

Law's Dynamic Effects: The Case of South Africa

Introductory Statement:

This project investigates the implementation and operation of the National Minimum Wage Act, 9 of 2018 through a qualitative small-scale study of the domestic work and garment sectors in South Africa. The broad research aims are to understand how labour laws apply in informal workplace settings (or spaces where labour law does not commonly operate), and the processes and strategies used by workers and other relevant stakeholders in achieving improved working conditions.

Project Background Information/Introduction:

On the 1st January 2019, South Africa introduced the National Minimum Wage Act, 9 of 2018 (the NMWA) to respond to persistent wage inequality and working poverty – both part of the legacy of the Apartheid era. The earlier attempt to overhaul the wage structure had failed to significantly improve the conditions of a majority of workers at the lower end of the income distribution. In turn, this has posed significant challenges to poverty reduction and sustainable and equitable economic development. The new law sets a national-level minimum wage rate of ZAR 20 per hour (which is equivalent to ZAR 3.500 per month for a full-time employee) depending on the number of hours worked. Additionally, the NMWA creates a phase-in period for farm workers, forestry workers, domestic workers, welfare sector and care workers. This wage rate is expected to raise the earnings of more than half of the labour force (approximately 6 million workers).

Whether the NMWA succeeds will depend on, inter alia, its implementation in low-wage sectors which are notoriously characterised by the absence of labour law protections. Expanding the reach and influence of formal labour standards to workers deprived, in whole or in part, of key labour law protections is, however, a universal challenge. In the face of prevailing criticisms on the ineffectiveness of labour laws, particularly aimed at lower- and middle-income countries, this doctoral project employs a developing theory on the (actual) operation of labour law, referred to in recent research as “institutional dynamism” (ID).[†] Two dimensions of ID are highlighted. First, “external dynamism”, that is the capacity of labour regulations to operate and be implemented in informal work settings, and secondly, “internal dynamism”, the interaction between labour regulation and labour market institutions that result in improved outcomes for workers. The literature on ID, which focuses largely on minimum wage laws, provides crucial insights into how protective outcomes for low wage workers in informal settings

can be realized through effective labour regulation. However, the precise mechanics of ID is unclear and unstudied. In order to better understand this theory, the project will investigate the operation of the NMWA, with South Africa as the empirical context.

For more information, see:

<https://www.dur.ac.uk/law/policyengagement/ufw/africa/dynamiceffects/> and <https://www.dur.ac.uk/research/directory/staff/?id=18047>.

Research Aim/Objectives/Questions/Hypotheses:

The aim is to investigate the operation of the NMWA in the domestic work and the garment sectors in South Africa. The project's analytical questions are the following:

- 1) To what extent is the NMWA having dynamic effects in work settings where levels of statutory inspection and enforcement are negligible?
- 2) What strategies are being adopted by the relevant stakeholders to extend the influence of the NMWA?
- 3) Which responses, activities and strategies have proven effective in ensuring compliance with the NMWA?
- 4) Does the NMWA interact with other labour market mechanisms (such as collective bargaining) within the prevailing wage dispensation system and, if so, to what extent?
- 5) Which responses, activities and strategies have proven effective in producing positive pay equity outcomes, particularly for low-wage workers?

Linked to the above are the following broad empirical questions:

- (i) Through which processes is the NMWA being implemented in formal and informal sectors in South Africa, if at all?
- (ii) How is the NMWA affecting remuneration in the domestic work and garment sectors?
- (iii) How is the NMWA affecting labour relationships in these specific sectors?

Data/Methods/Analysis:

The project adopts an interdisciplinary approach: doctrinal analysis of regulatory frameworks and an empirical investigation of the awareness, perception, and influence of the NMWA. This small-scale qualitative study will include semi-structured interviews with key stakeholders such as workers, employers, trade unions, and government officials in the domestic work and garment sectors.

Contributions to the SDGs:

This project is situated at the intersection of linked SDGs. The urgency of sustaining productive and protected working lives in developing countries has been confirmed by the inclusion of decent work in SDG 8. Effective labour regulation in lower-income settings can only be secured, however, by linking SDG 8 with the Goals on poverty (1), health and wellbeing (3), gender equality (5), inequalities (10), sustainable cities and communities (11), responsible production (12), peace/justice/strong institutions (16), and partnerships (17).

Wider Project Outcomes:

A central objective of the project is to influence national and international policy agendas on the regulation of working life through effective labour regulation. The project will generate guidance on the design and implementation of regulatory frameworks in South Africa and more broadly. The aim will be to strengthen the influence of labour standards to promote the broader social sustainability of the South African economy. Through the United Nations' International Labour Organisation and other international-level project partners, the research will also be integrated into global-level debates on labour standards and decent work.

Project Information:

- Supervisors
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 - Dr. Siobhan McGrath (Department of Geography, Durham University)
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- Project Resources (funded by): Durham University, Global Challenges Research Fund, Centre for Doctoral Training (<https://sites.durham.ac.uk/GCRF-CDT/>)
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References:

† For more on the developing theory of 'institutional dynamism' and effective labour regulation, see:

Sangheon Lee & Deirdre McCann, 'Regulatory Indeterminacy and Protection in Contemporary Labour Markets: Innovation in Research and Policy' in Deirdre McCann, Sangheon Lee, Patrick Belser, Colin Fenwick, John Howe & Malte Luebker (eds), *Creative Labour Regulation: Indeterminacy and Protection in an Uncertain World* (Palgrave Macmillan 2014).

Sangheon Lee & Deirdre McCann, 'The Impact of Labour Regulations: Measuring the Effectiveness of Legal Norms in a Developing Country' in Sangheon Lee & Deirdre McCann (eds), *Regulating for Decent Work: New Directions in Labour Market Research* (Palgrave Macmillan 2011).