

**AN ASSESMENT OF THE ENFORCEMENT OF MINIMUM  
WAGE LEGISLATION IN KENYA**

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***Submitted in partial fulfillment of the requirements of the Bachelor of  
Laws Degree, Strathmore University Law School.***

***MARCH 2017***

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## **DEDICATION**

To God. To my parents David Thuita and Millicent Thuita for their enduring support and for affording me an education.

## **ACKNOWLEDGEMENTS**

I am grateful for the guidance and support of my supervisor, Mr Allan Mukuki all through the writing of this dissertation.

## DECLARATION

I, THUITA ERIC MWANGI, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: .....

Date: .....

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: .....

Mr. Allan Mukuki



## **ABSTRACT**

This dissertation looks to assess on the enforcement of minimum wages laws in Kenya. It does this by investigating on the exact extent of the enforcement of these laws and thereafter looking to evaluate on the factors causing such an extent of enforcement. Additionally, the dissertation looks to analyse and suggest the various approaches that could be considered so as to improve said enforcement.

This dissertation does not look to question the viability of minimum wage legislation by itself as a policy instrument, but instead confines itself to assessing the enforcement of these laws; an area of research it identifies as generally ignored and minimally explored by the academic community.

To achieve this, the dissertation primarily relies on secondary data from numerous strands of literature that have looked to analyse, whether partly or wholly, the questions that the dissertation seeks answers to. Thereafter, the dissertation combines and conceptualizes said data to paint a picture of the enforcement of these laws in contemporary Kenya as well as offer avenues through which the rate of enforcement can be improved.

The dissertation indeed establishes that enforcement of these laws is dismal in Kenya, with the most relevant and latest source placing said non-enforcement at an astounding 42% of all of Kenya's labourers. Some of the reasons behind this poor extent of enforcement are identified by the dissertation as a poorly capacitated labour inspectorate as well as on the manner in which the minimum wages are set, including the considerations looked at in the process of such setting. The high informality rate that characterises Kenya's labour force, and a general lack of awareness of these laws on the part of the various labour market players are too identified as major causes behind the poor rate of enforcement.

The dissertation thereafter identifies ways in which such enforcement can be improved, and such measure as the sustainable formalization of the informal economy, the enhancement of the labour inspectorate as well as the spreading of information and awareness about these laws are identified to that effect. In the end, the dissertation concludes and offers recommendations stemming from its writing.

## **LIST OF ABBREVIATIONS**

|          |   |
|----------|---|
| AWC      | Agricultural Wages Council  |
| AWO      | Agricultural Wages Order  |
| CBA      | Collective Bargaining Agreement   |
| DTUCIDC  | Danish Trade Union Council for International Development Cooperation                    |
| GWC      | General Wages Council   |
| GWO      | General Wages Order   |
| ILFS     | Intergrated Labour Force Survey   |
| ILO      | International Labour Organisation   |
| KIPPRA   | Kenya Institute for Public Policy Research and Analysis                                 |
| KUDHEIHA | Kenyan Union of Domestic Hotels, Educational Institutions, Hospitals and Allied Workers |
| NGO      | Non-Govenmental Organisation  |
| SWC      | Sectoral Wages Council  |
| SWO      | Sectoral Wages Order  |

# CHAPTER 1: INTRODUCTION

## 1.1 BACKGROUND

The question as to whether to treat labour as a mere commodity as opposed to treating it as a non-commodity, an extension of a labourer's dignity, has been asked for a long time now.<sup>1</sup> Treating it as a commodity would dictate its value be governed by the economic forces of demand and supply just as any other generic market good is.<sup>2</sup> However, treating it as a non-commodity would necessitate government intervention to protect labourers' rights due to the fact that the work of a labourer ties to his human dignity and is an expression of himself or herself.<sup>3</sup>

Currently, and in theory, Kenya's labour laws seem to be leaning towards the non-commodification school of thought, with an array of laws stepping in to ensure that the labourer is protected in one way or another. The Labour Institutions Act provides for wages councils responsible for minimum wage setting across the country.<sup>4</sup> This dissertation looks at the practical aspect of the enforcement of minimum wage legislation in Kenya.

It is evident that enforcement has been poor in Kenya even after there being laws that are in place to protect employees. For example, preceding research places the percentage of labourers paid below minimum wage at 42%.<sup>5</sup> An astounding degree of ignorance of these laws by both employees and employers all over the country has also been a factor inhibiting the enforcement.<sup>6</sup>

In Kenya, the legal framework governing minimum wage and the setting of conditions of employment emanates from part 6 of the Labour Institution Act.<sup>7</sup> Section 43 provides for the establishment of the General Wages Council (GWC) and

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<sup>1</sup> Pocock B, Prosser R and Bridge K, 'The return of 'labour-as-commodity'? The experience of casual work in Australia' (2005), 459.

<sup>2</sup> Marx K, 'Outlines of the critique of political economy' in, *The Collected Works of Karl Marx and Frederick Engels: Volume 28*, International Publishers, New York, 1986, 80.

<sup>3</sup> Preamble, *Constitution of the International Labour Organisation* (ILO) (1919)

<sup>4</sup> Labour Institutions Act (Act No. 12 of 2007)

<sup>5</sup> Danish Trade Union Council for International Development Cooperation (DTUCIDC), *Kenya Labour Market Profile 2015*, 2015, at 6.

<sup>6</sup> Manda D, Kosimbei G and Wanjala B, 'Impact of minimum wages on formal employment in Kenya' *DP No. 67 Kenya Institute for Public Policy Research and Analysis, KIPPRA* (2007), 5.

<sup>7</sup> (Act no. 12 of 2007)

the Agricultural Wages Council (AWC). It also provides that the Cabinet Secretary may establish a Sectoral Wages Council (SWC) in addition to the general wages council for any category of employees that he/she, with the consultation of the National Labour Board, feels is inadequately covered for by collective agreements and that it may be expedient to set minimum wages and other conditions of employment in such sectors.<sup>8</sup>

The functions of wages councils include investigating the remuneration and conditions of employment in any sector and making recommendations to the minister following such investigation.<sup>9</sup> Following the recommendations, the minister takes the responsibility of publicizing the wages orders in the gazette.<sup>10</sup> Currently in Kenya, the latest general wages and agricultural wages regulations were passed on 1<sup>st</sup> May 2015 through an announcement by the President.<sup>11</sup> They represented a general 12% rise in wages from the previous orders. The enforcement of minimum wage laws in Kenya is done through the Labour Institutions Act and the inspection department of the Ministry of Labour, Social Security and Services, herein after referred to as the Ministry.<sup>12</sup>

The main purpose of minimum wage requirements is to empower workers whose wages are constrained by the excessive market power of the employer.<sup>13</sup> Thus, enforcement is key in ensuring that this objective is realised. In fact, section 48 of the Labour Institutions Act provides that the rate of remuneration and conditions provided by a certain wages order are the utmost minimum an employer can offer an employee falling under such an order. An employer who fails to comply with the provisions of a wages order commits an offence and the court, on finding the employer guilty, may impose penalties in addition to requiring the payment of the difference between the amount that ought to have been paid and that which was paid.<sup>14</sup> Additionally, a labour officer may institute such proceedings on behalf of the

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<sup>8</sup> Section 43(2), Labour Institutions Act (Act No. 12 of 2007)

<sup>9</sup> Section 44, Labour Institutions Act (Act No. 12 of 2007)

<sup>10</sup> Section 46, Labour Institutions Act (Act No. 12 of 2007)

<sup>11</sup> Legal notice no 116, no 117 of 2015, Labour Institutions Act (Act No. 12 of 2007)

<sup>12</sup> Section 35(1), Labour Institutions Act (Act No. 12 of 2007)

<sup>13</sup> Andálon M and Pagés C, 'Minimum wages in Kenya' *DP No. 3390 The Institute for the study of labor* (2008), 2.

<sup>14</sup> Section 48, Labour Institutions Act (Act No. 12 of 2007)

employee.<sup>15</sup> The above is brief look at the legal framework governing minimum wages and their enforcement in Kenya.

This dissertation hence seeks to establish, clearly, the reasons behind this poor rate of enforcement, if it is indeed so, and subsequently review possible ways through which the situation can be remedied. This dissertation will look to answer this questions through its chapters that stream from its two research objectives. Chapter 2 will thus look to investigate on the extent or degree of minimum wage law enforcement in Kenya *vis-a-vis* the causes of such a degree of enforcement if it is indeed established to be poor. Chapter 3 will follow up by looking at approaches that would aid in improving the enforcement of minimum wage laws in Kenya. Chapter 1 will comprise the Introductory Chapter, whereas the last chapter, Chapter 4, will look to conclude the dissertation with recommendations therein as well, reliant on the findings of the preceding chapters.

## **1.2 STATEMENT OF PROBLEM**

As stated above, there indeed exist laws regulating the employment relationships and that ensure dignified working conditions are put in place for employees in Kenya. However, as accords a number of studies, the enforcement of these laws has been dismal in Kenya.<sup>16</sup>

Therefore, this research looks to establish the extent of minimum wage laws' enforcement in Kenya and subsequently the reasons behind their poor enforcement, if it will indeed be established as so, in addition to the avenues through which enforcement can be improved.

## **1.3 JUSTIFICATION OF THE STUDY**

The non-enforcement of employment regulations has received minimal policy attention and has over time been overlooked in studies in Kenya.<sup>17</sup> Therefore, this dissertation presents a good opportunity for this problem to be investigated.

More importantly, it is evident that a lot is at stake if widespread enforcement of these conditions is not realised in Kenya. Constitutional rights of hundreds of thousands

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<sup>15</sup> Section 49, Labour Institutions Act (Act No. 12 of 2007)

<sup>16</sup> Bhorat H and Stanwix B, 'Minimum wage enforcement in the developing world' *PB 13/29 The Development Policy Research Unit (2013)*, 2; DTUCIDC, 'Kenya Labour Market Profile 2015' (2015), 6.

<sup>17</sup> Andálon M and Pagés C, 'Minimum wages in Kenya', 19.

comprising the workforce are presently being breached. The Constitution provides workers with the right to, *inter alia*, fair remuneration and reasonable working conditions.<sup>18</sup> The urgency of this study is therefore called upon in this sense.

## **1.4 GENERAL AND SPECIFIC OBJECTIVES OF THE STUDY**

### **General Objective**

The general objective of this study is to examine on the level of compliance with minimum wage laws by employers in the country as well as scrutinize on the extent as to which these laws are enforced in practice, as they are provided for in the laws. Additionally, avenues through which the state of enforcement can be improved are looked at.

### **Specific Objectives**

The specific objectives of this study are to:

- a) Investigate on the extent of the enforcement of minimum wage laws in Kenya *vis-a-vis* the cause of such a degree of enforcement if it is indeed poor.
- b) Review and suggest appropriate approaches that would improve the enforcement of these laws in Kenya.

## **1.5 RESEARCH QUESTIONS**

The Dissertation's research questions are as follows:

- a) What is the degree or extent of minimum wage legislation's enforcement in Kenya *vis-à-vis* the cause of such a degree of enforcement if it is indeed poor?
- b) What are some of the approaches that can be considered to improve the enforcement of minimum wage legislation in Kenya?

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<sup>18</sup> Article 41(2), Constitution of Kenya (2010)

## **1.6 LITERATURE REVIEW**

This dissertation's literature review, just as the chapters, is divided into 2 thematic areas addressing each of the 2 objectives of the dissertation.

### **1.6.1 What is the degree or extent of minimum wage legislation's enforcement in Kenya vis-à-vis the cause of such a degree of enforcement if it is indeed poor?**

#### **1.6.1.1 The degree or extent of minimum wage legislation's enforcement?**

As aforementioned in the Background, the enforcement of minimum wage legislation in Kenya is pitiable. This position is supported by a resounding majority of the studies that have explored the issue, the latest being the Danish Trade Union Council for International Development Cooperation's (DTUCIDC) 2015 study that places the percentage of labourers paid below their respective minimum wages at 42%.

Older Research by Andálon and Pagés on minimum wage enforcement in Kenya posits that minimum wage non-compliance affected 1 in 6 workers, under the GWC and 1 in 4 workers under the AWC.<sup>19</sup> The research identified paid employees as all workers working for someone else in exchange of a wage or salary though it made use of 1998/99 Integrated labour force survey (ILFS) data, thus is rather fairly outdated<sup>20</sup>

Bhorat and Stanwix similarly place the enforcement of minimum wage legislation as poor in Kenya,<sup>21</sup> asserting that the presence of laws governing minimum wage standards in the developing countries, Kenya included, is not the problem as much as their enforcement is.<sup>22</sup> Moreover, a 2004 study by Omolo and Omiti also brings out the extent of the inadequacy of enforcement, indicating that even the government itself does not adhere to the minimum wage regulations it passes.<sup>23</sup>

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<sup>19</sup> Andálon M and Pagés C, 'Minimum wages in Kenya', 4. (The councils were then referred to as Boards; the General Wages Board and the Agricultural Wages Board)

<sup>20</sup> Both wages boards indicated were established under the Regulations of Wages and Conditions of Employment Act (CAP 229) which is now repealed. The form of the wages boards under the new laws has however not changed under section 43 of the Labour Institutions Act.

<sup>21</sup> Bhorat H and Stanwix B, 'Minimum wage enforcement in the developing world', 4.

<sup>22</sup> Bhorat H and Stanwix B, 'Minimum wage enforcement in the developing world', 2.

<sup>23</sup> Omolo J and Omiti J, 'Is minimum wage policy effective in Kenya?' *DP No. 054/2004 Institute of Policy Analysis and Research (2004)*, 16.

A study by the Kenya Institute for Public Policy Research and Analysis (KIPPRA) similarly points to poor enforcement of statutory minimum wage, attributing it to various reasons as will be observed in the ensuing part.<sup>24</sup> The study observes that enforcement is comparatively better in the formal sector as opposed to the informal sector though this does not seem to help the situation as the formal sector comprises of only around 22% of the Kenyan workforce.<sup>25</sup> A study by the Kenyan Union of Domestic Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) Trade Union also points to the poor enforcement of labour regulations in Kenya, minimum wage laws included.<sup>26</sup>

These studies accordingly reflect a compounded sorry state of the enforcement of minimum wage legislation in Kenya. This dissertation looks to dwell deeper into getting to establish the extent of the enforcement of minimum wage legislation in Kenya in its Chapter 2. In the chapter, the dissertation will look to wholly and comprehensively answer this question by contextualizing what the above works have presented as well as relying on other additional works. Quantitative data sourced from various works such as those mentioned above will be relied on so as to give a stronger and exact picture of state of enforcement. In Chapter 2 also, statistics regarding the Kenyan labour market will also be presented so as to bring context to the state of minimum wage enforcement in Kenya.

The other question that therefore begs at this interval, and that is covered hereon under, is the reason or cause(s) of the poor degree of enforcement of these laws as has been seen from the aforementioned studies.

#### **1.6.1.2 The Causes of the poor degree of enforcement?**

As has been established in the preceding subsection, a majority of the studies commissioned to establish the extent of the enforcement of minimum wage legislation in Kenya do not paint a good picture. Some of the causes and reasons for this poor state of enforcement are brought out in various works as is seen below.

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<sup>24</sup> Manda D, Kosimbei G and Wanjala B, 'Impact of minimum wages on formal employment in Kenya', 5.

<sup>25</sup> Manda D, Kosimbei G and Wanjala B, 'Impact of minimum wages on formal employment in Kenya', 5.

<sup>26</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, May 2011, at 17.



The study by Andálon and Pagés, even though not elaborate and comprehensive as to the root cause, attributes the poor enforcement to certain factors. Firstly, it attributes the poor rate of enforcement to the multiples categories of minimum wages in Kenya which, they argue, make it difficult for workers and firms to know them.<sup>27</sup> Bhorat and Stanwix also backs this assertion, as regards Kenya.<sup>28</sup> Further, Andálon and Pagés bring out the fact that minimum wages in Kenya are set at levels that are high in relation to the existent median wage of labourers in the minimum wage level, especially for semi-skilled and more skilled occupations falling under the wages orders.<sup>29</sup> This, in turn makes minimum wage compliance a costly affair for the employers in the country.

It is, however, important to note that Andálon and Pagés research was based on 1998/99 data as was earlier mentioned, and that later, the legal framework would stipulate considerations that the wages councils should take into account in setting the minimum wage rates and conditions for employment, an aspect that the now repealed Regulations of Wages and Conditions of Employment Act, Chapter 299 of the Laws of Kenya did not incorporate. The conditions the councils should consider in the setting of minimum wage rates include the ability of employers to carry on their business successfully and economic factors such as, the requirements of economic development, the level of productivity and the desirability of attaining and maintain a high level of employment in Kenya.<sup>30</sup> With that said, it is clear that the current framework is keen to look at the economic balance and, therefore, minimum wages set should not fall way above the median wage, as they did previously according to Andálon and Pagés.

Furthermore, various studies have revealed that the Labour Inspectorate under the purview of the Ministry is understaffed, under resourced and generally untrained. The KUDHEIHA study indeed proclaims that Kenya's labour inspectorate service is weak and overburdened.<sup>31</sup> In the same way, the KIPPRA study acknowledges a lack of capacity on the government to enforce minimum wage laws in addition to a lack of cooperation from employers and a general lack of awareness on the part of the

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<sup>27</sup> Andálon M and Pagés C, 'Minimum wages in Kenya', 18.

<sup>28</sup> Bhorat H and Stanwix B, 'Minimum wage enforcement in the developing world', 2.

<sup>29</sup> Andálon M and Pagés C, 'Minimum wages in Kenya', 18.

<sup>30</sup> Section 44(5), Labour Institutions Act (Act No. 12 of 2007)

<sup>31</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, Executive Summary.

workers as factors inhibiting enforcement and compliance with minimum wage laws.<sup>32</sup> As such, this dissertation will come in by looking to bring out, in a comprehensive and conceptualized way, the attitudes and variables that cause a poor degree of enforcement in Kenya if it will indeed be confirmed as so in the preceding section of Chapter 2.

### **1.6.2 What are some of the approaches that can be considered to improve the enforcement of Minimum wage legislation in Kenya?**

In an attempt to analyse approaches that would improve the enforcement of minimum wage legislation, Bhorat and Stanwix offer certain avenues. They propose that the law should play the role of a deterrent to potential offenders through the setting of higher penalties for non-compliance and better inspection of such compliance.<sup>33</sup> The higher costs, in penalties, the employer may face from non-compliance may push such an employer to prefer adhering to minimum wage legislation. The risk of this however becomes that such a punitive approach risks driving firms into the informal sector and has general disemployment effects.<sup>34</sup> This dissertation will look to dwell deeper into such mechanisms by seeing how best a balance can be established to avoid such dire consequences while still being effective.

A study by Benassi on the implementation of minimum wage and creative solutions on the same provides for certain workable remedies that can be applicable in Kenya. These solutions are broadly divided into 5 categories which are, persuasion strategies; capacity building measures; establishment of monitoring systems that allow the detection of non-compliance; empowerment of labourers to enforce their wage rights, not only individually but through collective action; and sanctions structured in a way that they constitute an actual deterrent to non-compliance as is similarly advocated for by Bhorat and Stanwix.<sup>35</sup>

The first mentioned solution, persuasion strategies, involves the building up of public support for minimum wage laws and civic education encouraging compliance and the

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<sup>32</sup> Manda D, Kosimbei G and Wanjala B, 'Impact of minimum wages on formal employment in Kenya', 5.

<sup>33</sup> Bhorat H and Stanwix B, 'Minimum wage enforcement in the developing world', 3.

<sup>34</sup> Bhorat H and Stanwix B, 'Minimum wage enforcement in the developing world', 4.

<sup>35</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions' *Working Paper No. 12 Global Labour University (2011)*, Executive Summary.

importance of such compliance. The second, capacity building measures, involves training and enhancing the awareness of employers and labourers on minimum wage laws and how to go about implementing them. The study indeed encourages the participation and cooperation of all relevant stakeholders in the implementation of such techniques, thereby discouraging a government-only approach especially in techniques such as those of empowerment of the labourers and collective struggle as well as of civic education of the public that other non-state actors such as Unions and Non-Governmental Organisations (NGOs) could similarly facilitate.<sup>36</sup>

The aforementioned KUDHEIHA study in a similar vein also advocates for civic education to the public by creating awareness on the part of workers and lobbying employers to support the implementation of minimum wage laws for the role it plays in national progression.<sup>37</sup> The KUDHEIHA study, seeing that it is specifically concerned with domestic workers, also pushes for the establishment of a specialized SWC for domestic workers as well as the formalization of the sector, which is currently considered informal, so as to better attract the significance and the formalisation that is requisite to ensure the better protection of the workers in the sector by the government.<sup>38</sup>

Indeed, the KUDHEIHA report paves way for a reflection as regards the possibility of the formalization of more sectors in the country currently considered informal as a means to better improve the protection of rights of workers therein by the government, including the right to be paid in accordance with the respective minimum wages. It is important to note that the KUDHEIHA study also encourages multi-stakeholder participation and cooperation in a bid to better implement minimum wage laws as does Benassi.<sup>39</sup>

The above works certainly shed light on the status of minimum wage enforcement in Kenya as well as on the main issues affecting the same together with some of the avenues that can be considered in a bid to improve the state of affairs. This dissertation thus seeks to build on the same by looking to get an even clearer picture on the degree and status of enforcement and thereafter dwelling on acquiring a deeper

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<sup>36</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 7.

<sup>37</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, Executive Summary.

<sup>38</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, Executive Summary.

<sup>39</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, Executive Summary.

understanding on the cause of poor enforcement, if it indeed so. Subsequently, this dissertation looks to capture avenues in which the state of enforcement can be improved by suggesting novel and synthesized solutions as well as conceptualising them in a way that makes them practical for contemporary Kenya.

## **1.7 THEORETICAL FRAMEWORK**

### **Conflict Theory**

Conflict theory is a theory propounded and advanced by various proponents including Karl Marx, Machiavelli, Thomas Hobbes, Max Weber, Randall Collins and Lewis Coser amongst others.<sup>40</sup> Though the different proponents have over time branched to different directions in advancing this theory, its basic form remains intact and it is it that this study relies on.

Conflict theory provides that conflict is normal and in fact characteristic of any and every society.<sup>41</sup> Such conflict is not only tied to violent contention but is in fact mostly in the form of misunderstanding and antagonism that persons and social groups in a given society experience in their daily lives and relationships.<sup>42</sup> Proponents such as Coser see conflict as instinctual for human beings and in fact perceive conflict as a vital means by which humans interact and look to tackle issues affecting them.<sup>43</sup> What becomes of importance is how societies choose to partake in conflict; some descend into violence whereas others formulate norms or laws to govern them.<sup>44</sup> Indeed, the former at times precipitates the latter. Proponents stress that human conflict is goal oriented and as such, human engage in conflict for a certain goal but mainly relating to the distribution of scarce resources.<sup>45</sup>

Proponents of this theory such as Marx, are of the position that societies inevitably organise themselves into certain distinctive groups that have antagonistic

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<sup>40</sup> Randall C, *Conflict sociology*, Academic Press, New York, 1974, 56-61.

<sup>41</sup> Randall C, *Conflict sociology*, 56-61.

<sup>42</sup> Kenneth A, *The social lens: An invitation to social and sociological theory*, Pine Forge Press, 2007, 215.

<sup>43</sup> Kenneth A, *The social lens: An invitation to social and sociological Theory*, 218.

<sup>44</sup> Coser L, 'Social conflict and the theory of social change' *The British Journal of Sociology* (1957), 198.

<sup>45</sup> Kenneth A, *The social lens: An invitation to social and sociological theory*, 213.

relationships within each other.<sup>46</sup> Since such societies are generally engaged in internal conflicts and struggles over power, ideas, and morals, such struggles bring about laws, or a struggle thereof to have laws or norms dictating how such a society can best accommodate the antagonistic social groupings with their antagonistic interests.<sup>47</sup>

How does this theory relate to this study? Well, firstly, this theory brings to context the purpose of the institution of minimum wage laws in Kenya, as is globally, which is to protect workers from pay that does not befit a sustainable standards of living.<sup>48</sup> The underpinning of minimum wage law is to protect workers from employers of whom they are in an antagonistic relationship with since the latter group is primarily inclined to and interested in maximizing or maintaining their profits. Similarly, and more significant to the study, this theory elucidates on a primary reason as to why minimum wage enforcement and compliance is likely poor in Kenya, and that is because employers are in an antagonistic relationship with workers where they are primarily inclined to maximize or maintain profits and are thus unwilling or in fact unable to comply with minimum wage legislation. Coser illustrates on how antagonist groups in society look to advance themselves amidst their differing interests as follows:

*“....As has been pointed out, there is never complete concordance between what individuals and groups within a system consider their just due and the system of allocation. Conflict ensues in the effort of various frustrated groups and individuals to increase their share of gratification. Their demands will encounter the resistance of those who previously had established a 'vested interest' in a given form of distribution of honour, wealth and power...”*<sup>49</sup>

As such, this theory does well in bringing out the forces that almost likely affect the compliance and enforcement of minimum wage legislation in Kenya.

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<sup>46</sup> Karl Marx, *A contribution to the critique of political economy*, Progress Publishers, Moscow, 1977, 2.

<sup>47</sup> Kenneth A, *The social lens: An invitation to social and sociological theory*, 218.

<sup>48</sup> ILO, *Minimum wages: Wage fixing machinery, application and supervision, Report III (Part 4B)*, 79<sup>th</sup> Session 1992, at 10.

<sup>49</sup> Coser L, ‘Social conflict and the theory of social change’, 203.

### **Public Choice Theory**

Another theory that guides this dissertation is the Public Choice theory. In its basic form, this theory seeks to elucidate on factors, primarily economic, that guide the decision making of politicians or policymakers in a given society.<sup>50</sup> A derivative of Public Choice theory however dwells into looking into the factors that affect the decision making of normal citizens in their interaction with the various laws they encounter; this is the derivative mostly relevant to this dissertation. The proponents of this theory range from Knut Wicksell to James Buchanan and Kenneth Arrow.

In its basic form the theory propounds that policy makers and politicians, in the course of their leadership and law-making mandate, do not wholly act in the interests of the common good but are in fact mostly motivated by their self-interests.<sup>51</sup> This economic theory prescribes that politicians are only rational human beings when they look to protect their interests first when carrying out their entrusted mandate even if it results in the common good not being necessarily or wholly achieved.<sup>52</sup> This theory is in respect to the policy makers' mandate as concerns any duty regarding the distribution of wealth and scarce resources as entrusted by the electorate. As such, this theory offers a solution for this predicament facing the common good by providing that systems should be established to check such tendencies by politicians; and such systems should do this by putting at an economic disadvantage such defaulting politicians by fining them in a repugnant way that would deter them from such tendencies in the first place.<sup>53</sup>

The derivative most relevant to this dissertation does not veer much from the basic form of the theory; which prescribes the use of economic rewards and punishments (fines) to regulate behaviour. This branch of Public Choice theory, applies to normal citizens' interaction with the law, and proclaims that people are intrinsically motivated to maximize their personal gain in their behaviour toward the law.<sup>54</sup> As such, proponents assert that, should a law making or law enforcement authority be

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<sup>50</sup> Buchanan J, 'Public choice and public policy' *Centre of Public Choice, Virginia Polytechnic Institute*, 131.

<sup>51</sup> Blankart C and Koester G, 'Political economy versus public choice' *KYKLOS International Review for Social Sciences. Volume 59 No. 2 (2006)*, 3.

<sup>52</sup> Blankart C and Koester G, 'Political economy versus public choice', 3.

<sup>53</sup> Tyler T, *Why people obey the law*, Yale University Press, New Haven and London, 1990, 3.

<sup>54</sup> Tyler, *Why people obey the law*, 21.

keen in ensuring compliance with a law that forces some sort of economic forfeiture on a citizen - a law such as tax remittance or paying employers above or as per minimum wage legislation, then the penalty for not observing such a law should cause graver economic detriment to such a citizen than compliance with the law in the first place would. This is so as to deter non-compliance with the law.<sup>55</sup>

As per this theory, the keenness, consistency and legitimacy of such law enforcement authorities is also key as citizens will be similarly opportunistic and observant such that they may fail to comply with such laws requiring a sort of economic remittance if such an authority is lax and is less likely to detect their breach of law.<sup>56</sup>

The relevance of this theory to this dissertation is that it sheds light on the factors that come into play in minimum wage law compliance and enforcement. These factors range from the keenness and consistency of the labour inspectorate in Kenya as established in the Labour Institutions Act in detecting violations of minimum wage law across the country. The theory points to the fact that enforcement agencies and institutions ought to be effective and proactive so as to secure citizens' compliance with mandated behaviour.

Similarly, this theory calls for an evaluation on the punishment that results as a consequence of a failure to comply with minimum wage law by employers and whether such penalties are economically deterrent enough to secure compliance. According to the Labour Institutions Act, the penalty resultant on an employer for a failure to comply with minimum wage legislation is reimbursement by the employer to the employee of the difference in wages that ought to have been paid to them as per the wages orders, and any other penalty that the court of law would render in addition.<sup>57</sup> This theory would invoke the question of whether such a penalty is in fact grave enough to deter the employer from behaving in a manner contrary to law or is in fact lenient such that employers, on weighing the personal loss that may occasion, prefer not to comply with the said law. This question is more extensively looked at in the succeeding chapters of the dissertation.

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<sup>55</sup> Tyler, *Why people obey the law*, 21.

<sup>56</sup> Tyler, *Why people obey the law*, 29.

<sup>57</sup> Section 48, Labour Institutions Act (Act No. 12 of 2007)

Public Choice theory thus sheds light on some of the variables, such as institutional goodwill and citizen behaviour towards law, that are at play as concerns the enforcement of minimum wage legislation in Kenya.

## **1.8 HYPOTHESIS**

The hypothesis to be tested in this study is:

There exists a contradictory relationship between employers and employees as regards minimum wage legislation; employers are inclined to non-compliance so as to minimize costs while employees would ultimately prefer to earn better wages.

## **1.9 RESEARCH DESIGN AND METHODOLOGY**

This dissertation's aim is to clearly establish the extent of enforcement of minimum wage laws in Kenya, the factors influencing the degree of their enforcement, and different approaches that can be applied to improve the extent of such enforcement based on their practicability in contemporary Kenya. The dissertation's main aim is to conceptualize and synthesize different approaches that have previously looked to deal with this question and thereafter offer a fused and up-to-date outlook on the issue including the best way forward Kenya can adopt as concerns the same.

As such, this dissertation will be primarily based on secondary sources and will involve data collection of both qualitative and quantitative nature as is outlined below:

### **Qualitative data.**

Qualitative research and data will form the main method and source of information and material for this dissertation. This is mainly because qualitative data not only presents the reality of a situation in question, but also offers reasons, attitudes and motives influencing such a situation. Qualitative research will be relied on extensively in all Chapters of the Dissertation.

### **Quantitative data.**

This dissertation will also rely on the complementation of quantitative data. Quantitative data is crucial in that it will aid in presenting situations with exactitude



and in quantifiable terms. The quantitative data the dissertation seeks to rely on will be sourced from secondary sources such as already commissioned reports.

The methods that will be applied for the gathering of both the qualitative and quantitative data for the research are outlined below:

- i. **Desk Research:** Seeing as the dissertation is wholly reliant on secondary research, desk research will form the main research method of data gathering the dissertation will employ. The sources of data under this method will range from published books, reports, journal articles, government publications, dissertations, working and discussion papers, research papers, cases, newspapers and other authoritative internet resources.
- ii. **Library Sources:** This dissertation will also rely on library resources for information gathering. These will similarly range from books, journals, government statistics, dissertations, research papers, newspapers, research papers, cases, and other publications.

An application of both quantitative and qualitative data is crucial as the former will help in bringing clarity to the research questions in precise and exact terms, so as to gauge the situations the research questions look to find answers to with exactitude. Qualitative data is similarly as crucial as, with the complementation of quantitative data, it offers clarity on the attitudes and explanations that inform such quantitative findings thereby bringing clarity to the issues that the research questions seek answers to.

## **1.10 SCOPE, ASSUMPTIONS AND LIMITATIONS OF THE STUDY**

### **1.10.1 Scope**

The dissertation focuses on analysing the enforcement of minimum wage legislation as opposed to questioning the viability or justification of minimum wage law itself. Thus, this dissertation starts off at a point of assumption that minimum wage laws are indeed legitimate policy instruments that therefore ought to be enforced.

### **1.10.1 Assumptions**

More importantly, the word enforcement is taken to be synonymous with compliance in this dissertation's context. This is because unravelling the two in the context of

minimum wage laws is problematic. Increased enforcement is likely to increase compliance, as firms are more likely to comply with the higher likelihood of being caught. This thus ends up painting a good picture as to the state of compliance. However, such increased efforts of enforcement may be as a result of the government reacting to a poor compliance rate in the first place. Thus there is a difficulty in unravelling the two for the purpose of analysis as Bhorat rightly observes.<sup>58</sup>

In this dissertation therefore, both enforcement and compliance are applied and analysed as if they are comparable.

### 1.11 DEFINITION OF TERMS

- i. **Minimum Wage:** Minimum wage may be understood to mean 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.<sup>59</sup>
- ii. **Enforcement:** Enforcement, in this dissertation's context, can be sufficiently defined as the act of compelling observance of or compliance with a law, rule, or obligation.<sup>60</sup>

### 1.12 CHAPTER BREAKDOWN.

The dissertation's chapter breakdown streams from the Research Questions where each Research question will be answered by a Chapter of its own with the Introductory and Conclusion Chapters similarly included. The dissertation will thereby comprise four Chapters in total. They are broken down as follows:

#### **Chapter 1: Introduction**

The introductory chapter comprises a background to the problem and the study's purpose.

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<sup>58</sup> Bhorat H, 'Compliance with minimum wage laws in developing countries' *IZA World of Labor* (2014), 6.

<sup>59</sup> ILO, *Minimum wages: Wage fixing machinery, application and supervision, Report III (Part 4B)*, 79<sup>th</sup> Session 1992, 10.

<sup>60</sup> <http://www.oxforddictionaries.com/definition/english/enforcement> on 4 July 2016.

It includes the:

- a. **Background:** This section introduces the study, its theme, purpose and objectives. It also introduces the legal framework relating to minimum wage legislation enforcement in Kenya in a bid to launch the study's aim which is to analyse the enforcement of minimum wage legislation.
- b. **Statement of problem:** This section clearly outlines the problem or subject this dissertation looks to answer to.
- c. **Justification of the study:** Under this section, the reason the carrying out of this research is called for is brought out.
- d. **Statement of Objective(s):** This section brings out the certain aims this dissertation seeks to accomplish.
- e. **Research Questions:** This section outlines the thematic areas in which the dissertation's objectives are broken into and are to be answered.
- f. **Literature Review:** This section looks at the preceding works that have covered, whether wholly or partly, the areas this dissertation look to dwell in. This section analyses such preceding works as well as relate them to the questions this dissertation looks to answer in a bid to appreciate the previous works on the area and more importantly signify where this dissertation is to come in.
- g. **Theoretical Framework:** This subsection analyses certain theories that help in the understanding of the problems this dissertation looks to address. This section also helps in attempting to project the relationships and dynamics that affect and determine the degree of the enforcement of minimum wage legislation.
- h. **Hypothesis:** This section brings out the contradictory or conflicting variables that create the problem the dissertation looks to analyse and answer to. The problem being the enforcement of minimum wage.
- i. **Research Design & Methodology:** This section outlines the way in which the dissertation is to be carried out, including the methods of research and data gathering that are to be applied so as to answer to the research questions and objectives.
- j. **Scope, Assumptions and Limitations of the Study:** This section clarifies on the area the dissertation looks to dwell in and clarifies on areas it does not look to dwell into. It also includes the assumptions that the dissertation makes.

- k. Definition of Terms:** This section outlines the contextualized meaning of terms that will be recurring throughout the dissertation.
- l. Chapter Breakdown:** This section outlines what each chapter of the dissertation entails.
- m. Time line/Duration:** This section outlines the time and dates by which each chapter will take for its completion.

**Chapter 2: What is the degree or extent of minimum wage legislation's enforcement in Kenya vis-à-vis the cause of such a degree of enforcement if it is indeed poor?**

This is the dissertation's main chapter and it will seek to answer the two main questions it asks wholly and comprehensively. The first question being that of the extent and degree of enforcement while the second one will follow up on the first by looking at the attitudes that inform the situation that will have been presented by the first question.

As such, this Chapter will begin with a comprehensive look at Kenya's contemporary labour market profile especially as it relates to minimum wage laws. This section will mostly rely on quantitative data. Thereafter, the Chapter will look at the legal framework, both local and treaty laws, governing minimum wages and their enforcement, without looking to repeat that that is already covered in Chapter 1's Background. Thereafter, the Chapter will be divided into two sections, each addressing the two main questions it seeks to answer.

The first of the the said sections will mainly look to rely on quantitative data in determining the exact extent of these laws' enforcement in Kenya. The Chapter will also rely on qualitative data relevant to the question the section poses to answer, in a bid to bring clarity to the same.

The second of the sections will thereafter rely on the findings established in the first of the sections. It will mostly make use of qualitative data in a bid to gain an understanding on the issues and attitudes that cause whatever the first of the sections will have presented as the situation in terms of the degree of enforcement. Quantitative data will also be relied on to complement and better bring out some of

the reasons or motivations behind the situation that will have been established in the preceding section.

### **Chapter 3: What are some of the approaches that can be considered so as to improve the enforcement of Minimum wage legislation in Kenya?**

This Chapter will look to offer avenues and the way forward as concern the improvement of the enforcement of minimum wage legislation. Indeed, this Chapter will similarly rely on the findings of the preceding Chapters, more so Chapter 2. Nonetheless, this Chapter will look to rely on both secondary qualitative and quantitative data on remedies and solutions that are best applicable in Kenya.

The Chapter's main aim will be to analyse an array of solutions as suggested in secondary sources, and examine their applicability in the Kenyan context. Such examination will be similarly guided by both quantitative and qualitative data as concerns Kenya's labour market profile. The Chapter's main aim will be to conceptualize different solutions as presented in different works and test their application in contemporary Kenya.

### **Chapter 4: Conclusions and Recommendations**

This final Chapter will thereafter conclude the dissertation with a summary of the final findings as well as offer conclusive recommendations. This Chapter will look to outline and conclusively summarise the main arguments of the preceding Chapters and thereafter offer recommendations from the study and as to the direction minimum wage enforcement should take in Kenya.

## **1.13 TIMELINE/DURATION**

### **Chapter 1**

This Chapter is expected to be complete by 11 February 2017.

### **Chapter 2**

This Chapter is expected to be complete by 11 February, 2017.

### **Chapter 3**

This Chapter is expected to be complete by 19 February, 2017.

### **Chapter 4**

This Chapter is expected to be complete by 19 February, 2017.

## **CHAPTER 2:**

### **WHAT IS THE DEGREE OR EXTENT OF MINIMUM WAGE LEGISLATION'S ENFORCEMENT IN KENYA *VIS-À-VIS* THE CAUSE OF SUCH A DEGREE OF ENFORCEMENT IF IT IS INDEED POOR?**

#### **2.1 INTRODUCTION**

This chapter looks to answer on the extent of the enforcement of minimum wage legislation in Kenya and thereafter answer on the cause of the poor extent of enforcement if it will indeed be established as so. Therefore, so as to bring this questions to context, a section on some of the Kenyan labour market statistics relevant to minimum wage enforcement will commence the Chapter. Another section on the legal framework will follow so as to outline the legal framework, including treaty law, relevant to minimum wage law enforcement before the two main questions the chapter seeks answers to can be addressed in two separate sections.

The Inclusion of the legal framework is so as to similarly bring the main questions to context before scrutinizing on the extent of the actual enforcement in practice and the causes of such a degree of enforcement. Both the labour market profile and the legal framework will be crucial in analysing some of the aspects influencing the questions this Chapter as well as the dissertation in whole seek answers to.

#### **2.2 NATURE OF THE KENYAN LABOUR MARKET**

Of Kenya's population of over 43.2 million, 17.2 million compose the labour force; that is those that are working and those that are not but are actively looking for a job.<sup>61</sup> An astounding 82.7% of those working are in the informal sector, implying that only shy of 2 of every 10 labourers in Kenya are under formal employment.<sup>62</sup>

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<sup>61</sup>DTUCIDC, *Kenya Labour Market Profile 2015*, at 7.

<sup>62</sup> Kenya National Bureau of Statistics, *Economic Survey 2015*, 2015, at 2.

Kenya's unemployment rate was placed at 9.2% of the labour force in 2013 and more appalling is the youth (persons of age 15-24 years) unemployment which was placed at around 38% of the youth population in the labour force.<sup>63</sup> This is even though different sources have presented different figures as to the unemployment rate. According to the World Bank in 2016, the youth unemployment rate in Kenya currently lies at 17.4%.<sup>64</sup> It could however also be that there has been a marked improvement between 2013 and 2016. All in all, the figures still point to a rather high unemployment rate and that a large majority of those unemployed are the youth. The annual job creation rate is similarly unimpressive relative to the increasing demand of jobs. It is estimated that around 350,000 jobs are created annually, both in the formal and informal sector, whereas 800,000 people enter the job market annually.<sup>65</sup>

Similarly, the Kenya labour market has been experiencing a great deal of casualization, which is a lack of job security of labourers -either by a lack of permanence of tenure or weaker working conditions. The proportion of casual workers in the formal sector was established to be at 30%.<sup>66</sup> The significance of Kenya's unemployment rate to this study is that it brings out a dynamic of demand and supply of labour that affects minimum wage law enforcement in the labour market. As it may be observed in the section concerning the causes behind the enforcement or compliance rate, the oversupply of labourers in a struggle for few jobs diminishes the labourers' bargaining power for better wages, ideally those at or above the minimum wage prescribed.

Another point to note is that, in Kenya, small and medium sized enterprises provide employment for 74% of all workers.<sup>67</sup> The significance of this is that workers in smaller firms are less likely to be assured of their working rights and conditions, including pay at or above the minimum wage, as opposed to their counterparts in larger firms or in government.<sup>68</sup> With such a high percentage employed in medium

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<sup>63</sup> DTUCIDC, *Kenya Labour Market Profile 2015*, at 8.

<sup>64</sup> [http://data.worldbank.org/indicator/SL.UEM.1524.ZS?year\\_high\\_desc=true](http://data.worldbank.org/indicator/SL.UEM.1524.ZS?year_high_desc=true) on 21 January 2017.

<sup>65</sup> DTUCIDC, *Kenya Labour Market Profile 2015*, at 7.

<sup>66</sup> Central Organization of Trade Unions – Kenya (COTU-K), Federation of Kenyan Employers (FKE), Government of Kenya (GOK) , ILO, *Kenya Decent Work Country Programme*, 2013-2016, at 7.

<sup>67</sup> COTU-K, FKE, GOK, ILO, *Kenya Decent Work Country Programme*, 2013-2016, at 7.

<sup>68</sup> WageIndicator Foundation, *Wages in Kenya*, June 2012, at 13.



to small size enterprises therefore, the probability of compliance with minimum wage laws indeed diminishes. This fact importantly helps to identify the areas or enterprises that need to be identified as those influencing most the extent of enforcement of working conditions, including minimum wage law, as will be looked at in the relevant section handling the same.

Further, in Kenya, only 11% of the labour force is unionized.<sup>69</sup> Similarly, only a meagre 6.5% are covered under a Collective Bargaining Agreement (CBA).<sup>70</sup> This is similarly significant as will be noted hereunder in the Chapter. Additionally, and equally important is the status of the Kenyan labour market as regards working hours. According to a survey, the normal average working hours in Kenya are 64 hours a week.<sup>71</sup> This is far beyond the prescribed 52 hours of work a week as is lawfully provided for.<sup>72</sup> This becomes relevant in that the variable of time worked relates to the wages payable. Extra hours worked ought to attract compensation in overtime.<sup>73</sup> Working hours hence relate to minimum wage laws, in that compliance or enforcement cannot be said to be achieved in instances where workers are marginally compensated at the minimum prescribed rate but consequently overworked for a stretch of additional hours weekly.

Thus, in analysing the extent or degree of minimum wage enforcement in the relevant subsection, the dissertation will give due regard to the crucial variable of working hours.

The above is a concise outlook of the Kenyan labour market as it mostly relates to minimum wage law enforcement in Kenya. As it will be observed in the succeeding sections and even chapters, most of these statistics will be relevant in analysing and explaining various phenomena as the dissertation takes progress.

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<sup>69</sup> DTUCIDC, *Kenya Labour Market Profile 2015*, at 1.

<sup>70</sup> DTUCIDC, *Kenya Labour Market Profile 2015*, at 1.

<sup>71</sup> WageIndicator Foundation, *Wages in Kenya*, June 2012, at 15.

<sup>72</sup> Section 5, Regulation of Wages (General) Order, Labour Institutions Act (Act No. 12 of 2007)

<sup>73</sup> Section 6, Regulation of Wages (General) Order, Labour Institutions Act (Act No. 12 of 2007)

## 2.3 LEGAL FRAMEWORK GOVERNING THE ENFORCEMENT OF MINIMUM WAGE LAWS

The majority of the laws dealing with the enforcement of minimum wage law are to do with the general mandate and powers of the labour inspectorate to carry out investigations at workplaces so as to identify and confirm the adherence to working standards and conditions by employers. The Labour Institutions Act of 2007 is the main domestic law that deals with the enforcement of minimum wage laws, as was observed in Chapter 1's Background. The Labour Institutions Act mainly derives its relevant parts to do with labour inspection from ILO labour inspection treaties Kenya is a signatory to.

The main ILO treaties are the Labour Inspection Convention 1947 and the Labour Inspection (Agriculture) Convention 1969. They are concerned with the enforcement of working conditions, minimum wage laws included. Seeing as the provisions of the Labour Institutions Act relating to minimum wages and their enforcement are broadly covered in Chapter 1's Background, the International treaties are looked at hereunder including the articles of the treaties that were adopted into the Labour Institutions Act.

The Labour Inspection Convention of 1947 was ratified by Kenya in 1964 whereas the Labour Inspection (Agriculture) Convention was ratified in 1979. The Labour Inspection Convention firstly provides that each member of the ILO for whom the treaty is in force shall maintain a system of labour inspection in industrial and commercial workplaces.<sup>74</sup> Kenya indeed adopted this provision as is seen under Part V of the Labour Institutions Act. Article 3 of the Convention provides for the functions of the system of labour inspection which are, *inter alia*, to secure the enforcement of the legal provisions relating to conditions of work such as provisions relating to hour and wages amongst others.

Article 5 of the Convention calls upon the competent authority as concerns labour, in Kenya's case the Ministry, to promote effective cooperation between inspection services and other government services and public or private institutions engaged in

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<sup>74</sup> Article 1, *Labour Inspection Convention*, 11 July 1947, UNTS vol. 54, 1-792.

similar activities. It also calls for cooperation amongst inspectorate officials, employers and workers or their respective organisations. The Convention further provides that the inspectorate staff be public officials whose status and conditions of service are such that they are assured of stability of employment and are more importantly independent of external influences and changes in government.<sup>75</sup>

Furthermore, the Convention mandates that the number of labour inspectors be sufficient so as to ensure the effective discharge of the duties of the inspectorate.<sup>76</sup> Equally significant, is the Convention's requirement that the Ministry or competent authority in a member state ensure that the labour inspectorate is well equipped for the performance of their duties including with adequate transport facilities necessary.<sup>77</sup>

Moreover, Article 12 of the Convention empowers labour inspectors to access workplaces without notice as well as enter any premises which there is reasonable cause to believe is liable for inspection. Additionally, the Article empowers labour inspectors to require the production of any books, registers or other documents the keeping of which is prescribed by national laws in order to establish whether or not there is conformity. In the context of minimum wages, the documents implied are the wage sheets as provided for in Section 35 of Kenya's Labour Institutions Act. This section provides that a labour officer may, for the purpose of monitoring or enforcing compliance with any labour law, require the production of wage sheets kept by an employer and any other such records as is required by any labour law or wages order to be kept by employers, and may inspect and examine such sheets or records.<sup>78</sup>

Article 16 of the Convention further reiterates that workplaces should be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. Another noteworthy provision of the Convention is its Article 27 that recognises arbitral awards and collective agreements upon which the

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<sup>75</sup> Article 6, *Labour Inspection Convention*.

<sup>76</sup> Article 10, *Labour Inspection Convention*.

<sup>77</sup> Article 11, *Labour Inspection Convention*.

<sup>78</sup> Section 35(1)(a), Labour Institutions Act (Act No. 12 of 2007)

force of law is conferred and thus are inclusively enforceable by the labour inspectorates.

The Labour Inspection (Agriculture) Convention is more or less identical with the Labour Inspection Convention save for the different areas they deal with, one being agricultural and the other commercial. Additionally, the primary provisions of these conventions have equally been adopted into Part V of the Labour Institutions Act. The above is thus a look at the legal framework surrounding the enforcement of minimum wage laws in Kenya. Its incorporation in the dissertation is crucial as it will find relevance in the forthcoming subsections and Chapters.

## **2.4 WHAT IS THE DEGREE OR EXTENT OF MINIMUM WAGE LEGISLATION'S ENFORCEMENT IN KENYA?**

The presence and clarity of minimum wage laws and other labour regulations is not a problem as much as their enforcement is in Kenya and other developing countries.<sup>79</sup> A departure or separation in this sense has indeed been identified by authors and scholars. Labour regulations are mostly in place though stronger enforcement is required.<sup>80</sup> Even in the realm of policy and research, enforcement of labour regulations, minimum wage laws included, has been widely ignored and a focus instead on the viability and feasibility of minimum wage laws themselves in the various local jurisdiction preferred.<sup>81</sup>

With that said, most of the studies commissioned over the years to investigate on the extent of the enforcement of minimum wages in Kenya have painted a grim picture of the same.

### ***Coverage***

Minimum wages cover the labourers identified in both the General Wages Order (GWO) and Agricultural Wages Order (AWO) as well as in the additional sector-specific Sectoral Wages Orders (SWOs) that the Cabinet Secretary is empowered to

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<sup>79</sup> Bhorat H, 'Compliance with minimum wage laws in developing countries', 1-2.

<sup>80</sup> COTU-K, FKE, GOK, ILO, *Kenya Decent Work Country Programme*, 2013-2016, at 12.

<sup>81</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', executive summary.

periodically enact. The Wages Orders are designed to determine and provide for minimum wages judging by the level of skill of a labourer where say, for example, drivers fall in a different category with house servants and the minimum wage for the former is set higher than that of the latter. Multiple categories characterise the Kenyan system so as to set more fitting and customized wages for the many kinds of labourers as opposed to generalizing all to one minimum wage thereby being ignorant of their variant skill levels.<sup>82</sup>

The latest GWO and AWO are as available in the Kenya Law resource.<sup>83</sup> As can be seen in both the General and Agricultural Orders, there are provisions for general labourers and unskilled employees, respectively, presumably to cover the labourers that may fail to fall under the specified occupational categories. Otherwise, the occupations in the GWO range from night watchmen to bakers and artisans, whereas under the AWO, they range from herdsmen, farm foremen and different classes of drivers.

### ***Method of measurement***

The method of measurement used to establish the rate of the enforcement of minimum wage laws is crucial,<sup>84</sup> as different methods may end up relaying differing results. Most of the studies that have previously looked to establish the extend of enforcement, as will be seen hereunder, measure non-compliance or non-enforcement of minimum wage laws by calculating the total number of workers paid below the minimum wage in comparison to the total number of workers and thereafter presenting it as a percentage. As it may however be observed in the subsequent Chapters, the said method may be insufficient in that it fails to measure how serious or grave the degree of such non-enforcement is. This current measure, applied by most of the current studies on the subject, generalises those workers severely paid

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<sup>82</sup> Manda D, Kosimbei G and Wanjala B, 'Impact of minimum wages on formal employment in Kenya', 4.

<sup>83</sup> Legal notice no 116, no 117 of 2015, Labour Institutions Act (Act No. 12 of 2007) [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiX8IGn2ofSAhXMAMAKHZr6BukQFggBMAA&url=http%3A%2F%2Fkenyalaw.org%2Fkl%2Ffileadmin%2Fpdfdownloads%2FLegalNotices%2FLN\\_No.116\\_117\\_of\\_2015\\_1.pdf&usg=AFQjCNHZcBX8xN-YHm3O0YP1-4E5tXqi2g&sig2=EGmw-anOmLIJXXigknTgDg](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiX8IGn2ofSAhXMAMAKHZr6BukQFggBMAA&url=http%3A%2F%2Fkenyalaw.org%2Fkl%2Ffileadmin%2Fpdfdownloads%2FLegalNotices%2FLN_No.116_117_of_2015_1.pdf&usg=AFQjCNHZcBX8xN-YHm3O0YP1-4E5tXqi2g&sig2=EGmw-anOmLIJXXigknTgDg) on 11 February 2017.

<sup>84</sup> Bhorat H, 'Compliance with minimum wage laws in developing countries', 2.

below the minimum wage and bundles them together with those just cents shy of a wage at the minimum level.<sup>85</sup>

### *Extend or degree of enforcement*

Nonetheless, as has been mentioned, mostly all the studies on this subject point to a poor degree of the enforcement of minimum wage legislation. The latest study on the subject by DTUCIDC places the non-enforcement or non-compliance at 42% of all the Kenyan labourers.<sup>86</sup> This implies that only 58% of all labourers are duly and legally remunerated at or above the minimum wage rates. The Report further indicates that non-enforcement largely affects workers in the informal sector. Eighty-five percent (85%) of workers in the formal sector are paid at or above the minimum wage compared to a negligible 35% of all workers in the informal sector. This is indeed dumbfounding given the fact that the informal sector accounts for over 82% of Kenya's labour force as was observed in the first section of this Chapter.

The DTUCIDC Report relies on a 2012 survey to indicate that non-enforcement mostly affects the youth or those under 29 years of age, with only 47% of them being remunerated at or above the minimum wage compared to their counterparts 50 years or older, of whom 71% are paid at or above their respective minimum wages.<sup>87</sup> Non-enforcement is also more rampant for workers in smaller firms and for workers without working contracts in comparison to their counterparts with permanent contracts. The enforcement or compliance rate for workers with permanent contracts is at 78% whereas that of workers without contracts is at 40%.<sup>88</sup> The survey also indicates that men are more likely affected by non-enforcement than women; 64% of women are paid at or above the minimum wage relative to 55% of the men.<sup>89</sup>

In terms of variances according to occupations, the survey points out that labourers in the craft and related trades are least paid at or above the minimum wage as compared to managers at an astounding 11% versus 82% enforcement rate

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<sup>85</sup> Bhorat H, 'Compliance with minimum wage laws in developing countries', 2.

<sup>86</sup> DTUCIDC, *Kenya Labour Market Profile 2015*, at 6.

<sup>87</sup> WageIndicator Foundation, *Wages in Kenya*, at 11.

<sup>88</sup> WageIndicator Foundation, *Wages in Kenya*, at 11.

<sup>89</sup> WageIndicator Foundation, *Wages in Kenya*, at 11.

respectively.<sup>90</sup> In terms of variances as to education, labourers with only primary education are mostly affected by non-enforcement as compared to their counterparts with more than upper secondary education at a similarly astounding huge differential of 36% versus 79% enforcement rate respectively.

The above Report's and survey's credibility is indeed enhanced by the fact that it takes consideration of the hours of work when computing the compliance or enforcement rates with minimum wages. In fact, the survey calculates the wage rates hourly as opposed to say monthly or daily.<sup>91</sup> This way, it eliminates the risk of assessing minimum wage law enforcement without giving regard to hours worked or overtime payable as had been mentioned in this Chapter's first section.

Andálon and Pagés relied on 1998/1999 IFLS Labour Force data for their analysis of minimum wage enforcement which is now rather outdated. Nonetheless, they still observed that minimum wage enforcement was poor. The finding indicated that 1 in 4 workers under the AWO was paid below the minimum wage (24% non-compliance/enforcement rate) and that 1 in 6 workers under the GWO were paid below the minimum wage (17% non-compliance/enforcement rate).<sup>92</sup>

If it is anything to go by, a comparison of the DTUCIDC's Report numbers (based on a 2012 survey) with those of Andálon and Pagés' study, reliant on 1998/9 labour force data, show that minimum wage enforcement in Kenya has been at a downward spiral in recent years. At 1998/9, the proportion of labourers paid below the minimum wage was only at 17% and 24% under the GWO and AWO respectively whereas at 2012, the proportion grew to 42% of all the workers as accords the DTUCIDC Report. However still, this could be a potentially dangerous inference in that both studies were carried out differently – such as the consideration for the hours of work by the 2012 study – and also that other factors, such as the regular increases in the amounts prescribed as minimum wages over the years, could have affected the enforcement rate between the two periods.

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<sup>90</sup> WageIndicator Foundation, *Wages in Kenya*, at 12.

<sup>91</sup> WageIndicator Foundation, *Wages in Kenya*, at 11.

<sup>92</sup> Andálon M and Pagés C, 'Minimum wages in Kenya', 4-9.

Nonetheless, both studies are comparable as regards non-enforcement affecting the youth and less educated more. Andálon and Pagés similarly find that it is mostly younger workers and the less educated that are more likely to be paid below the minimum wage.<sup>93</sup> However, in regards to the gender variable, Andálon and Pagés differ with the 2012 survey; they point out that the rate of enforcement was the same for both women and men under the AWO but in fact lower for women, at 75% compared to 93% for men, under the GWO. Conversely, according to the 2012 survey, women were better covered than men under both the GWO and AWO aggregated. Equally important to note is that non-enforcement affected higher skilled workers under the GWO more than their lower skilled counterparts therein according to Andálon and Pagés' study.<sup>94</sup> This could be because the prescribed wages for higher skilled workers are set higher than those of lower skilled workers under the Orders.

The above are the main studies that have looked to empirically establish the degree of the enforcement of minimum wage laws in Kenya and they both point to a poor degree of enforcement. Others such as of Haroon Bhorat assert that minimum wage law enforcement and compliance in developing countries has always been poor and Kenya is no exception with an equally astounding non-compliance or non-enforcement rate of 70% in higher skilled occupations in urban areas.<sup>95</sup>

At this point, it is evident that the enforcement of minimum wage legislation is indeed poor in Kenya. The latest study by DTUCIDC, places it at 42% of all labourers in Kenya, whereas the older study by Andálon and Pagés indicate a somewhat lower but still significant non-enforcement rate. It has also been observed that non-enforcement is mostly rampant in the informal sector which comprises more than 82% of the Kenyan workforce. The method mostly applied to measure non-enforcement in the studies is taking the proportion of those paid below the minimum wage and contrasting it to the total number of labourers to present it as a percentage. All in all this section of the Chapter establishes that indeed the degree or extent of the enforcement of minimum wage legislation in Kenya is poor.

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<sup>93</sup> Andálon M and Pagés C, 'Minimum wages in Kenya', 9.

<sup>94</sup> Andálon M and Pagés C, 'Minimum wages in Kenya', 9.

<sup>95</sup> Bhorat H, 'Compliance with minimum wage laws in developing countries', 4.



## **2.5 WHAT IS THE CAUSE OF THE POOR DEGREE OF MINIMUM WAGE LEGISLATION'S ENFORCEMENT IN KENYA?**

As has been established in the preceding section, the enforcement of minimum wage legislation in Kenya is dismal. This section consequently endeavours to look into the reasons or causes of the poor degree of enforcement of these laws. It will look to do this in four broad subsections that encompass the various causes or reasons. The subsections are Inspectorate capacity and other institutional factors; Setting; Informality; and lastly, Lack of awareness and civic education.

### **2.5.1 Inspectorate Capacity and other Institutional factors**

As has been previously mentioned, the labour inspectorate under the Ministry is responsible for the enforcement of minimum wage legislation in Kenya. The inspectorate is supposed to do this by carrying out inspections at the workplaces and requesting wage sheets as well as interviewing employees should there be need for the same.<sup>96</sup> However, in practice, many studies point to a lack of capacity on the part of the Ministry's inspectorate as a major factor hampering the enforcement of minimum wage laws. The poor capacity of the labour inspectorate to enforce labour laws is attributable to an array of factors such as corruption, being under resourced and outnumbered relative to the demands of the labour market.

The effectiveness of labour inspection is typically measured by comparing the number of inspectors with the numbers of the workforce in a certain jurisdiction; this is according to the ILO in 2006.<sup>97</sup> Thus according to the ILO, the benchmark for an ideal inspectorate for developing countries like Kenya is one inspector for every 40,000 workers. However, as the previously looked at KUDHEIHA study observes, Kenya's numbers are indeed depressing. As at 2010, Kenya's inspectorate of only 90 staff had to serve a labour force of 10.958 million workers. That presented a ratio of 1 inspector for every 121,752 workers. What is even more appalling is that the numbers have over the years kept looking worse. At 1996, the ratio was 1 inspector for every 37,284 workers; this was optimal applying ILO standards. The numbers have however consistently and gradually gone downhill from there on; not only in terms of the ratios but in the actual number of the inspectorate staff. Below is the table

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<sup>96</sup> Section 35, Labour Institutions Act (Act No. 12 of 2007)

<sup>97</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 21.

from the KUDHEIHA report comparing the number of staff of the labour inspectorate and the work force as from 1996 to 2010.<sup>98</sup>

**Table 2.1**

| <b>Year</b> | <b>Total employment (Millions)</b> | <b>Inspectorate staff (Nos.)</b> | <b>Inspectorate staff/Empl-oyment ratio</b> | <b>Variance</b> |
|-------------|------------------------------------|----------------------------------|---|-----------------|
| <b>1996</b> | 4.314                              | 116                              | 37,284                                      | -2,716          |
| <b>1997</b> | 4.707                              | 114                              | 41,214                                      | 1,214           |
| <b>1998</b> | 5.100                              | 112                              | 45,506                                      | 5,506           |
| <b>1999</b> | 5.493                              | 114                              | 48,181                                      | 8,181           |
| <b>2000</b> | 5.912                              | 115                              | 51,755                                      | 11,755          |
| <b>2001</b> | 6.367                              | 116                              | 55,257                                      | 15,257          |
| <b>2002</b> | 6.852                              | 116                              | 59,197                                      | 19,197          |
| <b>2003</b> | 7.330                              | 115                              | 63,702                                      | 23,702          |
| <b>2004</b> | 7.999                              | 117                              | 68,363                                      | 28,363          |
| <b>2005</b> | 8.505                              | 112                              | 75,938                                      | 35,938          |
| <b>2006</b> | 8.993                              | 107                              | 84,050                                      | 44,050          |
| <b>2007</b> | 9.479                              | 104                              | 91,143                                      | 51,143          |
| <b>2008</b> | 9.946                              | 93                               | 106,948                                     | 66,948          |
| <b>2009</b> | 10.439                             | 96                               | 108,735                                     | 68,735          |
| <b>2010</b> | 10.958                             | 90                               | 121,752                                     | 81,752          |

Evidently, from the above table, the demands of the labour force have overtaken the capacity of the government to ensure the steady enforcement of labour regulations, minimum wage laws included. It is manifest that the Kenyan government has over the years significantly failed to focus on endowing the inspectorate so as to protect workers' rights in Kenya.

More to that, other additional factors have contributed to the inspectorate's sorry capacity. Ronconi and Almeida, in their work on the enforcement of labour laws in the developing world, Kenya included, observe some trends that severely limit the effectiveness of labour inspections. For example, they observe that in almost all the countries they surveyed, larger firms are more likely to be inspected than smaller firms.<sup>99</sup> This is even though larger firms are more likely to comply with labour

<sup>98</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 21

<sup>99</sup> Almeida R & Ronconi L, *The enforcement of labor law in the developing world: Some stylized facts from labor inspections*, May 2012, at 4.

regulations relative to smaller firms.<sup>100</sup> Also, this becomes more noteworthy in that in Kenya, 74% of all employment is provided by small to medium sized enterprises as was observed in the first section of the Chapter. Ronconi and Almeida similarly observe that inspected firms, relative to those not inspected, are more likely located in the capital city and are more likely to have a large proportion of their workforce unionized. This is even though many of the sectors in Kenya are decentralised, as the KUDHEIHA study observes for domestic workers,<sup>101</sup> and that only a meagre 11% of the Kenya work force are unionised.<sup>102</sup> Ronconi and Almeida also observe that inspected firms, relative to the non-inspected, are more likely to have a more educated workforce. The higher probability for inspection attributable to unionisation and education is so since unionized and educated workers are more likely aware of their rights and thus are more likely to lodge complaints to the inspectorate for inspection.<sup>103</sup>

What is observable from Ronconi and Almeida's finding is that there is an observable disconnect between the objectives of the labour inspectorates and how they go about achieving them. The inspectorates, Kenya's included, seems to be ignorant of the areas where violations are mostly likely to happen.<sup>104</sup>

Corruption, bribery and a general lack of institutional goodwill has also been a factor incapacitating the Inspectorate and other key institutions relevant for minimum wage law enforcement. It has been pointed out that Kenyan trade unions are constantly concerned with the bribery of labour inspectors by employers in the country.<sup>105</sup> The KUDHEIHA study also observes a general culture of impunity surrounding the enforcement of labour regulations from the players in the labour market, the inspectorate and employers included.<sup>106</sup> The Ronconi and Almeida study indeed observe a correlation between a low rule of law perception in a certain State and the

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<sup>100</sup> Almeida R & Ronconi L, *The enforcement of labor law in the developing world: Some stylized facts from labor inspections*, at 4.

<sup>101</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 13.

<sup>102</sup> DTUCIDC, *Kenya Labour Market Profile 2015*, at 1.

<sup>103</sup> Almeida R & Ronconi L, *The enforcement of labor law in the developing world: Some stylized facts from labor inspections*, at 12.

<sup>104</sup> Almeida R & Ronconi L, *The enforcement of labor law in the developing world: Some stylized facts from labor inspections*, at 14-15.

<sup>105</sup> DTUCIDC, *Kenya Labour Market Profile 2015*, at 6.

<sup>106</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 17.

inefficiency of labour inspection in the same State.<sup>107</sup> Another concern is that the awards of Kenya's Industrial Court, a court constitutionally established to adjudicate on labour issues and to protect labour rights, have been identified as not being consistently enforced in the country.<sup>108</sup>

### 2.5.2 Setting

Another crucial factor influencing the degree of the enforcement or compliance with minimum wage legislation is their setting. Setting in this case refers to how the minimum wages are set either in terms of amounts prescribed or occupations included therein (or excluded for that matter) in the wages orders. Setting in this subsection's context similarly refers to other considerations such as of the sufficiency of existent SWCs relative to the labour market's demands.

#### *Amount*

Authors such as Andálon and Pagés and Bhorat and Stanwix have attributed the poor degree of the enforcement or compliance with minimum wage law to a high setting of minimum wages in terms of amount.<sup>109</sup> Such a high setting, evident especially for higher skilled occupations as seen in the current GWO and AWO, means that fewer employers are able to pay such employers at the prescribed rate without being economically constrained.

Andálon and Pagés observe that the Kenyan minimum wages under the respective order are set relatively high compared to the prevailing median wages in Kenya.<sup>110</sup> They observe that the minimum wages set in the orders are way higher than the existent median wages of Kenyan workers thus they may be in fact be impractical or over-ambitious on the part of the setters. To better scrutinize how high the minimum wage is set relative to the average wage, Andálon and Pagés rely on the *Kaitz ratio*, a method of measurement used to compare the two – median wage and the prevailing

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<sup>107</sup> Almeida R & Ronconi L, *The enforcement of labor law in the developing world: Some stylized facts from labor inspections*, at 9.

<sup>108</sup> DTUCIDC, *Kenya Labour Market Profile 2015*, at 3.

<sup>109</sup> Bhorat H and Stanwix B, 'Minimum wage enforcement in the developing world', 5.

<sup>110</sup> Andálon and Pagés rely on the median wage as opposed to the mean wage as reliance on the mean wage means a risk of few very high earners nonetheless influencing the sum to give an inaccurately higher depiction of the average wage of Kenyans.

minimum wages. Grounded on the *Kaitz ratio*, they observe that Kenya's minimum wage is 0.76 of the median wage under the GWO.<sup>111</sup> They further indicate that this ratio is indeed high since Columbia's ratio of 0.68 is considered to be high.<sup>112</sup> As such, the high setting in amounts is observed as one of the causes of the low degree of compliance with these laws as employers are economically constrained to be accommodative of them.

This is not helped by the high unemployment rate facing the country as has been pointed out in this Chapter's first section. With such a depressing unemployment rate, employees lack bargaining power against the relatively few employers under the classical economic model.<sup>113</sup> This means that many labourers find themselves willing, out of desperation, to be employed even when receiving measly wages below the prescribed minimum wage.<sup>114</sup>

### *Occupations and Wages Councils*

Another factor as regards the setting of minimum wage is the occupations considered in the wages orders and also the sufficiency of the current SWCs as such. As regards the occupations, it has been noted that some of the existent occupations provided for in the current wages orders are outdated or non-existent in today's labour market.<sup>115</sup> This invariably means that the wages orders have failed to consider some of the novel and contemporary occupations in Kenya. Indeed, this exclusion could however or similarly relate to the problem of informality that will be looked at hereinafter.

Furthermore, the KUDHEIHA study observes that there lacks SWCs for nonetheless crucial sectors or industries that indeed deserve the specialized attention that comes with the SWCs. As was observed in Chapter 1, the Cabinet Secretary of the Ministry is empowered to establish sectoral councils for any sector that, in his opinion, is not sufficiently covered under the GWO and AWO. However this is in actuality not the

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<sup>111</sup> It is however 0.39 of the median wage under the AWO: Andálon M and Pagés C, 'Minimum wages in Kenya', 11.

<sup>112</sup> Andálon M and Pagés C, 'Minimum wages in Kenya', 11.

<sup>113</sup> This is because numerous labourers, and prospective labourers as such, relative to fewer employers are all willing and able to work under poor conditions of work and as such the bargaining power lies with the employers: Gustav R, 'The micro-economics of "surplus labor" *Economics Growth Centre Discussion Paper No. 772, Yale University (1997)*, 1.

<sup>114</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 24.

<sup>115</sup> Andálon M and Pagés C, 'Minimum wages in Kenya', 18.

case for domestic workers as the KUDHEIHA report points out.<sup>116</sup> This becomes even more significant considering that the domestic workers industry accounted for a whopping 5.2% of waged employment in Kenya as at 2011.<sup>117</sup> Of course, this point similarly relates to informality in Kenya's labour market which will be looked at in the ensuing part.

Correspondingly, and in a light that would seem contradictory of the above, the many categories of minimum wages in their variances in terms of location and occupation in Kenya have been attributed as a factor causing the poor enforcement of minimum wage law. This is because the many categories mean that it is harder for the employers to master the applicable minimum wage for their respective employee(s).<sup>118</sup> Indeed, this is a concern that can instead or equally be attributed to a lack of awareness or civil education as will be looked at in a succeeding subsection of this section concerning the same.

### *Sanctioning*

Additional to the legal duty of minimum wage setting are the sanctions or penalties that attach to minimum wage law non-compliance by employers. Under the Labour Institutions Act, the penalty resultant on an employer for a failure to comply with minimum wage legislation is reimbursement by the employer to the employee of the difference in wages that ought to have been paid to them as per the wages orders, and any other penalty that the court of law would render in addition.<sup>119</sup> Borat and Stanwix indeed observe that higher penalties for non-compliance allow for better compliance with minimum wage law.<sup>120</sup>

It could therefore be, as a cause, that the poor degree of enforcement in Kenya is attributable to the non-existence of higher or, more so, more established and clear penalties under the law such as to be more effective in deterring employers from non-compliance. However, the prospects of improved sanctions will be looked at in the ensuing Chapter concerned with avenues that can be put in place to improve

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<sup>116</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 15.

<sup>117</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, executive summary.

<sup>118</sup> Borat H and Stanwix B, 'Minimum wage enforcement in the developing world', 2.

<sup>119</sup> Section 48, Labour Institutions Act (Act No. 12 of 2007)

<sup>120</sup> Borat H and Stanwix B, 'Minimum wage enforcement in the developing world', 3.

enforcement. Also noteworthy is that the effectiveness of sanctions goes hand in hand with and is dependent on an effective inspectorate keen on identifying violations, which is neither the case in Kenya as has been observed above.

### 2.5.3 Informality

Informality comprises an additional major factor that influences the enforcement of minimum wage legislation in Kenya. Informality in this context refers to the high proportion of informal labour that there is in Kenya. As has been mentioned before, a whopping 82.7% of employment in Kenya comes from the informal economy whereas only shy of 3 in 10 employees therein are remunerated at or above the minimum wage. In contrast, 9 in 10 employees are remunerated at or above the minimum wage in the formal sector. Informality can indeed thus be attributed as one of the major factors causing the poor enforcement or compliance with minimum wage laws in Kenya. Ronconi and Almeida indeed observe a correlation between inspections and the size of the informal economy, where countries with more labour inspections carried out have less informality, relative to countries with less inspections having more informality.<sup>121</sup>

The question as regards informality is however complex and difficult to grab a hold of especially as regards establishing causal effect and causal linkage.<sup>122</sup> It is also reckless to refer to informality as a mere problem whereas informality could as well be looked at as a means by which employers and entities in such an economy absorb the economic shocks and constrains in the said economy.<sup>123</sup> In such cases, the lack of the option to exist as an informal entity for such employers would mean extinction and that would yield negative results to economic growth and the rate of employment

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<sup>121</sup> Almeida R & Ronconi L, *The enforcement of labor law in the developing world: Some stylized facts from labor inspections*, at 9.

<sup>122</sup> Defining informality is equally difficult since informality involves heterogeneous factors and such factors furthermore vary regionally. For example in Kenya, determining informality is problematic; a Kenyan entity may be registered but nonetheless fail to pay taxes or declare their employees for the purpose of social insurance coverage. There is indeed no single, widely agreed definition of informality used by the academic community. See USAID, *Removing barriers to formalization: The case for reform and emerging best practice*, March 2005, at 1.

<sup>123</sup> USAID, *Removing barriers to formalization: The case for reform and emerging best practice*, at 3.

consequently.<sup>124</sup> In this sense then, Informality can be looked at as advantageous or at least provisionally crucial.

However still, in some aspects, avoidable but poor enforcement of minimum wage legislation is attributable, to informality. It is observed that firms elect to stay informal so as to avoid labour regulations that they view as excessive economically.<sup>125</sup> As such, such firms make the rational economic decision even though still illegal.

Nonetheless, the USAID observes that there are barriers that keep firms out from formalizing, thereby being less visible for inspection. These barriers range from and are caused by factors such as bureaucracy in business registration and licensing, and corruption in public administration.<sup>126</sup> In such instances therefore, the blame for locking out firms in the informal economy can be wholly apportioned to the state that fails to ensure an effectual and corruption-free business environment.

Additionally, and in another vein, Informality becomes a problem when rather novel and informal occupations are not included in the wages orders or granted designated SWCs for specialized attention. Such affected employees in the informal economy are therefore left to be covered under the “general” or “unskilled” employee categories under either the GWO or AWO.<sup>127</sup> As such, informality becomes a general problem when the right occupations cannot be identified to the labourers in the first place. Informality indeed surrounds the major issues that derail enforcement in Kenya. As will be looked at in the succeeding Chapter, the creation of an efficient and corruption free business environment by the State is crucial in helping firms transform into formalization and thus become more visible for inspections.

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<sup>124</sup> Manda D, Kosimbei G and Wanjala B, ‘Impact of minimum wages on formal employment in Kenya’, 1.

<sup>125</sup> USAID, *Removing barriers to formalization: The case for reform and emerging best practice*, at 17.

<sup>126</sup> USAID, *Removing barriers to formalization: The case for reform and emerging best practice*, at 19.

<sup>127</sup> Manda D, Kosimbei G and Wanjala B, ‘Impact of minimum wages on formal employment in Kenya’, 4.



#### **2.5.4 Lack of awareness and civic education**

Another key factor that has derailed the enforcement or compliance with minimum wage law in Kenya is a general lack of awareness and education on the part of the various relevant players in the labour market including mostly employers and employees. The minimum wage laws in Kenya are indeed relatively complex in that they include various variations variant on occupation and location. Similarly, minimum wages are updated at least annually or biennially, thus becoming subject to regular change. Sectoral wages are also periodically published and gazetted by the respective SWCs. Consequently, these categories indeed prove to be too many for employers to master and Bhorat and Stanwix indeed observe this as a factor inhibiting compliance and enforcement.<sup>128</sup>

In a similar vein, the herein relied on KUDHEIHA study points to a low level of awareness on the part of the players in the labour market as regards minimum wage law and other conditions of labour.<sup>129</sup> The KIPPRA Report equally points to a general lack of awareness on the part of the workers as regard their right to remuneration at or above the prescribed minimum wages.<sup>130</sup> Even in instances where employers have been good willed and informed and in fact paid employees at the prescribed minimum wage requirements, complaints as regards subjecting workers to extended hours of work without due overtime payments have been reported especially in Kenya's hospitality industry.<sup>131</sup>

#### ***Unionization***

Furthermore, the Kenyan labour force presents low figures as regards unionization. Only 11% of Kenyan labourers are members of trade unions.<sup>132</sup> Moreover, only 6.5% of Kenyan labourers are covered under a CBA.<sup>133</sup> A positive correlation between unionization and better wages, at or above the minimum wage, has been established

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<sup>128</sup> Bhorat H and Stanwix B, 'Minimum wage enforcement in the developing world', 2

<sup>129</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 17.

<sup>130</sup> Manda D, Kosimbei G and Wanjala B, 'Impact of minimum wages on formal employment in Kenya', 5.

<sup>131</sup> However still, this could indeed as well be inferred as a conscious calculated economic decision by employers as opposed to a lack of awareness as to overtime and the prescribed rates of remuneration for such overtime work: DTUCIDC, *Kenya Labour Market Profile 2015*, at 6.

<sup>132</sup> DTUCIDC, *Kenya Labour Market Profile 2015*, at 1.

<sup>133</sup> DTUCIDC, *Kenya Labour Market Profile 2015*, at 1.

by a multitude of studies. Ronconi and Almeida observe that labour inspection, in low and lower-middle income countries such as Kenya, is more likely to take place in firms with unionized workers as opposed to those without.<sup>134</sup> They attribute this to the fact that in such countries, inspection agencies have lower technical capacity to detect violations and hence rely more on complaints which are more likely to be made by workers who are aware of their rights, such as unionised and more educated workers. Unionization is therefore key in ensuring or at least positively influencing the degree of enforcement of labour regulations and thus the fact that only 11% of the Kenyan workforce is unionized points to a general lack of collective struggle as one of the causes of the poor degree of compliance or enforcement with minimum wage laws.

Authors such as Omolo observe that negotiated wages enumerated in CBAs arising from trade union membership are mostly if not always at an amount that is above the prescribed minimum wages for the respective employers.<sup>135</sup> Omolo remarkably observes that the prescribed minimum wages at a given time act as benchmarks as to which the various parties in the negotiations of CBAs use to more or less guide the amounts in wages that are consequently agreed upon.<sup>136</sup> He terms this as the ‘ripple effect’ of minimum wages, where prescribed minimum wages act as a guide to negotiated wages and thus consequently, it more likely results in higher agreed upon (negotiated) wages. Owidhi equally observes that negotiated wages tend to be set way higher than the prevailing prescribed minimum wages.<sup>137</sup> The above reliance on both Omolo’s and Owidhi’s work is so as to bring out the significance unionization has on wages and yet the opportunity of unionization is one that a majority of Kenyan labourers seem not to be keen on relying on, thus contributing as a factor causing a general low compliance and enforcement rate of labour regulations let alone minimum wage laws.

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<sup>134</sup> Almeida R & Ronconi L, *The enforcement of labor law in the developing world: Some stylized facts from labor inspections*, at 12.

<sup>135</sup> Omolo J, ‘Ripple effects of minimum wages and the response of labour markets in Kenya’ PhD Thesis, Kenyatta University, November 2010, 20.

<sup>136</sup> Omolo J, ‘Ripple effects of minimum wages and the response of labour markets in Kenya’, 20.

<sup>137</sup> Owidhi G, *Economic paper for decision making in trade unions in Kenya*, April 2016, at 18.

Indeed, the low level of unionization could be attributed to a lack of awareness and civic education on the part of the workers and employers too,<sup>138</sup> thus bringing this part to context. In the KUDHEIHA study, 89.3% of domestic workers indeed identified trade union membership as a prospective avenue through which they could improve their working conditions though such workers would consequently be illegally constrained by their employers from proceeding to join such trade unions.<sup>139</sup> This is despite the fact that every worker is constitutionally empowered and protected to freely associate for the purpose of championing for his or her rights.<sup>140</sup>

Thus, the general lack of awareness in the labour market amongst the different players becomes a major hindrance for the compliance with and enforcement of minimum wage legislation among other conditions of labour. A general lack of complete knowledge as to the respective legal rights and obligations arising for both employers and employees is indeed a major factor causing the sorry state of enforcement and compliance.

Accordingly, what is looked at above are some of the major factors that are behind the poor extent of the enforcement of minimum wage legislation in Kenya. They range from Institutional factors; the legal setting of minimum wages; the informal nature of the majority of Kenya's labour force; and a general lack of awareness amongst some of the key players in the labour market.

## **2.6 CONCLUSION**

This Chapter thereby concludes having analysed the questions it sort to. It indeed establishes a poor extent of the enforcement of minimum wage legislation and comprehensively looks at some of the key factors causing the said poor degree of enforcement. Consequently, what is looked at in the succeeding Chapter 3 are some of the avenues that may be applicable for the purpose of improving the now established poor degree of enforcement.

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<sup>138</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 12.

<sup>139</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 12-13.

<sup>140</sup> Articles 36 & 41, Constitution of Kenya (2010)

## **CHAPTER 3:**

### **APPROACHES THAT CAN BE CONSIDERED SO AS TO IMPROVE THE ENFORCEMENT OF MINIMUM WAGE LEGISLATION IN KENYA**

#### **3.1 INTRODUCTION**

As has been observed in Chapter 2, the extent of the enforcement of minimum wage laws is indeed poor and the causes to that regard have been looked at as well. Chapter 3 therefore follows up and seeks to look at some of the avenues and approaches that can be applied in Kenya so as to remedy the sorry state of these laws' compliance and enforcement rate. As will be seen, most of these avenues looked at hereunder mostly stem from the causes looked at in Chapter 2 and seek, as such, to be remedial of the said causes. The avenues are broadly broken down into 6 categories being setting; labour inspection; "soft" mechanisms, awareness and unionisation; sanctioning; formalization; and other additional measures addressed in different sections.

#### **3.2 SETTING**

As discussed in Chapter 2, 'setting' refers to how minimum wages are fixed, and all the legal considerations therein including the provisions to do with the amount; categorizations and variations regarding occupations and location; and furthermore, provisions relating to the enforcement. As such, and as was similarly mentioned in Chapter 2, the legal process of setting the minimum wages is crucial and is a factor that could contribute to a poor compliance or enforcement rate. Indeed, it is noted that when looking to scrutinize the enforcement rate of minimum wage laws and means by which such enforcement can be improved, it is important to first consider how they are set in the relevant enabling laws.<sup>141</sup>

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<sup>141</sup> This is what the ILO refers to as the comprehensive approach. See ILO, 'Chapter 6 - How to enforce minimum wages' in *Minimum wage policy guide* (2016), 2.

### ***Categories***

As was observed in Chapter 2, Kenya's minimum wages are indeed numerous due to their variations in occupations and locations.<sup>142</sup> So as to better enhance enforcement, it is argued that a less complex minimum wage system is preferable.<sup>143</sup> This is more so for governments that are constrained of resources, such as is the case for Kenya<sup>144</sup>, in that they hardly can enforce and follow up on the different categories and variations of minimum wages.<sup>145</sup> As such, Kenyan policy makers and legislators should consider simplifying or altering the provisions to make them less complex. This way, minimum wage rates will be better known by inspectors, employers and employees, thus enhancing compliance and enforcement.<sup>146</sup> In a similar vein, less complex minimum wages are advantageous in that they are easier to communicate and sensitize to the different labour market players when public campaign and awareness efforts are made by the state or other non-state actors.

Of course, this presents a contradictory situation seeing that multiple categories and variations of minimum wage are enacted for the reason that they represent better the diversity of the labour market and are thus more realistic and aligned for every worker they look to cover.<sup>147</sup> In this regard therefore, the legislators and policy makers ought to weigh all these considerations and balance them out. Indeed, they can maintain the categories but ensure their efforts, in terms of ensuring their communication and sensitization to the public and the interested parties, are enhanced and improved, as will be observed in the succeeding section concerning awareness raising.

### ***Amount***

Similarly, in Chapter 2, it was observed that the high setting of the minimum wage amounts relative to the prevailing median wages is a factor inhibiting the compliance

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<sup>142</sup> There are over 45 categories and variations under the GWO and AWO alone. This is similarly without the inclusion of the numerous SWOs. See KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 15; Legal notice no 116, no 117 of 2015, Labour Institutions Act (Act No. 12 of 2007)

<sup>143</sup> It is easier to enforce minimum wages and equally spread awareness on them in countries with one prevailing and all-encompassing minimum wage compared to countries with multiple categories. See ILO, 'Chapter 6 - How to enforce minimum wages' in *Minimum wage policy guide*, 3.

<sup>144</sup> See Chapter 2, under the Inspectorate capacity and institutional factors subsection.

<sup>145</sup> Borat H and Stanwix B, 'Minimum wage enforcement in the developing world', 6.

<sup>146</sup> Borat H and Stanwix B, 'Minimum wage enforcement in the developing world', 6.

<sup>147</sup> Manda D, Kosimbei G and Wanjala B, 'Impact of minimum wages on formal employment in Kenya', 4.

and enforcement rate of minimum wage laws. As such, the relevant policy makers and legislators ought to weigh in the circumstances at hand. Indeed, as is observed in Chapter 1, economic circumstance and such other considerations are supposed to guide the wage councils in their setting of the minimum wage amounts. Therefore, the relevant policy makers ought to balance out the setting, taking such economic factors into consideration.

Hence, should the relevant drafters feel that the prevailing rates are indeed suitable and not high, such that they give due regard to the economic situation of employers, then they should indeed stick to such rates but still look to enhance their top - down enforcement approach through better labour inspection and the other measures that are discussed in this Chapter. This is the same for the multiple categories of minimum wages; should the concerned drafters be of the opinion that they nonetheless need to maintain the current system.

All in all, setting as has been noted, is a crucial step that policy makers looking at the enforcement of minimum wage and how such enforcement can be enhanced cannot afford to ignore.<sup>148</sup> Setting, as such, should be first considered before delving into other measures of improving enforcement and compliance.

### **3.3 LABOUR INSPECTION**

Inspection is the standard measure by which labour laws, including minimum wages, are enforced. According to the ILO's data base, Over 100 countries globally use inspectorates to enforce labour laws,<sup>149</sup> and Kenya is no exception. That notwithstanding, and as was observed in the preceding Chapter, Kenya's inspectorate and inspection system is disappointing and that need not be reiterated. Numerous remedies as regards the same therefore need to be considered. Firstly, the State ought to sufficiently fund the labour inspectorate so as additional staff can be employed and so that their training can be carried out. It is with sufficient funding that the inspectorate can be enhanced so that it can cease being under resourced and

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<sup>148</sup> ILO, 'Chapter 6 - How to enforce minimum wages' in *Minimum wage policy guide*, 2.

<sup>149</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 14.

understaffed.<sup>150</sup> An enhanced higher ratio of inspectors to workers will indeed result to higher enforcement and compliance rates over time in Kenya.<sup>151</sup>

More importantly, efficiency in carrying out inspections has to be considered as an avenue through which the enforcement of these laws can be enhanced. This is especially so for under-resourced inspectorates and those with limited funding like Kenya's. Such efficiency by the inspectorate can be achieved through different ways looked at hereunder.

### ***Prioritization and target inspection***

Prioritization entails the discriminate inspection of sectors, areas, or workers that are perceived or known to be more likely affected by non-compliance, so as the inspectorate can invest their limited resources, manpower and time to nonetheless still significantly influence the compliance and enforcement rate.<sup>152</sup> This approach is indeed fitting for Kenya given its inspectorate's limited capacity. As such, Kenya's inspectorate could look to concentrate more in the informal economy, for example, seeing that as was noted in the preceding Chapter, it is the one mostly affected by non-compliance and non-enforcement of minimum wage legislation.

### ***Complaints systems***

Furthermore, so as to boost its efficiency, the labour inspectorate could look to adopt an effective, accessible and confidential system of airing complaints. For an inspectorate with limited resources, an effective system of complaints could be really advantageous, where labourers who are victims of non-compliance can signal to the inspectorate for the purpose of the inspectorate's response in inspection.<sup>153</sup> As such, Kenya's inspectorate should look to adopt such a system. The system should be accessible, such as through toll-free telephoning hotlines, and should be accommodative of various languages and not simply the official languages so as to be equally of reach to the illiterate or less educated working population.<sup>154</sup> More

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<sup>150</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 25.

<sup>151</sup> Bhorat H and Stanwix B, 'Minimum wage enforcement in the developing world', 6.

<sup>152</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 15.

<sup>153</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 15.

<sup>154</sup> Almeida R & Ronconi L, *The enforcement of labor law in the developing world: Some stylized facts from labor inspections*, at 6; Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 29.

importantly, the system should be safe such as to ensure the confidentiality of the complaining labourers in order to protect them from employer retaliation;<sup>155</sup> a subject that will be looked at hereunder in the Chapter as well.

### ***Partnerships***

Another significant approach that could enhance the labour inspectorate is through its partnership with other actors, whether governmental or non-governmental. Trade Unions, Public Interest Groups (PIGs), Non-Governmental Organisations (NGOs) and other actors should be entitled under law to attend labour inspection as Benassi observes.<sup>156</sup> This way, the inspectorate is held to a higher degree of account. Furthermore, the inspectorate should look to partner with other State institutions that could help in identifying non-compliance and capturing such non-complaint employers as well.<sup>157</sup> The Kenyan inspectorate could for example coordinate with the Department of Small, Medium and Micro enterprises (SMMEs) of the Ministry to facilitate sustainable and tailored enforcement in the informal economy.<sup>158</sup> This multi-stakeholder and multi-institutional approach is indeed recognised under the Labour Inspection Convention looked at in Chapter 2 and could thus indeed enhance inspections thereby positively influencing the enforcement rate.<sup>159</sup>

Additionally, the inspectorate should be rid of corruption and instances of bribery which was observed in the preceding Chapter as a factor contributing to its poor functioning. This can be achieved through better remuneration of the inspectorate staff as well as additional reward based bonuses such as to make them generally less prone to compromise.<sup>160</sup> Also, a rotational policy could be introduced where an inspector's mandate in a certain sub-region is limited in time after which, he is

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<sup>155</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 22.

<sup>156</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 29.

<sup>157</sup> Nyambari takes cognisance of the effectiveness of this approach; he gives an example, as such, of an instance the Kenyan labour inspectorate at Nyeri had a difficult time capturing mobile non-compliant informal sawmill employers until the inspectorate thereafter coordinated with the Department of Forestry to capture them. See Nyambari S, 'Improving labour legislation, labour administration and labour inspection' *African Regional Labour Administration Centre (2007)*, 3.

<sup>158</sup> Nyambari S, 'Improving labour legislation, labour administration and labour inspection', 3.

<sup>159</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 25.

<sup>160</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 14.



transferred to another region to avoid his familiarization with the area's employers which may lead to the creation of corruption links.<sup>161</sup>

Undeniably, labour inspection is crucial in the enforcement of minimum wage laws such that without its enhancement, other applicable approaches do not correspondingly succeed.<sup>162</sup> As such, the above measures can be applied by Kenya's labour inspectorate for it to be adequately enhanced.

### **3.4 “SOFT” MECHANISMS, AWARENESS, AND UNIONISATION.**

Soft mechanisms are other additionally important approaches, different from the standard top-down mechanisms the State applies - for example labour inspection, to facilitate compliance.<sup>163</sup> Soft mechanisms thus differ from “hard” mechanisms which are the standard model States rely on. Soft mechanisms are as a matter of fact hugely fundamental in ensuring effective enforcement of labour regulations including minimum wage laws.<sup>164</sup> The hard, top-down mechanisms are by themselves not precisely sufficient to ensure the proper compliance with and enforcement of minimum wage laws. Applicable soft mechanism are numerous and they range from persuasion; public campaigns; capacity building and training of employers and employees, among others that are looked at hereunder.

These mechanisms, as will be noted too, require the significant and creative participation of non-state actors such as NGOs. In fact in some, the state will take a back seat.

#### ***Persuasion***

Persuasion is one of the soft mechanisms that can influence enforcement and compliance greatly. Persuasion has been described as creating a “culture of compliance”.<sup>165</sup> This is done through different means such as trained inspectors engaging employers and managers in open and frank discussion regarding non-

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<sup>161</sup> The better remuneration, bonuses and rotational technique have proved successful in Brazil. See Benassi C, ‘The implementation of minimum wage: Challenges and creative solutions’, 14.

<sup>162</sup> ILO, ‘Chapter 6 - How to enforce minimum wages’ in *Minimum wage policy guide*, 9.

<sup>163</sup> Benassi C, ‘The implementation of minimum wage: Challenges and creative solutions’, 6.

<sup>164</sup> Nyambari S, ‘Improving labour legislation, labour administration and labour inspection’, 1.

<sup>165</sup> ILO, ‘Chapter 6 - How to enforce minimum wages’ in *Minimum wage policy guide*, 6.

compliance so as to establish the cause of such non-compliance together with ways in which compliance can be gradually achieved.<sup>166</sup> Bhorat identifies this patient and engaging means of ensuring compliance as the “Latin model of enforcement” that similarly looks to progressively get employers or firms to comply with minimum wage laws, by applying persuasive techniques and allowing for a period of time to enable such employers to transition to full compliance amidst economic constraints.<sup>167</sup> This method is advantageous in that it looks to sustainably get the laws complied with by engaging the employers and furthermore educating them on the purpose and need to comply. It is additionally suitable in that it can be applied in the informal economy as opposed to the top-down approach of enforcement that risks to drive firms in the informal economy to extinction as will be subsequently touched on in the formalization section of the Chapter.

### ***Training and capacity building, and information dissemination***

Training and capacity building in relation to employers and employees is another form of soft mechanism that can enhance compliance and enforcement. This entails the inspectorate, and/or any other State or non-State agents – such as unions, instructing and making known to both employers and employees about minimum wage laws, the ways in which they are complied with and the respective right and obligations arising from the employment relationship.<sup>168</sup> This way, it is ensured that non-compliance is not due to a lack of awareness, knowledge or understanding on the part of the labourers and firms as was unfortunately observed as the case for Kenya in Chapter 2.

Such training will be additionally beneficial, in that workers will be more likely to raise complaints when they have knowledge of their rights.<sup>169</sup>

More importantly, a legal provision to mandate employers to display the relevant wages orders at the workplace or at the place where wages are to be paid to the

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<sup>166</sup> Benassi C, ‘The implementation of minimum wage: Challenges and creative solutions’, 11.

<sup>167</sup> This method is contrasted to the standard, top - down approach of inspection and instant sanctioning that Bhorat refers as the “Anglo-American model”. See Bhorat H, ‘Compliance with minimum wage laws in developing countries’, 5.

<sup>168</sup> ILO, *Minimum wages: Wage fixing machinery, application and supervision*, at 154-155; KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 24.

<sup>169</sup> Benassi C, ‘The implementation of minimum wage: Challenges and creative solutions’, 12.

employees could indeed be significantly helpful in ensuring that employees are in full knowledge of the wages due to them.<sup>170</sup> Such a measure has indeed proved beneficial in countries such as Algeria.<sup>171</sup> Indeed, Kenya's way of communicating and publishing wages orders through gazette notices is not by itself sufficient and accessible to many employees and even employers.<sup>172</sup>

### ***Public campaigns***

Another related soft mechanism that can be applied is the use of public campaigns so as to sensitise the various labour market players about these laws. The information to be disseminated may be to do with the laws' general importance and even the prevailing rates as accords the wages orders.<sup>173</sup> This is indeed one of the most appropriate measure to ensure compliance with minimum wage laws.<sup>174</sup> Public campaigns can take the form of radio, television or newspaper advertisements and posters where persuasive messages are presented, as well as information to do with the prevailing minimum wage rates and any changes thereof.<sup>175</sup> This measure increases awareness of these laws thus enhancing compliance.<sup>176</sup>

Another related and equally effective means is the public naming and shaming of non-compliant employees. This measure acts as a deterrent for firms since the negative publicity that comes with such a proclamation of violating labour laws leads to immeasurable market losses for such violating firms.<sup>177</sup> In Kenya, the state or other non-state players could look to rely on this measure to encourage compliance with minimum wage laws.

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<sup>170</sup> ILO, *Minimum wages: Wage fixing machinery, application and supervision*, at 134.

<sup>171</sup> ILO, *Minimum wages: Wage fixing machinery, application and supervision*, at 134.

<sup>172</sup> ILO, *Minimum wages: Wage fixing machinery, application and supervision*, at 134.

<sup>173</sup> ILO, 'Chapter 6 - How to enforce minimum wages' in *Minimum wage policy guide*, 6.

<sup>174</sup> ILO, *Minimum wages: Wage fixing machinery, application and supervision*, at 153.

<sup>175</sup> Such public campaign strategies, using the television, radio, and posters have in the past resulted in significant responses in complaints of minimum wage violations through telephone helplines. See Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 21.

<sup>176</sup> ILO, *Minimum wages: Wage fixing machinery, application and supervision*, at 153.

<sup>177</sup> Bhorat H and Stanwix B, 'Minimum wage enforcement in the developing world', 6.

### 3.4.1 Unionisation

This dissertation recognises unionisation as a fitting measure that can greatly influence the enforcement of minimum wage legislation. In Chapter 2, the significant influence unionisation has on wages, owing to collective bargaining and wage negotiation, was pointed out. Similarly, unionisation has the effect of enlightening labourers about the labour rights due to them and hence they are able to demand the enforcement of such rights even through complaining to the inspectorate.<sup>178</sup>

Nevertheless, unions in Kenya could do with the support of legal guarantees and assurances; they should be empowered under law to, for example, attend inspections so as to hold the inspectorate accountable as was earlier mentioned regarding partnership in labour inspection. Furthermore, and more importantly, they should be granted the legal right and guarantee to access workers in their workplaces so as to recruit and educate them of their rights.<sup>179</sup>

Conversely, unions ought to work on the internal problems facing them so as to be fully effective in championing workers' rights. These include bureaucracy and capacity problems that face Kenyan unions.<sup>180</sup>

All in all, more and more workers should look to get unionised so as to be able to access the benefits that come with unionisation; the 11% unionisation rate in Kenya, as was noted in Chapter 2, is dismal.

## 3.5 SANCTIONING

It is only with an effective deterrent measure that employers can be discouraged from non-compliance with minimum wage legislation.<sup>181</sup> Firms should never elect not to pay at the prescribed minimum wages following economic calculations that make non-compliance cheaper than compliance.<sup>182</sup> As such, the sanctions that an employer

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<sup>178</sup> ILO, 'Chapter 6 - How to enforce minimum wages' in *Minimum wage policy guide*, 8.

<sup>179</sup> The KUDHEIHA report observes this as a problem, where workers are illegally blocked from accessing and being recruited into unions by their employers. See KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 12.

<sup>180</sup> The KUDHEIHA report similarly identifies this as problem in Kenyan unions. See KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 13.

<sup>181</sup> Borat H and Stanwix B, 'Minimum wage enforcement in the developing world', 6.

<sup>182</sup> Borat H, 'Compliance with minimum wage laws in developing countries', 7.

is likely to face on non-compliance need to be indeed punitive. Kenya's legal framework as concerns sanctioning is however unfortunately vague and not as retributive. Section 48 of the Labour Institutions Act provides that the court seized of such a matter concerning minimum wage violation may order the remuneration of the accrued difference in wages plus any other penalty the court may consider.<sup>183</sup> The problem with Kenya's framework is that it lack clarity and grants the court the discretion to be possibly lenient.

It is observed that, in many developing countries, the threat of imprisonment is one of the only effective deterrent measures for employers who fail to remunerate as per the wages orders.<sup>184</sup> Such imprisonment could be considered for Kenya as well. Alternatively, a clear, fixed and certainly punitive fine provision could do. It is observed that in Colombia for instance, the fine due to a non-compliant employer may possibly reach the respective minimum wage provision violated multiplied to up to 100.<sup>185</sup> A provision that is equally cognisant of, and more retributory to repeat offenders is also key for the sanctioning and deterrence mechanism so as to enhance compliance. In some countries, the penalty for repeat violators could involve suspension or complete cessation of one's business.<sup>186</sup> Such measure may indeed be considered for Kenya.

More importantly, the means through which, and time in which such sanctions are meted to the employers and wages recovered by employees is really key for establishing an effective enforcement mechanism.<sup>187</sup> Regrettably in Kenya, sanctions can only be handed by the courts and so is the recovery of wages by employees.<sup>188</sup> This thus results not only in a discouragingly long process for the workers seeking redress, but is also less punitive for employers if compared to an instantaneous sanction.<sup>189</sup> In some countries such as South Africa and Thailand, labour inspectors are indeed empowered to order the payment of the wages due on inspection.<sup>190</sup> This

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<sup>183</sup> Section 48(3), Labour Institutions Act (Act No. 12 of 2007)

<sup>184</sup> ILO, *Minimum wages: Wage fixing machinery, application and supervision*, at 143.

<sup>185</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 17.

<sup>186</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 17.

<sup>187</sup> ILO, 'Chapter 6 - How to enforce minimum wages' in *Minimum wage policy guide*, 11.

<sup>188</sup> Section 48(3), Labour Institutions Act (Act No. 12 of 2007)

<sup>189</sup> ILO, 'Chapter 6 - How to enforce minimum wages' in *Minimum wage policy guide*, 11.

<sup>190</sup> ILO, 'Chapter 6 - How to enforce minimum wages' in *Minimum wage policy guide*, 11.

model is certainly advantageous in that it fastens the recovery of wages and workers are additionally not subjected to the complex, lengthy, and uncertain processes of the court.<sup>191</sup>

Such efficient provisions could thus be considered for incorporation into Kenya's legal framework. Certainly, the accompanying labour inspectorate has to be indeed equally well capacitated, trained and - more importantly, not corrupt, seeing as such a measure grants them increased discretion.<sup>192</sup>

### 3.6 FORMALIZATION

The complexity of the informal economy and the complexity of its identification as a problem, as such, was pointed out in Chapter 2. Being in the informal economy means less visibility for inspection<sup>193</sup>; and with an over 82% stake in employment, the informal economy presents a huge problem that requires rectification in Kenya. Steady and sustainable formalization of Kenya's informal economy needs to be achieved so as to protect the workers therein from the unsuitable working conditions that characterise it, minimum wage law non-compliance included as was noted in Chapter 2.

Firstly, seeing that informality and formalization as such lacks a definite definition, formalization in this section's context refers to the deliberate submission for visibility by informal firms to the state through their registration and their gradual compliance with labour laws and other requisite but relevant legal requirements.<sup>194</sup> Informal firms can indeed progress to formalization but, as Nyambari observes, patience in handling them is ever critical since rushing would drive them out of the economy as a result of financial and capacity-related constraints.<sup>195</sup>

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<sup>191</sup> ILO, *Minimum wages: Wage fixing machinery, application and supervision*, at 148-150.

<sup>192</sup> Borat H and Stanwix B, 'Minimum wage enforcement in the developing world', 4.

<sup>193</sup> Almeida R & Ronconi L, *The enforcement of labor law in the developing world: Some stylized facts from labor inspections*, at 9.

<sup>194</sup> In the USAID report, these processes are identified as the basic and initial steps that could gradually guide a firm into formalization per se. See USAID, *Removing barriers to formalization: The case for reform and emerging best practice*, at 2.

<sup>195</sup> Nyambari S, 'Improving labour legislation, labour administration and labour inspection', 5.

For that reason, the role and duty that falls on the Kenyan government is to ensure that an exceedingly conducive environment is created for such firms so as to enable their formalization without economic hardship that would do more harm than good. Hence, the State can do this by firstly ensuring that public administration, including licensing and registration is streamlined and made exceedingly efficient and inexpensive.<sup>196</sup> Furthermore, the State should work to alleviate corruption in public administration that proves costly for informal firms - for instance through bribe remittance. Additionally, corruption lowers the informal players' confidence in the State agencies thereby leading to such firms electing to stay in the informal economy.<sup>197</sup> All these issues indeed affect Kenya and its informal economy and thereby ought to be corrected.<sup>198</sup>

Service delivery, such as of provision of infrastructure and micro-financing, to the informal firms by the State is also key. This is so as to legitimize the State's role and significance such that informal firms can appreciate the reason and purpose of formalization and indeed be incentivized to formalize.<sup>199</sup> One of the reasons that informal firms in developing countries elect to stay informal is that they do not anticipate the prospects of reaping governmental support and services from such formalization anyway.<sup>200</sup>

Another mechanism that can be used to accommodate the informal economy and boost the enforcement of minimum wage laws therein is the application of the previously mentioned soft mechanisms, as well as the aforementioned "Latin enforcement model" that looks to have the laws incorporated into firms progressively and may in fact allow time for firms to comply. The application of this model is as opposed to applying the standard and less engaging retributive model of enforcement that is likely to unsustainably constrain such informal firms economically.

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<sup>196</sup> USAID, *Removing barriers to formalization: The case for reform and emerging best practice*, at 19.

<sup>197</sup> USAID, *Removing barriers to formalization: The case for reform and emerging best practice*, at 18.

<sup>198</sup> Amenya G, *The informal sector in Kenya*, 2007, at 7-10.

<sup>199</sup> USAID, *Removing barriers to formalization: The case for reform and emerging best practice*, at 25.

<sup>200</sup> USAID, *Removing barriers to formalization: The case for reform and emerging best practice*, at 19.

With the above applied remedies, informal firms are more likely to respond positively by gradually complying with minimum wage laws whether voluntarily or through their increased visibility for labour inspection.<sup>201</sup>

In addition, the wages councils and the Ministry ought to take cognisance of the novel jobs that are not specially recognised under any of the wages orders. As was discussed in Chapter 2, the exclusion of these new types and kinds of occupations mostly found in the informal sector has not been reflected in the published and gazetted wages orders.

### 3.7 ADDITIONAL MEASURES

Other supplementary and helpful measures that can be applied to guarantee the enforcement of minimum wage legislation are such as barring non-compliant firms from credit and procurement contracts, as well as protecting labourers from employer retaliation.

#### 3.7.1 Barring from credit and procurement contracts.

Benassi identifies debarment from procurement contracts as an innovative measure through which compliance of firms with minimum wage laws can be achieved. Under this measure, legislation could provide that no governmental procurement or tendering opportunities are to be advanced to non-compliant firms.<sup>202</sup> Indeed, Article 227 of the Constitution of Kenya provides for this and paves a way for such provisions to be properly established and enforced. The Article concerns governmental tendering for good and services, and provides that legislation be brought to effect to provide for the sanctioning against persons under the Article guilty of, *inter alia*, violations of employment laws and practices.<sup>203</sup> Indeed, this Article was actualised by the enactment of the Public Procurement and Asset Disposal Act, which in its section 41 provides that a person shall be debarred from participating in procurement proceedings if such a person is, *inter alia*, guilty of a serious violation of fair employment laws and practices.<sup>204</sup>

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<sup>201</sup> Nyambari S, 'Improving labour legislation, labour administration and labour inspection', 5.

<sup>202</sup> Such a law is similarly present in Brazil's enforcement framework. See Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 31.

<sup>203</sup> Article 227, Constitution of Kenya (2010)

<sup>204</sup> Section 41(1)(i), Public Procurement and Asset Disposal Act (Act No. 33 of 2015)



Therefore, The Ministry (of Labour) could proactively look to coordinate with these state agencies responsible for the regulation of procurement contracts, such as the Public Procurement Regulatory Board (PPRB), to effectively identify and debar minimum wage law violating firms from procurement opportunities. This way, firms will be keen to comply with minimum wage laws seeing that they risk missing out on such lucrative opportunities.

Similarly, it could be provided under law that no credit or loan facilities are to be advanced to any non-compliant firm by any financial institution. This again forces firms to comply with minimum wage laws lest they are blocked from accessing capital advancements. Such a measure could indeed be applicable in Kenya and would constitute suitable incentives to ensure compliance. For this to be effected, a blacklisting system for the purpose should be established and the proper mechanism for keying in and omitting firms effected.<sup>205</sup>

### **3.7.2 Protecting labourers from employer retaliation.**

Another crucial consideration that ought to be incorporated into Kenya's enforcement mechanism is the protection from vulnerability for employees upon their looking to advocate or demand for their rights whether individually or collectively. The KUDHEIHA points to the curtailing of employees by employers when such employees look to join unions.<sup>206</sup> Furthermore, the report identifies the power imbalance in the employment relationship, where employers have immeasurable market power in contrast to the surplus low skilled workers, as a reason why protection from such retaliation is needed.<sup>207</sup> As such, legal guarantees or provision should be put in place to penalize any employer or firm that looks to negatively affect ones employment status in any way for the reason of their taking action to advocate or demand for the observance or enforcement of their rights.<sup>208</sup>

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<sup>205</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', 31.

<sup>206</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 12-13.

<sup>207</sup> KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, at 12.

<sup>208</sup> ILO Committee of Experts, *General Survey 2015*, at paragraph 327.

### 3.8 CONCLUSION

In conclusion, the various approaches that can be adopted so as to enhance the compliance with and enforcement of minimum wage law are looked at above. They range from cautiousness in the actual setting of minimum wages; enhanced inspection; additional “soft” mechanism, awareness raising, and unionisation; and formalisation amongst others such as debarment from procurement contracts and from the advancement of credit facilities. What is correspondingly evident is that these measures are, in different ways, related and complementary of each other. Such an enforcement model of incorporating and combining different approaches is indeed also acclaimed for its optimal outcomes.<sup>209</sup> Furthermore, and in a general sense, it is apparent that what the enforcement of these laws and the proper application of these mechanisms requires is the attention and goodwill on the part of the State towards the proper enforcement of the same.<sup>210</sup>

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<sup>209</sup> Nyambari S, ‘Improving labour legislation, labour administration and labour inspection’, 1.

<sup>210</sup> Nyambari S, ‘Improving labour legislation, labour administration and labour inspection’, 5.

## **CHAPTER 4:**

### **CONCLUSION AND RECOMMENDATIONS**

#### **4.1 Summary and Conclusion**

At the onset, this dissertation purposed to assess the enforcement of minimum wage legislation in Kenya. Bit by bit, such assessment was done looking at the extent of enforcement, the reasons behind such an extent of enforcement, and consequently, avenues that could be relied on so as to improve said enforcement.

In Chapter 2, both the extent of enforcement and the causes behind such an extent of enforcement were looked at. It was established that Kenya's minimum wage enforcement is indeed poor with the latest work on the same placing the non-enforcement rate at 42% of all labourers. Subsequently, after establishing the enforcement rate as indeed dismal, the dissertation went ahead to establish the causes of such a poor extent of enforcement.

There were indeed numerous causes identified as being behind the poor rate of enforcement, and they varied from a poorly capacitated labour inspectorate that is under-resourced, under-staffed and inadequately funded, to a high incidence of informality in Kenya's labour market seeing that firms in the informal economy are less visible for inspection thus a low compliance rate.<sup>211</sup> Similarly, the setting of minimum wage was observed as a factor herein, in that Kenya's minimum wage system comprises numerous provisions variant on occupation and location that are hence hard for employer and employees alike to master. Under setting, it was additionally observed that Kenya's minimum wages are set too high in relation to the prevailing median wages, and as a result, they become too much of an economic constrain for firms to internalize.

Another cause for the established poor enforcement of minimum wage laws was identified as a general lack of awareness and civic education of the various relevant

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<sup>211</sup> The informal economy provides for an astounding 82.7% of all employment in Kenya.

labour market players such that their limited knowledge of these laws, their applicability and the resultant and related rights and obligations created by them prevented such players from fully appreciating and applying the said laws.

Consequently, Chapter 3 looked to analyse approaches that could improve the enforcement of these laws in Kenya and it indeed identified the enhancement of Kenya's inspectorate capacity as well as its application of certain efficient methods, such as targeted inspection, so as to further impact the enforcement rate. Sustainable formalization of the informal economy was similarly outlined as a measure that could enhance the compliance with and the enforcement of these laws by making firms more visible for inspection.

Other additional measures that were analysed in Chapter 3 were the application of soft mechanism; such as awareness raising and civic education through public campaigns and training of the labour market players about the applicability of minimum wage laws. Additionally, unionisation of the un-unionised working population was noted as a key approach that could positively influence the compliance and enforcement rate due to the supportive role that unions play in advocating for their members' rights as well as educating them on the same. Similarly, fostering partnerships between unions, the inspectorate and other relevant agencies in addition to enhancing the internal working of Kenyan unions was sensitized on.

A review of Kenya's legal provisions concerning the sanctioning of minimum wage law violators was similarly looked at in Chapter 3. It was observed that they needed to be enhanced, and such enhancing provisions indeed need to be made more punitive to employers by being clear and prescribing a fixed form of penalty whether in the form of high fines or an imprisonment sentence. More aggravated sanctions for repeat violators was similarly identified as a measure that could improve the sanctioning framework and thus consequently improve the enforcement rate.

All in all, this dissertation achieved what it purposed to attain by consolidating and conceptualizing different strands of literature to comprehensively present the status of the enforcement of minimum wage laws in contemporary Kenya.

## 4.2 Recommendations

The recommendations that consequently stem from the writing of this dissertation are as follows. Firstly, it is this dissertation's recommendation that the State ought to first consider its priorities in terms of policy direction concerning the labour market. This is because, as was pointed out, there is a high unemployment rate in Kenya, and the annual job creation is furthermore not satisfactory enough to contain the steady demand for employment. Similarly, the productivity of Kenya's labour market has remained low, such that its contribution to the Gross domestic product (GDP) is insignificant and has indeed remained stagnated.<sup>212</sup>

As such, the government ought to first consider whether it should really focus its attention and resources to the vigorous enforcement of minimum wage laws and other conditions of labour, whereas many other Kenyans do not have such employment in the first place. Therefore, this dissertation suggests that the government could first ponder on whether it should direct its resources and attention into job creation<sup>213</sup> as opposed to directing such resources into the enforcement of minimum wages law in the first place. Furthermore, in addition to freed up resources for employment creation, a failure by the state to enforce these laws for the time being may more likely result in the creation of employment to ease the currently poor unemployment rate.<sup>214</sup>

As such, this dissertation indeed recognises the importance of the enforcement of minimum wage laws, but it still maintains that this should not be done blindly without consideration of other labour market factors.

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<sup>212</sup> Omolo J, Akoten J and Oyugi L, 'Viability of increasing minimum wages in 2009 in Kenya' *DP No. 110 of 2009 Institute of Policy Analysis and Research (2009)*, 33-36.

<sup>213</sup> For employment creation as a State's role, see Dundon T and Rollinson D, *Understanding Employment Relations*, McGraw-Hill Education, 2011, 170.

<sup>214</sup> Though contentious, there exists compelling evidence establishing a positive correlation between increased enforcement of minimum wage laws and an increased unemployment rate in developing countries, Kenya included. See Manda D, Kosimbei G and Wanjala B, 'Impact of minimum wages on formal employment in Kenya'; Andálon M and Pagés C, 'Minimum wages in Kenya', 3.

Secondly, this dissertation identifies the need for a better method of measurement of non-enforcement and non-compliance. As was noted, the current method of measurement, that simply looks at the percentage of employees remunerated below the minimum wage relative to those rightly remunerated, is abstract. One standard measure, which similarly looks at the gravity of the established non-enforcement rate, needs to be established for policy and academic circles and so as to rightly determine the extent of enforcement and compliance with minimum wage law.<sup>215</sup>

Lastly, this dissertation recognises the fact that the area of minimum wage enforcement has been widely ignored by the academic community even when the viability of minimum wages by themselves has received abundant policy attention.<sup>216</sup> Therefore, this area of research needs to be further dwelled on as it is not currently well traversed. More importantly, primary research regarding the enforcement of these laws in Kenya ought to be carried out. There is not sufficient and up to date empirical data on the same.

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<sup>215</sup> Borat H, 'Compliance with minimum wage laws in developing countries', 8.

<sup>216</sup> Benassi C, 'The implementation of minimum wage: Challenges and creative solutions', executive summary.

# **BIBLIOGRAPHY**

## **Books**

1. Dundon T and Rollinson D, *Understanding Employment Relations*, McGraw Hill Education, 2011.
2. Karl Marx, *A contribution to the critique of political economy*, Progress Publishers, Moscow, 1977.
3. Kenneth A, *The social lens: An invitation to social and sociological theory*, Pine Forge Press, 2007.
4. Randall C, *Conflict sociology*, Academic Press, New York, 1974.
5. Tyler T, *Why people obey the law*, Yale University Press, New Haven and London, 1990.

## **Chapters in Books**

6. Marx K, 'Outlines of the critique of political economy' in, *The Collected Works of Karl Marx and Frederick Engels: Volume 28*, International Publishers, New York, 1986.

## **Dissertations**

7. Omolo J, 'Ripple effects of minimum wages and the response of labour markets in Kenya' PhD Thesis, Kenyatta University, November 2010.

## **Journal Articles**

8. Blankart C and Koester G, 'Political economy versus public choice' *KYKLOS International Review for Social Sciences. Volume 59 No. 2 (2006)*.
9. Buchanan J, 'Public choice and public policy' *Centre of Public Choice, Virginia Polytechnic Institute*.
10. Coser L, 'Social conflict and the theory of social change' *The British Journal of Sociology (1957)*.
11. Pocock B, Prosser R and Bridge K, 'The return of 'labour-as-commodity'? The experience of casual work in Australia' (2005).

## **Discussion papers, working papers and policy briefs and guides**

12. Andálon M and Pagés C, 'Minimum wages in Kenya' *DP No. 3390 The Institute for the study of labor (2008)*.

13. Benassi C, 'The implementation of minimum wage: Challenges and creative solutions' *Working Paper No. 12 Global Labour University* (2011).
14. Bhorat H, 'Compliance with minimum wage laws in developing countries' *IZA World of Labor* (2014)
15. Bhorat H and Stanwix B, 'Minimum wage enforcement in the developing world' *PB 13/29 The Development Policy Research Unit* (2013).
16. Gustav R, 'The micro-economics of "surplus labor"' *Economics Growth Centre Discussion Paper No. 772, Yale University* (1997)
17. ILO, 'Chapter 6 - How to enforce minimum wages' in *Minimum wage policy guide* (2016).
18. Manda D, Kosimbei G and Wanjala B, 'Impact of minimum wages on formal employment in Kenya' *DP No. 67 Kenya Institute for Public Policy Research and Analysis, KIPPRA* (2007).
19. Nyambari S, 'Improving labour legislation, labour administration and labour inspection' *African Regional Labour Administration Centre* (2007).
20. Omolo J, Akoten J and Oyugi L, 'Viability of increasing minimum wages in 2009 in Kenya' *DP No. 110 of 2009 Institute of Policy Analysis and Research* (2009).
21. Omolo J and Omiti J, 'Is minimum wage policy effective in Kenya?' *DP No. 054/2004 Institute of Policy Analysis and Research* (2004).

## **Reports**

22. Almeida R & Ronconi L, *The enforcement of labor law in the developing world: Some stylized facts from labor inspections*, May 2012
23. Amenya G, *The informal sector in Kenya*, 2007.
24. Central Organization of Trade Unions – Kenya (COTU-K), Federation of Kenyan Employers (FKE), Government of Kenya (GOK) , ILO, *Kenya Decent Work Country Programme*, 2013-2016.
25. Danish Trade Union Council for International Development Cooperation, *Kenya Labour Market Profile 2015*, 2015.
26. ILO Committee of Experts, *General Survey 2015*, 2015.
27. ILO, *Minimum wages: Wage fixing machinery, application and supervision, Report III (Part 4B)*, 79<sup>th</sup> Session 1992.
28. Kenya National Bureau of Statistics, *Economic Survey 2015*, 2015.



29. KUDHEIHA Workers, *A rapid assessment of domestic workers in Kenya*, May 2011.
30. Owidhi G, *Economic paper for decision making in trade unions in Kenya*, April 2016
31. USAID, *Removing barriers to formalization: The case for reform and emerging best practice*, March 2005.
32. WageIndicator Foundation, *Wages in Kenya*, June 2012.

### **Legislation, Acts of Parliament**

33. Constitution of Kenya (2010)
34. Labour Institutions Act (Act No. 12 of 2007)
35. Legal notice no 116, no 117 of 2015, Labour Institutions Act (Act No. 12 of 2007)
36. Public Procurement and Asset Disposal Act (Act No. 33 of 2015)
37. Regulation of Wages (General) Order, Labour Institutions Act (Act No. 12 of 2007)

### **International Instruments**

38. *Constitution of the International Labour Organisation (ILO)* (1919)
39. *Labour Inspection Convention*, 11 July 1947, UNTS vol. 54, 1-792.

### **Internet Resources**

40. [http://data.worldbank.org/indicator/SL.UEM.1524.ZS?year\\_high\\_desc=true](http://data.worldbank.org/indicator/SL.UEM.1524.ZS?year_high_desc=true) on 21 January 2017.
41. Legal notice no 116, no 117 of 2015, Labour Institutions Act (Act No. 12 of 2007)  
[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiX8IGn2ofSAhXMAMAKHZr6BukQFggbMAA&url=http%3A%2F%2Fkenyalaw.org%2Fkl%2Ffileadmin%2Fpdfdownloads%2FLegalNotices%2FFLN\\_No.116\\_117\\_of\\_2015\\_1\\_.pdf&usg=AFQjCNHZcBX8xN-YHm3O0YP1-4E5tXqi2g&sig2=EGmw-anOmLIJXXigknTgDg](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiX8IGn2ofSAhXMAMAKHZr6BukQFggbMAA&url=http%3A%2F%2Fkenyalaw.org%2Fkl%2Ffileadmin%2Fpdfdownloads%2FLegalNotices%2FFLN_No.116_117_of_2015_1_.pdf&usg=AFQjCNHZcBX8xN-YHm3O0YP1-4E5tXqi2g&sig2=EGmw-anOmLIJXXigknTgDg) on 11 February 2017.
42. Oxford dictionary  
<http://www.oxforddictionaries.com/definition/english/enforcement> on 4 July 2016.