 2 and 3 by the CPI plus a specified percentage. Just before the start of the second and third years, the Minister of Labour would gazette the actual minimum for the coming year, on the basis of the CPI over the preceding year. I have been unable to access these actual gazetted minima in a number of instances (including the forestry sector in 2007, 2008 and 2010).

⁹ The analysis in this paper focuses on the wage minima. The ECC also recommended changes to conditions of employment. The absence of research on wages might have led to ‘adaptive wage-setting’ with respect to wages, but it did not mean that the ECC did not consider carefully the character of each sector in making a package of recommendations covering wages and conditions of employment.

minimum (or, more often, set of minima) that could be adjusted. About half of the initial SDs were in sectors where there had been wage regulation through the Wage Board prior to 1998, or where some workers were covered by bargaining councils operating under the LRA, or where employers and unions participated in an informal bargaining forum. Once a SD existed, any subsequent review could use the initial SD as a baseline. If there was a baseline, then a second question followed: By how much should wages be raised in real terms? Most of the ECC's work was therefore quite routine. Debate and negotiation revolved around how much minima should be increased in real terms, i.e. above the rate of price inflation, and whether past patterns of differentiated minima should be maintained or adjusted also. Below, I discuss these in terms of 'adaptive wage-setting'. Out of fifty-odd investigations, only six involved entirely or substantially new wage-setting in major sectors of employment: Private security, domestic work, farm and forestry work, the taxi industry and learnerships. Very occasionally the ECC was handed a highly politicised case, when adaptive wage-setting was not politically feasible even if a baseline existed. The most prominent instance of this was the 2013 farmworker report, which resulted in an adjustment to the existing minima that was an order of magnitude larger than any previous adjustment. Other instances in this category of 'politicised' cases included the 2000 clothing report and some of the post-2013 reports where the ECC had to decide whether to raise minima in other sectors in line with the farm work minima. In short, most of the ECC's work entailed incremental adjustments to existing minima, with perhaps one in five of its reports involving cases where there was no baseline to adjust or there was intense political pressure to set what would be, in effect, an entirely new baseline.

Whether the ECC was adjusting existing minima or setting new ones, it also had to decide whether to set one absolute minimum for the sector, or a set of minima. The ECC set minima differentiated by a variety of criteria, mostly inherited from previous SDs (or Wage Determinations by the old Wage Board) or proposed by formal or informal bargaining fora. The most common criterion was geography, with districts across South Africa allocated to between two and five categories. In at least one sector, the ECC differentiated by the size of the employer. The question of differentiation was integrally linked to the question of how high the minimum or minima should be set. Allowing multiple minima meant that higher minima could be set for workers employed by firms that were more likely to be able to pay them, whilst lower minima could be set for workers who were more at risk of retrenchment because their employers could not afford to pay higher wages. The ECC inherited geographical variation but slowly reduced the differential over time (and in some sectors decided not to recommend any geographical variation), moving toward countrywide uniformity. In a few sectors where there was an informal bargaining

forum, the forum proposed minutely detailed sets of minima very much like the schedules of minima agreed in bargaining councils under the LRA. SD3 (private security) provided for no fewer than one hundred different minima covering nine occupational categories, different lengths of service or experience, and five different geographical zones. The highest minimum (for artisans in selected metropolitan districts) was more than three times higher than the lowest minimum (for general workers without experience in rural districts).

Adaptive Wage-Setting: Sectors with an Existing Baseline

Most of the ECC's investigations involved sectors where the ECC could – and did – choose to make incremental changes to existing baselines. In four sectors (civil engineering, clothing and knitting, wholesale and retail and hospitality) wages had been regulated previously by the old Wage Board through Wage Determinations. One of these sectors (clothing and knitting) and the contract cleaning sector were also partially regulated through bargaining councils in some regions. The civil engineering and contract cleaning sectors also had informal national bargaining fora, in which employers and unions negotiated. An informal forum also existed in the private security sector. In all sectors, once an SD had been gazetted, the ECC thereafter could simply modify it, usually through an amendment to the existing SD. In all of these cases, the existence of a baseline meant that the primary question facing the ECC was how big a real wage increase it should recommend. Fairly quickly the ECC settled into a pattern of proposing minima for a three-year cycle. In the second and third years, minima would be raised by the increase in the consumer price index plus a specified percentage. The ECC thus had to decide, first, what real increase to recommend in the first year in relation to the existing or previous minimum and, secondly, what percentage real increase to recommend for the second and third years. In the negotiations over such adaptive wage-setting, labour representatives typically pushed for slightly larger increases, arguing that an extra 1 percent real increase (say) would be unlikely to have significant consequences for employment, whilst business representatives warned that there was no evidence that the negative effects on employment would be small. The consensus position was generally that minimum wages be increased in real terms, but at a generally modest pace. Real increases in the lowest minima, i.e. the minima in mostly rural areas, were however often raised more aggressively (especially in 2013-14).

It is not easy to unravel the ECC’s reasoning in its early recommendations because most of the early reports cannot be traced. When the report is unavailable, it is also difficult to identify what research was conducted as part of the investigation. Fortunately there is some discussion of each in the ECC’s first ‘annual’ report, covering the period up to the end of 2002 (ECC, 2003). Most of the ensuing gazetted minima are also available.

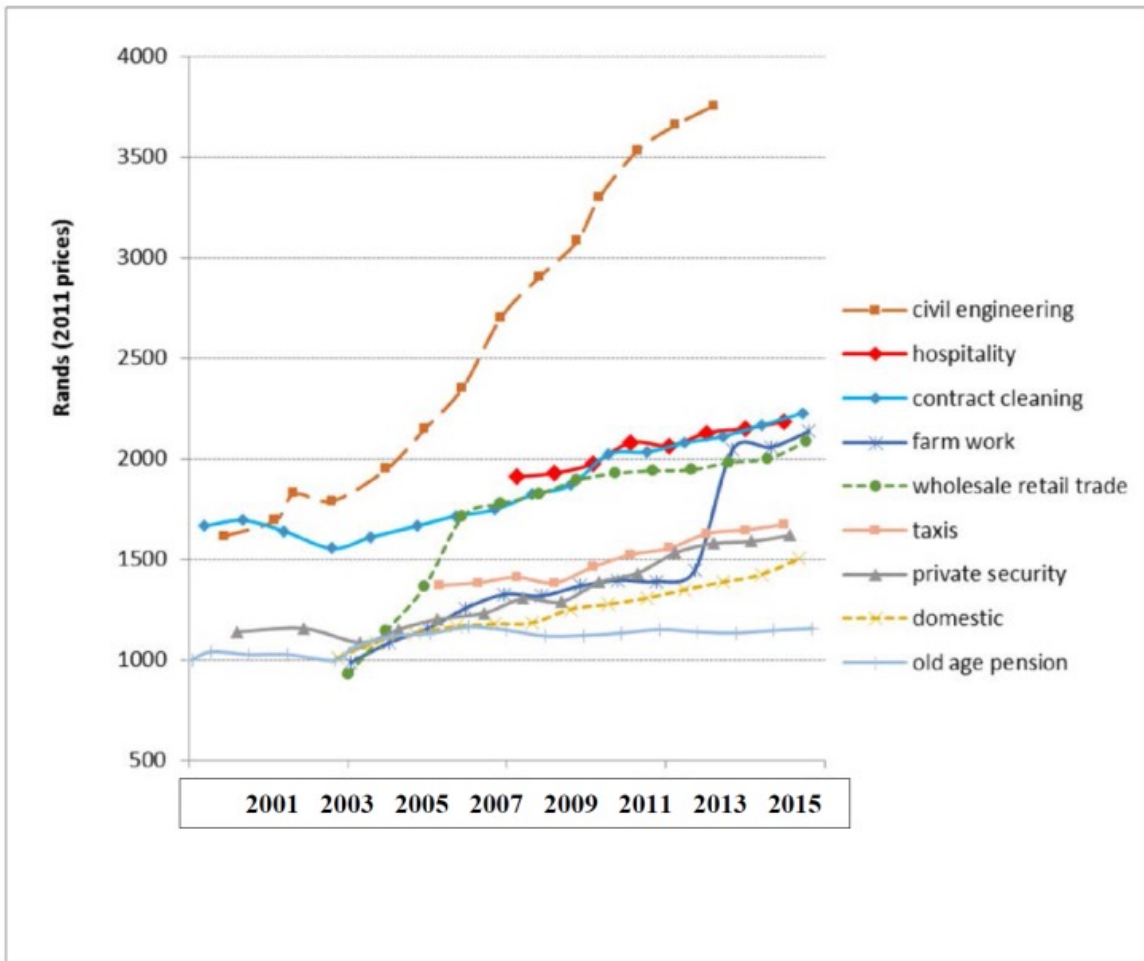


Figure 1: Lowest minima, by sector, in constant prices, 1999-2014

The lowest minimum wage in each sector over time is shown in Figure 1. The wages are shown in constant 2011 prices. Each series begins with the implementation of minima set by the ECC under the relevant Sectoral Determination. Figure 1 also shows the real value of the old-age pension.

SD 1 in the contract cleaning sector

The first SD to be gazetted was in the ‘contract cleaning’ sector. This sector had been regulated by the Wage Board (under WD 482). Some employers and unions participated in a ‘National Bargaining Forum’, but this was not representative and was thus not constituted as a bargaining council under the LRA. There was also a bargaining council in one province (KZN), but the Minister of Labour was apparently not prepared to ‘extend’ this countrywide under the LRA. The negotiations in the Forum did, however, provide a basis for the ECC’s recommendations. The effect was that, in this sector, the ECC was playing a role comparable to that of the Minister under the LRA in deciding whether to recommend that the wages negotiated in the Forum be applied to non-parties, through a SD (under the Basic Conditions of Employment Act) rather than through the ‘extension’ of a collective agreement (under the LRA).

The Forum provided for different wages in three zones. ‘Area A’ comprised the five metropolitan areas and selected urban areas. ‘Area B’ comprised the whole of the province of KwaZulu-Natal, most of which was covered by a bargaining council. The rest of South Africa fell into ‘Area C’. This kind of geographical differentiation had a long history in wage-setting in South Africa. The Department of Labour and ECC seem to have accepted this demarcation. SD 1 (gazetted in May 1991) apparently endorsed the minimum in Area B set by the regional bargaining council. The minimum in Area A was set at slightly higher than the Area B minimum set through collective bargaining. The minimum in Area C was set slightly lower than that in Area B. The result was that the minimum in Area C was 80 percent of the minimum in Area A.

Subsequent amendments to SD1 illustrate well the ECC’s general operation. In both 2002 and 2004, the ECC reviewed SD1. The commission retained the three-tier differentials, and based its recommendations on the minima negotiated in the Bargaining Forum and the bargaining council in KZN (‘Zone B’). But in 2002 the ECC assessed that the deal agreed by unions in the Forum had disadvantaged workers. It therefore raised the minima by 1 percentage point more than unions had agreed in the Bargaining Forum (raising the minimum by 7 percent in 2003-04 rather than the 6 percent agreed in the Forum). In practice, unanticipated inflation eroded the real value such that the real wage in 2005 was the same as in 1999. The ECC did effect two significant reforms, however. First, it required that employers pay an annual bonus. This increased annual earnings, and its effect increased over time as the bonus was extended from the equivalent of one week of pay to one month of pay. Secondly, it provided for a provident fund, to which both the employer and employee

had to contribute (and which thus in the short-term reduced workers' take-home pay). These two reforms raised the total payments by the employer by about 6 percent (ECC, 2002b). By the time of the 2004 investigation the KZN bargaining council had agreed to a 6 percent nominal increase, and the Bargaining Forum had failed to reach an agreement. Employers sought to restrict wage increases to about 6 percent, whilst the unions demanded increases of 9 or 10 percent. The Department of Labour assessed that the sector was 'a labour-intensive sector creating much needed employment', and therefore proposed modest increases of 6.5 percent p.a.. The ECC recommended that the minima be increased by 7 percent in the first year (inclusive of an extra 1 percent of wages that the employer had to pay into the provident fund), and 6.5 percent in the second year – i.e. the ECC was again marginally more generous than the Department of Labour had been. This raised the minimum in Zone C above the minimum agreed by the unions in the KZN bargaining council (ECC, 2004).

In 2006, again, the ECC examined the sector at a time when the Bargaining Forum was deadlocked, with unions demanding 12 percent (for Zone A) or 15 percent (Zone C) whilst the employers offered 3 percent (which they anticipated would entail a real wage decrease). The Department of Labour proposed a gradual reduction of geographical differentials. Reiterating its concern with job losses, the Department recommended that the minimum wage in Zone A rise by an average of 7 percent p.a. over three years, whilst the minimum in Zone C would rise more sharply. The Commission accepted the Department's recommendations for Zone A wage increases and for a reduced differential between Areas A and C. The Area C minimum would rise to 85 percent of the Area A minimum in December 2007 and to 90 percent in December 2008, with a view to abolishing the difference soon thereafter. This would mean that real wages increased faster in the Zone C districts. In both Zones A and C the increases were more than employers offered, less than unions demanded in Zone A but close to what the unions had demanded in Zone C. The ECC went further than the Department, however, in increasing the annual bonus requirement, which amounted to an additional 4 percent increase over two years. The rationale for the ECC's decisions was that there was a rising number of 'fly-by-night' business in the industry, that secured contracts (including from government) through paying low wages (ECC, 2006a). The next ECC review, in 2009, came in the middle of the global economic crash. The Department of Labour 'strongly' urged the ECC not to abolish the geographical differential. The ECC concurred, reversing its earlier decision. It increased the real wage paid in 2009, and provided for further real increases of 1 percentage point in each of 2010 and 2011. For the first time in this sector, the ECC specified wage increases in subsequent years in terms of the CPI plus a fixed increment (1 percent) ensuring a steady if slow rise in the real value of the minimum (ECC, 2009). In 2012, most of the unions and employers agreed in the

Bargaining Forum to real wage increases of 2 percent p.a., for three years. This was endorsed by the Department of Labour and by the ECC (ECC, 2012b).

The ECC's recommendations for the contract cleaning sector reveal the essentially adaptive character of the process. Wage increases were, in most years, framed by agreements reached in the Bargaining Forum and the KZN bargaining council. Both the Department of Labour and the ECC steered a middle ground between business and labour, with the ECC generally being slightly more positive about real wage increases. The ECC recommended wages that, it anticipated, would raise real wages slowly. When inflation eroded real wages, and in order to be sure to raise the real value of the lowest minima faster than higher minima, the ECC adopted the mechanism of setting minima in terms of the CPI plus a specified real increase (of 1 percent p.a. initially, then 2 percent p.a). Unions staked out bold rhetorical positions, but often agreed to very modest increases. The ECC reduced geographical differentials, raising the lowest minima faster than higher ones, but reversed its decision to abolish them altogether. Between 1999 and 2014, the ECC raised the real value of the minimum wage by about 20 percent in Zone A districts and by about 35 percent in Zone C districts.

Subsequent SDs

Comparable processes were followed for SDs 2 (in the civil engineering sector) and 4 (clothing and knitting). Civil engineering had been regulated by the Wage Board under WD 480. In this sector, also, there was a National Bargaining Forum, in which an employers' association negotiated with several trade unions. As in contract cleaning, this Forum was not considered to be representative. SD2 was set taking into account WD 480. In revising SD2 in 2000, the ECC invited the employers' association and trade unions to make formal submissions at the outset of the investigation, the draft SD took into account the agreement reached in the Forum in June 2000, and this draft was circulated to the employers' association and unions. The ECC concluded that the minima agreed in the Forum should be endorsed in the SD given that the negotiations between employers and unions in the Forum had 'developed into a mature process and affordability of wage rates was taken into consideration' (ECC, 2000: 9). This was in line with the logic of the post-apartheid labour dispensation, which prioritised collective bargaining as long as the parties were broadly representative, with the ECC protecting 'vulnerable' workers who lacked strong trade unions. The SD provided for a three-tier wage structure, with three geographical zones. The minimum in the lowest-wage zone was set at approximately 80 percent of the highest minimum. The ECC also slowly improved

conditions of employment (including provisions for casual employees and overtime), as well as lengthening the annual bonus (or, later, annual leave) that employers were required to pay. In 2009, the geographical differentiation was finally abolished (although different minima continued to operate for different occupational categories). Real minima were raised steadily. Over ten years (1999-2009), the minimum wage for the least skilled workers was increased by 50 percent in higher-paying districts and by 100 percent in lower-paying districts (not counting the increases effected by the initial SD).

SD4, covering the clothing sector, was also framed by negotiations between employers and unions. In the clothing sector, the ECC had jurisdiction only over those workers who were not covered by any of the various regional bargaining councils (and were therefore covered by neither the collective agreements reached in the bargaining councils nor the extension of these to non-parties by the Minister of Labour). Wages in areas like Newcastle (in northern KZN) and Phutaditjaba (in the southern Free State) were regulated under the Wage Board's WD 471. The ECC's report is not available, and so the ECC's precise recommendations and reasoning are unclear. The ECC reportedly recommended that minimum wages be raised to bring them into line with the wages prescribed by the Bargaining Council for the Clothing Industry (Natal) and the Knitting Industry Bargaining Council (Northern Areas), adjusted for inflation (ECC, 2003: 8). This meant a substantial increase in real wages for affected clothing workers. Commissioners recall that they were under considerable pressure from the Southern African Clothing Workers' Union, which at the time was trying to establish a National Bargaining Council to enable sector-wide collective bargaining. Raising minima in areas outside the jurisdiction of the existing regional bargaining councils to the minima in collective agreements increased the pressure on employers to negotiate. In effect, the ECC played the role played under the LRA by the Minister of Labour, in extending countrywide the minima in a collective agreement negotiated through bargaining councils. At the time, the weakening Rand cushioned many employers against rising labour costs, although massive retrenchments followed in 2002-03 when the Rand strengthened. By then a National Bargaining Council had been established, and the ECC ceased to be responsible for any wage-setting in this sector.

In the private security sector there was no existing WD but employers and unions had attempted to form a bargaining council, and their negotiations provided an informal baseline for the ECC's consideration. Unfortunately neither of the ECC's first two reports – that led to SDs 3 (February 2000) and 6 (in November 2001) – is available, so it is difficult to reconstruct precisely how the ECC approached its task. The ECC records that it was especially concerned in this sector with the hours of

work – reducing the maximum hours worked per week in phases from 60 to 45. The ECC also provided for a provident fund (ECC, 2003: 8). Minimum wages were set for twenty different occupational categories, with regional differentiation into five different geographical areas. By 2005, when minima for the sector were re-gazetted, the lowest minimum (for ‘employees not elsewhere mentioned’) in cities such as Cape Town were set at R1,445 per month or R7.41 per hour from June 2005, whereas in rural areas the minimum was set at R1,016 per month or R5.21 per hour.

In 2002, SD 9 regulated another major sector – wholesale and retail trade – that had previously been regulated by the Wage Board (under WD 478, which excluded the formerly ‘independent’ bantustans as well as small enterprises). SD 9 (wholesale and retail) provided for three categories of district (although this was later reduced to two), and for a range of job categories. SD 9 also allowed for a phased implementation (over three years) of these minima for employers with fewer than five employees, those situated in former ‘independent’ homeland areas, and others previously excluded from the scope of WD 478. This was another complex SD, with specified minima for nineteen distinct occupational categories, in three geographical zones, with special provision for employers previously excluded from WD 478, and with special provision also for newly-established employers – resulting in a hypothetical total of more than two hundred distinct minima.

The lowest minimum set under SD 9 was very low. Debbie Budlender, who served as a commissioner on the ECC from 1998 to 2006, wrote in 2007 that one of the ‘principles’ developed by the ECC was that ‘a minimum wage should not be set lower than the value of the old age pension’ (2007: 2). Most of the SDs set minima significantly higher than the value of the old-age pension (see Figure 1). The lowest minima in contract cleaning and civil engineering were about 60 percent higher. The lowest minimum in the private security sector – for a general worker in an Area 5 district – was set at just under R600 per month, which was at the time only about 15 percent higher than the pension (although the lowest paid security guards were paid more). The lowest minimum set under SD 9 was, however, briefly lower than the value of the old-age pension. The minimum wage for a general assistant in the wholesale and retail trade sector in a district within any of the formerly independent bantustans was only just over R600 when the old-age pension paid R640 (increased to R700 two months later). New businesses could pay even lower minima (90 percent of the minimum) for an initial period (not shown in Figure 1). One year later, the minimum wage in wholesale and retail trade was raised above the value of the pension, and it was increased very rapidly over the following two years (see Figure

1). With very brief exceptions, therefore, the old-age pension served as a floor for minimum wage-setting.¹⁰

In these initial SDs, the ECC's adaptive approach meant that sectoral characteristics were taken into account indirectly. Minima were set at higher levels in the contract cleaning and civil engineering sectors than in private security or (especially) wholesale and retail trade. The real values of the minima set in initial SDs can be seen at the start of each series in Figure 1.

Some time later, in 2007, SD 14 set minimum wages in the hospitality industry. This sector had been covered by a set of WDs (457, 461, 477 and 479). The ECC was instructed to investigate the sector at the end of 2001. The Department of Labour commissioned the Human Sciences Research Council to prepare a research report, which was not published until early 2006.¹¹ The ECC decided against any geographical or occupational differentiation (over-riding the recommendations of the Department of Labour, employers and unions). With respect to occupational differentiation, the ECC reported that it felt 'that its role is to set minimum conditions and wages for vulnerable groups and therefore it would be inappropriate to set wages for every category of employee employed in the sector', and it therefore proposed a single minimum wage and left it up to employers and unions in the sector to determine wages for other job categories (ECC, 2007: 33). The ECC did recommend, however, that very small businesses be allowed to pay minima that were 10 percent lower than other businesses (i.e. R 1,480 rather than R 1,650 per month, or R 7.59 rather than R 8.46 per hour). Primarily geographical differentiation was thus replaced by differentiation in favour of small businesses. Minima would rise by the CPI plus 2 percent p.a.. These minima were substantially higher than the value of the old-age pension.

Reviewing existing minima

As we saw above with respect to the contract cleaning sector, once a SD was in place the ECC had to decide how to revise it. In almost all cases, the Minister of Labour gazetted revised minima in amendments to the existing SDs. Faced with its own

¹⁰ Budlender notes that in one later case (forestry), the ECC recommended a minimum above the value of the old-age pension, but the Minister accepted the minority recommendation of the business representative and set minima that were at times lower than the old-age pension (Budlender, 2007: 2).

¹¹ See *Government Gazette*, 24th February 2006.

baseline, the ECC had to decide how fast to raise minima over time. One of the perceived problems with the Wage Board had been its ‘failure ... to revise minimum wages regularly, ... without any provision for escalation being made in the determination’ (South Africa, 1996: Chapter E, section 2). Minima sometimes remained unchanged for many years, so that their real value declined with inflation. From the outset the ECC provided for annual increases. At first, it simply specified rising nominal wages, with the proviso that these would be raised if inflation was rapid. At times, especially during 2002 and 2003, actual inflation exceeded the expected rate, with the result that some wage minima actually declined in real terms.¹² The ECC responded by setting minima in three-year cycles that adjusted minima for the first year of the cycle, taking inflation into account, and then in the second and third years of the cycle raised these minima by price inflation (measured using the consumer price index or CPI¹³) plus a specified percentage real increase.

In the case of farmworkers, for example, the 2009 amendment to the SD specified that the minimum would rise by CPI plus 1 percent in the second and third years (2010 and 2011). In 2012, the ECC recommended that the minimum rise by CPI plus 1.5 percent in the second and third years (2013 and 2014). This amendment was superceded by a new one in 2013 (see below), but the 2013 amendment kept to the formula of a CPI plus 1.5 percent increase in the following two years (i.e. 2014 and 2015).

The real value of changes in the minimum in the ten major sectors over time are shown in Figure 2, as a moving average of five changes to minima. The individual changes are shown in Appendix 4 (excepting the two outliers of very large real increases for farms and forestry in 2013). Figure 2 shows the changes to the *lowest* minimum in each sector.¹⁴ The data are for actual increases, deflated using the CPI. Sometimes these differed from the scheduled increases (i.e. the specified real increase above the CPI) because of changes in the inflation rate between when the future increase was calculated and when the actual increase became effective. The

¹² Given the lag before price data were published, the ECC had to set minima on the basis of data on prices that were several months out of date. This amplified the problem of unanticipated inflation.

¹³ In 2011 the ECC recommended using the CPI for the lowest income quintile when recommending increased minima for domestic workers. The business representative filed a minority report dissenting from this recommendation. It is not clear why this was considered an appropriate measure, given that few domestic workers are in the lowest income quintile.

¹⁴ The gazetted minima include one apparent error that has been corrected in this figure. This was the minimum monthly wage for general workers in the private security sector in 2004, where the gazetted minimum seems to have been misprinted. The 10 percent extra concession allowed to new businesses in the wholesale and retail trade is excluded from these series.

first minima set by the ECC (shown in Figure 1) are not reflected here, because they cannot be shown as an increase over an existing minimum. The minima also exclude changes in the requirements for payments of annual bonuses, for leave or for contributions to provident funds. Given that these additional payments expanded over time, Figure 2 understates the total value of the ECC-recommended amendments to SDs.

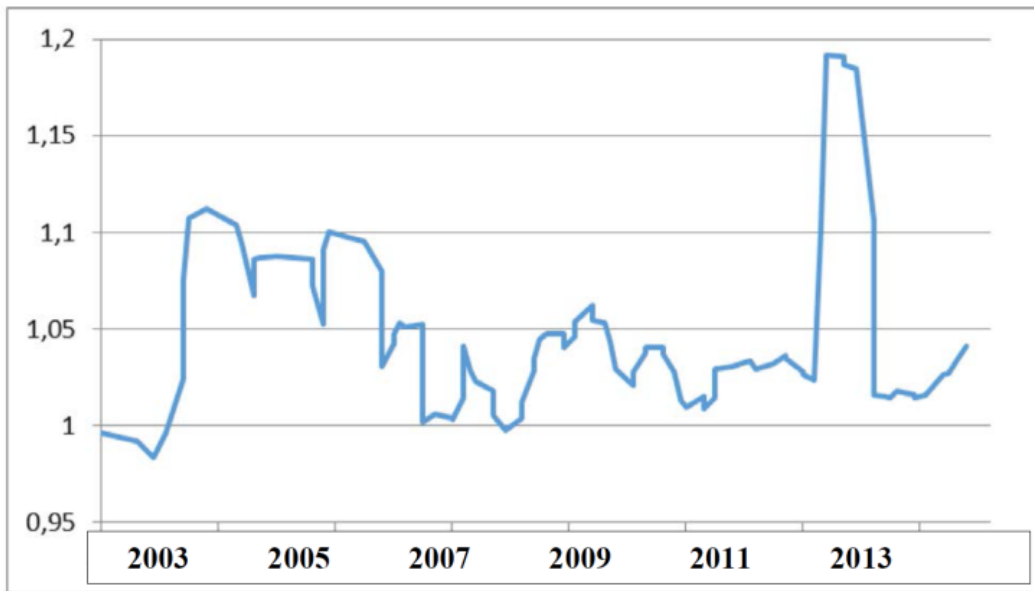


Figure 2: Moving average of real increase in minima

The general pattern is clear. Initially there were some real decreases, because the ECC sometimes underestimated current and future price inflation when specifying increases in minima for future years – a problem solved by specifying future increases in relation to the CPI. There followed a period with some sizeable increases, primarily due to the rapid reduction in geographical differentials in wholesale and retail and other sectors (see below). Over time, the variation in increases diminished (in part because of reduced geographical differentials). The trend line is downwards – meaning that the rate of increase tended to decline (not that the real value of the minima declined) – although this does not pick up an upturn in 2013-14. Most importantly, perhaps, almost all minima were raised in real terms, by an average of 3.5 percent p.a. (with a standard deviation of 1.3 percent).

Differentiated minima

The ECC inherited – not only from the Wage Board but from the entire system of wage regulation in South Africa, including through bargaining fora (whether registered under the LRA or not) – a system of geographical differentiation, whereby minima were set at higher levels in districts where employers could arguably afford higher wages. In practice, this meant that minima were set much higher in metropolitan areas than in medium-sized towns, and they were lowest in rural districts. SDs 1 (contract cleaning) and 9 (wholesale and retail trade) recognised three geographical zones. SD 2 (civil engineering) set separate minima for each province, but in effect grouped the nine provinces into three zones. SD 3 (private security) recognised five geographical zones. SDs 4 (clothing), 7 (domestic workers) and 8 (farmworkers) recognised two zones only.

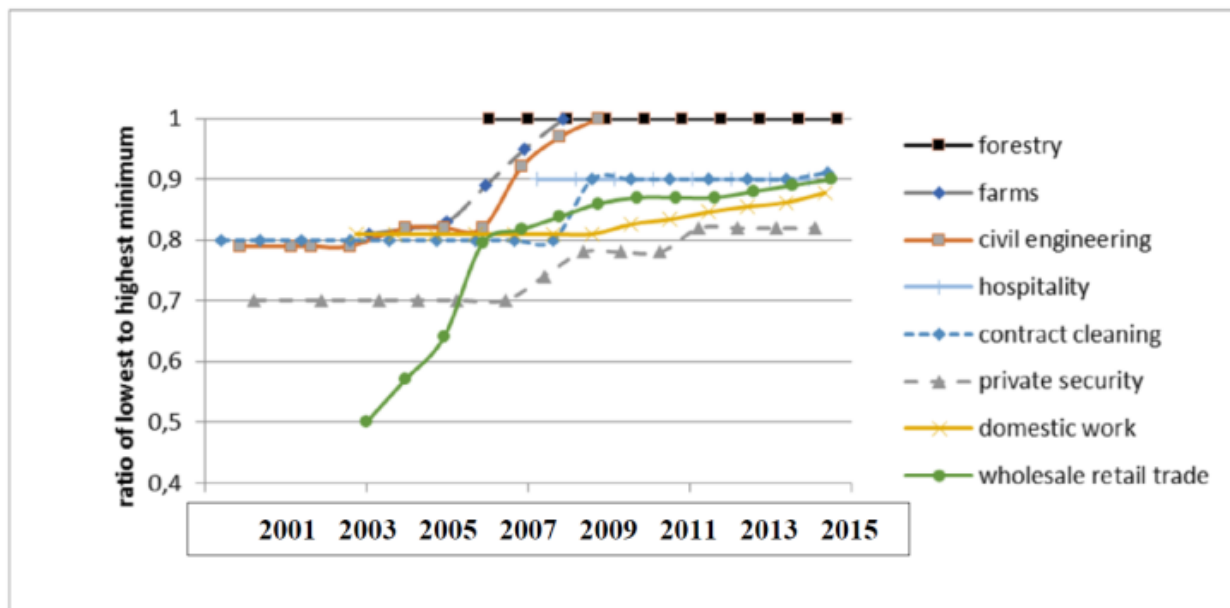


Figure 3: Geographical differentials by sector, 1999-2014

The initial differences in different geographical zones were significant, as shown in Figure 3. SDs 1 (contract cleaning) and 2 (civil engineering) set minima in the poorest districts or provinces at 80 percent of the minima in the richer areas. The ECC later recommended similar differentiation in the domestic and farming sectors. SDs 3 and 6 (private security) set a minimum of 70 percent. In the wholesale and retail trade, the ECC initially set the lowest minimum in selected districts that had been in former bantustans at only 50 percent of the minimum in the metropolitan areas.

Allowing multiple minima made it easier to set the actual minima, because lower minima could be set in areas where the Department of Labour and ECC imagined that a higher wage would destroy jobs. This was clearly relevant in some of the newly-regulated sectors, including domestic work (discussed below).

Budlender (2007) identifies as another ‘principle’ that the ECC would ‘work towards a single minimum wage in each sector rather than wages that differ by location’. This, she writes, was informed by the argument made by the unions that ‘workers in different areas are doing the same job and those in certain areas should not be discriminated against in respect of a minimum’ (2007: 2). The counter-argument was that the affordability of wages varied between employers, so that employment effects might differ between districts. Both bargaining fora – involving unions and employers – and the Department of Labour were usually reluctant to erode too rapidly differentials, but over time the ECC did slowly move to reduce or even eliminate them.

Above we saw that in the contract cleaning sector the ECC accepted in 2006 a recommendation from the Department of Labour that the differential between Areas C and A be reduced. The Department and ECC also agreed that the differential should later be abolished entirely, but both later reversed this decision and the differential remained. Also in 2006, when the ECC reviewed SD 9 (wholesale and retail trade), it reported that it had ‘previously taken a firm stance towards minimising differentiated wages within sectoral determinations in that workers doing similar work should – at least at the minimum – be similarly remunerated’. The Department of Labour had recommended that Area C be phased out within three years, and concessionary rates (for small employers and employers in the formerly ‘independent’ bantustans) were abolished, resulting in a simpler two-tier minimum wage structure for the wholesale and retail sector. The ECC agreed that Area C should be phased out but, heedful of the challenges facing employers in rural areas especially, it recommended doing so over four rather than three years (ECC, 2006: 23). As is clear in Figure 3, the geographical differential was reduced dramatically. By merging zones (and abolishing most concessions), the ECC raised the lowest minima much faster than higher minima. In the private security sector, for example, five zones were reduced to four zones then to three zones, and occupational categories were also combined. Minimum wages in rural districts rose much faster than in metropolitan areas, and the differential decreased. The real value of the lowest minimum wage for a security guard rose by 57 percent between 2003 and 2014 (although the minimum wage for security guards in higher grades rose much more modestly). The effect of reduced differentiation was greatest in the wholesale and retail trade sector, which started off (in 2003) with the lowest minima. The minima

for general assistants (the lowest-paid category of workers) in Areas A and B rose (in real terms) by a total of 20 percent between 2003 and 2010, in line with most other sectors. By merging Area C into Area B, and removing most concessional rates, however, the lowest minimum was raised by 108 percent over the same period. In 2003, the lowest minimum was set at 45 percent of the Area A minimum. In 2010, it was more than 80 percent of the Area A minimum. It was this reduction in differentials that raised minima in this and most other sectors far above the value of the old-age pension.

SD 14, covering the hospitality sector (gazetted in May 2007), did not differentiate geographically, as we saw above. The ECC recommended that “a single minimum wage should apply to the whole of South Africa”. The ECC considered proposals to vary minima according to skill, but it considered this unfeasible “because of the lack of a clear definition of unskilled and semi-skilled employee”. The ECC instead recommended that minima should vary according to the size of the enterprise. Lower minima were required of employers employing ten or fewer employees, although the differential should not be more than ten percent. In making its recommendation to the Minister, the ECC took into account the fact that majority of employers in the sector were small, employing fewer than ten employees (ECC, 2008: 13). In the farming sector, discussed below, differentiation was abolished in 2008, although it was retained in domestic work. There was never any differentiation in either the taxi or forestry sectors.

Over time, as Figure 3 shows, differentiation was reduced. By the end of 2014, differentiation had been eliminated in several sectors and reduced to about 10-12 percent in most others. Private security was the outlier, with differentiation of almost 20 percent.

Factors influencing the ECC

Although the ECC generally recommended a marginal adjustment to an existing baseline, and seems to have never intentionally reduced real minima, the Commission did have to consider how large an adjustment to make, i.e. by how much minima should be raised. In many cases, informal or formal bargaining fora provided the basis for this decision, but in even these cases the ECC deliberated over what to do. In some cases – mostly concerning employment conditions – the ECC balked at endorsing the agreements reached in bargaining fora, in some cases because the

fora were dominated by big employers and agreements sought to disadvantage unrepresented small businesses.¹⁵

The ECC was required to report on how its recommended minima took into account a set of factors including the cost of living and, crucially, affordability and hence likely effects on employment. In its 2011/12 report on farm workers, for example, the ECC reported that employees and unions had pointed to the high cost of living, whilst employers pointed to their high costs of production. The Department of Labour had acknowledged that ‘the cost of living and price increases have negatively affected the ability of employees to sustain themselves and their families’, but noted that ‘it would be a futile exercise to increase wages to R3500 as proposed by employees’ if workers were subsequently retrenched because employers could not afford to keep employing them; ‘a balanced approach is necessary, which will take into consideration all the aspects mentioned to ensure that employees are able to survive on their wages and that employers are able to pay the prescribed wages without having to reduce the number of employees employed’ (ECC, 2012a: 13-14).

The position adopted by the Department of Labour seems to have played an important role in framing the ECC’s deliberations. In general, the Department of Labour appears to have adopted a cautious approach, concerned with negative effects on employment. With respect to sectors such as domestic workers in the late 2000s, black Department of Labour staff may have been more attuned than most of the (white and Indian) commissioners to the problems facing hard-pressed employers. Whereas professionals (like the commissioners) might be able to pay higher minima, lower middle-class or working-class employers could afford to pay their domestic employees far less. The contrary argument, made by one commissioner, was that a domestic worker should be seen as a luxury, and should be expensive; in addition, it was argued, employment effects were likely to be modest because domestic employers, unlike (say) agricultural employers, could not retrench one worker and make another work harder.

The ECC relied on the Department of Labour for guidance on sectoral employment trends. In sectors where employment seemed to be steady or even rising – such as the wholesale and retail trade, or private security – there may have been more scope for raising minima, especially in lower-wage geographical zones. The quality of data was always suspect, however, and it was almost never clear how employment would have changed in the absence of any adjustment to minimum wages. Overall, it is not

¹⁵ In the contract cleaning sector, big businesses reportedly took the ECC to the Labour Court over the ECC’s refusal to endorse a multi-year agreement from the informal bargaining forum.

clear that the ECC ever made significant adjustments based on analysis of sectoral employment trends. Faced with both persistently very high unemployment and pressure to raise real wages, both the Department of Labour and the ECC made mostly cautious adjustments upwards. Only the very lowest minima – i.e. the least skilled occupations in the poorest districts – were raised substantially.

SDs in hitherto unregulated sectors without any collective bargaining

In four sectors the ECC had no readily available baseline minimum or minima that it could adjust, and therefore had to justify on other grounds where it set the minima: domestic work and agriculture (both 2002), taxi-drivers (2005) and forestry (2006). In 2014, the ECC discussed a further sector, construction (much of which was not covered by SD 2, civil engineering). Domestic and farm work were the most important sectors politically. Not only did they employ very large numbers of low-wage workers, but they had also been explicitly excluded from wage-setting procedures under apartheid.¹⁶ The government saw regulation in the domestic and farm sectors as a priority.

In 1999, the ECC was instructed to investigate the wages and conditions of domestic workers. The resulting process was ‘the most extensive undertaken to date’ by the Department of Labour and ECC (Budlender, 2013: 13). The Department of Labour held workshops as well as the standard public hearings. It received written submissions, including a 10-page submission from COSATU. The Department commissioned two surveys – a telephone survey of domestic workers in Gauteng and a survey conducted at taxi ranks in major cities – and commissioned the Development Policy Research Unit (DPRU) at the University of Cape Town to examine existing household survey data. In July 2001 the Department published a consultative document, which set out recommended minima (South Africa, 2001a; see also Budlender, 2013). The ECC also sought assistance from the ILO (during its visit to Geneva in 1999). In early 2002, the ECC submitted its report. It accepted most but not all of the Department of Labour’s recommendations, and gave reasons where it did not do so. The Minister of Labour gazetted SD 7 in August 2002. A few months later (in December) SD 8, covering agricultural work, was gazetted also.

¹⁶ In addition, both the Minister of Labour and the Director-General in the Department of Labour in the early 2000s had mothers who had been domestic workers (Budlender, 2013: 12).

The key questions facing the ECC were whether to allow geographical variation in minimum wages and how low should the minimum (or minima) be set. All of the ECC's recommendations hitherto had accommodated geographical differentials, but this was primarily because these were part of the inheritance from the Wage Board or were endorsed by employers and unions in informal bargaining fora. There was no necessary reason why this practice should be replicated in the domestic or agricultural sectors. Similarly, the ECC's previous investigations had all been based on existing baselines. In the domestic work sector, the ECC failed to find a quasi-baseline through the ILO.

In all of these sectors, however, the Department of Labour, employers, unions (especially COSATU) and researchers all suggested minima to the ECC. With respect to domestic workers, submissions and research pointed in different directions with respect to both differentiation and the level of minima. COSATU objected in principle to geographical differentiation (although it accepted that this might be necessary during a transitional period). It proposed minimum wages of about R 1,200 per month for more skilled workers and about R 800 per month for less skilled workers, which were close to the minima in the contract cleaning sector at the time. COSATU did not worry about affordability. COSATU reportedly suggested that employers should employ a domestic worker for fewer hours if they felt that they could not afford the full-time minimum, whilst poorer households could be assisted by public facilities (presumably meaning creches) (Budlender, 2013: 16). On the other hand, researchers in the DPRU warned of a 'very serious risk of large and significant job losses' if minima were set too high (quoted in *ibid*: 15).¹⁷ In response the Department of Labour adopted a conservative position, recommending a three-zone differentiation with minima of R 400, 500 and 600 per month. These were only one half of the minima proposed by COSATU (and were much lower also than the minima recommended for other sectors hitherto). The Department of Labour's report expressed concern over job losses, especially in rural areas, but concluded that 'job losses can be minimised by setting an appropriately low minimum wage' (South Africa, 2001: 13). The Department of Labour relied heavily on the DPRU's estimates of how different minima would affect employment and poverty. Specifically, the DPRU warned that one quarter of the rural domestic workforce – or 100,000 people – could lose their jobs if the minimum was set at R 400 per month, whilst another 50,000 rural jobs could be lost if the minimum was set at R 500 per month. The DPRU found that job losses in urban areas would be more limited (*ibid*: 99-99). The Department of Labour heeded the DPRU's strong emphasis on both geographical differentiation and low overall minima in order to limit job losses.

¹⁷ The DPRU research was summarised in Borat (2000).

In its own report, the ECC declared that it ‘felt uncomfortable with recommending a minimum wage below the level of the government’s old age pension and other social security grants’, which were at the time R620 per month (ECC, 2002a: 51). It reported that ‘a single national minimum wage for the domestic worker sector should be the ultimate goal’, but in the meantime there should be two geographical zones. The minimum wage for domestic workers in ‘B’ districts (defined in terms of average household income) should be R 650 per month compared to R 800 per month in ‘A’ districts. The Commission stated that the ‘high wage differential’ between highest and lowest minima proposed by the Department of Labour – i.e. the minimum in its Area C being only two-thirds of the minimum in its Area A – ‘could not be morally justified’ (*ibid*: 39). The Commission felt that that the lowest minimum (for Area B, in its recommendation) ‘should be equal to at least 80% of the minimum wage for Area A’ (*ibid*: 48). Furthermore, the Commission recommended that ‘the diminishing of the urban-rural wage gap should be considered when the minimum wages are reviewed’ (*ibid*: 39). The ECC’s lowest recommended minimum was about 60 percent higher than the lowest minimum proposed in the Department of Labour’s consultative report. The ECC justified its higher minima on primarily technical grounds (*ibid*: 45), including noting that the DPRU’s estimates of job losses were probably exaggerated because the DPRU had used an implausibly high figure for the elasticity (i.e. the responsiveness of employment to wages) (*ibid*: 51). The ECC’s recommendations were incorporated into SD 7. Subsequent studies found that wages had risen substantially – by about 20 percent, and more in districts with lower wages beforehand – as a result of SD 7. There was little evidence of significant job destruction (Dinkelman & Ranchhod, 2010; Borat, Kanbur & Mayet, 2012).

The process in agriculture was similar to that in domestic work. In September 2001, the Department of Labour published a massive (almost 200-page) report, written with the help of broadly pro-employer and pro-labour institutions¹⁸ (South Africa, 2001b). It included more academic content than the Department’s report on domestic work,¹⁹ and probably entailed the most comprehensive study of wages in agriculture conducted in South Africa (although, as the ECC itself noted in its report, data on agricultural wages remained very unsatisfactory). The report warned that agriculture would probably experience job losses even without any minimum wage-setting (*ibid*: 21). Taking into account differences in farmers’ ability to afford increased labour costs (contrasting ‘extensive livestock’ farmers with wine and fruit farmers (*ibid*:

¹⁸ The Centre for Rural Legal Studies and the Department of Agricultural Economics at the University of Stellenbosch assisted on the agricultural sector, and the National Institute for Economic Policy assisted with macro-economic modelling.

¹⁹ Chapter 8, for example, reviewed ‘theoretical perspectives’ on minimum wage-setting.

21)), farmers' and farmworkers' views on wages, and the estimates of job losses generated through the macro-economic modelling (see *ibid*: 159-61), the report recommended a four-tier structure of minimum wages from R400 to R750 per month.

The ECC concurred that minima needed to be differentiated by district, given the risk of job destruction resulting from a uniform countrywide minimum. It recommended not the four-tier demarcation of districts proposed by the Department of Labour, but rather the same two-tier demarcation that it had recommended for domestic workers earlier that year. The minima should also be the same, i.e. R650 and R800 per month. These minima were higher than the minima recommended by the Department of Labour. The ECC, in its report, worried about the data used by the Department of Labour, but accepted that the Department's projection of employment losses 'represents a fair indication of the effect on employment in the sector if wages are set too high'. But the ECC recorded that it 'felt uncomfortable with recommending a minimum wage below the level of the government's old age pension and other social security grants' and was 'keen to align its approach with that of the recently launched domestic worker sectoral determination' (not least because 'there are agricultural workers that perform domestic work on a farm') (ECC, 2002c: 32, 37). The ECC's recommendations were accepted by the Minister of Labour and gazetted as SD 8.

The result was a substantial increase in the wages paid to farmworkers. Using data from labour force surveys prior to and following the implementation of minimum wages in agriculture, Bhorat, Kanbur & Stanwix (2014) calculated that farmworkers' wages rose by approximately 30 percent as a result of SD 8. Kernel density plots reveal a sharp upward movement in the wage distribution. Bhorat *et al.* also found that the minima had resulted in substantial job destruction.

The ECC's lowest recommended minima for domestic and farm work were higher than those recommended by the Department of Labour, but they were lower (in real terms) than all of the ECC's previous recommendations. The lowest minima in the contract cleaning and civil engineering sectors had been significantly higher than the old-age pension. The lowest minima in the private security sector had been lower than those, but were still higher than the old-age pension. In the domestic and agricultural sectors, however, the minima were almost exactly the value of the old-age pension.²⁰

²⁰ The lowest minimum in the wholesale and retail trade, set under SD 9 at the same time as SD 8 for agriculture, was very slightly lower than the lowest minima for domestic and farmworkers.

In 2006, the ECC recommended that the two-zone minima in farming be phased out (just as it recommended that the differential be phased out in contract cleaning, discussed above). In the case of agriculture, this reflected not only a general wariness of differentiation, but also the fact that many farmers in the higher-minimum districts applied to the Department of Labour, perhaps as a result of a campaign by the employers' association. The Department of Labour did not have the capacity to scrutinise applications satisfactorily. Removing the geographical differentiation promised to remove this problem.²¹ A uniform countrywide minimum was put into effect in 2008. In the domestic work sector, however, both the Department of Labour and the ECC supported the continued use of two zones, albeit with less differentiation. As of December 2013, the recommended minimum monthly wage for domestic workers in B districts was 86 percent of the minimum in A districts.

In the mid-2000s, the ECC finally, after long delays, reported on two further, hitherto unregulated sectors: Forestry and taxis. In 2004 the ECC reported to the Minister of Labour on the taxi industry. The Minister had initiated this investigation in 1999, but the sector posed many challenges. First, there was little data on employment or wages. It was also the first sector considered by the ECC where the employers were overwhelmingly black, and many were organised into powerful taxi associations that were negotiating with government over other issues (especially the proposed recapitalisation of the industry). At the beginning of the investigation it was also thought that many drivers were paid on a piece rate system, according to the number of passengers transported per day. In 2001 the Department of Labour recommended minimum monthly wages in three zones plus a fourth category of long-distance drivers. Minima would vary from R450 to R1200. It seems that it was then decided to commission further research. A survey was conducted in 2003 by the Community Agency for Social Enquiry (CASE) and analysed by the DPRU. It found that actual average wages in 2003 were already at least R1200 per month, and that most drivers were paid monthly not piece-rate. After negotiations with taxi associations, the Department of Labour proposed new minima for drivers in two geographical zones, of R1200 and R1500 per month respectively. Some other employees (including rank managers and queue marshals) would be paid less (although the ECC's 2004 report was very confusing on precisely how much less), with the lowest minimum being R840 per month.

The ECC seems to have recommended a minimum for drivers, adjusted for inflation, of R1350 per month, with rank managers getting 80 percent of this (i.e. R1080) and queue marshals 70 percent (i.e. R945). These minima would be countrywide, i.e. the

²¹ I am grateful to Debbie Budlender for this information.

ECC rejected geographical variation, although the ECC itself later wrote that, ‘mindful of the effects that a minimum wage might have on the profitability of the sector’, it had ‘recommended a wage level that took into consideration its possible effects on areas where the income levels of operators in the sector might be relatively low’, by basing it on the wage for non-metropolitan drivers as revealed in the survey (ECC, 2006a: 15).

In forestry, the ECC accepted the recommendation of the Department of Labour that there be a single, national minimum in each sector, without geographical or occupational variation. This decision accentuated the difficulty of deciding how high the minimum should be set. The Department of Labour proposed that the minimum be the same as the lower (Area B) minimum in agriculture, inflated to R 836 per month in late 2005. The ECC was unable to reach consensus on this. A ‘majority of Commission members’ recommended a single minimum wage for the forestry sector, set at the rate applicable for farm workers in ‘A’ districts, i.e. about R950 per month, i.e. more than R100 per month more than the ‘B’ district minimum. ‘The Commission members recommended this level on the basis that the research commissioned for the purpose of this investigation revealed that forestry employers were generally paying higher wages than agricultural employers’ (ECC, 2006a: 12; see also ECC, 2006b). The Minister, however, disagreed with the higher recommended minimum, and referred it back to the ECC for further deliberation. The ECC stood its ground (ECC, 2006a: 12). When the Minister gazetted SD 12, in March 2006, it set a uniform minimum wage at the lower level of R 836 per month (with effect from 1 April).²² This was in fact lower than the minimum in agriculture, because the latter increased in March 2006, but was a little higher than the old-age pension at the time. The Department of Labour also presented to the ECC arguments in favour of task-based payment. ‘The majority view in the Commission was that forestry workers should be guaranteed a fixed minimum wage at the agreed level, and that task-based payment should only be allowed over and above this minimum’. This recommendation was accepted by the Minister (ECC, 2006a: 12).

In these four sectors – domestic work, agriculture, taxis and forestry – the ECC could not rely on an existing Wage Determination or proposals from informal or formal bargaining fora. Nor could the ILO provide any clear international baseline. In these sectors, the Department of Labour played a more important role in the investigation, producing detailed reports and recommendations that provided a basis for deliberation within the ECC. The ECC could use its SDs in other sectors as baselines, i.e. the recommendation in one sector affected subsequent recommendations in other

²² *Government Gazette* 28,598 (17th March 2006).

sectors. The ECC (or at least individual commissioners) also identified the old-age pension as a minimum baseline (albeit one that was occasionally, perhaps inadvertently, transgressed).

These were, however, lower-wage sectors, and there was heightened anxiety around the possible negative effects that high minima might have on employment. The Department of Labour repeatedly recommended minima that were low, and in many cases were way below the value of the old-age pension. Researchers warned about employment effects. The ECC itself nonetheless rejected the Department of Labour's caution and shrugged off these warnings. In domestic and agricultural work, it set the lowest minimum at about the value of the old-age pension, and about 60 percent higher than the Department of Labour had suggested. In forestry, it recommended an even higher minimum, although only about 10 percent higher than the Department of Labour recommended (although the Minister, unusually, did not accept the ECC's recommendation).

The ECC's recommendations followed extensive and largely unprecedented research. The process as a whole was informed not only by the best available evidence, but by evidence that was better than any collected hitherto. The boldness of the ECC relative to the Department of Labour and researchers, however, was hardly justified by the evidence available at the time. The ECC over-ruled researchers who warned of job destruction. The ECC's stated reasons for over-ruling researchers were plausible but lacked supporting evidence. It is hard to avoid the conclusion that the ECC decided to set minima wages for 'vulnerable workers' higher than the recommendations of the Department of Labour and researchers because they felt that they *should* raise the wages of vulnerable workers unless the evidence showed *conclusively* that this would be counter-productive in terms of job destruction. Insofar as the ECC acted in this way, it did so in keeping with the apparent spirit of the legislation that governed the ECC.

The politicisation of minimum wage-setting: The 2013 farmwork minimum and its consequences

Of the fifty-odd sets of recommendations in the ECC's reports to the Minister of Labour, one stands out: Its 2013 recommendation on farm workers wages. Whilst its initial SDs had sometimes raised wages in unregulated sectors by as much as 30 percent, the ECC's subsequent recommendations on revising the minima generally entailed real increases of between 1 and 3 percent, and even the lowest minima had

rarely risen by much more than 5 percent p.a. as geographical differentiation was reduced. Even in the wholesale and retail trade sector, where the lowest minimum wage for a general assistant more than doubled (in real terms) between 2003 and 2010, primarily through the elimination of concessions to employers in specific districts, the average annual real rate of increase was only 11 percent. In contrast, in 2013 the ECC recommended that minimum wages on farms be increased at once by more than 40 percent (in real terms).

The 2013 recommendations for revised minimum wage in agriculture reflected the politicisation of the ECC's work. The ECC's work had always been politicised. As we saw above, the ECC set minima in several sectors higher than recommended by the Department of Labour and researchers because commissioners understood their role in terms of raising the wages of the poor unless evidence conclusively suggested otherwise. In the case of the 2013 agricultural recommendations, however, the ECC itself was effectively side-stepped by the Minister of Labour and government.

The eruption in November 2012 of a bitter strike on farms in the Western Cape posed an acute challenge to the ECC, and even more so to the government. The strikes began a few months after the Marikana Massacre, when South African police had opened fire on striking platinum mineworkers, killing thirty-four. When farmworkers began their protests, a COSATU spokesman even proclaimed "Marikana has come to the farms!!!" (quoted in Alexander, 2013: 610). Like the protests on the platinum mines, the farmworkers' protests caught the ANC and its allied unions in COSATU flat-footed, on the wrong side of workers' anger.

Striking farmworkers demanded a minimum wage of R150 per day, compared to the existing minimum of R69 per day (or R1,503 per month) introduced earlier in 2012 on the recommendation of the ECC and following the ECC's review of the sector. The challenge to the ECC was twofold: Any major change to the minimum wage in the sector would imply that the ECC had erred previously and/or that it was susceptible to political pressure. In this case the politics was not uncomplicated. Few farmworkers were organised by any trade union (including the COSATU-affiliated Food and Allied Workers Union). But most strikes occurred in the only province controlled by the opposition Democratic Alliance, and white farmowners were a useful target for the ANC government's criticism, so the ANC government clearly wanted farmers to concede the strikers' demands. Indeed, the Minister of Labour quickly announced that the existing wage regulations would be cancelled, and new and higher minimum wages would be gazetted. It was then pointed out to her that the Basic Conditions of Employment Act precluded revising the existing minimum within twelve months, i.e. until February 2013. She could, however, instruct the

Department of Labour and ECC to investigate new minima in preparation for February 2013.

The Department of Labour and ECC had considered the sector as recently as early 2012. FAWU had demanded real increases, including annual increases of 5 percentage points more than the CPI. The Department and ECC had recommended raising the minimum wage in March 2012 by just over 9 percent (in nominal terms), which meant a real increase of 4 percent, with further increases of CPI plus 1.5 percent in each of the following two years. The ECC's report warned repeatedly of the dangers of job losses at a time of high unemployment, although without any specific evidence on the likely effects of higher increases in the minimum wage (ECC, 2012a).²³

Faced with high-profile strikes and related violence in November 2012, organisations representing employers (especially AgriSA) and workers (especially COSATU, although it had few members in the sector) agreed to commission research from the Bureau for Food and Agricultural Policy (BFAP, based at the Universities of Pretoria and Stellenbosch) to report on 'the viability and the sustainability of any wage level' (ECC, 2013a: 8). The BFAP very quickly compiled a report (in December 2012). The Department of Labour also invited written submissions and held public hearings in December 2012 and January 2013. In their written and verbal submissions, employers emphasised the constraints on employers, and the consequences of wage increases for employment, whilst workers and unions tended to focus on the cost of living. The BFAP Report noted that minimum wages had risen over the past ten years and acknowledged that this had contributed to job losses in the sector. The sector was complicated by very different production models, cost structures and profitability in different sub-sectors. The BFAP report argued, nonetheless, that the sector as a whole would have to shift from relying on low-waged, unskilled labour to more mechanised production, with fewer but more skilled and better-paid workers. Both the BFAP's study of production costs in specific agricultural sectors and its macro-economic analysis pointed to the likelihood that jobs would be lost even if *average* wages rose by R20/day to about R104/day, in both sectors that could mechanise and those that could not do so. Wages higher than this were 'unaffordable'. 'The gap between what farmers can pay and what workers require to make a basic living is large', but 'most' agricultural sectors 'could absorb an increase of approximately R20 per day' (BFAP, 2012: 38).

²³ The study by Bhorat, Kanbur & Stanwix, showing that the original SD for agriculture had destroyed jobs, was only published as a working paper in 2013.

The Department of Labour seemed to endorse these findings, opposing a wage increase to R150/day because it would lead to massive job losses, and recommending a minimum of R105/day (or R2,275/month) from 1 March 2013, with annual increases thereafter of CPI plus 1.5 percent (ECC, 2013a: 72). This was not precisely an endorsement, given that the BFAP report pointed to an increase in the *average* wage to R104/day, not an increase in the *minimum* wage to that level. The Department of Labour was widely perceived to be under considerable political pressure from the government to effect a compromise that would satisfy the striking farmworkers.

The ECC's report described the BFAP findings as 'sombre' (ECC, 2013a: 73). Whilst there was 'some scope to increase the minimum wage', it was 'evident that if average wages increase by more than R20 per day (i.e. to about R104 per day), many farms will be unable to cover their operating expenses', to service their debts or to earn any profit (*ibid*). Higher wages would result in larger, more mechanised farms, with fewer but more skilled workers. The demand for seasonal labour would drop. Job destruction would offset the benefits of higher wages.

The ECC was unable to agree on a recommendation. A majority supported the Department of Labour's recommendation that the minimum be increased to R105/day from 1 March 2013 (increasing by CPI plus 1.5 percent in 2014 and 2015). This new recommendation was R30/day higher than the ECC's previously recommended minimum wage from March 2013. It was far below the amount needed to meet basic needs, but the ECC cited the BFAP report as showing that a higher wage would have 'a significant negative impact on employment'. Both the labour and business commissioners dissented: The former argued 'strongly that R105 takes farm workers nowhere near a decent living wage, and that this remains unacceptable', whilst the latter proposed a minimum of R95/day (i.e. along the lines of the BFAP report). The business commissioner 'was also concerned about the message being sent to parties in this sector and in other sectors about the need and reasons for reviewing sectoral determinations'. Specifically, he worried that increasing minima in response to a strike would be seen as rewarding the strike (*ibid*: 80). He also opposed the recommended 1.5 percent real increase in 2014 and 2015. The labour commissioner also opposed the recommendation covering three years.

On 5 February, the Minister of Labour gazetted the increases recommended by the Department of Labour and endorsed by the majority of ECC members. They would take effect from 1 March. The Minister made a point also of inviting farmers who felt that they were unable to pay the new wages to apply for exemptions.

The ECC was put under considerable political pressure to endorse the Department of Labour's recommendations. Commissioners recall that they were given twenty minutes to agree with or dissent from the Department's recommendations, and the ECC report itself was finalised *after* the Minister of Labour had announced her decision at a press conference. In short, a political decision was taken at a high level in the Department of Labour, and effectively imposed on the ECC. The decision was made possible by the BFAP report, which legitimated some wage increases, whilst warning of job losses. The Department of Labour twisted the BFAP's recommendations, transforming a recommended wage increase of R20/day) into an increase of R30/day by muddling up average and minimum wages. In short, political considerations trumped the statutory concern with employment. The sector would need to become leaner.

Knock-on effects on other sectors

This massive adjustment to the minimum wage in agriculture might have been expected to affect other sectors also. The minimum wage in agriculture had originally been set at the same level as in domestic work, and the minimum wage in forestry was set at the same level as on farms.²⁴ Other low-wage sectors – notably private security and the taxi industry – might also have been affected. Over the course of 2013 and 2014, the ECC adjusted massively some sectoral minima, adjusted modestly some others, and left others unchanged. Figure 4 shows selected sectoral minima during the period since 2012. Whilst minima in forestry were raised automatically in response to the new minimum in agriculture, the other sectors showed greatly reduced or no adjustments, even in those cases where some minima were below the new farm work minimum. The political pressure to raise the minimum in agriculture did not extend to other sectors.

Minimum wages in forestry were adjusted massively in response to the new agricultural minimum. They could be raised automatically because the existing amended SD had adopted the recommendation in the ECC's 2011 report that 'wages in the forestry sector should be aligned to the farm worker sector' (ECC, 2011: 23). The minimum in forestry was explicitly set at 98 percent of the minimum in agriculture from April 2013, and at 100 percent from April 2014. At the time, in 2011, the ECC had envisaged that the agricultural minimum would rise modestly

²⁴ Indeed, it was unclear to some commissioners why forestry had needed to have its own SD rather than fall under the SD for agriculture. Officials within the Department of Labour seem to have been especially enthusiastic about regulating forestry as a distinct sector.

over this period. But because the Minister of Labour had gazetted these specific increases in 2012, in 2013 she could (and did) simply gazette an amendment that raised the minimum in forestry to R102.90/day or R2229/month, because these corresponded to 98 percent of the new minimum in agriculture. The minimum in forestry was thus raised by more than 40 percent without any specific investigation by the Department of Labour or the ECC of the consequences of so doing. The ECC had loosely endorsed this course of action, however, in its 2013 farm work report, recording that it felt that ‘it is important that the link between forestry and farm worker sector should be maintained’ (ECC, 2013a: 81). Commissioners report that there was some rushed discussion, and some consultation (by the Department of Labour) with major forestry employers. Had there been major objections from the industry, then the issue might have been considered more fully.

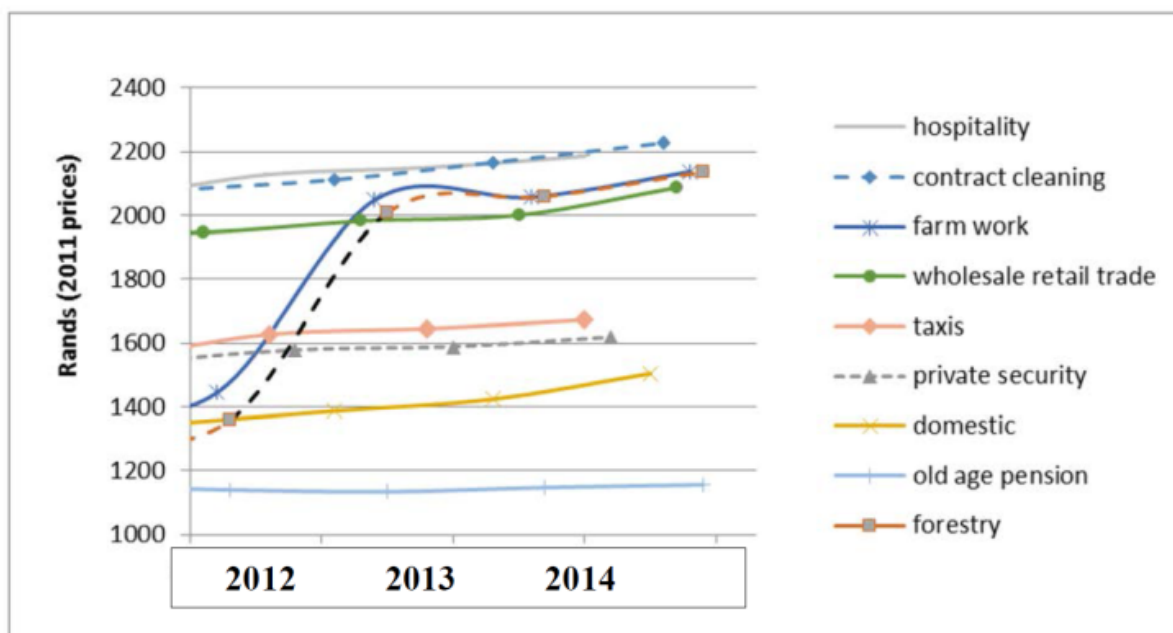


Figure 4: Minimum wage by sector, 2012-2015

The first major sector to be reviewed after agriculture was the hospitality sector. Minimum wages there were already about as high as the new minima in agriculture, so there was no pressing need to raise them any more than would have been the case anyway. The changed context was, however, reflected in the suggestion by the South African Commercial, Catering and Allied Workers’ Union (SACCAWU) that the minimum should be raised to R3500 per month, despite the fact that the minima set by ECC were slightly *higher* than the minima set by agreement with SACCAWU itself in the two bargaining councils in the sector, both in Gauteng (ECC, 2013b: 19-21). Based on a careful study of the sector, the Department of Labour warned that

the economic context was still bad, with low occupancy rates, although it was expected to improve (*ibid*: 22). The Department therefore recommended a modest 2 percent real increase in the minimum in July 2013, and 1.5 percent in each of 2014 and 2015. The ECC endorsed and the Minister of Labour gazetted²⁵ these recommendations (although the actual increase in July 2013 proved to be smaller than anticipated in real terms).

There was more pressure to raise minima in the domestic work sector. The existing minimum wage schedule for domestic workers covered the period up to the end of November 2014. The Minister of Labour did not try to interfere with this schedule, and as usual waited until the end of this period before she instructed the ECC to initiate a new investigation. The Department did not conduct any new research, although it prepared a report for the ECC that reproduced large parts of a paper written for the ILO by former commissioner Debbie Budlender, that implied that minima were too low (Budlender, 2013). Trade unions with an interest in the sector proposed a uniform minimum wage of R2,500 per month, i.e. eliminating geographical differentiation and raising all minima. The Department of Labour warned, however, that this, if ‘immediately implemented’, would ‘either lead to massive layoffs or reduction in working hours, especially impacting on employment levels in Area B’.²⁶ The Department proposed that the geographical differential be reduced, but not eliminated, and minima be raised cautiously. The ECC concurred with the Department on the issue of differentiation:

‘The ECC unanimously supported the Departmental proposal of a gradual narrowing of the minimum wage gap between Area A and B, instead of the immediate eradication of Area B. The ECC argued that moving to a national minimum wage with immediate effect, could result in unemployment as employers in Area B have a lower average household income than those employed in Area A. The ECC thus felt that due to the differing household income profiles that it would be advisable, at this stage, to maintain the two-tiered demarcation model, whilst at the same time gradually narrowing the minimum wage gap between the two areas’ (ECC, 2014: 32).

The Department proposed that the minimum in Area A be increased by 10 percent (and by CPI plus 2.5 percent in each of the following two years), and the minimum

²⁵ *Government Gazette* 36,624, 1st July 2013.

²⁶ The Department did not seem to have any compelling evidence on the effects of wages on employment.

in Area B by 11 percent (and then by CPI plus 3.5 percent). The Department explained this ‘double digit’ (nominal) increase in terms of raising domestic workers’ wages towards the newly-raised wages of farm workers, whilst considering also ‘the effect that this will have on job retention and job creation’ in the domestic work sector (*ibid*: 35). The ECC decided – over the objections of the alternative business representative – to raise the Area B minimum even faster, by 12 percent from December 2014 (equivalent to a real increase of between 5 and 6 percent) and then CPI plus 4.5 percent in the following year (but leaving the increase in the following year to CPI plus 3.5 percent). Over the three year period, the real minimum in the sector (i.e. the Area B minimum) would thus increase by between 13 and 14 percent, primarily because of the erosion of the geographical differential. The business commissioner submitted a minority report, but the Minister of Labour gazetted the increases recommended in the majority report.²⁷

Whilst the ECC recommended rising real wages, it did not raise them to the level of farm workers. It justified lower minima for domestic workers than farmworkers on the grounds that ‘employers of farm workers are generally business persons as opposed to Domestic employers, who are themselves workers’ (*ibid*: 46). For perhaps the first time in its history, the ECC’s report was entirely silent on the effects of rising real wages on employment. The recommendations, the silence on employment effects and the extensive use of Budlender’s ILO paper all suggest that the farmworkers’ settlement had effected a partial shift in the ECC’s approach to minimum-setting in other low-wage sectors: real wages would be increased faster, but not as fast as for farmworkers.

The other major low-wage sectors – private security and wholesale and retail trade – had both started a new three-year cycle of minima in 2012. The lowest minimum in the wholesale and retail trade – for a general assistant in Area B districts – was already higher than the new minimum for farm workers, so there was little need to make any immediate adjustment. In the private security sector, the minimum for a security guard was higher than the new minimum for farm workers. The minimum for general workers in the sector was, however, lower. No adjustment was made to this in 2013 or 2014. Both sectors were reviewed in 2015.²⁸ The minimum wage for security guards was raised in September 2015 by 5 percent (in real terms). The minimum wage in wholesale and retail trade was increased by a smaller percentage as of March 2016. These real increases were significant, and represented an acceleration of the

²⁷ *Government Gazette* 26th November 2014; note that this was a correction of the GG on 24 November, which transposed some figures..

²⁸ Neither report is available on the Department of Labour’s website.

rate of increase (see Figures 1 and 2), but minima nonetheless remained far below those in agriculture.

The final sector affected by the new context was construction, which the ECC was in the process of investigating. Some construction work – on roads and bridges – had been covered by the SD in civil engineering, until the sector moved under the LRA when a national bargaining council was established. Some other construction work fell under the ministerial determination on ‘allowances’ or wages for public works programmes. Yet other construction workers were covered by regional bargaining councils, although some of these had reportedly collapsed, making it more important to have a SD for the sector.²⁹ Many workers remained uncovered, posing the largest obvious gap in the wage-regulatory system. The Department of Labour had formulated proposals for a SD, taking the high minima in civil engineering as a benchmark. Wages would be differentiated by size of firm, not geographical area – as in the hospitality sector. At a series of meetings in late 2014 and early 2015, the majority on the ECC worried about using civil engineering as a benchmark, because their minima were much higher than the minima agreed in regional bargaining councils. The labour commissioner dissented from this, and was said to be preparing a minority report on the wage issue specifically.

As Figure 4 shows, farming and forestry were initially part of a cluster of sectors with low minimum wages, along with domestic work, private security and the taxi industry. The 2013 hike in the minimum wage moved farming and forestry into the other cluster of sectors with relatively higher minimum wages, i.e. with hospitality, contract cleaning and the wholesale and retail trade. The hikes in farming and forestry did not, however, result in all of the lower minimum sectors following suit.

It is possible that the most important consequence of the hike in the farming minimum wage was political. The fact that political pressure had resulted in a unprecedented, massive adjustment in the minimum wage, together with the fact that neither the Department of Labour nor the ECC nor the Minister of Labour showed any enthusiasm for replicating this adjustment in other sectors, might have been a factor in COSATU’s strategic shift toward the rejection of the sectoral and supposedly ‘technocratic’ mode of wage regulation practiced by the ECC and its embrace of a uniform high national minimum wage set through some alternative, more political mechanism. It was probably not a coincidence that COSATU shifted its strategy at precisely this time.

²⁹ I am grateful to Debbie Budlender for this information.

Assessment

The design of the ECC reflected debates in the 1990s over wage regulation, during which COSATU, progressive labour researchers and the Minister of Labour had come to the conclusion that wages needed to be regulated sector by sector, by an institution that comprised appointed independent experts as well as nominees from organised business and labour, taking into account especially affordability and possible negative effects on employment as well as the cost of living. For fifteen years, the participants in the process – the Department of Labour, appointed experts, and the commissioners nominated by business and labour – broadly concurred over the setting and subsequent revisions to minimum wages in ten major and some minor sectors. The Department of Labour, business nominees and some of the expert commissioners generally advocated caution, whilst labour nominees and other expert nominees generally advocated larger increases, but the differences in practice were almost always small. There was general consensus that minima should rise steadily but slowly, from starting-points that, in some sectors, were low.

Effects on wages and employment

The ECC regulated the wages of a substantial proportion of the South African workforce. Through the 2000s somewhere between 3 and 4 million workers (and possibly more) were in sectors that were regulated under SDs gazetted on the basis of the ECC's recommendations. The precise figure is not known, nor does anyone seem to have estimated how many (and which) low-paid employees (as opposed to the self-employed³⁰) remained uncovered.

Empirical studies using data from series of household surveys suggest that the initial SDs did have a positive effect on wages and conditions of employment in low-paid sectors, even if compliance was incomplete.³¹ SD 8, in agriculture, is estimated to have raised wages by 30 percent (relative to a control group of workers in other sectors) (Bhorat, Kanbur & Stanwix, 2014). In other sectors, the initial increase in wages was probably smaller (Bhorat, Kanbur & Mayet, 2013). Since the initial SDs, minimum wages in all sectors have risen steadily in real terms (see Figure 1). On

³⁰ The distinction is important in sectors such as farming, where the SD excludes peasant farmers, and taxis, where it excludes owner-operators.

³¹ Bhorat, Kanbur & Mayet (2012a, 2012b) conclude that non-compliance was widespread, using labour force survey data. But they probably underestimate compliance, given the probable under-reporting of wages in these surveys (see Wittenberg, 2014; Seekings, forthcoming).

average, sectoral minima were increased *after* the initial SD by about 3.5 percent p.a. in real terms. Over time, the increases were considerable.

Table 1: Cumulative real increase in minimum wage, by sector

Sector	Real increase in lowest minimum wage subsequent to initial SD		Gazetted future real increase	
	%	Time period	%	By when
Contract cleaning	34	May 1999 – Jan 2015	3	Jan 2017
Civil engineering	132	Nov 1999 – Sep 2012	No longer ECC	
Private security	45	Mar 2000 – Sep 2015	5*	Sep 2017
Domestic work	49	Nov 2002 – Dec 2014	8	Dec 2016
Farm work	116	Mar 2003 – Mar 2015	To be reviewed	
Wholesale and retail trade	125	Feb 2003 – Feb 2016	4	Feb 2018
Taxis	22	July 2005 – July 2014	1.5	July 2015
Forestry	80	Apr 2006 – Apr 2015	To be reviewed	
Hospitality	14	July 2007 – July 2014	1.5	July 2015

Notes: These are real increases subsequent to the initial SD in each sector, excluding bonuses etc.

* Gazetted increases for security guards; grades D and E to be combined with grade C from September 2017.

Table 1 shows the real increases in the lowest minimum wages for the major sectors from the first adjustment of the initial SD to the end of 2015. In several sectors – civil engineering, farming and wholesale and retail trade – minima were more than doubled over time by the ECC, without even taking into account the effect of the initial SD. In most other sectors minima were raised more modestly. If the effect of the initial SD is added, then the combined effect is even larger. In the case of agriculture, the actual increase of 30 percent resulting from the initial SD and the

gazetted increase in the minimum wage of 116 percent thereafter combine to produce an almost threefold aggregate increase. Minimum wage-setting by the ECC helps to explain compression in the distribution of wages in the bottom half of the distribution. The ratio of the tenth and twenty-fifth percentiles to the median rose in the early 2000s (at least until the 2008-09 recession) (Wittenberg, 2014: 20).

Figure 1 and Table 1 show the lowest minima. Not all workers were paid the lowest minimum, because they were not in the districts or occupational categories with the lowest minima. For example, Figure 1 and Table 1 shows the minimum payable to domestic workers in poorer districts. The minimum wages payable to domestic workers in richer districts grew more slowly.

Minimum wages were pushed up over time because the members of the ECC understood that their role was to protect vulnerable workers, in an economic and social context characterised by high inequality (of both wages and total incomes) and poverty, including among working men and women. GDP per capita rose over this period. Managers and professionals, skilled workers and most trade union members enjoyed substantial real increases in their earnings (Wittenberg, 2014; Seekings, 2015). ECC members understood their role as to ensure that the working poor also benefitted from such prosperity.

The ECC's enthusiasm for higher minima was moderated, however, by the statutory requirement and moral imperative of taking into account whether employers in each sector could afford increases and hence the likely magnitude of any job destruction. The economy as a whole was characterised not only by very high unemployment but also by a low employment elasticity of growth, meaning that economic growth created very few jobs. The sectors regulated by the ECC were labour-intensive. Insofar as the demand for labour in these sectors was wage-elastic, i.e. increased labour costs would result in a large decline in the demand for labour, the ECC had to exercise caution.

Evidence and benchmarks

The ECC's wage-setting was hamstrung by a lack of solid evidence on how wages might affect employment. The research conducted for or by the Department of Labour was, at best, incomplete. Not until the 2010s was there compelling evidence on the effects of increased minimum wages on employment (i.e. the sectoral employment elasticity of wages). Whilst there remained concerns over the quality of data (Wittenberg, 2014; Seekings, forthcoming), the key reason for the paucity of

evidence on employment effects was that the ECC lacked resources itself and the Department of Labour was slow to commission sufficient research, perhaps because no one on either the ECC or in the Department thought to do so. The ECC's reports (and, when they were separate, the preliminary reports from the Department of Labour) were substantial, and perhaps unprecedented for the sectors concerned. But they generally lacked strong evidence on likely effects on employment.

When evidence was presented, however, it was sometimes discounted. The DPRU was commissioned to assess the effects of different minima on employment in the domestic work sector as part of the investigation that led to SD 7. The DPRU warned that minima of even R400 or R500/month would result in job destruction in rural districts. The Department of Labour heeded this warning. But the ECC recommended a minimum of R650 per month in rural districts. Later, in 2012-13, more thorough research was conducted by Borat and colleagues at the DPRU. It is not clear that this informed discussions within the ECC. Members of the ECC seem to have been happy to be guided by their instincts. Their search for 'balance' between the cost of living and the risk of job destruction (both of which the ECC was required to consider under the legislation) meant that they did not press for research on job destruction or heed it as much as they might have done.³²

The absence of compelling research and indifference to some of the data that were available went along with an enthusiastic search for an appropriate baseline which could be used in recommending a new or revised minimum wage. In several sectors, the ECC took as a baseline Wage Determinations inherited from the Wage Board. The conservatism of the Wage Board led to the ECC itself being cautious. In some other sectors, the ECC paid attention to minima that were agreed by employers and employees through formal or informal bargaining fora. From the outset the ECC accepted that, in general, it should privilege collective bargaining. In some of these cases trade unions had agreed to modest real wage increases, presumably because they were weak (perhaps because there was a high risk of their own members being retrenched). This also resulted in moderation in setting minima.

In some sectors, however, there was no prior Wage Determination nor any informal collective bargaining to provide a baseline. In the cases of domestic work and

³² In 2014, Nicoli Nattrass was invited to present to the ECC the findings of research on minimum wages (then set under the LRA not by the ECC) and job destruction in the clothing industry (see Nattrass & Seekings, 2014). The response among the members of the ECC present seemed to vary from hostility to indifference. There was no evident interest in engaging in substantive deliberation over trade-offs between wage growth and job losses. (Personal communication from Nicoli Nattrass).

agriculture, the ECC looked for some other baseline to provide a floor below which they would not recommend a minimum wage. The value of the government's old-age pension provided this baseline. Once the domestic work minimum had been set, it constituted an additional baseline informing the ECC's recommendation for agriculture. In turn, agricultural minima informed forestry.

The result was two clusters of sectoral minima, as shown in Figures 1 and 4. One cluster of sectors had much lower minima, initially close to but rising to about one and a half times the value of the old-age pension (which itself rose only very slowly) or just over 50 percent of the median wage in the labour market as a whole.³³ Minima in the second cluster were about 50 percent higher than in the first cluster. They rose to about double the value of the old-age pension, or about 75 percent or more of the median wage. The minimum wage in civil engineering was initially in this second cluster, but then diverged upwards (until it established a formal national bargaining council and therefore ceased to fall under the ECC's jurisdiction). Three sectors – wholesale and retail trade, farming and forestry – shifted from the lower-minimum cluster to the higher-minimum cluster, at different moments. The Department of Labour and ECC resisted, however, the rate of increase that would shift the remaining lower-minimum sectors (domestic work, taxis and private security) into the higher-minimum cluster.

Macro-economic influences and employment effects

In setting minima, especially the lowest minima, the ECC showed a clear commitment not only to taking into account the cost of living, but to raising the real value of minimum wages. The ECC also took into account some of the risks of job destruction, although its respect for evidence was uneven. It would not be surprising if the ECC was also influenced by the prevailing macro-economic context. The factors that might be expected to have informed the ECC's recommendations included the growth rate of the economy, the unemployment rate and changes in wages, especially in the unionised or formal sectors. Figure 5 compares the annual average real change in minimum wages in the major sectors (as shown in more detail in Figures 2 and Appendix 4), the growth rate of real GDP per capita, the absolute change (in percentage points) in the employment rate, and the average wage settlement recorded by Andrew Levy & Associates (covering bargained settlements

³³ Finn (2015) calculates the median at R3,224/month in 2014. Insofar as low-waged workers under-report their wages in labour force surveys, this might be an underestimate.

in the formal labour market).³⁴ Because few SDs were amended before 2003, the series begins then.

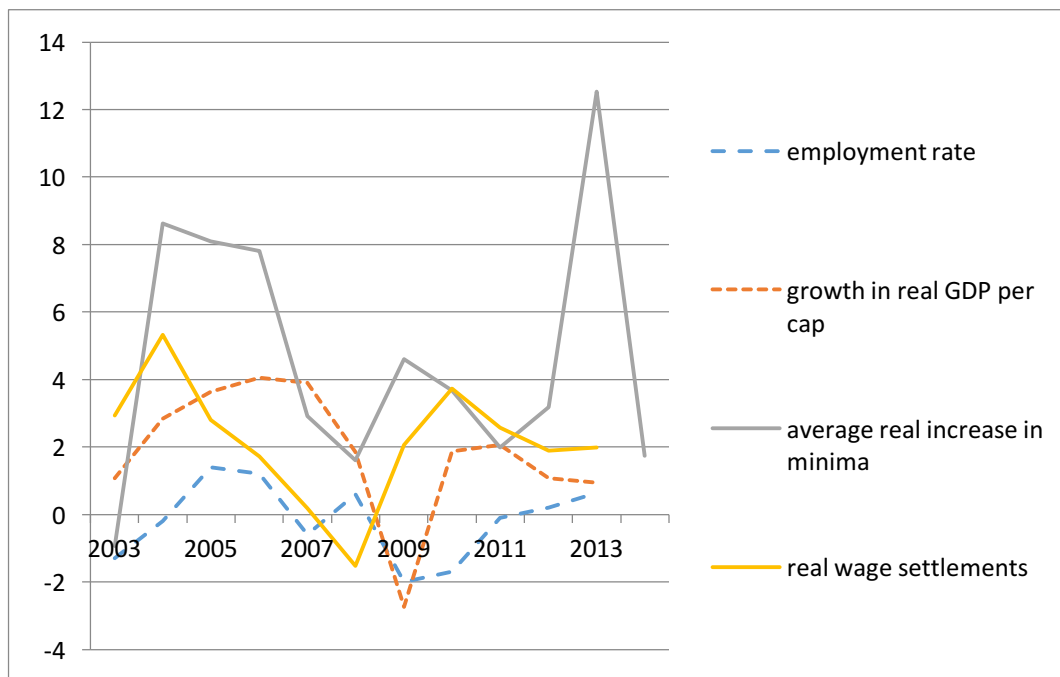


Figure 5: Increases in minima, GDP per capita, wage settlements and employment, 2003-14

The period 2003-13 can be seen to comprise three periods. First, in the early 2000s, the economy is buoyant (fuelled by a strong global economy and high commodity prices). GDP per capita grows, although the employment rate rises only in 2005 and 2006, and then only modestly. During this phase, negotiated settlements provided for real wage increases, although the rate of increase slows down. Wage minima are raised aggressively by the ECC. In the second phase, the economy crashed in 2008 and 2009; the employment rate continued to fall in 2010. Wage settlements were below inflation in 2008, but recovered quickly in 2009. The ECC was cautious in 2007 and 2008, but more assertive in 2009. In the third phase, from 2010, the economy recovered, but slowly. Wage settlements outpaced the growth of GDP per capita, but were very much lower than the ECC’s changes to minima. It is not easy to identify any clear pattern, but the ECC’s changes to minima do seem to track wage settlements more closely than either of the other series. They drop from 2004 to 2008, then pick up in 2009 – surprisingly sharply, given the continued drop in GDP per capita. The spike in the minimum wage series in 2013 (due to agricultural wages) is, however, independent of any trend in wage settlements.

³⁴ Data collated from various issues of the South African Reserve Bank’s *Quarterly Bulletin*.

Research by Borhat and the DPRU tends to suggest, however, that the ECC generally ‘got’ it broadly ‘right’, although it might have been too conservative in non-tradable sectors and rash in tradable ones. Methodologically, assessing the effect of SDs is not straightforward, because the specific effects of changes in minimum wages on employment need to be isolated from exogenous effects. The approach used by Borhat and the DPRU has been to compare changes in employment in sectors where there was a sharp change in the minimum wage with concurrent changes in employment in comparable sectors where there was no such change in the minimum wage. There are two obvious problems with this. First, there are almost no low-wage sectors that were not subject to constant increases in minimum wages, through either collective bargaining and extensions under the LRA or through SDs recommended by the ECC, so it is probably impossible to identify a clean control group. Secondly, the sector-specific effects of minimum wages cannot easily be separated from sector-specific exogenous changes in the demand for labour. In the private security industry, for example, the demand for labour has risen despite rising real wages and labour costs, because more and more consumers – both business and private households – are prepared to spend money on their security. Similarly, rising incomes for growing numbers of rich households raised the demand for domestic work, even if the cost of a domestic worker was rising. In practice, therefore, research is likely to underestimate negative employment effects.

The Borhat/DPRU research suggests that employment effects varied, but were generally modest. Borhat and colleagues found that the negative employment effects in sectors other than agriculture were limited to reduced working hours (Borhat, Kanbur & Mayet, 2013; Borhat & Mayet, 2013). Individual workers clearly benefit if they work fewer hours for the same (or more) money, but they may not be lifted out of poverty. Most of these sectors were non-tradable sectors, i.e. sectors (such as private security, domestic work, retail and restaurants) which did not face competition from imports. This reduced the likelihood that modest wage increases would result in major employment losses. It is possible that, in sectors such as these, the ECC might have raised minima faster. With regard to tradable sectors, notably agriculture, the evidence points to a rather different conclusion. South African farmers – whether they are producing grapes for wine or lambs for slaughter or sheep for wool – compete with farmers elsewhere in the world for foreign and local markets. Case-studies in different parts of the country (Conradie 2007; Murray & van Walbeek 2007), as well Borhat, Kanbur & Stanwix’s analysis of national data (2014) suggest that the original (2002) sectoral determination in agriculture was accompanied by a significant reduction in total employment and/or hours worked. In the (tradable) forestry sector, Borhat, Kanbur & Mayet (2013) found that the initial

SD did not lead to any observed improvement in total earnings, because higher wages were offset by a reduction in working hours. Both studies by Borat and co-authors found larger wage and employment effects in districts where wages were lowest before the SDs.

This research is a good start, but is clearly incomplete. In sectors such as private security and domestic work, it is not clear that Borat *et al.* adequately controlled for the exogenous rise in demand. Nor is it clear how much the problems with specifying control groups serve to disguise employment effects. The research also focuses on the original SDs, not on subsequent real increases in minimum wages. There does not seem to be any research yet into how subsequent revisions to minima have affected the demand for labour in those districts or occupations where minima were raised disproportionately.

Despite these weaknesses, the available research tends to suggest that the ECC in general did not raise minima so dramatically that there were clear and large negative effects on employment, except in agriculture. The Department of Labour and ECC were right to worry about ‘negative employment effects’ (i.e. job destruction), especially in tradable sectors, but that they could raise minima cautiously. The evidence points to the benefits of setting minima at the sectoral level, because the effects of higher minimum wages varied between sectors (according to factors such as their exposure to international competition, the possibilities for mechanisation, and the incomes of employers or customers). In a context of high unemployment, a sectoral approach had obvious advantages in comparison to the national minimum-setting approach adopted in the UK in 1999. Where the sectoral approach falls short is in ensuring that all workers in sectors are covered. Section 55(8) of the Basic Conditions of Employment Act, added under a 2013 Amendment Act, provides for the Minister to publish a sectoral determination covering ‘employers and employees who are not covered by any other sectoral determination’ (subject to the existing restrictions), allowing for the possibility of a national minimum wage to serve as a floor in all otherwise uncovered sectors.

Comparison with other wage-setting institutions

The ECC in South Africa thus seems to have operated for the most part in ways similar to minimum-setting institutions in a number of other national contexts. Freeman (2010) has emphasized that minimum wages have generally not had significant effects on employment because minima have been set taking into account

likely effects! In most countries, minima have been set at modest levels and raised slowly.

The fullest analysis of how statutory minima have been set by a tripartite institution elsewhere in the world is the account of the the Low Pay Commission (LPC) in the UK written by a former commissioner, drawing on his own diary notes (Brown, 2009). Like the ECC in South Africa, the LPC practiced the kind of ‘adaptive wage-setting’ discussed above. The LPC paid close attention to the minima set in other advanced capitalist countries. At the outset, it also examined the minima set by its predecessors in the Wage Board system (Brown, 1999). Thereafter, the LPC raised the minimum steadily but slowly. This did not mean that the LPC reached agreement easily. Brown implies that the LPC’s recommendations were all, in the end, unanimous, because commissioners in a minority felt that they could achieve more by negotiating a compromise than by submitting a minority report. The ensuing compromise recommendations meant that both ‘labour’ and ‘business’ commissioners were strongly criticised by unions and small businesses respectively.

The range of disagreement within the LPC was significant. Brown describes the LPC as ‘self-consciously polarized’, with the labour commissioners providing ‘unwavering upward pressure on the minimum wage’ whilst the business commissioners applied the brakes, although they too ‘were committed to achieve the highest coverage of workers by the minimum wage that was consistent with the protection of employment’ (Brown, 2009: 441-2). Brown reports that the difference between the initial high ‘bids’ put forward by the ‘labour’ commissioners and the initial low ‘bids’ proposed by ‘business’ commissioners varied between 6 and 14 percent of the final compromise recommendation. In the worst case (in 2003, presumably for the increase that was finally implemented in 2005), the reported difference of 14 percent implies that the ‘labour’ commissioners initially proposed that the national minimum be £0.7/hour higher than the ‘business’ commissioners’ proposal (with the compromise being £5.05/hour). Brown writes that the ‘negotiations involved a lot of talking, ... the parties converged slowly, and ... the process did not get easier with experience’ (Brown, 2009: 437). He acknowledges that the LPC’s work was made much easier by the steady growth of the British economy and employment.

By comparison, the ECC failed to reach agreement in a significant minority of cases. Commissioners did sometimes submit minority reports, and some of the unanimous reports recorded the reservations of individual commissioners on one or other recommendation. None of the ECC commissioners interviewed mentioned a process of ‘bidding’ comparable to the LPC in the UK, but the ECC’s reports do record the

submissions made to the Department of Labour and ECC by trade unions and employers, as well as the recommendations of the Department of Labour. In the case of the original SD for domestic workers, unions initially proposed minima that were double the minima recommended by the Department of Labour. The difference was about two-thirds of the final ECC recommendation. In the extreme case of the 2014 report on domestic workers, proposals (for the lowest minimum, in more rural districts) varied from no real increase (i.e. an increase in line with the consumer price index) to the trade unions' proposed increase of approximately 50 percent, to bring the minimum for domestic workers into line with the recently-raised minimum for farmworkers. In this case, the ECC recommended an initial real increase of about 6 percent, with further real increases of 4.5 percent in each of the following two years. The differences between the proposals made to of the ECC were very much larger than the differences between the proposals made by commissioners within the LPC in the UK. Whilst we don't know what range of proposals were made within the ECC, by commissioners, we do know that commissioners submitted minority reports on a number of occasions.

It is hard to avoid the conclusion that commissioners on the ECC were less willing or committed to compromise, and were more likely to play to external galleries, than their equivalent commissioners on the LPC in the UK. This is perhaps unsurprising given the differences in perspectives that were inevitable in a society characterised by *both* a high proportion of low-wage work *and* very high unemployment: Trade unions and some independent members of the ECC focused on the cost of living and the hardships of the working poor; business commissioners and other independent commissioners focused on affordability and job destruction. The ECC did not enjoy the luxury enjoyed by the LPC, of steady economic growth and record-low unemployment.

The ECC did, however, raise sectoral minima faster in real terms – and, probably, relative to median wages – than the LPC raised the national minimum in the UK. The ECC might not have recommended real increases anywhere close to those demanded by trade unions, but it was responsive to the pressure to raise sectoral minima.

The ECC's success in rising minima without, in most sectors, obvious job destruction did not protect it from criticism from COSATU. In 2012, COSATU began to criticize the post-apartheid labour dispensation in South Africa for its alleged failure to end working poverty and to reduce the 'wage gap' between higher and lower earners. COSATU strategist Neil Coleman proposed that COSATU demand a national minimum wage of between R4,800 and R6,000 per month (in 2011 prices). The ECC had, Coleman asserted, been captured by business interests and conservative

technocrats (Coleman, 2013). The proposed range for a national minimum wage was more than three times higher than the minima set by the ECC in sectors such as domestic work, would cover a majority of wage-workers, and would raise minimum wages to the highest level in the world (by a variety of criteria) (Seekings & Natrass, forthcoming). Despite the facts that (1) COSATU had endorsed the design of the ECC in the 1990s, (2) COSATU and individual trade unions proposed to the ECC minimum wages that were a fraction of those proposed by Coleman, (3) the COSATU deputy general-secretary and other unionists on the ECC had concurred with most of its fifty-odd reports, and (4) unions in some other sectors agreed to similarly low minima through collective bargaining, COSATU nonetheless swung behind the demand for a national minimum wage, although it reduced the target range by about one-third, to between approximately R4,100 and R5,300 in 2015 prices (COSATU, 2015).

References

- Alexander, P. 2013. Marikana, turning point in South African history. *Review of African Political Economy* 40(138): 605-19.
- Belser, P. & K. Sobeck. 2012. At what level should countries set their minimum wages? *International Journal of Labour Research* 4(1): 105-27.
- BFAP. 2012. *Farm Sectoral Determination: An Analysis of Agricultural Wages in South Africa*. Pretoria and Stellenbosch: Bureau for Food and Agricultural Policy, Universities of Pretoria and Stellenbosch.
- Bhorat, H. 1991. Wage fixing and the South African reality. Paper presented at workshop on *Budgeting for Redistribution*. Cape Town: University of the Western Cape.
- , Kanbur, R. & N. Mayet. 2013. The impact of sectoral minimum wage laws on employment, wages, and hours of work in South Africa. *IZA Journal of Labour and Development* 2(1): 1-31.
- , ----- & B. Stanwix. 2012. Estimating the impact of minimum wages on employment, wages and non-wage benefits: the case of agriculture in South Africa. *DPRU Working Paper No. 149*.
- , ----- & ----- . 2014. Estimating the impact of minimum wages on employment, wages and non-wage benefits: the case of agriculture in South Africa. *American Journal of Agricultural Economics*, published online.
- & N. Mayet. 2013. The impact of sectoral minimum wage laws in South Africa. *Econ3x3*. <http://www.econ3x3.org/article/impact-sectoral-minimum-wage-laws-south-africa>.
- Boeri, T. 2012. Setting the minimum wage. *Labour Economics* 19(3): 281-290.
- Brown, W. 2002. The Operation of the Low Pay Commission. *Cambridge Working Papers in Economics 0223*. Cambridge: Cambridge University.
- . 2009. The process of fixing the British national minimum wage, 1997–2007. *British Journal of Industrial Relations* 47(2): 429-443.

Budlender, D. 2007. Second Economy Strategies: Minimum wages and conditions. Unpublished paper.

-----, 2013. The introduction of a minimum wage for domestic workers in South Africa. Geneva: International Labour Organization.

Coleman, N. 2013. Towards new collective bargaining, wage and social protection strategies in South Africa – Learning from the Brazilian experience. *Working Paper No. 17*. Geneva: Global Labour University.

Conradie, B. 2007. Revisiting labour casualisation on fruit farms in the Western Cape. *CSSR Working Paper No. 177*. Cape Town: Centre for Social Science Research, University of Cape Town.

COSATU. 2015. *The case for a national minimum wage*. Briefing document, revised. 18 February. <http://www.politicsweb.co.za/party/the-case-for-a-national-minimum-wage--cosatu>, accessed 16th May 2015.

Dinkelman, T. & V. Ranchhod. 2010. Evidence on the impact of minimum wage laws in an informal sector: Domestic workers in South Africa. *Working Paper No. 44*. Cape Town: Southern African Labour and Development Research Unit, University of Cape Town.

Development Policy Research Unity (DPRU). 2008. Minimum wages, employment and household poverty: Investigating the impact of sectoral determinations. Cape Town: Development Policy Research Unit, University of Cape Town.

ECC. 2000. *Report to the Minister of Labour on the Investigation into the Civil Engineering Sector*.

-----, 2002a. *Recommendations of the Employment Conditions Commission on the Investigation into the Domestic Worker Sector*.

-----, 2002b. *Report to the Minister of Labour by the Employment Conditions Commission on the Contract Cleaning Sector, South Africa*.

-----, 2002c. *Recommendations of the Employment Conditions Commission on a Determination for the Agricultural Sector*.

----- . 2003. *Report of the Employment Conditions Commission, 1 August 1998 – 31 March 2003*. Pretoria: Department of Labour.

----- . 2004. *Report of the Employment Conditions Commission to the Minister of Labour on the the Contract Cleaning Sector, South Africa*.

----- . 2006a. *Annual Report, Employment Conditions Commission, 2005-2006*. Pretoria: Department of Labour.

----- . 2006b. *Report of the Employment Conditions Commission on the Investigation into a Sectoral Determination for the Forestry Sector*.

----- . 2006c. *Contract Cleaning ECC Report – 2006*.

----- . 2007. *Report on the Investigation into a Sectoral Determination for the Hospitality Sector 2007*.

----- . 2008. *Annual Report, Employment Conditions Commission, 2007-2008*. Pretoria: Department of Labour.

----- . 2009. *ECC Contract Cleaning Report 2009*.

----- . 2011. *ECC Forestry Report 2011*.

----- . 2012a. *Report of the Employment Conditions Commission to the Minister of Labour on the Farm Worker Sector, South Africa, 2011/2012*.

----- . 2012b. *Report of the Employment Conditions Commission to the Minister of Labour on the the Contract Cleaning Sector, South Africa*.

----- . 2013a. *Report of the Employment Conditions Commission to the Minister of Labour on the Farm Worker Sector, South Africa, 2013*.

----- . 2013b. *Employment Conditions Commission Report on the Investigation into the Hospitality Sector, South Africa, 2013*.

----- . 2014. *Employment Conditions Commission Report for the Domestic Worker, South Africa Review*.

Freeman, R. 2010. Labour regulations, unions and social protection in developing countries: Market distortions or efficient institutions? In Rodrik, D. & M. Rozensweig (eds.), *Handbook of Development Economics*, 5. Amsterdam: Elsevier.

Garnero, A., Kampelmann, S. & F. Rycx. 2015. Sharp Teeth or Empty Mouths? European Institutional Diversity and the Sector-Level Minimum Wage Bite. *British Journal of Industrial Relations* 53(4): 760-788.

Godfrey, S., Maree, J. & J. Theron. 2006. Conditions of employment and small business: Coverage, compliance and exemptions. *Working Paper 06/106*. Cape Town: University of Cape Town, Development Policy Research Unit.

ILO. 2013. *World of Work Report 2013: Repairing the economic and social fabric*. Geneva: International Labour Organisation.

Kalula, E. & D. Woolfrey (eds.). 1995. *The New Labour Market: Reconstruction, Development and Equality*. Cape Town: Labour Law Unit, University of Cape Town.

Manning, A. 2012. *Minimum wage; maximum impact*. London: The Resolution Foundation.

Metcalf, D. 1999. *The British National Minimum Wage*. London: Centre for Economic Performance, London School of Economics.

Murray, J. & C. Van Walbeek. 2007. Impact of the sectoral determination for farm workers on the South African sugar industry: Case study of the KwaZulu-Natal North and South Coasts. *CSSR Working Paper No. 181*. Cape Town: Centre for Social Science Research, University of Cape Town.

Nattrass, N. & J. Seekings. 2014. Job destruction in Newcastle: Minimum wage-setting and low-wage employment in the South African clothing industry. *Transformation* 84: 1-30.

----- & ----- . 2015. Should and can labor-surplus, middle-income economies pursue labor-intensive growth? The South African Challenge. *CSSR Working Paper No. 351*. Cape Town: Centre for Social Science Research, University of Cape Town.

Neumark, D. & W. Wascher. 2008. *Minimum Wages*. Boston: MIT Press.

Pierson, K. & F. Thompson. 2014. Taxation without Representation? The political economy of state minimum wage levels. Unpublished paper. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2461018, accessed 3rd April 2016.

Seekings, J. 2016a. Trade unions and the redesign of South Africa's minimum wage-setting institutions in the 1990s. *CSSR Working Paper No. 374*. Cape Town: Centre for Social Science Research, University of Cape Town.

----- . Forthcoming. The Quality of South African wage data. *CSSR Working Paper*. Cape Town: Centre for Social Science Research, University of Cape Town.

----- & N. Nattrass. 2015. National Minimum Wage Setting in South Africa. *CSSR Working Paper No. 362*. Cape Town: Centre for Social Science Research, University of Cape Town.

----- & ----- . Forthcoming. Setting the level of a national minimum wage: What can South Africa learn from other countries' experiences? *Transformation*, in press.

South Africa. 1996. *Employment Standards Statute: Policy Proposals*. Green Paper, published as Notice 156 of 1996. Pretoria: Ministry of Labour.

----- . 2001a. Report on Investigation into Minimum Wages and Conditions of Employment of Domestic Workers (by the Department of Labour). *Government Gazette* 22,453. 10 July.

----- . 2001b. Determination of Employment Conditions in South African Agriculture (by the Department of Labour). *Government Gazette* 22,648. 13 September.

----- . 2014. Investigation into a National Minimum Wage in South Africa. Pretoria: Department of Labour.

Starr, G. F. 1993, first published 1981. *Minimum wage fixing: an international review of practices and problems*. Geneva: International Labour Organization.

Whitaker, E. A., Herian, M. N., Larimer, C. W. & M. Lang. 2012. The Determinants of Policy Introduction and Bill Adoption: Examining Minimum Wage Increases in the American States, 1997–2006. *Policy Studies Journal* 40(4): 626-49.

Wittenberg, M. 2014. Analysis of employment, real wage, and productivity trends in South Africa since 1994. *Conditions of Work and Employment series paper no. 45*. Geneva: International Labour Organization.

Appendix 1: ECC Reports and Sectoral determinations, by year

Sector	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Contract cleaning (SD1)	R			R		R		R			R			R			
Civil engineering (SD2)	R	R			R?				R		R			R			
Private security (SD3/6)		R	R		R			R			R			R			R
Clothing and knitting (SD4)		R															
Learners (SD5)			R									R					
Domestic (SD7)			R				R			R			R				R
Farms (SD8/13)			R					R			R		R		R		
Wholesale and retail trade (SD9)				R				R			R			R			
Children in performing arts (SD10)						R		R									
Taxis (SD11)						R				R							
Forestry (SD12)								R		R			R				R
Hospitality (SD14)									R			R			R		

Sources: **Bold** indicates that I have examined the report. This list is probably incomplete and may contain errors.

Appendix 2: Sectoral determinations, 1999-2007

S D	Industry	Date appointed	Date of report	Date of SD	Prior or parallel minimum wage-setting	Differentiation in wage minima?
1	Contract cleaning	5 th March 1999	1999	May 1999	Regional BC in KZN only + Informal national bargaining forum	3 geographical zones + Multiple occupations
2	Civil engineering	20 th Nov 1998	1999	12 th Nov 1999	WD 480	Provinces, combined into 3 groups + Multiple occupations
3	Private security	5 th March 1999	2000?	Feb 2000	Informal bargaining forum	5 geographical zones + multiple occupations
4	Clothing and knitting	7 th May 1999	2000?	Oct 2000	WD 471 + regional BCs across much of the country	2 geographical zones (excepting areas covered by BCs) + occupation and experience
5	Learnerships	4 th Aug 2000	2001	June 2001	-	
6	Private security	12 th Jan 2001	2001?	Nov 2001	SD 3	See SD 3
7	Domestic workers	10 th July 2001	2001	Aug 2002	None	2 geographical zones

8	Farm workers	13 th Sep 2001	2001 or 2002	Dec 2002	None	2 geographical zones
9	Wholesale and retail trade	11 th June 1999	2002?	Dec 2002	WD 478 + informal bargaining forum	6 geographical zones + additional concession to new business + occupations
10	Children in the performance of advertising, artistic and cultural activities		2004?	July 2004		
11	Taxi workers	1999	May 2004	April 2005		No geographic differentiation; 3 occupational categories
12	Forestry workers	16 Nov 2001	2005?	March 2006		None
13	Farm workers		2005?	Feb 2006	SD 8	
14	Hospitality workers	19 th Feb 1999*	2007?	May 2007	WDs 457, 461, 477, 479	small vs large employers

Sources: Documents accessed on www.labour.gov.za.

Reports: <http://www.labour.gov.za/DOL/contacts/statutory-bodies/employment-conditions-commission>

* Revised 17th March 2000 and Nov 2001?

Note: The ECC was also instructed to investigate the maritime sector on 27th July 2001, but a bargaining council was established in the sector before the ECC reported.

Appendix 3: membership of the ECC, 1999-

	1999-2002	2002-2005	2005-2008	2008-2011	2011-2014	2015-
Independent members	Edwin Molahlehi (ch)	Evance Kalula (ch)	Evance Kalula (ch)	Ingrid Woolard (ch)	Ingrid Woolard (ch)	Adriaan van der Walt (ch)
	Evance Kalula	Debbie Budlender	Debbie Budlender	Imraan Valodia	Imraan Valodia	Imraan Valodia
	Debbie Budlender	Zav Rustomjee	Haroon Borat	Adriaan van der Walt	Adriaan van der Walt	Cecil Mlatsheni
Organised business	Aubrey Tshalata	Boetie Letsoela	Kaiser Moyane	Kaiser Moyane	Kaiser Moyane	Kaiser Moyane
Alternate	-	Kaiser Moyane (from 2003)	Eric Nwedo		Jonathan Goldberg	Jonathan Goldberg
Organised labour	Basheer Waglay (later: Tony Ehrenreich)	Bheki Ntshalintshali	Bheki Ntshalintshali	Bheki Ntshalintshali	Bheki Ntshalintshali	Bheki Ntshalintshali
Alternate	-	Mdudusi Mbongwe (from 2003)	Mdudusi Mbongwe (from 2003)		Jane Barrett	Jane Barrett

Appendix 4: Real increases (or decreases) in minimum wages over time (excepting agriculture and forestry, 2013)

