



# Minimum Wage Policy Guide

## Chapter 3 – Who should set minimum wages?

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### Summary

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**Minimum wages can be fixed in different ways, including by giving the force of law to provisions of collective agreements.<sup>1</sup>**

**Collective bargaining can be a means to fix minimum wages.** However, there are only a few countries that rely exclusively on collective bargaining for minimum wage fixing. These are countries where collective agreements cover over 90 per cent of employees. In most countries, the coverage of collective bargaining is insufficient to provide protection of minimum standards to a broad majority of workers. In many countries, governments have therefore adopted statutory minimum wages in addition to those set through collective agreements.

**In statutory minimum wages, governments should make every effort to ensure the full consultation and, insofar as possible, direct participation, on a basis of equality, of the social partners in the establishment and operation of minimum wage systems.**

To be effective such consultations should be carried out in a context of open social dialogue and held before decisions are taken by the public authorities.

While governments and employers' and workers' organizations may hold divergent views on some occasions, social dialogue is the recognition that there is a common interest in the well-being of enterprises and of the workers and their families. It also provides policymakers with important information for effective policy design, improves the chances of buy-in (ownership) and

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<sup>1</sup> [Minimum Wage Fixing Recommendation, 1970 \(No. 135\)](#)

therefore effective implementation, and advances social and industrial peace and stability by minimizing misunderstandings and tensions.

**Independent experts, who represent the general interest of the country, and national statistical offices also play a key role.** Sufficient resources should be devoted to the collection of wage statistics and other relevant data, as employers and workers' organizations need to have access in advance to relevant information as a basis for formulating their views.

## 3.1 Consultation and direct participation of social partners

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### Social partners in full consultation

Whatever the machinery,<sup>2</sup> governments should make every effort to establish and maintain the conditions for genuine social dialogue, a process which increases the chances that a minimum wage responds to the needs of the various parties and contributes to national development.<sup>3</sup>

The principle of full consultation with social partners in the establishment, operation and modification of such machinery is at the heart of the ILO [Minimum Wage Fixing Convention, 1970 \(No. 131\), \(Article 4.1\)](#) .

Social dialogue plays a key role in a country's social, political and economic stability, equity and democracy. It creates a framework of peaceful and orderly procedures with which to resolve potentially damaging disputes.<sup>4</sup> When workers or employers feel that they have been left out of decision-making, or not well represented in the decision-making process, there will be less "buy-in" or ownership of minimum wage policies – and protests or strikes may occur.

➤ [What is "consultation"?](#)

The principle that there should be full consultation and participation, on a basis of equality, of social partners in establishing, operating and modifying the minimum wage machinery is one of the pillars of Convention No. 131 and the Minimum Wage Fixing Recommendation, 1970 (No. 135).

In its General Survey 2000 on tripartite consultation, the ILO Committee of Experts on the Application of Conventions and Recommendations specified that consultation implies more than merely sharing information, without implying a joint decision-making process. This is different from "negotiation", which implies that the objective of the different parties is to reach an agreement. The consultations required under the term of the Convention are intended to assist the competent authority in taking a decision – rather than lead to an agreement.

The ILO considers that – to meet the requirement of Convention No. 131 – employers' and workers' organizations should be fully consulted. The existence of a formal consultation procedure is not sufficient to meet this requirement. Steps should be taken to ensure that concerns and arguments put forward by social partners are really taken into account. This implies that consultation must take place before decisions are taken and that the representatives of the employers' and workers' organizations should be provided with full and pertinent information.

### Direct participation

[Convention No. 131](#) also calls – wherever it is appropriate to the nature of the machinery – for the direct participation of social partners.

Social partners' direct participation in fixing the rate and its adjustment should lead to balanced outcomes that are both enforceable and maintain social cohesion. In general, the involvement of social partners allows the concerns and priorities of

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<sup>2</sup> Machinery refers to the mechanism through which minimum wages are set and adjusted.

<sup>3</sup> [ILO General Survey on minimum wage systems \(2014\)](#), p. 119

<sup>4</sup> [Fashoyin, T. \(2004\). "Tripartite cooperation, social dialogue and national development", International Labour Review, Vol. 143.4, pp. 341-72.](#)

those most directly affected by the minimum wage policy to be taken into account more effectively. This in turn is likely to secure greater authority and support for the minimum wage that will be fixed, and tends also to facilitate its effective implementation. representing the general interest of the country can be public officials with responsibilities in industrial relations or other related fields, or independent experts – such as academics – who are free from any conflict of interest.

## 3.2 Minimum wages through collective bargaining

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### Collective bargaining

The most direct involvement of social partners is through collective bargaining, which is a perfectly legitimate form of minimum wage fixing under Convention No. 131.

➤ [Learn more about Convention No. 131 and collectively agreed minimum wages](#)

Convention No. 131 does not solely refer to statutory minimum wages. Minimum wages may in fact be fixed by giving the force of law to provisions of collective agreements. This does not require collective agreements to be extended so that they apply to all workers and employers in a specific sector or to all branches of activity in a country. The requirement is only for negotiated minimum wages to be legally binding on the parties.

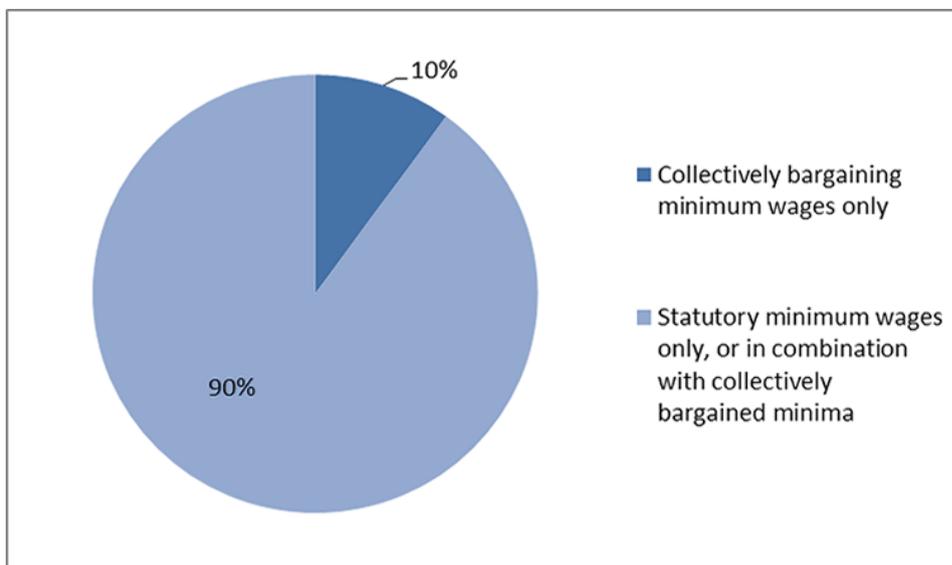
However, the provisions on the scope of application of minimum wage systems – which according to the Convention should cover “all groups of wage earners whose terms of employment are such that coverage would be appropriate” – should be taken into account.

For example, the situation in Austria or Belgium, where the coverage rate of collective agreements exceeds 90 per cent of wage earners, is very different from that of other countries where the coverage rate is much lower. The extension of collective agreements can play a useful role in reducing the number and groups of wage earners not protected by minimum wages.

Source: ILO General Survey 2014

In many countries, bargained and statutory minimum wages co-exist. In a more limited number of countries, collective bargaining is the only means of minimum wage fixing. Figure 1. below distinguishes between countries where minimum wages are exclusively set through binding collective agreements, and countries that rely on statutory minimum wages (with or without additional bargained minima).

Figure 1. Proportion of countries with different minimum wage fixing machineries



Source: ILO estimate

We observe that only 10 per cent of countries with a minimum wage rely exclusively on collective bargaining. In practice, many of these countries are Nordic European countries. In addition, Belgium also sets its national minimum wage through an inter-sectoral collective agreement adopted by the National Labour Council.

➤ [Learn more on minimum wages in Nordic countries](#)

None of the Nordic countries has a statutory minimum wage.

Denmark and Sweden use collective agreements as their only mechanism for setting minimum wages, while Finland, Iceland and Norway have also started to use extension mechanisms to cover all workers at industry level.

Minimum wage agreements are often differentiated by age, skill or seniority. Higher wages will be subject to further negotiations at the enterprise level. In Denmark and Sweden, the collective agreements are binding only for those parties that have signed them. This system covers around 89% of employees in Sweden, and about 84% in Denmark. In Norway, EU enlargement in 2004 caused these practices to be supplemented by an extension of collectively agreed wage rates in industries that absorbed many migrant workers from the new member states. Even so, the coverage rate is only about 67%. Finally, in both Finland and Iceland, coverage of collective agreements is widespread, of about 90% of workers. Finland extends all national collective agreements that have an industry coverage exceeding 50%. In Iceland negotiated wages apply to all employees who perform work of similar type.

Sources: Eldring L. and K. Alsos (2012). *European Minimum Wage: A Nordic Outlook* (Fafo, Norway). Adapted from pp. 71–73 and 78. ILO (2015) *Trends in collective bargaining coverage: stability, erosion or decline?* Issue Brief No. 1 – Labour Relations and Collective Bargaining.

Collective bargaining can provide protection of minimum standards. However, in most countries, the coverage of collective bargaining is insufficient to provide protection of minimum standards to a broad majority of workers (See [Issue Brief No.1](#)). Many countries therefore adopt statutory minimum wages in addition to the minima set through collective bargaining.

This is the case in Germany where close to 60 per cent of workers are covered by collective agreements, and where a national minimum wage was adopted in 2015. In Brazil, more than 40,000 collective labour contracts cover about two-thirds of paid employees, and are complemented by a national-level and several state-level statutory minimum wages. Similar situations prevail in other countries.

In general, collective agreements can set minimum wages provided that they are not lower than statutory levels. This implies that when a statutory minimum is increased above the floor level of some collective agreements, the statutory minimum wage applies.

In France, for example, it was noted that when the SMIC (salaire minimum interprofessionnel de croissance) was adjusted in July each year, it often exceeded bargained minima – making them obsolete. In Croatia too, it has been observed that the statutory minimum wage frequently exceeds collectively agreed pay floors – creating direct interaction between the two systems.<sup>5</sup>

In other instances, a statutory minimum rate is fixed so low that it may be viewed as irrelevant for collectively agreed wage floors.

➤ [Find out more on the ILO's work on collective bargaining and labour relations](#)

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<sup>5</sup> [Grimshaw, Bosch and Rubery \(2014\). "Minimum wages and collective bargaining: What types of pay bargaining can foster positive pay equity outcomes?" British Journal of Industrial Relations, Vol. 52, Issue. 3, pp. 470-498.](#)

### 3.3 Statutory minimum wages

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As is generally the case in the economic literature, the term statutory minimum wage is used here to designate all minimum wage fixing mechanisms other than through collective agreements. This may include minimum wages set through the decision of a competent authority; decisions of wage boards or councils; or industrial or labour courts or tribunals. This differs from the more narrow legal definition of the term “statutory” that refers to a legislative process.

In statutory systems, the most frequent way of ensuring consultation and participation of social partners and independent experts is through institutions such as tripartite or bi-partite wage commissions, wage boards, or other bodies with general competence for economic and social affairs.

However other forms of consultations are possible, including written communications or separate ad hoc bilateral consultations. Although most wage commissions are consultative, some countries have delegated decision-making authority to them, such as in the Republic of Korea.

As a matter of principle, social partners should be involved on a basis of equality. Membership in wage boards or commissions should include employers' and workers' representative organizations.

➤ [Learn more about centralized and decentralized wage boards](#)

How multiple minimum wage rates are set varies from country to country. In some cases, minimum wage systems with multiple rates are updated by a single national-level commission. In cases where the system is very complex, this could prove challenging for a single high-level wage-setting commission. The commission would, in principle, need to understand the intricacies of each individual occupation, region and/or sector where a minimum wage is set.

In practice, however, adjustments are sometimes updated using the same percentage increase across the whole minimum wage structure. In practice, the application of a uniform percentage increase to all minimum wages crystallizes the relative structure between the different minimum wages. Consequently, after several years, the minimum wage structure no longer adequately reflects actual labour market trends or the economic development of different sectors of activity.

In these cases a more decentralized process, coordinated at a higher level, would usually be a more appropriate approach. Minimum wages by sector and/or occupations would be set through the active participation of social partners, at a decentralized level, but under the general coordination of a tripartite commission at the national level. Specific minimum wage updates can then be determined and informed by the social partners' direct knowledge of the particularities of a certain sector, region, and/or occupation.

The [Minimum Wage Fixing Machinery Recommendation, 1928 \(No. 30\)](#), and [Minimum Wage Fixing Machinery \(Agriculture\) Recommendation, 1951 \(No. 89\)](#), explicitly indicate that employers' and workers' organizations should be invited to recommend individuals for appointment to such bodies, to ensure that these individuals have the confidence of those whose interests they represent.

When wage boards are sectoral, it is essential that the relevant employers' and workers' organizations be involved. Women should also be included among social partners.

Here are examples of how the minimum wage is set in practice:

➤ [France](#)

France's SMIC (salaire minimum interprofessionnel de croissance) is adjusted annually on 1 January. Successive adjustments must aim to eliminate long-term distortions between minimum wage increases and increases in the general level of wages .

The SMIC is adjusted by Decree of the Council of Ministers, after a recommendation by the National Collective Bargaining Commission (CNNC). The CNNC comprises 18 workers' representatives and 18 employers' representatives.

Since 2008, the CNNC consults an expert group, whose five members are nominated for four years by the Prime Minister. The role of the group is to meet social partners and collect their views on the level and design of the minimum wage; to collect available studies on the effects of the minimum wage; to gain deeper understanding of what is known about the minimum wage in general and in France, particularly regarding employment effects; and to propose new studies on aspects that are less well known or understood.

The CNNC can also recommend – or not - an additional increase, the “coup de pouce”, based on its analysis and various economic factors.

➤ Peru

In Peru, the Constitution indicates that minimum wages must be regulated by the State with participation of representative organisations of workers and employers. In practice, the minimum wage is set by the Government after proposal by the tripartite National Council for Labour and Employment Promotion (CNTPE).

Since 2007, the CNTPE is supported by a “technical commission on productivity and minimum wages”, which identified statistical indicators and criteria for the adjustment of the minimum wage. These criteria were adopted by the CNTPE and include expected inflation as well as multifactor productivity. Technical reports are produced by the Ministry to facilitate implementation of the adjustment mechanism.

The proposed criteria have been agreed by all parties with a view to protect the purchasing power of workers who earn the minimum wage, and ensure that higher enterprise revenues arising from increased efficiency translate into higher wages for workers who participated in the production process.

➤ Malaysia

Malaysia adopted a system of minimum wages in 2013, applying to all workers except domestic workers. Two different rates apply – one rate for Peninsular Malaysia, and another for Sabah, Sarawak and the Federal Territory of Labuan.

The government makes the final decision about minimum wage levels following recommendations from the National Wages Consultative Council as well as after consulting relevant stakeholders throughout the country. The government may either agree with the Council's recommendations or direct it to make fresh recommendations. The Council has suggested a set of criteria and a formula to guide the adjustment of minimum wage rates.

The National Wages Consultative Council is a tripartite advisory body that also includes technical experts, and was established under the National Wages Consultative Act 2011. It is obliged to have at least four meetings a year. Before making recommendations, the Council must (a) have consultations with the public on the rate and coverage; and (b) collect and analyse data and conduct and disseminate research on wages and socio-economic factors. The Council can also formulate recommendations on the coverage of the minimum wage, its non-application to certain sectors or regions, or implementation-related matters.

In addition to an independent Chairperson, Deputy Chairperson and a public officer acting as the Secretary, the Council consists of at least five members among the public officers, at least five representing employees, at least five representing employers, and at least five other members.

Source: Government minimum wage portal: <http://minimumwages.mohr.gov.my/>

### ➤ [South Africa](#)

One way in which the minimum wage is determined in South Africa is through “sectoral determination”.

The Basic Conditions of Employment Act (BCEA) provides for the establishment of the Employment Conditions Commission, which plays a key role in drawing up and advising the Minister on sectoral determinations. The Commission initially consisted of five members, with three (including the chairperson) nominated by government, one by organised business and one by organised labour. The composition was later expanded to allow for one alternate for each of organised business and organised labour. The nominees must be approved by the National Economic Development and Labour Council (NEDLAC), which is South Africa’s primary statutory body for social dialogue and which must be consulted during the development of labour and economic policies. However, the nominees to the Employment Conditions Commission do not serve as “representatives” of the social partners and are not accountable to them in the sense of receiving mandates and reporting back to their constituencies. The Commission is thus not a tri-partite body in the strict sense of the term.

The BCEA specifies the procedure for drawing up sectoral determinations in some detail. It requires that the Department of Labour issue a public notice announcing the terms of reference and asking for written input from members of the public, conduct an investigation, and prepare a report for consideration by the Commission. The Commission then discusses the report and makes recommendations to the Minister in respect of a determination. The Act also provides for the Commission to hold public hearings. In practice, the hearings are organized by the Department with government officials always in attendance and Commission members sometimes in attendance.

Source: Debbie Budlender, 2016. “The Introduction of a minimum wage for domestic workers in South Africa”, ILO Working Paper, Geneva.

## **3.4 Independent experts and statistical offices**

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### **Independent experts**

Convention No. 131 also calls – wherever it is appropriate to the nature of the machinery – for the direct participation in the minimum wage fixing of persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice.

### **Statistical offices**

In addition to social partners, independent experts with technical expertise and national statistical offices play a key role too. Because minimum wage-setting should be evidence-based and effects should be carefully monitored, social partners and policy-makers should have timely access to relevant data and analysis from a country’s national statistical office.

Sufficient resources should be devoted to the collection of statistics or other relevant data. Recommendation No. 135 considers that “to the extent possible in national circumstances, sufficient resources should be devoted to the collection of statistics and other data needed for analytical studies of the relevant economic factors, particularly those related to the criteria for minimum wage determination”.

The objective of statistical indicators is not, of course, to substitute for social dialogue or bargaining, but rather to allow well-informed social dialogue.