MALAYSIAN TRADES UNION CONGRESS

LABOUR'S MILLENNIUM VISION

- Full Implementation of Core Labour Standards
- Extending the Compulsory Retirement Age
- National Minimum Wage and Monthly Wages for Plantation Workers
- Equal Wages and Opportunities for Women Workers
- Eliminating Child Labour
- Better Occupational Safety and Health Standards
- Better Social Safety Nets
- Greater Involvement in Consumer Activities
- Promoting Human Resources Development
- Promoting Greater Tripartite Participation

....

A STUDY

ON

MINIMUM WAGE FIXING

IN MALAYSIA

BUREAU FOR WORKERS' ACTIVITIES

INTERNATIONAL LABOUR OFFICE

(ILO-ACTRAV)

MALAYSIAN TRADES UNION CONGRESS

(MTUC)

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FOREWORD

Minimum Wage Fixing serves as a policy instrument to afford protection to workers and improve their quality of life. The International Labour Standards have set out the basic principles and identified the criteria, as well as the procedural framework for minimum wage fixing, according to prevailing national conditions. Based on these guidelines, countries have adopted varying methods and procedures for fixing minimum wages to suit their particular socio-economic needs and national interests.

The Wages Council Act (1947) was, accordingly, enacted to fix minimum wages in Malaysia. The scheme and provisions of this Act are neither appropriate nor adequate to meet the current needs and conditions with regard to minimum wage fixing in Malaysia.

The absence of minimum wage regulations, the difficulty of unionizing workers in small and medium sized establishments, coupled with the abundant supply of migrant workers in the country, continue to artificially depress Malaysian workers' wage levels.

All these factors have necessitated the commissioning of this study on Minimum Wage Fixing in Malaysia by the ILO Consultant, Mr. Ram Thiagarajah, at the initiative of the Malaysian Trades Union Congress (MTUC). This Study discusses the concept and rationale of Minimum Wage Fixing, the principles and criteria enunciated in the respective International Labour Standards on Minimum Wage Fixing, the prevailing law and practices on minimum wage fixing in different countries, both developed and developing, and, in that light, the circumstances warranting the early introduction of statutory Minimum Wage(s) in Malaysia.

Apart from providing guidelines for the (MTUC), this Publication will equally benefit the policy-makers concerned and employers by giving them a clear insight into the concept and the guiding principles underlying Minimum Wage Fixing. It will also help allay any fears or misgivings that may surround the issue of minimum wage regulations.

We are thankful to the Bureau for Workers' Activities of the International Labour Office (ILO-ACTRAV) for sponsoring this initiative and for engaging the services of the Consultant, Mr. Ram Thiagarajah. We also wish to accord our sincere appreciation to ILO ACTRAV for their invaluable support and cooperation extended during every stage of this important study.

It is our sincere hope that this Publication will serve its intended purpose of facilitating the early introduction of statutory Minimum Wage(s) in Malaysia.

Zainal Rampak
President,
Malaysian Trades Union Congress.

MESSAGE

The Bureau for Workers' Activities, International Labour Office (ILO-ACTRAV), Geneva is indeed greatly pleased to have been able to support the publication of this significant work, "Minimum Wage Fixing in Malaysia."

Minimum wages constitute an integral and a very important element of the ILO's holistic approach towards creating, sustaining and improving the quality of life of workers worldwide. ILO Convention No. 131 and its accompanying Recommendation No. 135 (Minimum Wage Fixing, with Special Reference to Developing Countries) provide the magnitude, direction and scope of minimum wages within the context of national situations. The ILO, while cognizant of specific national circumstances relating to economic competitiveness with job creation assuming cross-cutting priority, continues to strongly pursue its mission towards encouraging and promoting governments, employers and workers to identify, consider and implement viable wage management systems in their respective national setting that would, at the very least, afford good quality of life for workers.

With globalisation occupying the central position in most, if not all, aspects of employer-employee relations, it is within the fitness of things that governments take cognizance of workers' aspirations to have access to a decent standard of living as citizens of a free, civil society. The new millennium is fraught with challenges that need to be adequately addressed with ever increasing strengths of coordination and cooperation. Social dialogue and tripartite initiatives in an environment of mutual trust, confidence and understanding are therefore the very foundations for realising sustainable social development.

This publication, commissioned by the ILO, will hopefully provide ample educational opportunity for industrial relations practitioners, researchers, students and all concerned individuals having a keen interest in the subject of minimum wages. The references, statistical data and interpretation provided by our Consultant, Mr. Ram Thiagarajah, throughout the course of this publication should prove a very useful source of knowledge and inspiration to all concerned parties towards the successful implementation of a viable minimum wage mechanism in a national setting.

M.V. Simon
Director
Bureau for Workers' Activities
International Labour Office (ILO-ACTRAV)
Geneva

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MINIMUM WAGE FIXING IN MALAYSIA

(A STUDY)

BY

RAM THIAGARAJAH *

INTRODUCTION

The origin of the concept of "minimum wage" dates back to the turn of the last century. It gained statutory recognition in Malaysia in 1947 through the enactment of Wages Council Act 195, but its scope of coverage continues to remain very limited. The country has recorded steady growth rates over the years and has become one of the newly industrializing countries in the region. It is now geared to realizing Malaysia Vision 2020.

The workers' contribution to the country's economic growth and national development as well as their co-operation in overcoming the recent economic crisis have received government's recognition and appreciation. Yet, a significant proportion of the wage earners in the country remain poorly paid and devoid of basic necessities of life. The vast majority of these workers are unskilled and remain outside the coverage of trade union membership. Thus, they do not posses the collective strength and bargaining power to improve their level of wages and conditions of employment at their own initiative. Their problem has been further weakened by the mass influx of migrant workers, who are willing to accept employment on rates of wages lower than that of their local counterparts.

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How can the plight of these vulnerable groups of poorly paid workers be remedied? Will the introduction of statutory minimum wage(s) provide a solution?

This paper discusses the various aspects of minimum wage fixing in historical retrospect and international perspective, and considers the feasibility of introducing statutory minimum wage fixing in Malaysia for the better income protection and improvement of the living standards of the vulnerable categories of workers.

CHAPTER 1

HISTORICAL BACKGROUND

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HISTORICAL BACKGROUND

It is generally considered that minimum wage regulation had first been developed in New Zealand (1896) followed by Australia (1899) and later by Britain (1909). Other countries followed suit in subsequent years: France (1915), Norway (1918), Austria (1918), Czechoslovakia (1919), Germany (1923), Spain (1923) and Belgium (1934).[1] As the main objective of minimum wage regulation was the elimination of "sweating" – that is, the payment of exceptionally low wages, its application was usually restricted to a limited number of particularly low- paying sectors or to selected categories of workers, such as homeworkers, women, children and indigenous workers judged to be particularly vulnerable [2]

As elsewhere, a number of developing countries had also carried out experiments with minimum wage regulation for the protection of the categories of workers judged to be particularly vulnerable. In Sri Lanka, for example, the Minimum Wages (Indian Labour) Ordinance was promulgated in 1927 in order to regulate the wages of Indian workers employed in plantations. In Africa, a number of colonies introduced minimum wages soon after the First World War in order to prevent forced labour arrangements. British colonies in Africa and the Caribbean issued a number of minimum wage ordinances during the 1930's. Latin America was not an exception to this general trend in minimum wage regulation. In Argentina, for example, the Home Work Act was adopted in 1918 in line with the then prevailing trend in Europe.

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1. ILO Minimum Wage Fixing – An International Review of Practices and Problems, Gerald Starr, ILO, Geneva, pp. 1-2
2. Minimum Wages and Development prepared by the ILO in Labour Management Series 64; Labour Relations in Africa – English Speaking Countries, ILO, Geneva p. 51

The most significant development in minimum wage regulation in Latin America was the explicit reference to minimum wages in the Federal Constitution of Mexico adopted in 1917, which, in Article 123, VI, States: [3]

The minimum wage to be received by a worker shall be that which is considered sufficient, according to the conditions of each region, to satisfy the normal need of his living, education and honest pleasures, considering him as the head of a family.........

These Constitutional provisions, eventually, led to the introduction in 1937 of a National Minimum Wage Board for the fixing of general minimum wages applicable to all workers throughout the country. Few other Latin American countries also introduced similar minimum wage regulation with broader scope and coverage (e.g. Costa Rica and Cuba (1934) and Brazil (1938)

With the exception of a few countries, Minimum Wage fixing remained a rarely used and limited instrument of government policy in both industrialised and developing countries before the Second World War. Legislative provisions did not exist in many countries, and where they existed, their application was restricted to only a few categories of workers. It was towards the end of the economic depression of 1930s and after the Second World War that the number of countries adopting a minimum wage regulation grew rapidly. There was also a trend towards extending protection to more and more groups of workers and in many cases coverage was more universal.

3. ILO Minimum Wage Fixing – An International Review of Practices and Problems, Gerald Starr, ILO, Geneva, p. 3

Presently minimum wage provisions are found in the labour laws of the vast majority of the countries throughout the world, both in developed and developing. An exception to this pattern is found in some countries of Europe (Austria, Federal Republic of Germany, Finland, Denmark, Norway, Sweden, Italy, and Switzerland). In these countries collective bargaining is so extensively practised that minimum wage regulation has not been considered necessary or has been confined to a very limited number of workers. [4] As for developing countries, virtually all those in Asia-Pacific, Africa, Latin America and Caribbean have legislative provisions on minimum wages.

4. Ibid. p. 4

CHAPTER 2

DEFINITION OF MINIMUM WAGE

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None of the International Labour Standards concerning Minimum Wage Fixing defines the term "minimum wage." Each of these standards uses a different term specific to its own purpose. Thus, Minimum Wage Fixing Machinery Convention (No. 26) 1928, and the Minimum Wage fixing Machinery (Agriculture) Convention (No 99), 1951 use the terms "minimum rates of wages", while the Minimum Wage Fixing Convention (No 131), 1970 systematically uses the term "minimum wage". The corresponding Recommendations Nos. 30, 89 and 135, however, use the terms "minimum wage", "minimum rates" and "minimum rates of wages", respectively.

In attempting a definition of "minimum wage" it may be useful to recall the conclusions of a meeting of experts convened by the Governing Body of the ILO at its 168th Session (Geneva, February-March 1967) to examine, inter alia, the problems of minimum wage fixing with special reference to developing countries. The experts stated in their report that minimum wage "*represents the lowest level of remuneration permitted in law or fact, whatever method of remuneration or the qualifications of the worker: (... ...) is the wage which in each country has the force of law and which is enforceable under threat of penal or other appropriate sanctions.* Minimum Wages fixed by collective agreements made binding by public authorities are included in this definition."[5]

5. Report of the Meeting of Experts of 1967, para 103

The concept of a minimum wage as is deducible from the relevant International Labour Standards combines three distinct aspects.[6] First, wages are the remuneration for work performed by the worker; secondly, as the worker's basic income, wages must ensure the worker's subsistence, and that of his or her family; and, thirdly, wages are a production cost and a component of general consumer expenditure.

Thus, "minimum wage", for the purpose of this Paper, will refer to ***"the minimum sum payable to a worker for work performed or services rendered within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in the light of national economic and social conditions".***[7]

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6. ILO Recommendations Nos. 30 (Part III and 89 (Part 1, para 2) and Convention No 131 (Article 3)

7. ILO: Minimum wages- Wage fixing machinery, Application and Supervision, ILC 79th Session 1992, ILO Geneva, p.13

CHAPTER 3

MINIMUM WAGES AND INTERNATIONAL LABOUR STANDARDS

CHAPTER 3

MINIMUM WAGES AND INTERNATIONAL LABOUR STANDARDS

A. *Historical Development*

The founding members of the International Labour Organisation had expressed their concern over the need for a decent living wage for workers from the very inception of the organisation. They considered that one of the aspects that should be the subject of regulations on conditions of work was a wage that secured workers "a reasonable standard of life as this was understood in their time and country" [8]

This was in response to a similar concern expressed by those member States of the ILO which had signed the Peace Treaty of Versailles (1919) and considered that there was an urgent need to improve the conditions of work, inter alia, by "the provision of an adequate living wage" [9] These principles formed part of the Peace Treaty and were later incorporated as part of the ILO Constitution adopted in 1946.

The Declaration of Philadelphia concerning the aims and purposes of the ILO adopted in 1944 reaffirms the concern of the ILO over the workers' wages. It states, inter alia, that "the Conference recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve --------a minimum living wage [for] all employed and in need of such protection"

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8. ILO Minimum Wages – Wage fixing Machinery, Application and Supervision, Report III (Part 4B) ILC 79th Session 1992, ILO, Geneva, page 1

9. ILO Constitution and Rules, Geneva October 1921, pp. 4 and 17

B. ***ILO Conventions and Recommendations***

Since 1921, the ILO initiated series of measures to promote the principle of minimum living wage among its member States. Among others, the International Labour Conference adopted the following Conventions and Recommendations concerning Minimum Wage Fixing.

a. *Minimum Wage Fixing Machinery Convention (No 26) and Recommendation (No 30), 1928*
b. *Minimum Wage fixing Machinery (Agriculture) Convention (No 99) and Recommendation (No 89), 1951*
c. *Minimum Wage Fixing Convention (No 131) and Recommendation (No 135), 1970*

The International Labour Conference has also adopted other instruments that refer to minimum wages, including the following:

a. *Social Policy (Basic Aims and Standards) Convention (No 117), 1962*
b. *Labour Clauses (Public Contracts) Convention (No 94) and Recommendation (No 84), 1949*
c. *Protection of Wages Convention (No 95) and Recommendation (No 85) 1949*
d. *Equal Remuneration Convention (No 100) and Recommendation (No 90), 1951*
e. *Employment Promotion and Protection of Employment Convention (No 168) and Recommendation (No 176), 1988*

C. ***ILO Resolutions***

In addition to these instruments, the International Labour Conference has adopted a number of Resolutions on numerous occasions dealing directly or indirectly with minimum wages. Among these, special mention may be made of the following:-

a. *Resolution concerning International Trade and Employment.* [10]
b. *Resolution concerning the Convocation by the ILO of a tripartite World Conference on Employment, Income distribution, Social Progress and the International Division of Labour.* [11]
c. *Resolution concerning Industrialisation, the Guarantee of Employment and the Protection of the Income of Workers.* [12]
d. *Resolution concerning Development, Foreign Debt and the Social Objectives of the ILO.* [13]
e. *Resolution concerning Rural Employment Promotion.* [14]
f. *Resolution concerning Structural Adjustment, Industrial Relations and Economic and Social Development.* [15]

10. Official Bulletin, Vol. LIV, 1971, Series A, No 3, pp. 269
11. Official Bulletin, Vol. LVII, 1974, Series A, No 1, pp. 42-43
12. Official Bulletin, Vol. LVIII, 1975, Series A, No 1, pp. 84-85
13. Official Bulletin, Vol. LXIX, 1986, Series A, No 2, pp. 102 -105
14. Official Bulletin, Vol. LXXI, 1988, Series A, No 2, pp. 105 -115
15. Official Bulletin, Vol. LXXIV, 1991, Series A, pp 77-80

Resolutions dealing directly or indirectly with minimum wages have also been adopted at the regional level. These include the following resolutions and conclusions adopted at the tenth and eleventh Asian Regional Conferences: [16]

a. *Resolution concerning Action of the International Labour Organisation in respect of restrictive trade policies and their effects on employment.*

b. *Conclusions on growth and Structural Adjustment.*

ILO Industrial Committees, joint committees or technical meetings too have adopted a number of conclusions or resolutions concerning minimum wages.

D. ***<u>Objectives of the Conventions on Minimum Wage Fixing</u>***

(i) <u>Conventions Nos. 26 and 99</u>

The underlying objective of Convention No 26 is to prevent the payment of very low wages in industry or in certain trade, in which there is no effective arrangement for fixing minimum wages.[17] To reflect this objective, the preparatory reports and the Conference's discussions placed emphasis on home working trades. As stated by the Director General of the ILO in his report to the Eight session of the International Labour Conference, "The necessity for the payment of a minimum wage is primarily felt in those industries which through the absence of organisation on the part of the workers or for other reasons, pay wages lower than the normal wages, in the sense of the average wage obtained in the same country by workers in organised industries". [18]

16 Official Bulletin, Vol. LXX, 1987, Series A, No 1 p. 41 and GB. 252/6/6,Geneva (March) 1992, pp. 20-28

17. Minimum Wages- Wage Fixing Machinery and Supervision, Report III (Part 4B) ILO Geneva, page ILC 79th Session 1992, p 16

18. ILC Report of the Director-General, Annex IX, Vol. II, 8th Session, Geneva, 1926, p.326

Article 1, paragraph 1 of Convention No. 99 identified the Convention's objective as requiring member States "to create or maintain adequate machinery whereby minimum rates of wages can be fixed for workers employed in agricultural undertakings and related occupations". Recognising the fact that wages in agriculture are considerably lower than wages in industry, this Convention was seen as "a way of promoting economic and social conditions that would turn agriculture into a remunerative occupation, and lay the foundations of higher standards of living for all workers in agriculture".[19]

Conventions Nos. 26 and 99 explicitly set forth a twin objective, namely,-

a. The creation or maintenance by ratifying States of methods or machinery for fixing minimum wages in industry or in certain trades and in agricultural undertakings and related occupations.

b. The effective regulation of minimum wages for industry or certain trades and in agricultural undertakings and related occupations which fall within the scope of the machinery established for the purpose of fixing minimum wages.

19. ILO Report; VII (2), ILC, 33rd Session, Geneva, 1950 p. 51

Convention No. 131

Convention No. 131 also aims at preventing the payment of exceptionally low wages and, accordingly, it defines two objectives:

a. To establish and maintain an effective minimum wage fixing machinery (as an obligation on the part of ratifying States).

b. To give wage earners the necessary social protection in terms of minimum permissible levels of wages

Thus, Convention No. 131 aims to strengthen the protection of workers provided by Conventions Nos. 26 and 99 as well as to make minimum wage fixing machinery an element of social policy. [20]

E. *Scope of Application of the Conventions*

The scope of coverage of Convention No. 26 extend to workers employed in certain trades or parts of trades, in particular home working trades. The term "trades" for the purpose of this Convention refers to manufacturing and commerce. Convention No. 99 limits its scope to workers employed in agricultural undertakings and related occupations.

The scope of application of the provisions of Convention Nos. 26 and 99 are however made conditional on:-

a. the absence of arrangements for the effective regulation of wages in the trades or parts of trades for which minimum wage fixing machinery is to be established or maintained, and

b. the existence of low wages.

Both these Conventions also oblige the ratifying States to "consult" the organisations of employers and workers concerned.

20. ILO Report of the Director-General, Annex IX, Vol. II, 6th Session, Geneva, 1926, p.326

Convention No 131, on the other hand, broadens its scope to cover all groups of wage-earners whose terms of employment are such that coverage would be appropriate, without referring to any specific economic activity. The groups of wage earners to be brought within its scope are to be determined by the ratifying States, *"in agreement or after full consultation"* with the representative organisations of employers and workers concerned, where they exist.

F. *Minimum Wage Fixing Machinery*

Both Conventions Nos. 26 and 99 require ratifying States to create or maintain machinery whereby minimum wage can be fixed (Article 1, Paragraph 1), but without stipulating any corresponding obligation to fix these minimum wages. Convention No. 131, however, stipulates that ratifying States are bound not only to establish minimum wage fixing machinery but also to fix these wages (Article 1, paragraph 1 and Article 4, paragraph 1).

According to Article 1, paragraph 1 of Convention No.26, there is no obligation for a ratifying State to create or maintain minimum wage fixing machinery, if wages may be effectively fixed by collective agreement. In the case of Convention No. 99, the obligation of ratifying States to create or maintain "adequate machinery whereby minimum rates of wages can be fixed for workers employed in agricultural undertaking and related occupation", is not subject to any conditions. It is, therefore, within the right of a State to fix minimum wages by means of collective agreement.

Recommendation No. 135 (Part IV, Paragraph 6) lists different types of minimum wage fixing machinery, as follows:

(a) Statute
(b) Decisions of the competent authority, with or without formal provision for taking account of recommendations from other bodies;
(c) Decisions of the wage boards or councils;
(d) Industrial or labour courts or tribunals;
(e) Giving the force of law to collective agreements.

In establishing machinery for minimum wage fixing ratifying States are required by Convention No 131 (Article 4, Paragraphs 2 and 3) to provide for-

a. The full consultation with representative organisations of employers and workers concerned or where no such organisations exist, representatives of employers and workers on matters connected with the establishment, operation and modification of such machinery;

b. The direct participation in the operations of such machinery of –
   (i) representative organisations of employers and workers concerned or where no such organisations exist, representatives of employers and workers concerned, on a basis of equality;
   (ii) persons having recognised competence for representing the general interest 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.

Conventions Nos. 26 and 99 also provide for the right of organisations of employers and workers or for their representatives to participate and to be consulted in the determination of minimum wages. All these instruments provide that the obligation to consult the organisations of employers and workers concerned should be carried out at different times. Initially it should be done at the time of determining the scope of the minimum wage system to be established and secondly, during the operation of the minimum wage fixing machinery.

In considering the meaning of the terms "consultation" and "participation" in its 1982 General Survey of the reports on Convention No. 144 and Recommendation No 152 on Tripartite Consultation, the Committee of Experts stated that "consultation" has a different connotation from mere "information" and from "co-determination". It also pointed out that "the views expressed in the course of consultations were not a form of participation in decision making but simply one stage in the process of reaching a decision." It further added that "consultation must be able to have some influence on the decision".

G. ***Purpose of Minimum Wage Fixing***

According to the Recommendation (No 135) (Part I, Paragraphs 1 and 2)-

a. Minimum Wage fixing should constitute one element in the policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.
b. The fundamental purpose of minimum wage fixing should be to give wage earners necessary social protection as regards minimum permissible levels of wages.

H. *Coverage of Minimum Wage Fixing System*

The Recommendation (No. 135) provides that the number of groups of wage earners that may be excluded from the scope of application of Minimum wage Fixing Convention No 131 should be kept to a minimum (Part III, Paragraph 4)

It further provides (Paragraph 5) that, for purposes of Article 1 of Convention No 131, the system of minimum wage may be applied to the wage earners covered by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular group of workers.

Another provision of the Recommendation (Paragraph 5) stipulates that a system based on a single minimum wage-

a. need not be incompatible with the fixing of different rates of minimum wages in different regions or zones with a view to allowing for differences in the costs of living.

b. should not impair the effects of decisions past or future, fixing minimum wages higher than the general minimum for particular group of workers.

I. *Criteria for Determining the Level of Minimum Wages*

Recommendation No 135 (Part II) states that in determining the level of minimum wages, account should be taken of the following criteria, amongst others:-

a. *the needs of workers and their families*
b. *the general level of wages in the country*
c. *the cost of living and the changes therein*
d. *social security benefits*
e. *the relative living standards of the other social groups.*
f. *Economic factors, including the requirement of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.*

J. *Adjustment of Minimum Wages*

Recommendation No. 135 (Part V) provides as follows in regard to adjustment of minimum wages:

a. *Minimum wage rates should be adjusted from time to time to take account of changes in the cost of living and other economic conditions.*
b. *To this end a review might be carried out of minimum wages in relation to the cost of living and other economic conditions either at regular intervals or whenever such a review is considered appropriate in the light of variations in the cost of living.*
c. *In order to assist the process of minimum wage adjustment, periodical surveys of national economic conditions including trends in income per head, in productivity and in employment, unemployment and underemployment, should be taken to the extent that national resources permit.*

K. ***Binding Force of Minimum Wages***

All the Conventions (Nos. 26, 99 and 131) provide for the binding force of minimum wages for employers and workers and stipulate that, once fixed, minimum wage may not be abated. Conventions No. 26 and 99, however, make certain exceptions to this rule. While Convention No. 26 provides the possibility for exemptions from minimum wage rates fixed in collective agreements by means of a general or particular authorisation of the competent authority, Convention No. 99 allows for exceptions to the fixed minimum rates only in individual cases, and where necessary "*to prevent the curtailment of employment opportunities of physically and mentally handicapped workers*".

L. ***State of Ratification of the Conventions***

As at 31st December 1998 Convention No. 26, which came into force on 14th June 1930 has received 101 ratifications. Convention No. 99, which came into force on 23rd August 1953, has received 52 ratifications. Convention No. 131, which came into force on 29 April 1972, has been ratified by 41 countries.

The Asian Pacific countries which have ratified these conventions are listed below:[21]

	Name of Country	Date of Ratification
A. Convention No. 26	Australia	09.03.31
	China	05.05.30
	Fiji	19.04.74
	India	10.01.55
	Japan	29.04.71
	Myanmar	21.05.54
	New Zealand	29.03.38
	Papua New Guinea	01.05-76
	Solomon Islands	06.08.85
	Sri Lanka	09.06.71
B. Convention No.99	Australia	19.06.69
	Japan	29.04.71
	New Zealand	01.07.52
	Papua New Guinea	01.05.76
	Philippines	29.12.53
	Sri Lanka	05.04.54
C. Convention No. 131	Australia	15.06.73
	Japan	16.05.74
	Nepal	19.09.74
	Sri Lanka	31.11.71

21. See lists of Ratifications by Convention and Country, Report III (Part 2), ILC 85th Session 1997, ILO Geneva

CHAPTER 4

MINIMUM WAGES AND OTHER INTERNATIONAL STANDARDS

CHAPTER 4

MINIMUM WAGES AND OTHER INTERNATIONAL STANDARDS

The United Nations Organisation has also dealt with the question of minimum wages on a number of occasions through the international instruments it had adopted over the years. These include, in particular, the Universal Declaration of Human Rights, [22] which in Article 23, paragraph 3, provided that " *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity.......*". Similarly, Article 7 of the International Covenant of Economic, Social and Cultural Rights [23] makes provision for the right of *"remuneration which provides all workers, as a minimum, with —— a decent living for themselves and their families in accordance with the provisions of the present Covenant".*

Regional Organisations have also adopted legal instruments which refer directly or indirectly to minimum wages e.g. American Declaration of the Rights and Duties of Man (1948), the African Charter of Human and People's Rights (1961) and the European Social Charter (1961).

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22. Adopted by the General Assembly in Resolution 217 A (III), of 10 December 1948.
23. Adopted by the General Assembly on 16 December 1966 and which came into force on 3 January 1976.

CHAPTER 5

INTERNATIONAL EXPERIENCES IN MINIMUM WAGE FIXING

CHAPTER 5

INTERNATIONAL EXPERIENCES IN MINIMUM WAGE FIXING

A: *An Overview*

As noted earlier, minimum wage fixing is now widespread among both industralised and developing countries. But, the system of minimum wage fixing, its coverage and the effectiveness of the system vary between countries with differing socio- economic and political background. Whereas minimum wages are fixed by law in some countries [24] in others they are fixed by tripartite wage boards or councils, [25] Government decisions, [26] collective agreements [27] (and extention of these agreements) [28] or arbitration awards (and extention of these awards)[29]

The coverage of minimum wages is of overall application to all workers nation-wide in certain countries [30] or is of limited application as in others. In the latter case, minimum wages are fixed on a regional or zonal basis [31] or according to branches of economic activity [32] or occupational categories.[33]

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24. Brazil, Canada, United States, United Kingdom, Egypt, Netherlands, Yugoslavia, Nigeria, Luxembourg.
25. Argentina, Columbia, Ecuador, Philippines, Japan, Indonesia, Mexico
26. Algeria, Cuba, New Zealand, Spain, Angola, China, Morocco, Qatar, Portugal, Panama. Sri Lanka, Zambia, Bangladesh.
27. Columbia, Guatemala, Guinea, Swaziland, Yugoslavia.
28. France, Austria, Germany, Switzerland, Italy, Japan, Bahamas, Sri Lanka.
29. Australia, New Zealand, Columbia.
30. France, Spain, Columbia, United Kingdom, New Zealand, Portugal, Saudi Arabia, Belgium, Berlin, Bulgaria, China, Poland.
31. Austria, Argentina, Thailand, Philippines, Canada, United States, Australia, Panama, Senegal, Mali, Mexico.
32. Germany, Austria, France, Honduras, Mexico, Chad.
33. Germany, Austria, Argentina, Cuba, Canada, Columbia, Romania, Spain, Zambia

The criteria applied for the fixing and adjusting of minimum wages include the social and economic needs of workers and their families as well as the national economic and social considerations. The social and economic needs of workers and their families are merely mentioned in the legislation in some countries, [34] while in others they are defined in detail to include material, moral, social and cultural needs, housing, food, education, health, leisure, clothing, hygiene, transport, social security or the practice of sports. [35]

As regards the application of the criteria relating to national economic factors and requirements of development of the country in fixing minimum wages, the legislation of some countries require that the criteria listed in Convention No. 131and Recommendation No. 135 be taken into account. [36] The level of the country's economic and social development is applied in a few countries. [37] In certain other countries the general economic situation of the country is taken into account. [38] Employment related criteria are also taken into account in fixing minimum wage in some countries. [39] Other criteria applied in minimum wage fixing in certain other countries include productivity trends or levels, [40] the suitability of minimum wages to income and prices policy, [41] the concept of reasonable return on private investment, [42] income redistribution and investment policy, [43] level of government and European community subsides. [44]

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34. Chile, China, Cuba, Germany, Mauritius
35. Brazil, Canada, Chad, Guatemala, Namibia
36. Austria, Bangladesh, Belgium, Brazil, Netherlands, New Zealand, Philippines, Canada.
37. Australia
38. Bangladesh, Canada, Pakistan, Mexico, Peru, Spain.
39. Canada, Chile, Guinea, Hungary, New Zealand, Portugal, Philippines
40. Bulgaria, Cuba, Guinea, Honduras, Romania, Spain
41. Portugal
42. Canada, Philippines
43. Panama
44. United Kingdom

Gender based minimum wage fixing is fast disappearing but the practice of fixing lower rates of wage for special categories of workers is prevalent in some countries. These include young workers, [45] apprentices, [46] disabled workers [47] and aged and slow workers [48]. The practice also prevails in some countries whereby different rates of minimum wages are fixed for agricultural and non-agricultural workers. [49]

Adjustments or review of minimum wages is expressly provided for in the legislation of some countries [50] while in others it is carried out independently of legal provisions. [51] Such adjustments are carried out at regular intervals in certain countries, while in others it is done with no periodicity. [52] In the former case, adjustments or reviews are made once in three months, [53] every six months, [54] each year, [55] every two years [56] or every three years. [57]

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45. Australia, India, Mauritania
46. Guatemala, Honduras, India, Nicaragua
47. Argentina, Australia, Chad, Canada, Luxembourg
48. Malta, India, Australia, Canada, United States
49. United Kingdom, Solomon Islands, Mexico
50. Botswana, Brazil, Chile
51. Angola, Australia, Sri Lanka, Belgium, Pakistan
52. Mauritania, Sri Lanka
53. Poland, Romania when increase in prices is higher than 5 per cent.
54. Ecuador with respect to minimum living wages.
55. New Zealand, Japan, Swaziland, Morocco, Mauritius
56. Zambia, Zimbabwe, Turkey, Japan with respect to home workers
57. San Marino with respect to negotiation of collective agreement.

B: ***The Role and Scope of Minimum Wage Fixing***

Official declarations of the objectives of minimum wage fixing often stress its use in ensuring that wage earners receive what at a particular time and place are considered to be decent wages. A list of other related objectives are also pursued. Among those, the most commonly stated are:-[58]

(a) *the elimination of sweating or exploitation;*
(b) *the preservation of purchasing power;*
(c) *the reduction of poverty;*
(d) *the removal of unfair competition;*
(e) *the ensuring of equal pay for equal work;*
(f) *the prevention of industrial conflict; and*
(g) *the promotion of economic growth and stability.*

There is general recognition of the need for the State to become involved in fixing legal lower limits to wages, but quite different conceptions of the role of minimum wage fixing in the national system of wage determination have evolved. [59] Broadly, four basic roles are identified as follows:-

58. ILO Minimum Wage Fixing- An International Review of Practices and Problems, Gerald Starr, ILO, Geneva, p.17
59. Ibid

Industry- Based Minimum Wage System

(a) *The protection of the vulnerable groups of workers*

The scope of application of this role is limited to those groups of workers who are in a very weak bargaining position in the labour market. Originally, the notion of vulnerability was associated in some countries, with certain broad categories of workers (e.g. homeworkers, young, female or indigenous workers). Now it is often related to conditions prevailing in individual industries. Although the objective criteria for identifying these industries are not defined in legislative texts or in operating practice, it is generally assumed that they should be those characterised by both an absence of effective collective bargaining and low pay. [60] The wage council system which has been in operation in the United Kingdom in one form or another for about nine decades (until 1993), provides an example of this role in minimum wage fixing. Under this system over 3 million workers were covered mainly in the retail trade, hotels and restaurants, hairdressing, editing and agriculture. [61] Developing countries that have been influenced by the British legal traditions and practices have also assigned the role of protection of vulnerable groups of workers to minimum wage fixing. (e.g. Sri Lanka, India, Pakistan, Finland and Seychelles)

60. This is provided for in the Minimum Wage Fixing Machinery Convention 1928 (No 26)
61. ILO Minimum Wage Fixing- An International Review of Practices and Problems, Gerald Starr, ILO, Geneva, p. 21

(b) *Determination of fair wages*

This role resembles the role last described above in that it also implies fixing minimum wage for individual industries and occupations, but the distinguishing feature of this role is the much broader conception of the scope for wage regulation. Coverage is not restricted only to a small number of low-paid unorganised workers but potentially covers all workers including those receiving comparatively high wages. [62] This role underscores the belief that a collective process for establishing wage standards is likely to produce more acceptable wage levels and structures than if wage determination is left to unregulated labour market processes and decisions in individual enterprises. It also attaches considerable importance to having a "common rule" for individual industries or occupations in order to promote the application of the principle of equal pay for equal work and to reduce the area of industrial conflict. It further seeks to isolate wages from excessive competitive pressures, the reasoning being that while producers should be free to compete in matters of price, design and quality of product or service, it is unfair for competition to be based on a bidding down of workers' wages.[63] Conceptually, this role conceives minimum wage fixing as a means of improving wage structure and industrial relations. The underlying objective is not one of reduction of poverty by improving the relative position of the lowest paid, but rather, the determination of what is judged to be *"fair"* wages in the particular circumstances of a given industry or occupation.

62. Ibid p. 24
63. Ibid

This role for minimum wage fixing pre-supposes comparatively weak trade union organisations and the acceptance of extensive government or third party involvement, in determining wages. Thus, it is of not much relevance to industrialised market economy countries.

However, this role has been assigned to minimum wage fixing in a number of these countries. Leading examples would appear to be the systems of industrial tribunals and boards which have been operating in New Zealand and Australia, since the turn of the last century. Japan provides another good example with this role for minimum wage fixing. Since 1969, in each of the 47 prefectures in Japan, there is a general minimum wage plus a number of higher minimum rates for individual industries. The same system prevails in Canada as well. Some of the developing countries practising this system include Kenya and Sri Lanka.

In addition to the examples cited above, there is also the practice of legally extending the application of collective agreements throughout an industry which has quite similar objectives and is a salient feature of the industrial relations system of a few continental European countries. (e.g. Belgium and France)

Occupational minimum wages are also introduced in some countries as a supplement to the general minimum wage. In Mexico, for example, the National Minimum Wage Board and the regional boards are authorised to fix occupational as well as general minimum wage rates to be applied to important categories of workers where there are no other legal procedures for wage regulation and no collective agreements in the region applicable to the majority of workers in the occupation or trade concerned. This practice also prevails in a number of French speaking African countries (e.g. Rwanda, Zaire, Ivory Coast)

General Minimum Wage Systems

(c) *The Establishment of a Basic floor for the Wage Structure*

This system provides for a major role for minimum wage fixing involving the establishment of a basic floor under the entire wage structure. This approach is not intended to bring about major changes in the prevailing levels of wages but rather to make a modest contribution to reducing poverty by providing "safety-net" protection to low paid workers. Although this role implies that workers in all sectors are legally protected, the number actually receiving the minimum is limited. Deciding upon the level at which the floor should be established is considerably a complicated task than the fixing of minimum rates for individual industries. However, despite the broad legal coverage, the economic implications of this approach need not be pronounced as long as the minimum wages are fixed at levels that do not produce major changes in prevailing wages and lag behind rather than lead general wage movements.

A significant number of industrialised market economies, particularly those that have collective bargaining systems covering less than a majority of the economically active population, have introduced general minimum wages (e.g. several provinces of Canada, Japan, Portugal and Spain) [64]

(d) *Minimum Wages as an Instrument of Macro-Economic Policy*

The most comprehensive role for minimum wage fixation is that of a general wage policy instrument designed to make a significant contribution towards broad national, economic and social objectives such as a greater price stability, more rapid economic growth and an improved distribution of income. This requires that the system of minimum wage fixing not only has a broad legal coverage but also be an influential if not a predominant method of wage determination. While this role for minimum wage fixation undoubtedly has the greatest potential for bringing about an improved distribution of income and economic performance, at the same time it is by far the most difficult to implement effectively and runs the greatest risk of producing unintended adverse economic repercussions.[65]

64. Ibid p. 42
65. Minimum Wages and Development prepared by the ILO; in Labour Management Series 64; Labour Relations in Africa-English Speaking Countries, ILO Geneva. pg. 57

With the exceptions of the arbitration systems in Australia and New Zealand, rarely has minimum wage fixing been used as a measure of exerting control over general wage level movements in industrialised market economics. In fact in some countries (e.g. France and Spain) there are legal provisions prohibiting the linking of other wages to general minimum wage fixing. In a large number of developing countries, however, minimum wage fixing is often conceived of as the key instrument of government wage policy. (e.g. Mexico, Tunisia, Columbia) In a few developing countries policies of wage restraint appear to be shifting minimum wage practices in the direction of basic floor concept. (e.g. Brazil, Tanzania, Philippines)[66]

C: ***Minimum Wage Coverage***

(i) *Minimum Wages of General Coverage*

In some countries minimum wages are required to be of general coverage extending to all workers nation wide, while in others this form of coverage is one amongst several. Generally, in countries where minimum wages are fixed by law, the wages apply to all occupational categories in all branches of economic activity throughout the country. (e.g. Brazil, Canada, Chile, Netherlands, Nigeria, United States)

66. ILO: Minimum Wages- Wage Fixing Machinery, Application and Supervision, ILC 79th Session 1992, ILO Geneva, P. 49-53

Wages fixed by government or another competent body may also be of general application. In Columbia, for example, minimum wages fixed by the National Labour Council may apply to all regions, economic sectors and occupational categories throughout the country. In France, the Labour Code provides for a minimum growth wage (SMIC) for all the Metropolitan areas and the territories. In New Zealand, the minimum wage fixed by a decree of the Governor-general, applies to all workers of more than 20 years of age throughout the country. Other countries where minimum wages are of general coverage include Malta, Portugal, Trinidad and Tobago, Saudi Arabia, Belgium, Benin, Nepal, India, Israel, Poland, Romania, Turkey and Ukraine. [67]

(ii) *Minimum Wages by Region or Area*

In Germany, in the absence of collective agreements, minimum wages fixed by the relevant minimum wage fixing machinery may be applied only to one land. In Australia, minimum wages fixed by the statutory machinery in the absence of collective agreements are only valid for the territory covered by the machinery, which never extends to the federal territory as a whole. In the United States, apart from the federal minimum wage, minimum rates are also established at the level of each state or territory.

67. Ibid p. 49

In Panama, minimum wages are fixed by region, although minimum wages are sometimes fixed for specific economic activity within these regions. In the United Kingdom, minimum rates of wages for workers employed in agriculture, at least in Great Britain are fixed for each county or district, for which Agricultural Wages Boards have been set up. These wages may also be fixed for a defined area in a county or district. In the Philippines, minimum wages are established by the region, province or town.

Other countries where minimum wages can be fixed by regions or zones include Saudi Arabia, China, India, Indonesia, Japan, Kenya, Nicaragua, Uganda and the Syrian Arab Republic.[68]

(iii) *Minimum Wages by Sector of Economic Activity*

In Argentina, minimum wages in industry and in agricultural sector may differ. The wage fixing machinery too is different in these two sectors. A number of provinces in Canada provide for minimum wages for specific branches of economic activity. In France, minimum wages established by collective agreements vary according to the specific branch of economic activity. This type of wage determination exists in a number of African countries sometimes also for wages fixed by a government authority. (e.g. Benin, Burundi, Cameron, Comoros, Chad, Central African Republic)

68. Ibid pp. 51-52

In a number of countries in Latin America, minimum wages are fixed by branch of economic activity (e.g. Guatemala, Honduras, Mexico and Panama)

In the Nordic countries, where minimum wages are invariably fixed by means of collective agreement, these are negotiated by economic sector. (e.g. Denmark, Finland, Iceland, Norway, Sweden). Minimum wages are generally established by branch of economic activity in Bahamas, Fiji, China, Bangladesh, Sri Lanka, Botswana, India.

Countries where different rates of minimum wages are fixed for agriculture and industry include Tunisia, Kenya, Equatorial Guinea, Morocco and Syrian Arab Republic.[69]

(iv) *Minimum Wages by Occupational Categories*

In Germany, specialised committees are entrusted with establishing minimum wage for, inter-alia, categories of employment. In Argentina, where the general rule is not to fix minimum wages by occupation, domestic workers constitute a category on their own and their wages are determined by the government. In Cuba, there is a general wage scale and corresponding wage rates for all occupational categories. In Guatemala, Mexico and Panama, minimum wages may also be established by occupational categories. This is also the case in Angola, China, India, Myanmar, Saudi Arabia, Ecuador, Equatorial Guinea and Syrian Arab Republic.[70]

69. Ibid pp. 53-54

70. Ibid pp. 55-56

(v) *Minimum Wages for Particular Categories of Workers*

(a) Young Workers and Apprentices

"*Young Workers*", according to the Committee of Experts, refer to young persons who are of minimum age to enter the labour market, but who have not yet attained their legal majority which would allow them to participate fully in the labour market. "*Apprentices*", refers to persons who, irrespective of their age, are being trained at their place of work.[71]

In some countries, there are minimum wages that apply only to young workers and apprentices. In some cases, the national legislation merely stipulates that young workers or apprentices may receive wages that are lower than the minimum wages normally applied. This applies to apprentices in Guatemala, India, Honduras and Nicaragua and the young workers in Australia, India and Mauritania.

In France young people under 17 years of age are paid a minimum growth wage (SMIC) which is reduced by 20 per cent, as compared with young people who are between 17 and 18 years of age who are paid a SMIC reduced by 10 per cent; an exception is made for young workers (but not apprentices) who have an experience of more than six months in the same branch of economic activity.

71. See General Survey of the Reports relating to Convention No 138 and Recommendation No 146 concerning Minimum Age, Report III (Part 4B) ILC 67th Session 1981.

In Pakistan and Peru minimum wage rates lower than the general minimum rate may be fixed for persons aged 14 to 18 years. In the United Kingdom, young agricultural workers receive a wage, which varies in rate according to age. In the Netherlands, the minimum wage for young workers is based on the statutory minimum wage rate according to a sliding scale.[72]

(b) Disabled Workers

Legal provisions exist in a number of countries for the fixing of minimum wages applicable to disabled persons. In Australia, for example, at the federal level, workers incapable of earning the minimum wage established by an award may be paid a wage less than the normal minimum, which is also established in the same award. For some provinces in Canada, the competent authority may authorise that handicapped persons be paid a wage lower than the statutory minimum wage. In the United States, disabled workers may, with the authorisation from the Department of Labour, be paid less than the minimum wage established by Federal legislation for workers generally.[73]

72. ILO: Minimum Wages- Wage Fixing Machinery, Application and Supervision, ILC 79th session 1992, ILO, Geneva. pp. 60-61

73. Ibid p.p. 61-62

(c) Other workers

In Australia, aged and slow workers in the States of New South Wales and Tasmania may receive wages lower than the normal minimum wage. In Queensland, aged workers may receive rate of wages different from the minimum wage normally paid. In India, minimum wages may be fixed for children. In Peru, remuneration lower than the minimum wage payable may be fixed for workers aged over 60, where loss of capacity is proven. In the United States, workers whose productive or earning power is reduced on account of their age, may, with the authorisation from the Department of Labour, be paid a wage lower than the minimum wage stipulated in federal legislation for workers in general. [74]

D: ***Criteria for fixing Minimum Wages***

In General, most of the criteria formulated internationally for fixing the relative level of minimum wages are variants of the following four concerns:-

- *needs of workers*
- *capacity to pay*
- *comparable wages and income; and*
- *requirements of economic development*

74. Ibid pp. 63-64

These represent the sectoral interests of workers, employers and the macro economic concerns of the authorities. In practice, minimum wage fixing authorities are normally given a greater or lesser degree of discretion as regards the interpretation and application of these criteria, as they are usually expected to strike a balance between economic and social concerns. [75]

The criteria defined to guide the fixing of minimum wage rates are often seen as serving two important purposes, namely-

a. *ensuring that minimum wages meet the objectives set for them; and*
b. *decision making is not arbitrary but principled and reasoned.*

But, experience has shown that finding ways to make these general concepts operational is rather difficult. Nevertheless, in many countries the legal texts do specify the criteria that should guide the fixing of minimum wages. In some countries the relevant provisions merely stipulate that minimum wages shall be sufficient to meet the basic needs without giving further details. In Costa Rica, for example, the 1949 Constitution, declares that every worker is entitled to a minimum wage that will ensure his well being and a dignified existence. A provision of the Minimum Wage law 1949 further provides that "*wage fixing is to contribute to the well-being of the family—— and to promote a just distribution of wealth*". [76]

75. Minimum Wage Fixing: A Summary of Selected Issues, ILO Geneva, August 1998
76. Section 1 (ILO Legislative Series 1949 – Costa Rica 1)

In other countries, the legislation defines, in brief, what are considered to be basic needs. For example, in Iraq, the Labour Code states that *wages must be sufficient to ensure for the worker a decent human standard of living satisfying his basic requirements, as regards food, clothing and housing.*[77]

In Brazil, the only indication given for the level of minimum wage is that *it should satisfy at any given time and in any given region, the ordinary needs of a worker for food, shelter, clothing, health care and transportation.*[78]

In Argentina too, the legislation lays down only one criterion, namely, that the minimum wage shall *ensure for the worker without family responsibilities, adequate food, proper accommodation, education, clothing, medical care, transport, recreation, holidays and insurance coverage.*[79]

In Mexico, the basic needs to be taken into consideration are indicated in grater detail. The Constitution as well as the Federal Labour Act stipulate that the minimum wage shall be *sufficient to meet the normal requirements of a head of a family, of a material, social and cultural order and to meet the obligatory educational requirements of his children.*

77 Section 57b (ILO Legislative Series, 1970 – Iraq 1)

78 Section 76, Labour code, eigth edition, 1978

79 Section 116 (ILO Legislative Series 1976 – Argentina 1)

The Federal Labour Act also requires studies to be undertaken by the Technical Directorate of the National Minimum Wage Board on relevant matters; *including the cost of living by family size, the economic conditions of the consumer markets and the indispensable budget required to meet the following needs of each family: "Inter-alia, material needs, such as housing, household effects, food, clothing and transport; social and cultural needs, such as entertainment, sports, attending educational courses, libraries and other cultural centres; and expenses in connection with children's education."*[80]

In some countries, in addition to specifying the social criteria of ensuring a minimum living wage, the legislation explicitly provide for the need to take into account economic constraints. For example, the Fair Labour Standards Act of the United Stated refers to *the need to correct and as rapidly as practicable to eliminate conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency and general wellbeing of workers without substantially curtailing employment or earning power.*[81]

In a number of French speaking countries, the only restrictive provision imposed is that the tripartite consultative bodies concerned with minimum wage fixing, shall examine the "Minimum Living Wage" and "Economic conditions."[82]

80 Section 562 (L S 1969 – Mexico 1)

81 Section 2 (L S 1938 – USA 1)

82 ILO: Minimum wage fixing – an international review of practices and problems: Gerald Starr, ILO Geneva. p92

In Japan, the minimum wage law merely provides that *"minimum wages shall be fixed with due regard for the cost of living of the worker, the wages of kindred workers and the normal capacity of industries to pay wages"*.[83]

In countries where the legislation provides for the fixing of both industry and general minimum wages, the criteria specified are more detailed. In Peru, for example, the decree providing for the fixing of minimum wages states that *every person who works shall be entitled to equitable and satisfactory remuneration ensuring for himself and his family an existence in conformity with human dignity.* [84] Minimum wage decisions are, in addition, required to *take into account the cost of living in the respective localities or regions; the nature, manner and output of the work concerned: the general economic conditions in the region and the special conditions of the economic activity or branch concered.*[85]

In Honduras, the Minimum Wage Act of 1971, provides for the fixing of minimum wages at the highest levels which the industry may be reasonably in a position to pay, considering the economic and competitive conditions, and must not result in one zone or region having a competitive advantage over any other. In addition, the Act requires that studies of the following factors be taken into account: *the characteristics of each occupation, in particular conditions obtaining in each region and job, the cost of living, the relative aptitude of the workers and the systems of remuneration followed in the undertakings.*[86]

83 Section 3 (I. S. 1959-Japan 1)

84 Section 1 (I. S. 1965 –Peru 1B)

85 Section 24 (L S 1965-Peru 1A)

86 Section 20-21 (LS 1971-Honduras 1)

The Labour Code of the Philippines contains more elaborate provisions as regards the economic considerations that should enter into minimum wage fixing. It requires that minimum wage shall be as nearly adequate as is economically feasible to maintain the minimum standards of living necessary for the health, efficiency and general well-being of the employees within the framework of the national economic and social development programme. Consideration must be given to such factors as *the cost of living, comparable wages and other incomes in the economy: a fair return on the capital invested; and the imperatives of the national economic and social development.*[87] In addition, the supplementary rules and regulations [88] oblige the Minimum Wages Commission to *take into account social services and benefits provided free of charge to the workers, as well as the possible effects of the given increase in the minimum wage on prices, money supply, employment, labour mobility and productivity, labour organisation, domestic and foreign trade and other relevant indicators of social and economic development.* Furthermore, where what is a fair return of the capital invested cannot reasonably be determined, or where the industry concerned is not operated for profit its capacity to pay, taking into account all the resources available to it, has to be considered.

87. Section 121 (LS 1974 –Philippines 1)

88. Book III, Rule V, Section 4

The minimum Wage legislation of some countries are completely silent on the issue of criteria. These include Canada, the Netherlands, and the United Kingdom as well as many countries which have been influenced by British practice (e.g. Bangladesh, India, Jamaica, Kenya, Sri Lanka and Tanzania) In these countries the minimum wage fixing bodies are free to adopt the criteria they consider most appropriate in the circumstances. [89]

E: ***Minimum Wage Adjustment***

If the minimum wages fixed are to continue to meet their basic objective viz. to provide "safety-net" protection or ensure a decent standard of living, the degree to which they achieve this objective declines as the general level of wages and prices rises. The shorter the interval between adjustments, the shorter the period of time during which the rates fixed depart significantly from the most appropriate level, and the less marked the erosion of minimum wage protection caused by inflation. Comparatively frequent adjustments also avoid the disruptive effect of large changes in labour cost. [90]

89. Minimum Wages and Development prepared by the ILO; in Labour Management Series 64: Labour Relations in Africa-English Speaking countries, ILO, Geneva pp. 93-94
90. Ibid p. 120

In practice, the frequency of adjustments varies greatly among countries. In a number of countries adjustments have been made twice or more in one year (e.g. Argentina, Chile, France, Luxembourg, the Netherlands and Uruguay) In many other countries adjustments are made once a year. (e.g. Costa Rica, Ecuador, Iran, Japan, Australia, Peru, Portugal, Spain, Thailand, Mexico) In yet others they are made approximately every two or three years (e.g. most of the jurisdictions of Canada) In a large number of developing countries adjustments are made very irregularly. [91]

In a number of countries where tripartite wage boards play a key role, the employers' and workers' members have been given the right to convene meetings, inter alia, to revise minimum wages. This practice prevails in countries influenced by the British Wage Council System. Yet in others (e.g. Costa Rica, Japan, Panama) workers and employers have the right to petition the minimum wage fixing board for a review of the relevant minimum wages. [92]

Countries that utilise indexation to determine the size of increases also fix the timing of adjustments. For example, in Australia when indexation for adjusting all award wages, including minimum wages was introduced in 1975, the adjustments were made quarterly to begin with and subsequently the interval was extended to six months.

91. Ibid p. 120
92. Ibid p. 122

In recent years, the ARIC has stipulated the time period over which a safety-net review increase should apply in the federal system as (generally) a year. [93] The formula used in the Netherlands provide for adjustments every six months. Spanish legislation requires that adjustments be made every April and revised after six months if the national cost of living index has risen by at least 5 per cent.[94]

Indexation has been used to adjust minimum wages in many countries. In France, for example, originally the link was only with changes with consumer prices. Since 1970 changes in both consumer prices and wage levels have been taken into account. The Dutch approach is unique is that indexation is linked essentially with wages rather than price movements.

Examples of the use of indexation are also found in a few developing countries. In India the Minimum Wages Act of 1948 enables the respective State governments to fix minimum wages comprising of basic wage and a dearness or cost of living allowance linked to indices of consumer prices. Accordingly, minimum wage orders issued by a number of States have provided for a dearness allowance. The system of payment of dearness allowance provides for a lump-sum increase for each point rise in a specified index. Similar minimum wage orders have also been issued in Sri Lanka for over 30 trades under the wages Board Ordinance. Other countries that applied indexation in minimum wage adjustments include Papua New Guinea and Chile. [95]

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93. Source: Department of Employment, Workplace Relations and Small Business (DEWRSB), Canberra, Australia

94. ILO: Minimum Wage Fixing-An International Review of Practices and Problems: Gerald Starr, ILO, Geneva p. 123

95. Ibid pp. 126-127

CHAPTER 6

MINIMUM WAGE FIXING IN SELECTED COUNTRIES

CHAPTER 6

MINIMUM WAGE FIXING IN SELECTED COUNTRIES

A: AUSTRALIA [96]

Australia has seven minimum wage setting jurisdictions. Each of the six Australian States has a separate system for fixing minimum wages in addition to the Federal System. Five of the six States' systems are governed by legalisation and institutions controlled by each of the respective State parliament. The exception is the State of Victoria which has passed the legislation and institutional control over its system to the federal parliament, although, the Victorian system operates directly from the federal system itself.

Minimum wages in the federal system (including Victoria) are set through a network of industrial awards. Awards are legally enforceable documents determined by the Australian Industrial Relations Commission (AIRC) and equivalent State industrial tribunals, prescribing the minimum wages and conditions of employment that must be provided to employees covered by the particular award. The main awards covering the overwhelming majority of employees in the federal system are industry based, although occupation based awards are also common. Each award contains a range of minimal rates for the different skill levels in the industry or occupation as well as rates for casuals, junior employees and apprentices.

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96. Source: DEWRSB, Canberra, Australia

Increases in minimum wages in the federal system is determined by the AIRC generally in response to applications from unions operating in the relevant industry or occupation. While the AIRC (and the equivalent State tribunals) operate independently of direct government control, the federal Government can influence the outcome of these AIRC award wage deliberations, firstly through the AIRC's operating legislation, and, secondly, through the submissions which it makes to these deliberations on the appropriate level of minimum wages.

The Federal Government policy conceives the network of award minimum rates as a safety net aimed particularly at the protection of lower paid employees, with actual wages and conditions for most employees determined by agreements at the enterprise and workplace levels.

Because of the restrictions in the Australian Constitution, award rates in the federal system must be made on an award by award basis. The largest awards covering the majority of workers in the federal system are organised on an industry basis. As a consequence, workers in agricultural occupations will generally be covered by separate awards. Historically, these awards have been fixed by the AIRC according to a work value relativity with awards in the manufacturing occupations. As such awards rates for the variously skilled workers in the agricultural sector are broadly equivalent to those for comparable workers in non-agricultural sectors.

The federal Workplace Relations Act prescribes a number of criteria to guide the AIRC in fixing minimum wages. *These include economic factors such as levels of productivity and inflation and the desirability of obtaining a high level of employment; the need to provide fair minimum standards in the context of living standards generally prevailing in the Australian community; and the needs of the low paid.* In addition, the Workplace Relations Act and the AIRC's principles also provide for consideration in individual instances of *such factors as equal pay for work of equal value between men and woman, inter- award relativities and an employer's capacity to pay.*

Legislation does not prescribe any frequency for the adjustment of minimum wages. However, in the recent years, the AIRC has stipulated the time period over which a safety net review increase should apply in the federal system as (generally) a year. Towards the end of this period the peak union bodies initiate applications for another review.

Under the federal system, a wide range of rates apply to different work classifications in each industry and / or major occupation group. For example, the Metal Industry Award includes sixteen separate minimum rates ranging from the C14 entry level rate for unskilled (currently A $ 385.40 per week) through the C10 trades person's rate (currently A $ 477.20 per week) to the top C1(b) engineer's rate of A $ 930.10 per week.

The federal minimum wage was formally discontinued in 1986 and revived in 1997. The federal minimum wage rates fixed since then were-

	$ A per week
April 1997	359.40
April 1998	373.40
April 1999	385.40

Australia has a labour force of 9,384,400 of which 7,380,100 are wage earners. Of the total wage earners 28 per cent are members of trade unions, while around 45 per cent are covered by currently operating collective agreements. It is estimated that around 32 per cent of the Australian employees are reliant for their actual wages on federal or State safety- net awards.

As at June 1998, the total gross Australian per capita income per annum was recorded as $ A 26,400, while the gross disposable per capita income per annum was $ A 20,100. As against these figures, the annual minimum wage of a worker stood at A $ 19,416.

B: THE UNITED KINGDOM

A number of different objectives have, at various times, influenced legislative policy in Britain towards minimum wages. The first modern legislation was part of a broader attempt to curb the insanitary labour conditions and exploitation in the form of very low pay which were associated with: "sweated labour". The sweated trades were seen as 'parasitic' on the basis that employers who paid wages below what was needed for subsistence were receiving a subsidy from the rest of the community.[97] Hence, 'the enforcement of a common standard throughout the trade not only stops the degradation, but in every sense conduces to efficiency'[98]

The Trade Boards Act 1909 introduced statutory regulations for the first time, but was a limited measure confined to trades where voluntary collective bargaining had failed to take root. The Board of Trade was given power to establish trade boards if, 'they are satisfied that the rate of wages prevailing in any branch of the trade is exceptionally low as compared with that in other employment, and that the other circumstances of the trade are such as to render the application of this Act to the trade expedient'.[99] Boards were to consist of employees' and employers' representatives sitting with independent members who had the responsibility of ensuring agreement; the resulting minimum rates of pay were given statutory effect.

97. Labour Law: Simon Deakin and Gillian S. Morris; Butterworth, p: 251
98. Webb and Webb, [1898] 1920; p. 767
99. Trade Boards Act, 1909, Section 1 (2)

The Trade Boards Act of 1918, (which replaced the1909 Act) allowed for new boards to be set up in trades where 'no adequate machinery exists for the effective regulation of the wages' [100] and extended the powers of boards to cover the regulation of hours and other conditions of employment, as well as wage rates.

A major expansion of the statutory system took place after 1945 and under the Wage Council Act 1945, the procedures for setting up new councils were established and the scope of statutory wage regulation orders were widened to cover all issues of wages, hours and holidays. Over 60 wage councils were established under this Act. While implementing the minimum wage legislation, the Government recognised that there was a link between low earnings and poverty, and it sought to address it not through reforms to the wage councils but through the social security and tax systems. This was done by the introduction in 1976 of child benefits to replace the old system of child tax allowances and by the payment of Family Supplement and later, of Family Credit, as additions to low weekly earnings. [101]

100. Trade Boards Act 1918, Section 1 (2)

101. Labour Law: Simon Deakin and Gillian S. Morris; Butterworth: p. 253

Between 1960 and 1980, 27 wage councils covering half million workers were abolished. The pressure for reform came from a perception, shared by trade union and government, that Wage Councils were stifling the development of Voluntary Collective bargaining. [102]

Further reforms were introduced by the Wages Act 1986 which, inter alia, excluded workers under 21 years form the scope of coverage, restricted the powers of wage councils to setting single minimum wage rates for each sector as a whole (as opposed to a range of rates for workers of different grades within each sector as previously); abolished their power to regulate paid holidays and other terms and conditions of employment; and required the wages council to consider 'the effect that the rate will have on the level of employment among the workers to whom it will apply, and in particular in those areas where the remuneration received by such workers is generally less than the national average for such workers'. [103]

102. Ibid p. 253

103. Wages Act 1986, Section 14 (6) (a)

By 1993, the remaining powers of the Wage Councils were abolished completely, and around 2.5 million workers or 10% of the employed labour force, who were covered by wages orders prior to 1993 were affected. With the abolition of the Wages Councils, statutory regulation remained in place only in the agricultural sector. Around 220,000 workers are protected by statutory orders made by the Agricultural Wages Boards for England, Wales and Scotland. [104]

The Wages Councils, with the exception of agriculture, were abolished by the Conservative government because they took the view that a free market should determine wage levels, and that government interference was economically detrimental. Agriculture was left as an unusually controlled economic environment.[104A]

Prior to the enactment of Wages Act 1986, the United Kingdom government denounced the ILO Convention No. 26 of 1928 on Machinery for Minimum Wage Fixing.

104. Labour Law: Simon Deakin and Gillian S. Morris, Butterworth; pp. 254-255

104A. Source: Department of Trade and Industry. London, United Kingdom.

Nevertheless, a number of other international instruments remain relevant to the question of minimum wages but without imposing any obligation on United Kingdom to adopt general legislation in this area. Article 4 (1) of the Council of Europe's Social Charter of 1961 provides that member states should recognise '*the right of workers to a remuneration such as will give them and their families a decent standard of living*'. In interpreting this Article, the Committee of Experts has developed the notion of a 'decency threshold' of 68% of average (mean) earnings as a benchmark level of legal minimum wages. [105] Prior to abolition in 1993, the rates set by wages councils were well below this level, in a range of between 40% and 50% of the average wage of blue collar workers. [106] It was estimated that as many as 10 million workers in United Kingdom (or 46% of the employed labour force) had earnings from wages below the threshold. [107]

105. Ibid p. 256

106. Deakin, 1990b; p. 227

107. Low Pay Unit 1992

National Minimum Wage [108]

The National Minimum Wage Act enacted in 1998 provides for the introduction of National Minimum Wage (NMW) in the United Kingdom. The Low Pay Commission (LPC) was established by the government in 1997 to recommend the initial level at which a NMW might be set. The LPC reports its recommendations and the government can accept, reject or modify these in drawing up legislation.

On 1 April 1999, the United Kingdom government introduced the National Minimum Wage as an election manifesto commitment. *The minimum wage is intended to remove the worst excesses of low pay and ensure greater decency and fairness in the workplace.*

In addition to the national minimum wage, the Agricultural Wage Boards continue to fix minimum wage rates for agricultural workers. Agricultural workers are covered by both the NMW and the agricultural minimum wage and will receive the better of the two rates.

There is no explicit criteria or formula used in determining NMW, which is part of an overall strategy to "make work pay'.

108. Source: Department of Trade and Industry, London, UK.

The NMW applies to anyone who works personally for someone else, whether or not they have contract of employment or not. People such as home workers, agency workers, casual labourers, part-time workers and workers on short-term contracts are all entitled to the NMW. It does not matter how a worker is paid – by the month, week, day, session, hour or in some other way.

The NWC is not index-linked, either price inflation or average earnings growth. Decisions on uprating will be taken in the light of experience of the impact of NWC. The LPC has been asked to monitor and evaluate the introduction and impact of the NMW and to produce a report to the Prime Minister in December 1999.

The NMW (for an hour) had been fixed as follows:-

- £ 3.60 for adult workers aged 22 and over.
- £3.20 development rate for workers aged 22 and over in the first six months of employment who are receiving training leading to a recognised vocational qualification
- £ 3.00 for workers aged 19 to 21 inclusive

Most of the low paid workers in the United Kingdom are in the service sector, and according to the New Earnings Survey (NES) 1999, the average gross hourly earnings excluding overtime for all adult workers was £ 9.61 in April 1999. At £ 3.60 the NMW for those aged 22 and over represents around 37% of this figure.

In the United Kingdom, around 23,980,000 people aged 16 and over (or approximately 87% of all people in employment) were employees (in wage employment). In autumn 1998 it was estimated that around 30% of all employees were trade union members. Union density was estimated to be around 19% in the private sector and around 61% in the public sector.

According to the Labour force Survey (LFS) in Autumn 1998 approximately 34.5 % of employees pay was determined by collective agreement.

Prior to the implementation of the NMW, it was estimated (based on the Spring 1998 LFS and NES 1998) that around 1.7 million workers could be expected to benefit from the NMW. This represented around 7.4 % of all people in employment aged 18 and over.

C: THE UNITED STATES [109]

In the United States minimum wages are fixed both at the federal and State levels. 43 of the 50 States have State Minimum Wage laws. The Fair Labour Standards Act 1938 (FLSA) provide for the fixing of Minimum Wages at the federal level. All employees of enterprises having workers engaged in inter state commerce, producing goods for interstate commerce or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any persons are covered by the FLSA.

Under the FLSA minimum wages are the same for agricultural and non-agricultural employees, but certain small agricultural operations are excluded from the coverage. Some States also exclude certain small agricultural operations, while a few States exclude all agricultural employment. Where an employee is covered by both State and Federal law (this includes most employers) the higher or most favourable standard prevails.

National Minimum Wage under the FLSA is enforced by the United States Government and the regional minimum rates are enforced by the respective State governments.

109. Source: US Department of Labour Wage and Hour Division

In the United States, minimum wage fixing is based on a number of factors including public opinion, economic studies (often prepared by universities) and the positions of political parties. Prior to passing a minimum wage increase there is always debate and negotiations in the United States Congress (or State Legislatures) to determine a wage level that the majority of the politicians can agree to. An acceptable Bill is sent to the President (or State Governor) for approval or veto.

The minimum wage rate at the federal level (effective April 1997) is US $ 5.15 per hour, while the State rates range from a low of US $ 1.60 per hour to a high of $ 6.50 per hour. The greatest number match the federal rate of $5.15 per hour. At the federal level a subminimum wage of $ 4.25 per hour is established for employees under 20 years of age during the first 90 consecutive calendar days of employment with an employer

The federal minimum wage rate fixed for the first time in 1938 had been adjusted 19 times since then. The minimum wage rates for some selected years are given below:

Year	Hourly Rate (US $)
1938	0.25
1950	0.75
1956	1.00
1961	1.15
1967	1.40
1974	2.00
1980	3.10
1990	3.80
1991	4.25
1996	4.75
1997	5.15

President Clinton has proposed raising the federal minimum wage by $ 1 over the next two years to $ 6.15 an hour.[110]

As against the federal minimum wage of $ 5.15 in 1998, the average hourly earnings of production workers was $ 12.78.[111]

110. USA Today: Arlington; Sept. 14, 1999

111. Employment and Earnings, September 1999, Bureau of Labour Statistics,USA

The United States had a total labour force of around 137,673,000 in 1998, of which about 121,019,000 were salary and wage workers.[112] In 1998, 13.9% of the salary and wage workers were members of trade unions, while 15.4% received wages under collective agreements.[113] Although 64.9% of the salary and wage workers were subject to minimum wages (in 1996) only 6.2% of the work force actually received the minimum wage rates (or less).[114]

112. Employment and Earnings, January 1999,Bureau of Labour Statistics, USA.
113. Source: United States Department of Labour
114. Ibid

D: **JAPAN**[115]

In Japan, the Minimum Wage Law (MWL) was enacted in 1959. It had undergone various institutional changes since then, resulting in a complex and multilevel machinery.

The minimum wage fixing machinery consists of three main institutions as follows:

- The Central Advisory Committee on Minimum Wages (CACMW)
- Prefectural minimum wage councils
- Ad hoc industrial wage committees

The CACMW is a tripartite body comprising workers' representatives, employers' representatives and independent members. It was established in 1961 with the mandate to develop proposals for the reform of the minimum wage system. Since 1970 it has played a key role in minimum wage adjustments. Each year the committee provides guidelines on increases in minimum wages for the prefectural wages council:

Tripartite prefectural minimum wage councils were set up in each of the 47 prefectures to fix and adjust regional minimum wages. Council members are nominated by the Director of the Prefectural Labour Standard Office (PLSO) for one year, with the possibility of renewal.

115. Source: Based on ILO Background Materials

Ad hoc industrial committees are composed of members of the prefectural wage councils and from the representatives of workers and representatives of employers from the industry concerned. Their function is to fix industrial minimum wages at regional level.

Japan moved into a co-ordinated system of decentralised minimum wage fixing in 1968. Based on their minimum wage level and other economic data, the CACMW classified the 47 prefectures into four groups. Every year the CACMW provides each group with guidelines and the prefectural wage councils will determine the yearly adjustments based on the CACMW's guidelines. The prefectural councils are free to decide any increases in minimum wages but in practice they closely follow the guidelines.

In addition to regional minima minimum wages have also been fixed for the industries in most prefectures. In 1993, there were in all 250 industrial minimum wages covering over 5 million workers in the whole country.

Under the MWL, the minimum wage fixing bodies are required to take into account

(a) *cost of living*

(b) *wages of similar workers; and*

(c) *the industries capacity to pay.*

The relevant data collected by the CACMW and the prefectural councils include the latest data on cost of living, collective agreement rates, and the level and structure of wages at both the national and prefectural levels.

Among the various statistical sources two are important. One is the sample survey, covering 4,000 establishments employing less than 30 workers. The second source of data is the regular survey of wages in small establishments administered at the level of the prefecture. In Tokyo, for example, the survey covers 1,500 establishments employing less than 100 workers in manufacturing and less than 30 workers in services.

These surveys are conducted by the Ministry of Labour each June after the wave of Spring time collective agreements. The data are processed in mid-July and then the CACMW considers the survey results and recommends the minimum wages for the four groups of prefectures. In August, the prefectural wage councils deliberate on minimum wage adjustments, and the new regional minima come into operation from 1 October. From September to November the ad hoc committees work on fixing the industrial minimum wages.

The relevant information necessary for decision-making include: economic conditions in the region concerned (performance indicators of small- scale industries), labour market and wage trends (the results of establishment survey) and the CACMW's guidelines.

The national daily minimum wage rates in Japan (based on the average of the daily minimum wage by region) for some selected years are given below: [116]

Year	Rate (Yen)
1980	2,812
1990	4,117
1995	4,866
1996	4,955
1997	5,075
1998	5,167
1999	5,213

The average minimum wages as a percentage of average wage increased from 40.3 per cent on 1985 to 42.5 per cent in 1993. At the same time the regional disparities in the minimum wages have been reduced, which is a major objective of the CACMW.

In principle, minimum wage requirements under the MWL apply to all employees and their employers irrespective of their nature of employment (e.g. regular, temporary, part-time, etc) However, the MWL grants exemption from the application of the minimum wage rates in the following cases, subject to the approval of the concerned authorities:

- *physically or mentally disabled persons*
- *persons employed on probationary period*
- *persons receiving vocational training under programmes specified by the Human Resources Development Promotion Law.*
- *Persons employed for shorter duration of time; persons performing light duties; or persons who only work intermittently.*

116. Source: Ministry of Labour, Japan

E: **SOUTH KOREA**[117]

The Minimum Wage Act was introduced in South Korea in 1986 and it came into force in May 1988. The Act provides for the establishment of a tripartite Minimum Wage Council (MWC) with equal representation for workers, employers and independent members. The MWC can constitute technical committees to consider special issues.

The main function of the MWC is to prepare and submit proposals on adjustment in minimum wages to the Minister of Labour. Decisions in the council are taken by two-third majority votes. The MWC enjoys greater degree of autonomy vis-a-vis the Ministry of Labour. The Ministry may refer back the proposals to the MWC for re-consideration but not to alter them. He either accepts or rejects the proposals submitted by the MWC. The government has considerable influence on the decisions of the MWC through informal channels, policy guidelines and the independent members of the council. The Minister is required by the Act to publish the adopted resolutions for comments by those who may be affected by the decisions. If any objection submitted by employers or workers are found reasonable, the Minister may return the proposal to the MWC for reconsideration.

Originally there were two rates of minimum wages, one for low wage industries and another for high wage industries.

117. Source: Based on ILO Background Materials

In 1988, the minimum wage covered manufacturing establishments employing more than 10 workers and in 1989 the coverage was extended to mining, manufacturing and construction establishments with more than 10 workers. Since 1990, a general minimum wage applied to all industrial establishments employing more than 10 workers. The minimum wage protection does not apply to apprentices, workers on probation and the disabled. At the end of 1993, minimum wage protection covered around 5 million workers employed in about 100,000 establishments. The MWC may set hourly, daily and monthly minimum wages.

Between 1989 and 1994, adjustments in minimum wage were made in the month of January every year. Collective bargaining negotiations on wages also take place at the beginning of each year. In this context, the private sector labour and management perceived the rates of minimum wage increases as an indication of government's policy on wage movements. From 1994, the Government changed the date of minimum wage adjustment from January to September.

The Minimum Wages Act requires the MWC to take into account three factors in determining minimum wage adjustments, namely –

(a) *cost of living;*

(b) *wages of kindred workers; and*

(c) *labour productivity.*

For the purpose of monitoring changes in cost of living, the MWC regularly conducts cost of living survey.

The minimum wage rates determined by the MWC for the years 1988-1995 are given in Table 1 below:

Table 1

Minimum wage rates (1988 – 1995)

Year			Minimum wage (Won)	% increase
1988	Group 1	Hourly	462.50	
		Daily	3700.00	
		Monthly	111000.00	
	Group 11	Hourly	487.50	
		Daily	3900.00	
		Monthly	117000.00	
1989		Hourly	600.00	29.7
		Daily	4800.00	23.1
1990		Hourly	690.00	15.0
		Daily	5520.00	
1991		Hourly	820.00	18.8
		Daily	6560.00	
1992		Hourly	925.00	12.8
		Daily	7400.00	
1993		Hourly	1005.00	8.6
		Daily	8040.00	
1994/1*		Hourly	1085.00	7.96
		Daily	8680.00	
1994/2**		Hourly	1170.00	7.8
1995		Hourly	1275.00	9.0
		Daily	10200.00	
		Monthly	288150.00	

* Applicable from January to August 1994

** Applicable from September 1994 to August 1995

The minimum wage as a percentage of the average wage slightly declined from 1988 to 1994. In 1994, the minimum wage represented 32.9 per cent of the average wage.

F: <u>THE NETHERLANDS</u> [118]

In the Netherlands, minimum wages are fixed under the Minimum Wage and Minimum Holiday Allowance Act 1968. Minimum Wages under the law applies to all working people other than apprentices. The Wages of apprentices are regulated by collective agreements. Since 1992 all part-time workers are entitled to pro-rata minimum wage. Originally minimum wages were applied only to adult workers aged 24 years and over. In 1970, the age limit of adult workers was reduced to 23 years, and, by 1974 separate rates of minimum wages were applied to young workers aged between 15 and 23, as follows:

Table 1

Minimum Wage Rates Applicable by Age

Age	Percentage of Adult Minimum Wage
23-64	100 %
22	85 %
21	72.5 %
20	61.5 %
19	52.5 %
18	45.5 %
17	39.5 %
16	34.5 %
15	30.0 %

118. Source: Based on ILO Background Materials

The lower rates fixed for younger workers is contributed to the lack of working experience. The twin objectives of fixing lower wages for younger workers are:-

(a) to ease their access to labour market; and
(b) to discourage premature school leaving.

It is relevant to mention here that youth unemployment as a percentage of total unemployment is relatively high in the Netherlands.

The number of workers receiving minimum wages is relatively low, as collective bargaining remains the predominant form of wage determination in the Netherlands. Between 75 to 80 percent of the workers in private sector employment are covered by collective agreements. The difference between the minimum wage and the lowest collective agreement wage for adult workers was 12 percentage points in 1993. For younger workers the difference ranged from 22 to 29 percentage points depending on the age group. This wide gap is due in part, to the freeze in minimum wage in 1989 and 1993. In 1988 the gaps were smaller- 6 percent for adult workers and 15-24 for younger workers.

The question as to whether and by what percentage should minimum wage be adjusted are considered twice a year (January and July)

According to the Linkage Law of 1992, minimum wages and social benefits should, in principle, be linked to the average wage increase. The suspension of this principle in allowed in the event of an above average in wages and/or an increase in the number of people claiming social security benefits.

The suspension formula is based on the 1/A ratio, where 1 represents the volume of unemployed in the benefit years and A represents the employed in the work years. In 1990, the I/A norm was fixed at 82.6 – the threshold. When the ratio is below threshold, the government is obliged to apply full indexation. When the ratio goes beyond the 82.6 threshold, the government is given the option of suspending the adjustment or making a partial adjustment. In this case, the government is obliged to consult the (tripartite) Social and Economic Council. The Government is free to accept or reject the advice of the Council.

Apart from benefiting the wage earners, minimum wages are also important for social security benefit recipients, as various security benefits are linked to minimum wage. The quantum of social security benefits are also related to the type of household as well as the incomes and assets of other members of the household. The number of persons receiving social security benefits far exceeds the number of minimum wage earners in the Netherlands.

G: THAILAND [119]

In Thailand, the Labour Protection Act provides for the establishment of Minimum Wage Council (MWC) to determine minimum wages. The MWC is a tripartite body with equal representation for workers', employers' and government representatives. It makes recommendations based on which the Ministry of Labour and Social Welfare fix the rates of minimum wages.

Trade Union density in the private sector is very low (around 3 per cent) and the employees of public enterprises do not enjoy trade union and collective bargaining rights. Hence, wage determination by means of collective agreements is relatively low. The extent of coverage of workers by wages regulated by collective agreements is less than 5 per cent. Thus, minimum wage regulation is the predominant form of wage determination in Thailand and consequently its coverage is very wide (around 23 per cent of the wage earners, in 1997).

Daily rated minimum wages are determined in Thailand on a zonal basis, encompassing all 72 provinces as shown in ANNEX I. The wage rates are revised every year taking into account *consumer price trends, standard of living, cost of production, ability to pay, productivity, growth of GDP, etc.*

119. Source: ILO Bangkok, Area Operations (BAO) Office, Bangkok.

ANNEX I

Minimum Wage Rates in Thailand

(Bhat per day)

Effective Date	Zone 1 Greater Bangkok	Phuket	Zone 2 Chiang Mai	Nakhon Ratchasima	Saraburi ChonBuri	Ranong Phangnga	Zone 3 Rest of Provinces
17 Apr 1973	12a	-	-	-	-	-	-
1 Jan 1974	16a	-	-	-	-	-	-
14 Jun 1974	20	-	-	-	-	-	-
1 Oct 1974	20	18	16	18b	18	18	16
16 Oct 1975	25	18	16	18b	18	18	16
1 Oct 1977	28	21	19	19	21	21	19
1 Oct 1978	35	28	25	25	28	28	25
1 Oct 1979	45	38	35	35	38	38	35
1 Oct 1980	54	47	44	44	47	47	44
1 Oct 1981	61	61	61	61	61	61	52
1 Oct 1982	64	64	61	61	61	64	52
1 Oct 1983	66	66	63	63	63	66	56
1 Jan 1985	70	70	65	65	65	70	59
1 Apr 1987	73	73	67	67	67	73	61
1 Jan 1989	76	76	69	69	69	73	63
1 Apr 1989	78	78	70	70	70	75	65
1 Apr 1990	90	90	79	79	79	84	74
1 Apr 1991	100	100	88	88	88	93	82
1 Apr 1992	115	115	101	101	101	107	94
1 Apr 1993	125	125	110	110	110	110	102
1 Apr 1994	132	132	116	116	116	116	108
1 Oct 1994	135	135	118	118	118	118	110
1 Jul 1995	145	145	126	126	126	126	118
1 Oct 1996	157	157	137	137	137	137	128
1 Jan 1998	162	162	140	140	140	140	130

Notes: a Bangkok, Nonthaburi, Pathum Thani and Samut Prakan

b Including Udon Thani, Khon Kaen and Ubon Ratchathani

Source: Office of Wage Committee, Ministry of Labour and Social Welfare

CHAPTER 7

WAGE DETERMINATION SYSTEMS IN MALAYSIA

CHAPTER 7

WAGE DETERMINATION SYSTEMS IN MALAYSIA

A: BACKGROUND

(i) Labour Force and Trade Unions

In 1999, Malaysia had a total employed labour force of 8,740,700 distributed sectorally as follows: [120]

MALAYSIA: Employment by Sector (1999)[1]

	'(ooo)	(% share)
Agriculture, forestry and fishing	1399.2	16.0
Mining	41.9	0.5
Manufacturing	2368.3	27.1
Construction	803.8	9.2
Electricity, gas and water	72.1	0.8
Wholesale and retail trade, hotels and Restaurants	1449.5	16.6
Finance, insurance, real estates and Business services	420.3	4.8
Transport, storage and communications	441.9	5.1
Government services	876.5	10.0
Other services	867.2	9.9
Primary sector	1441.1	16.5
Secondary sector	3172.1	36.3
Tertiary sector	4127.5	47.2
TOTAL	**8740.7**	**100.0**

1. Estimate

120. Source: Economic Planning Unit (EPU), Prime Minister's Department, Malaysia.

Out of the total employed labour force, 71.4 per cent were employees, 21.1 per cent self-employed and 7.5 per cent were family workers (1996) [121] On the basis of this distribution, in 1999, 6.24 million of the labour force represented employees (or wage earners) in Malaysia. Of this number, 876,500 were employed in the government service and the balance of around 5.3 million employees were in private sector employment.

Besides the local labour force there are regular (or documented) and irregular (or undocumented) migrant workers employed in Malaysia in semi-skilled and unskilled jobs. 63 to 64 percent of the regular migrant workers are from Indonesia and nearly 27 to 29 per cent are from Bangladesh, while the remaining 9 to 10 per cent are from the Philippines, Thailand, Pakistan and others.[122] In 1997, there were in all, 1,120,172 regular migrants employed in Peninsular Malaysia and this number was reduced to 774,810 in 1998.[123] (see Table 2):

TABLE 2

Semi Skilled and Unskilled Migrant Workers by Sector-Peninsular Malaysia 1997 - 1998

Sector	Total		Percentage	
	1997	1998	1997	1998
Manufacturing	333,301	237,809	29.8	30.7
Construction	195,957	175,888	17.5	22.7
Plantation	320,840	140,285	28.6	18.1
Services	118,289	88,079	10.6	11.4
Domestic Maid	151,785	132,749	13.5	17.1
Total	1,120,172	774,810	100.0	100.0

Source: The Malaysian Immigration Department.

121. Source: Eddy Lee: The Asian Financial Crisis- The Challenge for Social Policy; ILO Geneva

122. Source: The Malaysian Immigration Department; Cited in Indera Putra Ismail: in Protecting Migrants - Problems faced by Trade Unions in Migrant Receiving Countries-"The Malaysian Perspective at Regional Migrant Workers' Symposium, Petaling Jaya, Malaysia 6-8 December 1999.

123. Ibid

In addition to the regular migrant workers, there is an estimated 800,000 irregular migrant workers working in Peninsular Malaysia and a further 150,000 Filipino migrant workers working in Sabah. [124]

As at 31 December 1999, there were 537 trade unions in Malaysia with a combined membership of 725,322. [125] This represented about 11.8 per cent of the employees in wage employment. Trade Union membership in the private sector accounted for 406,773 (or less than 10 per cent) of the wage earners in the private sector. Even in the sectors where trade unions have been established, their representativity is not very high except in the banking industry. According to the estimates of the respective unions, the representativity of unions is as follows:

Sector	Representativity
Banking	90 %
Commercial	30%
Transport	50%
Hotels, Restaurants	20%
Metal Industry	50%
Electrical Industry	40%
Construction	02%

124. IOM 1999 cited in Piyasiri Wickrewarakara, ILO EASMAT, Bangkok; Migrant Worker Issues In the ASEAN: Some Reflections, November 1999.

125. Department of Trade Unions, Malaysia

(ii) Methods of Wage Determination

Wages are regulated differently for the public sector (including statutory authorities and local bodies) and the private sector employees.

Public Sector

In the public service salaries are determined, by the government, based on the recommendations of Cabinet Committees or on the outcome of consultations and negotiations between the Congress of Unions of Employees in the Public and Civil Services (CUEPACS) and the National Joint Councils (NJCS), on the one hand, and the Public Services Department (PSD) on the other. The last salary increase of 10 per cent, offered by the Government to the public and civil servants with effect from 01 January 2000 was announced in the Budget for year 2000.

Private Sector

Collective Agreements and Awards of the Industrial Court

As for the private sector, salaries are generally determined and revised unilaterally by employers or through collective agreements concluded between representative organisations of workers and the employers, either individually or collectively through their industrial organisations. Where collective agreements cannot be concluded, salaries may be determined by awards of the Industrial Court.

Under the provisions of the Industrial Relations Act 1967 (Act 177) only trade unions of workers representing more than 50 per cent of the workforce in the bargaining unit are entitled to enter into collective negotiations on wages (and conditions of employment) with a view to concluding a collective agreement. Once a collective agreement is concluded, the parties to the agreement are required to deposit a copy of the same with the Industrial court. In the event of collective bargaining resulting in a dead lock, the union may seek the intervention of the Industrial Relations Department for the resolution of the dispute by conciliation and, failing which, by recourse to arbitration by the Industrial Court.

Collective Agreements may be concluded at the enterprise or industry level according to the structure of the trade union organisations.

Once a Collective Agreement is concluded and taken cognisance by the Industrial court, it will be deemed to be an Award of the Court and shall come into force and bind the parties to the agreement for such period as may be provided for in the agreement. In practice, collective agreements are concluded for a three year period and revised at the end of three years.

A collective agreement (and an Award) will apply not only to the workers who are members of the trade union which is a party to the agreement (or award) but also to workers who are non- members of the Union and are employed in the bargaining unit.

According to prevailing practice, the Industrial court does not grant full indexation in revising salaries under awards but provides for a percentage increase equivalent to two-thirds of the aggregate increase in the Consumer Price Index (CPI) for the preceding three year period.

The CPI increases during the 10 year period 1989 – 1998 were as follows:

Table 3

CPI Increases (1989 – 1998)

YEAR	CPI INCREASE (%)
1989	2.8
1990	3.1
1991	4.4
1992	4.7
1993	3.6
1994	3.7
1995	3.5
1996	3.4
1997	2.7
1998	5.3

Source: Bank Negara, Malaysia *

The rates to pay (and conditions of employment) agreed to under a collective agreement shall not be less favourable or in contravention of any written law applicable to the workers covered by the agreement.

* (Central Bank of Malaysia)

Most of the collective agreements are concluded at the industry level, while a smaller number of agreements are also entered into at the enterprise level, as shown in **Table 4**. [126]

Table 4

Collective agreements by Level of Bargaining

Year	Level	No. of Agreements	No. of Workers Covered
1980	(a) Industry	739	340,780
	(b) Enterprise	6	N.A.
1985	(a) Industry	807	409.165
	(b) Enterprise	25	8,788
1986	(a) Industry	792	369,867
	(b) Enterprise	62	42,809

Over 50 per cent of collective agreements concluded in recent years have been in the manufacturing sector, followed by commercial, services and transport sectors. The details of these agreements are given in **Table 5**. [127]

126. Report of Study on Coverage of Workers by Collective Agreements on Wages in the Asian- Pacific Region – Trends in the 1980s; ILO/ARPLA October 1991 (unpublished)
127. Economic Reports, Ministry of Finance, 1996/97, 1997/98, 1998/99, 1999/2000.

Table 5

Collective Agreement Coverage, by Industry (1995 –98)

Sector	No. of Agreements				No. of Workers Covered				Average % wage Increase			
	1995	1996	1997	1998	1995	1996	1997	1998	1995	1996	1997	1998
Manufacturing	134	210	241	146	37667	47674	64485	37175	11.8	10.6	15.0	8.0
Commercial	66	42	62	23	8071	4866	6836	4240	12.2	13.0	NA	8.0
Transport/ Storage and Communication	24	55	31	37	1194	9918	7708	42389	10.7	10.0	11.0	8.0
Services	20	38	44	52	31008	6364	11973	50459	10.2	9.0	13.0	14.0
Agriculture Products	8	32	18	11	125	12990	35982	6665	9.1	15.0	18.0	13.0
Mining & Quarrying	0	6	7	4	0	1342	364	160	0	9.0	8.0	11.0
Electricity/gas & water supply	0	9	2	0	0	29713	2307	0	0	5.0	18	0
Construction	1	0	0	1	1237	0	0	152	16.3	0	0	10.0
Others	4	6	7	10	NA	456	1484	1171	NA	0	9.0	11.0
TOTAL	**257**	**398**	**412**	**284**	**79302**	**111333**	**128545**	**142331**	**11.7**	**10.1**	**13.1**	**9.2**

Statutory Minimum Wage Determination

Legal provisions also exist under the Wages Council Act, 1947 (Act 195) for the determination of statutory minimum remuneration by Wages Council for such categories of workers as the Minister of Labour may determine-

(a) if he is of opinion that no adequate machinery exists for the effective regulation of the remuneration or condition of employment of the workers described in the order and that, having regard to the remuneration existing amongst those workers or any of them, it is expedient that such a council should be established;

(b) on the recommendations of a joint industrial council, conciliation board or other similar body constituted by organisations representative of respectively those workers and their employers.

Since the introduction of Wages Council Act, statutory minimum remuneration have been fixed in respect of four categories of employees through minimum wage orders made by the Minister of Labour, based on the recommendations of the respective Minimum Wages Council, as detailed in **Table 6**.

Table 6

Minimum Wage Orders by Category

	Category of Employees	Year of order	Year of Revision
(a)	Catering and Hotel Employees	1967	1976
(b)	Shop Assistants	1970	1981
(c)	Cinema Workers	1972	1981
(d)	Stevedore and Cargo Handlers	1982	-

The combined coverage of these orders was estimated at around 100,000 employees.

None of these orders was further revised since 1981 as wages (and conditions of employment) of some of the employees in these sectors were also regulated by collective agreements. The rates of remuneration fixed by these orders are far too low (ranging from RM 150 – 305 for adult workers and RM 125 – 250 for young workers) in the current context and are of no practical significance to the employees anymore.

(iii) Social Security Coverage

Social Security benefits in the private sector in Malaysia are governed by the Social Security Act, 1969 and the Employees' Provident Fund Act, 1951. The Social Security Act confers such benefits as employment injury, disability and death benefits, while the EPF Act provides for superannuation benefits. Both employees and employers are required to make contributions to the EPF and SOCSO Scheme at stipulated rates. Contributions to the SOCSO Scheme is mandatory only on behalf of employees whose commencing salary is less than RM 2,000 per month.

The number of active members of the EPF as at 31 December 1997, was 4,306,973 while the corresponding figure for SOCSO was 4,183,343.

The number of active members in EPF by wage range is given in **ANNEX 1**. The number of registered employees under the SOCSO scheme by active employers is shown in **ANNEX 2.**

ANNEX 1

EMPLOYEES PROVIDENT FUND

No. of active Members by Wage Range

Wage (RM) *	No. of Active Members
<100	72,570
101 – 300	357,783
301 – 500	685,747
501 – 600	382,243
601 – 700	367,849
701 – 800	294,561
801 – 900	255,167
901 – 1000	215,560
1001 – 2000	1,020,784
2001 – 3000	316,468
3001 – 4000	132,585
4001 – 5000	66,159
5001 – 6000	41,330
6001 – 7000	26,437
7001 – 8000	17,113
8001 – 9000	11,874
9001 – 10000	7,889
> 10,000	34,854
Total	4,306,973

Source: EPF Annual Report 1997

* R.M. –Ringgit Malaysia (RM 3.80 = US $1)

ANNEX 2

SOCSO

REGISTERED EMPLOYEES BY ACTIVE EMPLOYERS

(31st DECEMBER 1997)

Number of Employees Per Employer	Numbers of Active Employers	Total assumed Employees by Active Employers
< 11	185,267	648,567
11 - 20	24,164	348,542
21 - 40	12,953	366,273
41 - 60	4,487	220,029
61 - 80	2,344	162,964
81 - 100	1,442	126,760
101 - 200	2,993	416,334
201 - 400	1,669	464,372
401 - 600	480	231,262
601 - 800	285	195,956
801 - 1000	124	110,218
1001 - 2000	239	334,467
2001 - 4000	107	282,610
< 4000	39	271,989
Total	**236,593**	**4,183,343**

Source: Socso Annual Report 1997

B: **PATTERN OF WAGE LEVELS**

The wage schemes and wage levels currently prevailing in the private sector in Malaysia may be ascertained from two important sources, namely-

I. The salary and Fringe Benefits Survey conducted by the Malaysian Employers' Federation (MEF); and

II. The various Collective Agreements concluded between representative organisations of workers and their employers in the different industries.

This paper examines the wage levels of workers in the semi-skilled and unskilled grades, with special focus on wages of unskilled workers, as this is the vulnerable group that needs minimum wage protection most and, hence, the target group for fixing statutory minimum wages in Malaysia, as elsewhere.

I. **Wage Levels Based on MEF Salary and Fringe Benefits Survey forNon- Executives 1998**

(a) *Minimum Average Monthly Basic Wage for Workers Recruited without prior working Experience by Industry*

Table 1

Wage Levels by Industry and Qualifications

Qualifications		Minimum Monthly Basic Salary (RM)
Manufacturing	SRP	441
	SPM	546
	STPM	660
	Vocational	660
	Certificate	812
	Diploma	1,110
Non Manufacturing	SRP	538
	SPM	687
	STPM	825
	Vocational	802
	Certificate	932
	Diploma	1,248
Overall	SRP	478
	SPM	610
	STPM	732
	Vocational	720
	Certificate	862
	Diploma	1,171

(b) *Minimum Average Monthly Basic Wage for Workers recruited without Prior Working Experience by Location*

Table 2

Wage levels by Location

QUALIFICATIONS		AVERAGE SALARY (RM)
Perlis, Kedah and Perak	SRP	373
	SPM	430
	STPM	439
	Vocational	439
	Certificate	595
	Diploma	946
Penang	SRP	452
	SPM	564
	STPM	696
	Vocational	701
	Certificate	793
	Diploma	1,085
KL, PJ, Shah Alam And Klang	SRP	514
	SPM	671
	STPM	805
	Vocational	778
	Certificate	931
	Diploma	1,270
Rest of Selangor, Negeri Sembilan & Melaka	SRP	441
	SPM	509
	STPM	631
	Vocational	678
	Certificate	774
	Diploma	1,016
Johore	SRP	445
	SPM	543
	STPM	641
	Vocational	668
	Certificate	838
	Diploma	1,061
Pahang, Trengganu & Kelantan	SRP	385
	SPM	394
	STPM	579
	Vocational	532
	Certificate	723
	Diploma	828
Overall	SRP	478
	SPM	609
	STPM	731
	Vocational	720
	Certificate	862
	Diploma	1,172

(c) *Minimum Monthly Basic Wage for Production/ Technical Workers by Location*

(i) Perlis, Kedah and Perak

Table 3

Production/Technical Workers

Job Positions	Average Basic Monthly Salary		
	Lower Quartile	Median	Upper Quartile
Production Clerk	597	691	882
Production Operator (Semi-Skilled)	600	660	821
Production Operator (Unskilled)	431	465	575
General Unskilled Worker/Labourer	400	525	632

(ii) Penang

Table 4

Production/Technical Workers

Job Positions	Average Basic Monthly Salary		
	Lower Quartile	Median	Upper Quartile
Production Clerk	725	1,000	1,080
Production Operator (Semi-Skilled)	544	642	800
Production Operator (Unskilled)	534	579	620
General Unskilled Worker/Labourer	594	600	701

(iii) Kuala Lumpur, Petaling Jaya, Shah Alam and Klang

Table 5

Production/Technical Workers

Job Positions	Average Basic Monthly Salary		
	Lower Quartile	Median	Upper Quartile
Production Clerk	800	900	1,184
Production Operator (Semi-Skilled)	595	750	995
Production Operator (Unskilled)	543	605	675
General Unskilled Worker/Labourer	550	650	739

(iv). Rest of Selangor, Negeri Sembilan and Melaka

Table 6

Production/Technical Workers

Job Positions	Average Basic Monthly Salary		
	Lower Quartile	Median	Upper Quartile
Production Clerk	728	790	916
Production Operator (Semi-Skilled)	570	683	802
Production Operator (Unskilled)	413	474	570
General Unskilled Worker/Labourer	550	619	676

(v). Johore

Table 7

Production/Technical Workers

Job Positions	Average Basic Monthly Salary		
	Lower Quartile	Median	Upper Quartile
Production Clerk	625	842	1,050
Production Operator (Semi-Skilled)	522	735	1,081
Production Operator (Unskilled)	395	419	528
General Unskilled Worker/Labourer	550	550	580

(vi). Pahang, Trengganu and Kelantan

Table 8

Production/Technical Workers

Job Positions	Average Basic Monthly Salary		
	Lower Quartile	Median	Upper Quartile
Production Clerk	440	578	977
Production Operator (Semi-Skilled)	350	442	644
General Unskilled Worker/Labourer	470	565	816

(d) *Minimum Monthly Basic Salary Production/ Technical Workers by Union Status*

(i) Unionised Companies

Table 9

Production/Technical Workers

Job Positions	Average Basic Monthly Salary		
	Lower Quartile	Median	Upper Quartile
Production Clerk	750	957	1,150
Production Operator (Semi-Skilled)	660	802	985
Production Operator (Unskilled)	550	611	674
General Unskilled Worker/Labourer	550	594	655

(ii) Non -unionised Companies

Table 10

Production/Technical Workers

Job Positions	Average Basic Monthly Salary		
	Lower Quartile	Median	Upper Quartile
Production Clerk	750	820	1,000
Production Operator (Semi-Skilled)	547	619	800
Production Operator (Unskilled)	440	500	600
General Unskilled Worker/Labourer	550	650	705

I A. ***Rates of Wages used by MIDA***

Based on the MEF Salaries and Benefits Survey of Non-executive staff, the Malaysian Industrial Development Authority (MIDA) has used the following wage rates in its official Brochure for the guidance of foreign investors, as the basic monthly salaries of production/technical/operation staff in the manufacturing sector:

Table 11

Rates of Wages used by MIDA

Category	Monthly wage	
	Minimum (RM)	Maximum (RM)
Driver	591.00	1,271.00
Lorry/Truck Driver	575.00	1,320.00
Clerk/Typist	560.00	1,230.00
Q/C. Inspector	543.00	1,189.00
Security Guard	518.00	1,152.00
Production Operator (Semi – skilled)	492.00	1,169.00
Production Operator (unskilled)	428.00	943.00

II. Minimum Monthly Wages Based on Collective Agreements by Sector

(a) Transport Equipment and Allied Industries

(i) ***Selangor***

Table 1

Production and Maintenance Workers

Grade	Monthly wage	
	Minimum (RM)	Maximum (RM)
III	500.42	1,447.75
IV	569.18	1,050.24
V	615.84	1,848.88
VI	668.50	1999.77
VII	718.16	2,223.24

(ii) Butterworth

Table 2

Production and Maintenance Workers

Category	Minimum (RM)	Increment (RM)	Maximum (RM)
Shophand	450.00	34.00	1 Year
Maintenance Operative	540.00	38.00	1,000.00
Maintenance Junior Technician	620.00	44.00	1,200.00
Maintenance Technician	720.00	50.00	1,450.00

(b) Metal Industry

(i). ***Selangor***

Table 3

Technical and Production Workers

Category	Monthly wage		
	Minimum Salary (RM)	Maximum Salary (RM)	Minimum Annual Increment
Grade 1	700.00	1,540.00	60.00
Grade II	630.00	1,400.00	55.00
Grade III	550.00	1,250.00	50.00
Grade IV	480.00	1,110.00	45.00
General Workers	430.00	990.00	40.00

(ii) ***Johore***

Table 4

Production Workers

Level	Monthly wage		
	Minimum Salary (RM)	Maximum Salary (RM)	Minimum Annual Increment
1	530.00	848.00	37.00
2	636.00	1,018.00	45.00
3	763.00	1,221.00	53.00
4	916.00	1,446.00	64.00
5	1,100.00	1,760.00	77.00
6	1,320.00	2,112.00	92.00

(iii) ***Shah Alam***

Table 5

Production and Manual Workers

Category	Grade	Minimum (RM)	Maximum (RM)	Annual Increment (RM)
Industrial Worker	1	660.00	1,210.00	50.00
	2	580.00	772.00	48.00
	3	500.00	635.00	45.00
Lorry Driver	1	880.00	1,400.00	60.00
	2	720.00	940.00	55.00
	3	550.00	750.00	50.00

(c) Banking Industry

Industry Level Agreement

Table 6

	Minimum (RM)	Annual Increments (RM)	Maximum (RM)
Non Clerical Grade	565.00	24	
		27	
		31	
		35	
		38	1165.00

(d) Hotel and Restaurant

Table 7

(i) Restaurant Workers

	Minimum (RM)	Maximum (RM)
Thru-Put-Servers	432.00	1,314.00

(ii) Restaurant Workers

Table 8

	Minimum (RM)	(Maximum (RM)
Assistant Maintenance Technician	500.00	1,350.00
Kitchen Helper	350.00	1,140.00
Waiter/Waitress	400.00	1,220.00
Dispenser	450.00	1,300.00
Cashier	450.00	1,300.00

(e) Commercial

(i) *Industry Level Agreement*

Table 9

Technical Group	Salary Bracket (RM)	Increment Quantum (RM)
Technical Advanced Grade	505 - 775	45.00
	775 - 2,155	50.00
Intermediate Grade	355 - 595	40.00
	595 - 1,930	50.00
Basic Grade	275 - 485	35.00
	485 - 1,710	45.00
Apprentice Grade	250 - 940	35.00
Computer Operator	410 - 610	40.00
	610 - 2,040	55.00

(ii) *Insurance Companies*

Table 10

	Minimum (RM)	Annual Increment (RM)	Maximum (RM)
Non-clerical	475.00	39.00	1,139.00
Non-clerical special	535.00	50.00	1,260.00

(f) Transport Industry

(i) ***Selangor***

Table 11

Category	Minimum (RM)	Increment (RM)	Maximum (RM)
Clerical	450.00	40.00	1,170.00
Tradesman	450.00	44.00	1,170.00
F/Lift Driver (A6T)	460.00	42.00	1,300.00
Driver (Grade 13 A)	460.00	39.00	1,124.00
Driver (Grade 13 B)	430.00	34.00	955.00
General Worker	380.00	29.00	770.00

(ii) ***Perak***

Table 12

Basic Wage for Drivers	RM 13.30 per day
Trip Allowance	RM 8.00 per trip with 2 trips guaranteed
Annual Increment	RM 2.00 per day

(iii) ***Johore***

Table 13

	Minimum (RM)	Increment (RM)
Basic Pay-Drivers	14.20 per day	0.60 sen
- Conductors	12.20 per day	0.60 sen
Express Drivers Workshop Staff, Ticket Inspectors	450.00 per month	35.00

(g) Electrical Industry

(i) ***Selangor***

Table 14

	Minimum (RM)	Annual Increment (RM)
Production staff IV	530.00	64.00
Production staff III	545.00	73.00
Production staff II	615.00	83.00

(ii) ***Johore***

Table 15

Machine operator Packer Storehand

	Minimum (RM)	Maximum (RM)	Annual Increment (RM)
Grade IV	430	1032	43
Grade III	480	1152	48
Grade II	530	1272	53
Grade I	680	1632	68
Tester			
Grade IV	440	1056	44
Grade III	490	1176	49
Grade II	540	1296	54
Grade I	690	1656	69

(iii) ***Kedah***

Production Operator

Table 16

	Minimum (RM)	Maximum (RM)	Annual Increment (RM)
Operator IV	360.00	792.00	36.00
Operator III	370.00	814.00	37.00
Operator II	380.00	836.00	38.00
Operator I	390.00	858.00	39.00

(h) Plantation

Table 17

Industry Level Agreement

Field and other General Staff

Basic Pay	RM 11.50 per day
Price Bonus	RM 1.00 per day
Additional Payment	RM 2.60 per day
Total	**RM 15.10 per day**
Monthly rate	
(RM 15.10 x 26)	RM 392.60
Plus	
Out-turn/Attendance	
Incentive	RM 32.00
Total Monthly Wage	**RM 424.60**

(i) Electronics Industry

Selangor (in House Union)

Table 18

Category	Minimum (RM)	Minimum Increment	Maximum (RM)
Production Operator 1 General Worker	440.00	7 %	1200.00
Forklift driver Impregnation Worker Storehand (Mtrl/Ship)	460.00	7%	1258.00
Checker /QC Inspector Assistant Line Leader	500.00	7%	1355.00
Line Leader Clerk 1	550.00	7 %	1500.00

(j) Construction Industry

Selangor

Table 19

Semi skilled workers	Minimum (RM)	Maximum (RM)	Annual Increment (RM)
Grade 2	700.00	1,150.00	45.00
Grade 1	1,240.00	1,720.00	60.00
Labourers/ General Workers			
Grade 2	600.00	1,000.00	40.00
Grade 1	1,080.00	1,480.00	50.00

CHAPTER 8

SCOPE AND NEED FOR MINIMUM WAGE FIXING IN MALAYSIA

CHAPTER 8

SCOPE AND NEED FOR MINIMUM WAGE FIXING IN MALAYSIA

The *raison d'être* for fixing minimum wages is to provide wage earners necessary social protection as regards minimum permissible levels of wages so as to enable them to overcome poverty and to ensure the satisfaction of their needs and their families.

Minimum wages not only afford 'safety-net' protection to workers but also provides a benchmark for linking social benefits of various kinds in some industrialised countries.

In Malaysia, the Social Security Act provides for the payment of minimum invalidity and survivor's pensions at the rate of 50 per cent of the "average minimum wage," the quantum of which the Minister of Human Resources may determine from time to time. In January 1999, the average monthly wage was revised and re-fixed by the Minister at RM 500 for the purposes of the Social Security Act.

Poverty eradication is one of the major concerns of the Malaysian Government, as reflected in the New Economic Policy (NEP) and the various Development Plans. According to the Seventh Malaysia Plan, the incidence of poverty has declined from 17.1 per cent in 1990 to 9.6 per cent in 1995, and is estimated at 5.5 percent in year 2000. For this purpose, poverty line income has been defined as RM 425 per month for a household size of 4.6 in Peninsular Malaysia, RM 601 per month for a household size of 4.9 in Sabah and RM 516 per month for a household size of 4.8 in Sarawak.

Poverty is conceptualised in Malaysia as "lack of income needed to acquire minimum necessities of life". [128] Conceptually, minimum wage aims at providing the basic needs of workers and their families, the size of which may vary from country to country.

The poverty eradication programmes hitherto undertaken by the Government did not, however, include income protection measures, such as statutory minimum wages for the benefit of wage earners.

The issue of statutory minimum wage protection has been raised by the MTUC for a long time in its quest for the eradication of "sweated labour" in Malaysia. It has been clamouring for a decent living wage for the low paid workers whose wages are determined unilaterally by employers.

As a matter of policy, the MTUC General-Council took a decision in 1996 to raise the minimum wage to RM 600, and urged the MTUC affiliates to place greater emphasis on this issue.

In the absence of Statutory minimum wage in Malaysia, employers often insist that wages must be left to be determined by market forces, and fix their own wage rates, which in several cases, fall below the poverty line income.

128. Malaysian Quality of Life 99: Economic Planning Unit, Prime Ministers Department, Malaysia

Market forces cannot be trusted to work efficiently, as there are a lot of abuses in the market system. Nowhere in the world is the market allowed to operate absolutely free, without some form of minimal regulation. That is why Malaysia chose selective exchange controls to insulate itself against market forces that sought to destroy its economy. It is. therefore, not fair for employers to use the argument to allow wages to be regulated by market forces when they in fact profit from the government's protection against the serious abuses of the market. [129]

The imperfect market system has been further compounded by the innundation of the labour market in Malaysia with (regular and irregular) migrant workers, which has had the effect of depressing the wage levels and discouraging local workers from accepting unskilled and semi-skilled jobs.

Malaysia's real per capita GNP has doubled from RM 3120 in 1980 to RM 6130 in 1997 as a result of higher economic growth , which was accompanied by the structural transformation of the economy from one relying mainly on the production and exporting of primary commodities, to one which is based on manufacturing. In 1998, however, the per capita GNP declined to RM 5912 due to the economic downturn. [130] But it is now on its way to recovery.

129. Tan Sri Ramon Navaratnam: Give Top Priority to Raising Productivity; New Straits Times, 3 July 1999

130. Malaysian Quality of Life 99: Economic Planning Unit, Prime Minister's Department Malaysia

The high rate of economic growth has contributed to better quality of life of the Malaysian people and reduced the number of poor households by 56 per cent from 739,800 in 1980 to 346,000 in 1997, although the number has subsequently risen to 393,000 in 1998 due to effects of economic slowdown. [131] Those who benefited most from the poverty eradication programmes are the self- employed persons of the labour force such as fishermen, paddy farmers, shifting cultivators (Sabah), sago producers (Sarawak), agricultural labourers, rubber small holders, estate workers, orang aslis (natives) and urban poor.[132]

Similar income protection in the form of statutory minimum wages has not been extended to an important segment of the labour force, namely, the vulnerable category of unskilled workers whose earnings are in the brink of the poverty line income or even below.

Among the workers who contribute to the EPF no less than 10 percent are receiving wages of less than RM 300 per month. The number of workers who contribute to the EPF and SOCSO schemes are in the region of 4.2 million (in 1997), including (34,854) public sector employees, whereas the private sector wage earners alone account for about 5.3 million. This means that no less than 1 million workers in the private sector do not receive EPF and SOCSO benefits. It is relevant to note in this context that only 236,593 employers were active contributors to the SOCSO Scheme as at 31 December 1997, while the number of establishments registered with the Department of Labour is reported to be about 325,000.

131. Ibid

132. Ibid

This brings to focus the need to enhance the effectiveness of the labour law enforcement system in the country, which is an essential pre-requisite for ensuring better protection of minimum wage and social security benefits, among others.

As noted earlier, an "average minimum wage" has been fixed under the Social Security Act by the Minister of Human Resources on 1 January 1999 at RM 500 for the purposes of payment of minimum invalidity and survivor's pension benefits. This amount may have been based on actuarial criteria, but nevertheless, for the purposes of the Social Security law this quantum represents the "average minimum wage in Malaysia" [133]

It is also relevant to note that this quantum of RM 500 approximated to the then prevailing minimum commencing salary of the lowest paid public servant in Malaysia. The Government has since proposed a 10 per cent salary rise and an increase in the housing allowance to low paid public servants through the Budget for the year 2000, effective 01 January 2000. The sum total of these increases will raise the minimum pay of the lowest paid public servant to around RM 600 per month. Coincidently, RM 600 is the figure that the MTUC adopted as minimum wage in 1996 as a policy guideline for its affiliates to use in negotiating collective agreements.

It is, therefore, fair to use RM 600 as a benchmark to consider the question as to the need and justification for statutory minimum wage fixing in Malaysia.

133. See Section 20 (2) (a) of the Social Security Act 1969.

On the basis of the MEF Salary and Benefits Survey 1998 and the currently applicable Collective Agreements, all workers, including unskilled workers are placed on incremental salary scales whose initial or commencing salary ranges from RM 350 to RM 550, rarely has it reached RM 600 level. It is unlikely that these rates would have improved significantly since 1998 as salary revisions were suspended with the onset of the recent economic crisis.

Applying the benchmark of RM 600, about 35 percent (or 1.5 million) of the workers who contribute to the EPF receive monthly wages below the benchmark, as follows:

< RM 100 *	-	1.7 %
RM 101 -300	-	8.5%
RM 301 – 500	-	16.0%
RM 501 – 600	-	9.0%

Even if RM 500 is used as the benchmark, no less than 1 million workers among the EPF contributors will receive less than RM 500 as monthly wages. As pointed out earlier, there is a further 1 million (or more) workers in wage employment without EPF and SOCSO benefits, let alone minimum wage protection.

* This could possibly represent the wages of part-time workers and workers with poor attendance

It is likely that around 800,000 to 1 million workers (or 18 – 20% of the private sector workers) may be currently receiving wages under collective agreements. Of this number only a quarter or a third of them (or 250,000 – 350,000 workers) are likely to be employed in unskilled jobs. Overall, therefore, no less than 2 million workers in Malaysia remain vulnerable without minimum wage protection. Of this number, no less than 25 percent (or 500,000 workers) receive wages below RM 300 per month, while around 1.5 million receive wages less than RM 500 per month. It is, therefore, probable that about a million workers may receive wages below the poverty line income.

If the number of jobs in the unskilled positions held by migrant workers is also taken into account, the total number of vulnerable workers receiving wages below RM 600 per month will be in the region of 2.5 million and those receiving wages below RM 500 per month around 2 million. Even in an industrialised country such as the United Kingdom, where minimum wages were in operation from 1909, abolished in 1993, and later re-introduced by legislation in 1998, it was stated by the British Trade Secretary, when introducing the Minimum Wage legislation, that *"(It)------- will help some two million workers escape from poverty pay, without adverse effects on jobs or inflation."* [134]

134. Source: Debate on Minimum Wage Rages on; The Sun, 29 September 1998

The experiences of both industrialised and developing countries show that general minimum wages are introduced by law for the protection of vulnerable categories of workers, irrespective of the size of the labour force that would eventually benefit by such protection. For example, the statutory minimum wage protection cover only 5 percent of the labour force in Canada, 6.2 percent in the United States and 7.4 percent in the United Kingdom.

On the other side of the spectrum, there are countries with wider extent of coverage, such as Australia, where 32 percent of the workers are said to be reliant on minimum wages determined by the Minimum Wage Awards of AIRC.

Thailand presents an extreme case, where statutory minimum wages predominate for over two decades to the extent of covering as high as 23 [redacted] percent of the labour force. (at present) This is mainly due to low union density (about 3 percent in the private sector), denial of the right to organise and collective bargaining to public enterprise employees and, hence, the absence of effective collective bargaining. In the result, minimum wage in Thailand operates as a ceiling wage rather than serving as a floor wage for the wage structure in general.

Malaysia is now steadily working towards the attainment of industralilsed status and realising Vision 2020. Workers' contribution in these efforts is, indeed, indispensable. Their share in the fruits of development is equally important and is recognised by the Government. The Prime Minister himself is reported to have indicated

that a minimum wage may be introduced in the near future and the government would work towards this goal despite the recent economic setback. [135] He is further reported to have stressed that "*workers be compensated fairly as this would also mean a stronger purchasing power which would ensure that the growth cycle was enhanced*". [136]

The above quoted statements attributed to the Prime Minister imply that fixing of a fair minimum wage in Malaysia is consistent with the national development objectives. The current level of wages applicable to unskilled workers falling outside the scope of coverage of collective agreements is far too low bordering almost on the fringes of poverty line and even below. They need statutory minimum wage protection most as a matter of urgent priority. It is equally important that the minimum wage level under the collective agreements be raised and standardised across the industries.

Although the initial point in the wage scales of unskilled workers under collective agreements is also low as RM 350 – 450 in certain cases, their wages are annually increased through the payment of annual increments ranging from 5 – 8 percent, and the wage levels are adjusted once in three years based on CPI increases (about 3.5 per cent per year, on an average for the last 3 years). These advantages do not, however, accrue to workers to whom statutory minimum wages are applicable, as minimum wage comprises a single rate, which may or may not be revised or adjusted annually or regularly.

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135. Ibid

136. Ibid

In the light of the forgoing analysis, statutory minimum wage fixing in Malaysia is no more a question of "Whether?", but "What?", "How" and "When?"

In fixing a statutory minimum wage, the following issues need have to be addressed:-

(a) *What should be the role of minimum wage fixing in Malaysia?*

(b) *Should there be a single minimum wage for the whole country, or should there be different rates for different States/regions?*

(c) *Should there be a single minimum wage for all workers or should there be two different rates for young and adult workers?*

(d) *Should the minimum wage be fixed on a monthly, daily, or hourly rate basis?*

(e) *Should the minimum wage be adjusted every year or every two years or every three years or at longer intervals?*

(f) *Should wage adjustments provide for full or partial indexation?*

(g) *Should the minimum wage apply to all workers employed in all establishments or should, certain categories of workers or certain class of employers or establishments be excluded from the scope of coverage?*

In addressing these and other related issues, the following considerations might be given due weightage, amongst others:

(a) Minimum wage fixing in Malaysia must not only provide "safety-net" protection to workers but also serve as a general wage policy instrument so as to contribute towards broad national economic and social objectives, such as rapid economic growth and improved distribution of income.

(b) A general minimum wage of country- wide application will, inter alia, help prevent inter-State and rural- urban migration.

(c) Fixing a lower rate of minimum wage for young workers will help enhance employment opportunities for young school leavers as the employers will be slow in recruiting young workers if the same rate applies to both young and adult workers.

(d) As minimum wages are not fixed on an incremental scale, the same wage rate will continue to operate until it is revised and its purchasing power will be eroded by rising cost of living in the intervening period. Annual adjustment of wages based on full indexation will help avert such adverse impacts on wages. It will also help employers to pay the CPI increases in smaller amounts annually, rather than having to pay lump sum increases at longer intervals.

(e) If minimum wage is fixed on the basis of daily or hourly rate, the employers may resort to cutting down the number of working hours in a day or the number of working days in a month and reduce the monthly income of workers, and thereby, defeat the basic objective of fixing statutory minimum wages.

(f) As statutory minimum wage is intended to provide safety-net-protection to workers, all workers employed in all sizes of establishments, other than, those who are genuinely self-employed must be brought within the scope of coverage of statutory minimum wage. This should include, in particular, home workers, contract workers, part-time workers, casual workers and piece-rated workers. Only possible exception could be domestic servants.

(g) If the objectives of minimum wage are to be achieved, its effective enforcement must be ensured.

(h) The level of minimum wage should be so fixed as to ensure:-

  (i) That workers receive a decent and fair wage, which will enable them to satisfy their needs and their families.

  (ii) That the wage level so fixed is sufficiently high as to attract local workers to fill all positions in unskilled and semi-skilled jobs, without the need to rely on foreign workers.

  (iii) That such level of minimum wage will have greater influence in shaping the general wage structure in the country.

CONCLUDING OBSERVATIONS

Malaysia's economy has grown steadily over the years until the recent economic downturn from which it is now recovering. The nation is well on its way towards attaining NIC status, thereby, realising Vision 2020. The quality of life of the Malaysians has also improved significantly. Poverty among both the rural and urban population has been considerably reduced. The self-employed, in particular, have benefited most under the poverty eradication programmes.

On the other side of the spectrum, a major segment of the labour force, namely. the low-paid workers have been left out completely without any form of income protection, such as statutory minimum wages. Since the vast majority of them are not unionised, the collective bargaining mechanism does not extend wage protection to them. Employers often argue that wage levels must be determined by market forces and workers continue to receive low wages. Market forces cannot be trusted any longer when the market system itself is imperfect.

The abundant supply of migrant workers at sub-minimum rates of wages also tends to depress the wage levels of unskilled and other categories of low paid workers.

Hence, State intervention *via* statutory minimum wage fixing only can provide the 'safety-net' income protection to these vulnerable categories of workers. Apart from affording income protection to the low paid workers, the level of the wages fixed must provide sufficient incentive for the local workers to replace the migrant workers employed in Malaysia.

In the Malaysian context, minimum wage fixing must also serve as an instrument of macro-economic policy to ensure equitable distribution of income within the framework of a ***National Wage Policy***.