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The Implementation of Minimum Wage: Challenges and Creative Solutions

Chiara Benassi

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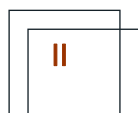
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EXECUTIVE SUMMARY

While minimum wage is widely debated at both academic and political levels, little attention has been dedicated to documenting and assessing the implementation of and compliance with minimum wage policies. This paper begins to fill this research gap by identifying and qualitatively assessing a variety of minimum wage implementation mechanisms. The theoretical framework delineates various frameworks that explain what implementation strategies might be effective in achieving compliance with minimum wage. The empirical part offers examples of how these elements have been implemented in practice. First, it provides an overview of existing implementation mechanisms drawn from across the globe. Then, the British minimum wage implementation system is illustrated in detail. Finally, additional implementation strategies from the broader field of labour regulation are presented with a view to diversifying and strengthening minimum wage implementation.

Based on the documentation of these strategies, five types of measures should be included in setting up an effective implementation system: First, persuasion strategies should be used to build public support for the minimum wage and encourage employers to comply voluntarily. Second, capacity building measures such as information sessions and training seminars should be undertaken so that employers and workers are informed about the minimum wage and so that employers know how to implement it in their firms. Third, the monitoring system should allow the detection of non-compliance. Labour inspections should be reinforced and carried out, especially in the sectors at risk; complaint procedures should be made more accessible and safer to workers and their representatives. Fourth, workers should be empowered to enforce their wage rights not just through individual complaints, but also through collective action, as workers fear retaliation when they are required to undertake individual action. For instance, unions should be given access to information on workers' wages, the opportunity to organize workers and the power to act on workers' behalf.

Finally, sanctions should be structured such that they constitute an actual deterrent to non-compliance. This means that the cost of sanctions should be higher than the benefit of workers' underpayment. Moreover, the application of sanctions should be sure and incremental.



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I. LIST OF ABBREVIATIONS

ACAS	Advisory, Conciliation and Arbitration Service
BERR	Business Enterprise and Regulatory Reform
BFC	Better Factories Cambodia
BIS	Business, Innovation and Skills
DTI	Department of Trade and Industry
EAS	Employment Agency Standards
EGS	Employment Guarantee Scheme
HRMC	Her Majesty's Revenue and Custom
IFA	International Framework Agreement
IFC	International Finance Corporation
ILO	International Labour Office
LPC	Low Pay Commission
NMW	National Minimum Wage
PIG	Public Interest Group
TUC	Trades Union Congress
USDAW	Union of Shop, Distributive and Allied Workers
WB	World Bank

1. INTRODUCTION

Minimum wage is one of the most used instruments for affecting the wage distribution on the labour market. In fact, minimum wage is provided by law in 90% of the world's countries; however, its implementation varies highly in both approach and effectiveness across countries. Because of its potential redistributive effect, setting a minimum wage as a matter of policy is a contentious political issue and object of controversies among the government, workers' organizations and employers. Despite (or because of?) the controversy, there still lacks a coherent debate about effective minimum wage implementation strategies.

A review of academic literature reveals the same gap in the research: the minimum wage issue is widely debated as a matter of policy, but its implementation is often left out. Some authors deal with the question of legitimacy of minimum wage from a philosophical and legal perspective, discussing the minimum wage in reference to the ideal of social justice and of civil rights in different societies (Levin-Waldman 2009; Gaski 2004). The majority of the debate over minimum wage however mainly focuses on its macroeconomic effects. The effect of minimum wage on employment at the national level, as well as its application to specific groups (e.g. youth) or the informal sector represent some of the most controversial matters. Adopting different theoretical approaches, some authors support the negative correlation between employment and minimum wage, while others find no correlation or even positive effects of minimum wage.¹ Parallel and equally controversial debates have been conducted on the impact of minimum wage on prices² as well as on income distribution³.

Despite the aforementioned ongoing controversies, discussions about effective minimum wage implementation must also take shape. The research on this issue is still at a very early stage despite the practical relevance of this aspect; however, there are some studies conducted in developing and industrialized countries that report that the presence of legal provisions for minimum wage does not guarantee that it will actually protect the workforce (i.a. Jones 1997; Strobl and Walsch 2001; BIS 2010a). These findings suggest that minimum wage needs further implementation mechanisms besides the traditional legislative top-down approach in order to serve as useful regulation tool.

To be clear, this paper does not deal with the issues related to the impact of minimum wage, but rather takes as its starting point the assumption that minimum wage is a legitimate instrument of labour market regulation. The paper then begins to fill the implementation research gap by identifying and qualitatively assessing a variety of minimum wage implementation mechanisms.

1 On the negative effect of minimum wage on employment see i. a. (Dickens et al. 1994; Neumark & Wascher 2006). For opposite results see (Machin & Wilson 2004; Card & Krueger 1994)

2 See i.a. (Aaronson et al. 2005; Fougere et al. 2009; Wadsworth 2009)

3 See i.a. (Leigh 2005; Angel-Urdinola 2004; Maloney & Nunez 2001)

The theoretical framework in section 3 delineates various frameworks that explain what implementation strategies might be effective in achieving compliance with minimum wage. Sections 4 and 5 then provide examples of how these elements have been implemented in practice. First, section 4 provides an overview of existing implementation mechanisms drawn from across the globe. Then, the British minimum wage implementation system is illustrated in detail in section 5. Finally, section 6 suggests additional implementation strategies drawn from the broader field of labour regulation with a view to diversifying and strengthening minimum wage implementation.

2. METHODOLOGY

The purpose of this paper is to analyze existing practices of minimum wage implementation and to conceptualize additional innovative solutions. To provide a guideline for identification and categorization of such mechanisms, the field of international relations provides a sufficiently articulated and appropriately elaborated theoretical platform. Compliance theories deal with the question of why international and transnational actors comply with norms, rules and laws,⁴ with the aim of explaining how mechanisms and processes favour or inhibit the implementation of regulation and compliant behaviour of the “norm addressees”. The different schools draw from a range of disciplines, from economics and game theory, sociological and rational-choice institutionalism, to constructivism and discourse analysis. This variety of approaches highlights different aspects of implementation, that is, the process of putting a rule into practice. In fact, the effect of persuasion and education approaches on actors, power relations among actors, and interests’ constellations are all examined to provide more comprehensive explanations of actors’ behaviour. Such internal processes are precisely what this review concerns itself with, making compliance theory a logical choice as the theoretical framework for our research on the implementation of national minimum wage.

Thus, a variety of logics drawn from compliance theory are described in the theoretical section, helping to explain why certain approaches to minimum wage implementation might generate compliance. The logical frameworks of compliance are then used to identify and describe implementation strategies of particular interest from across the globe. To deepen the analysis, we look closely at the case of the UK, which uses a combined approach to minimum wage implementation. We conclude by suggesting implementation mechanisms which were used in the field of market regulation and that could be effectively applied for the minimum wage.

The case study was chosen for two main reasons. , First, the UK has a well developed minimum wage enforcement system, and the minimum wage seems to be really binding. Indeed, the British case satisfies three criteria used in this paper to assess general compliance with the minimum wage: first, the level of minimum wage is relatively high; second, the minimum wage covers a relevant percentage of the national workforce; third, the minimum wage contributes to a fairer income distribution. The second reason for choosing the UK is a pragmatic one: there is a broad academic literature as well as many reports and statistics regarding the National Minimum Wage (NMW) and its implementation, which has made a detailed description of the existing mechanisms possible.

In the final part of this paper, some additional ideas for implementing minimum wage will be presented in order to provide suggestions for policy formulation to practitioners and labour activists. While some proposals derive from initiatives

⁴ For studies on compliance considering states as actors see (i.a. Raustiala&Slaughter 2002; Tallberg 2002). For works on compliance by transnational actors see (i.a. Börzel 2000; Börzel&Honke 2010).

aimed at the implementation of minimum wage, most of the ideas were “inspired” by actions undertaken for promoting labour standards and civil rights. A group of experts from the ILO, trade unions, and academia has revised our suggestions, taking into consideration their feasibility and their (potential) effectiveness.

The main information sources were the ILO Wage Database as well as academic studies and reports of International Organizations, NGOs and trade unions.

3. THEORETICAL FRAMEWORK

This section crafts a compliance theory framework offering a variety of explanations of when and why actors comply. After a brief clarification of few key terms, it presents the various schools of compliance theory, emphasizing the implementation mechanisms suggested and the different actor logics underlying them. The purpose of the theoretical framework is twofold: it allows the identification and categorization of existing implementation mechanisms, including the ones departing from the classical legal top-down approach; and it constitutes the basis for the argument that an effective system for implementing minimum wage should combine soft mechanisms (such as persuasion and capacity building) and hard mechanisms (e.g. sanctioning), as well as measures to empower workers.

3.1 Disambiguation of terms: Compliance, Implementation and Enforcement

The scope of this paper is to illustrate how compliance with the minimum wage can be achieved. In the present framework, the term “compliance” is used as in Young’s definition: “Compliance can be said to occur when the actual behaviour of a given subject conforms to prescribed behaviour, and non-compliance or violation occurs when actual behaviour departs significantly from prescribed behaviour” (Young 1979: 202).

Compliance is achieved through implementation, which describes the process of putting a rule into practice. This includes three main steps: 1. rule creation, 2. the setting up of institutions, and 3. rule enforcement (Raustiala & Slaughter 2002: 539). While it is usually the whole implementation process that leads to compliance, the latter can be more easily achieved when rules reflect actual practices. In this case, enforcement may not be necessary (Raustiala & Slaughter 2002: 539).⁵ For instance, if the minimum wage is set at a low level, the compliance rate will be high – but the effectiveness of the measure is debatable. For this reason, this paper will dedicate some attention to the process of minimum wage setting in order to create a regulation on the labour market which is relevant and at the same time enforceable. However, the main focus will be on the last two steps of implementation process: the establishment of institutions, capacity building programmes, and persuasive processes aimed at achieving compliance without enforcement; and the enforcement measures which require actors to comply with the law.

The definition of enforcement and its mechanisms changes significantly depending on the discipline and in international and national contexts. In law, in the international context, laws do not benefit from an institutional enforcement mechanism. In fact, this is arguably one of the primary weaknesses of international regulations. In the national context, obligations determined by law are enforceable if the party obligated can be forced or ordered to comply through

a legal process. In traditional legal terms therefore, a law or policy is enforceable only by a state-sanctioned legal authority, and sanctions can be applied only by a state-sanctioned legal authority.

The social sciences however define sanctions (one form of enforcement) more broadly as negative incentives that raise the cost of non-compliance.⁶ Compliance with a binding rule can therefore be achieved through a sanction applied not only by “an authority outside the social aggregate” but also “by other individuals in the social aggregate” (Gibbs 1965: 588). This definition puts the accent on the function of sanctions, which is to punish the defecting party for ensuring compliance, rather than on the nature of the sanctioning authority. As such, in the implementation of labour law, domestic non-state actors, such as trade unions, can also play a role in pressuring employers to comply by way of sanctions.

For the purposes of this paper, enforcement will therefore be used in two ways, first as a state or law-based mechanism, and second as a more contentious approach that trade unions could take to ensure the implementation of a given minimum wage policy.

3.2 Approaches to compliance

In the academic literature on compliance, three theoretical approaches are dominant: persuasion, management and enforcement.

Drawing on Habermas’ theory of communicative action,⁷ some authors in the field of international relations suggest persuasion as a means to compliance (cf. i.a. Risse 2000; Checkel 2001). Persuasive processes take place when “actors use arguments to persuade or convince others that they should change their views of the world, their normative beliefs, their preferences, and even their identities” (Risse 2000: 9). Assuming that actors follow not only rational benefit-cost calculations but also values and norms, a change of the latter would probably influence their behaviour (Hartlapp 2007: 657). Similarly, Ayres and Braithwaite suggest persuasion as a first implementation measure for labour regulation because employers “are also often concerned to do what is right, to be faithful to their identity as a law abiding citizen, and to sustain a self-concept of social responsibility” (Ayres & Braithwaite 1992: 22). Regarding minimum wage implementation, persuasion would entail convincing employers to comply with the minimum wage law by arguing, for example, that it improves efficiency and has a positive impact on the welfare of the whole society (Levin-Waldman 1999: 3).

The management school does not make clear whether actors follow considerations related to norms, efficiency or economic calculation. However, the first sources of non-compliance are considered to be lack of capacity and rule ambiguity. Consequently, management authors suggest rule interpretation, capacity building and transparency as main solutions to non-compliance

⁶ Among the authors using this definition of sanctions see Ehrlich 1996; Oliver 1980.

⁷ Habermas 1989.

problems (cf. Chayes & Chayes 1993). First, dispute settlement systems are required for providing an arena where rules can be discussed and clarified among all the interested parties. Second, technical assistance should be delivered. Third, monitoring is necessary and this for two reasons: 1 it allows the detection of a lack of capacity to implement minimum wage; 2. it ensures transparency and makes social pressure on noncompliant employers possible (Tallberg 2002: 614). In the case of non-compliance with minimum wage policy, the management approach would argue, for instance, that employers may be unaware that they have to pay the minimum wage, especially if it varies across sectors, professional categories or according to workers' age.

The enforcement approach is based on the collective action theory.⁸ The main assumption is that actors are rational and their non-compliance is due to cost-benefit calculations. Actors do not comply with rules if the benefits of non-compliance outweigh its costs. In other words, wrong incentive structures lead to non-compliance. In cooperation games, non-compliance is particularly likely because of the opportunity of free riding, meaning that noncompliant employers not only benefit from their individual act of non-compliance, but also from others abiding by the rule (cf. Cornes & Sandler 1986).

This theoretical model is illustrated in the following example: if an employer underpays their employees, their marginal profits will increase; however, in an ideal competitive market where every other employer complies with the minimum wage, the employer would stand to benefit from the competitive advantage gained through the labour cost reduction.

For achieving compliance, enforcement authors suggest two main measures, namely monitoring and sanctioning. Monitoring is the first core element because it allows the detection of non-compliance and provides information for making possible sanctioning decisions. Sanctioning then increases the costs of non-compliance by providing a strong incentive to comply (Tallberg 2002: 612; Downs et al. 1996: 385).

Quite surprisingly, the existing literature seems to overlook an aspect which would need to be taken into consideration for implementing the minimum wage: the power imbalance among employers and workers and the necessity of empowering workers for ensuring compliance. Instead, the literature focuses on measures that address the employers, such as incentives, capacity building and sanctions, and emphasizes the role of the state in enforcing workers' (wage) rights.

Even if these measures are certainly necessary, this paper points out that workers must be able to enforce their rights by themselves. Similar claims are made by authors studying the enforcement of labour standards in the global production chains; Lipschutz affirms that workers' empowerment is preferable to "caretaking interventions" by NGOs, while Thomas shows that a top-down approach in the transnational regulation of standards may weaken rather than help unions to

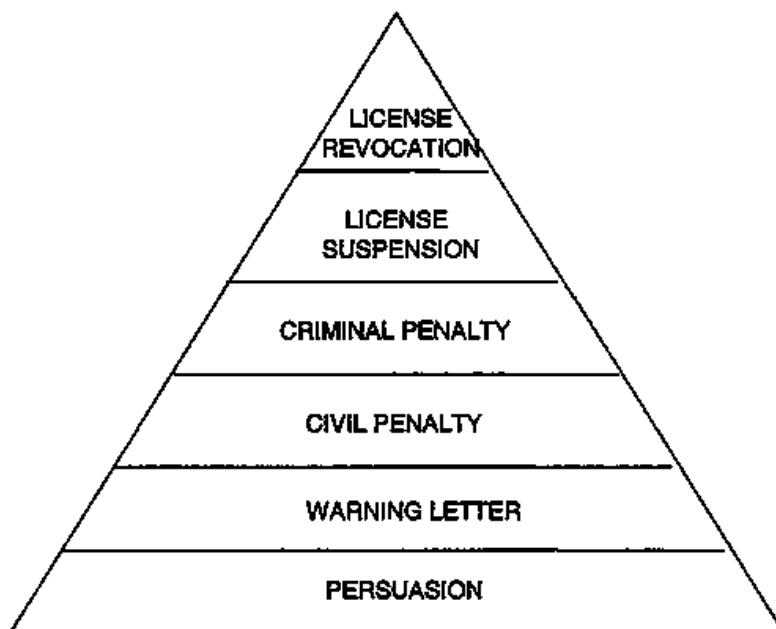
⁸ See i.a. (Olson 1965; Axelrod 1984; Ostrom 1990).

defend workers’ rights (cf. Lipschutz 2004; Thomas 2010). Therefore, this paper will focus on measures aimed at supporting workers’ individual and, most of all, collective enforcement action. For instance, unions could be given the right to represent workers in case of disputes on minimum wage and to have access to information on workers’ wages. As stated in different ILO publications, the empowerment of workers is core for the enforcement of their rights at workplace (i.a. Shaheed 2007; International Labour Office 2006; International Labour Office 1996).

3.3 Combining approaches for implementing regulation

Empirical evidence suggests that the aforementioned approaches are complementary, and not mutually exclusive. Indeed, many studies confirmed that the combination of persuasion, capacity building and sanctions even improves the performance of the compliance system (Hartlapp 2007; Braithwaite 1985; Tallberg 2002; Paternoster & Sampson 1996). In their research on labour inspections in different sectors, Ayres and Braithwaite find the escalatory use of persuasion and sanctioning particularly effective because actors are driven by rational cost-benefit calculations as well as norms and beliefs (Ayres & Braithwaite 1992). In their study on corporate crime, Sampson and Paternoster come to similar conclusions, as arguing that appeals to morality seem to motivate actors more than the threat of punishment (Paternoster & Sampson 1996).

The implementation system is particularly effective if it is organized as a “pyramid of severity of regulatory orders” (see figure below) (Braithwaite 1985: 182). The cooperative strategy, including persuasion and capacity building is at the base of the pyramid, and it should be used as “preventive” measures (Gallina 2005: 11).



(Ayres and Braithwaite 1992)

One of the strongest arguments for the use of the cooperative strategy first is that preventing violations through persuasion is cheaper than setting up monitoring and sanctioning mechanisms. Nevertheless, in case of non-compliance, the escalation to punishment needs to be certain in order to be a credible deterrent. In case of reiteration or severe offence, even the highest hierarchy of sanctions needs to be used.⁹

It is worth mentioning that worker empowerment is both a preventive strategy and, I would argue, a form of enforcement by a non-state actor. Having a strong counterpart is a deterrent for noncompliant employers, because they must take into account a possible reaction. In fact, strong and well-organized workers are more likely to monitor non-compliance and denounce it. Moreover, they can use their power through industrial or legal action, thus activating the more traditional, state-led or top-down enforcement mechanisms.

⁹ Ayres & Braithwaite 1992: 40; Braithwaite 1985: 182

4. OVERVIEW OF IMPLEMENTATION MECHANISMS IN PRACTICE

There exists a variety of approaches to implementing minimum wage laws, examples of which can be found in countries at almost any stage of development. These range from “soft” approaches, such as persuasion and education, to the “hard” strategies of legal enforcement. With reference to the theoretical framework in section 3, some of the most common mechanisms that are put in place for implementing the minimum wage will be described in context.

4.1 Persuasion

Creating a so called “culture of compliance” among employers (Skidmore 1999: 435) is a low-cost strategy for facilitating the self-enforcement of minimum wage. This strategy implies the construction of persuasive arguments in favour of the minimum wage and the appeal to common values and beliefs such as, for instance, the principle of “fair pay – fair play”.

Here, two main strategies for building commitment among employers can be identified. First, persuasive processes at the interpersonal level may take place. A strategy of interpersonal persuasion was used, for example, in the interaction between labour inspectors and managers in British and US-American coal mines from the Sixties to the Eighties, when “open and frank discussions” as well as persuasion through the inspectors contributed significantly to achieve higher level of compliance with safety provisions (cf. Braithwaite 1985).

Second, persuasion about the minimum wage may take place at a societal level through a supportive public discourse. Employers who do not comply need to be presented to the wider society as “cheaters” (Ayres & Braithwaite 1992: 92; Skidmore 1999: 436). Indeed, employers paying under the minimum wage are competing in an unfair way with others who respect the minimum wage law. Furthermore, the profits deriving from labour cost cutting are made at the public expense, because underpaid workers may then need state subsidies.

Levin-Waldman argues that rhetoric about minimum wage in the US has had political and social outcomes. For instance, in the nineties the government’s discourse supported the living wage as a means for achieving individual independence, which is a value deeply rooted in the American culture. In the same period, many US municipalities passed living wage bills requiring companies doing business with the municipality to pay a wage which is higher than the national minimum wage (Levin-Waldman 1999: 5).

4.2 Minimum wage setting and common rule interpretation

The management approach to compliance highlights the importance of regulatory frameworks which have been discussed and understood by the actors involved. This is a way to avoid non-compliance due to rule ambiguity. Moreover, as the actors have previously agreed upon them, shared rules should be more likely to be complied with rather than top-down regulation.

A participative process of minimum wage setting allows the minimum wage to be set at a level on which workers' and employers' representatives have agreed. Ideally, the minimum wage would first be the outcome of a consensus-oriented consultative/bargaining process between social partners and then it would be institutionalized by the government. Employers should thus be more ready to comply with it rather than in the case when the minimum wage is fixed top-down by the government. A good example for this kind of process of minimum wage setting is Uruguay where, in 2005, the government assigned to sectoral tripartite wage councils the task of setting the minimum wage and adjust it twice a year (International Labour Office 2008: 55). The new government's support for the minimum wage stopped the decline of the real minimum wage, which had been taking place in the previous 20 years (Furtado 2006: 287 f.). Indeed, in 2008 the minimum salary was 176% higher than its level in 2000 (International Labour Office 2009: 118). The minimum wage increase might even have contributed to reduce the gender pay gap, the regional pay gap and the pay gap among workers with different education levels (International Labour Office 2008: 55).

Furthermore, a tripartite decision-making process could facilitate the common interpretation of the minimum wage law, thus avoiding misinformation and confusion among workers and employers. To this aim, a simple minimum wage system might be preferable than a sectoral or occupational minimum wage. National minimum wage systems exist for instance in Brazil, UK, Albania and many West Africa countries (International Labour Office 2008: 50 f.).

4.3 Information and capacity building

A strong, consensus-based minimum wage regulation still requires much knowledge- and capacity-building to ensure it is effective. As mentioned above, clear information and correct understanding of the minimum wage are necessary for compliance. In addition to this, training should be provided for employers, workers and their representatives in order to guarantee that non-compliance is not due to a lack of capacity. Information and training also contribute to empowering workers; knowing and understanding their rights forms the base from which they can defend themselves at the hands of a non-compliant employer.

The government as well as employers' organizations and trade unions can run information campaigns targeting the wider society, employers and workers. The UK represents a good case in this sense. In fact, the British government has run five coordinated campaigns from October 2007 to March 2008 in order to raise

awareness of minimum wage (Low Pay Commission 2009: 190). Parallel to general campaigns, the British government has been running almost yearly campaigns that target sectors at risk: so far, the sectors targeted have been hairdressing, childcare, hotel, and hospitality (Low Pay Commission 2009: 196; see section 5.3).

Parallel to information campaigns, training seminars on issues related to minimum wage should be organized for employers and workers. For employers, such trainings prevent the underpayment of wages due to ignorance (whether real or feigned) of the minimum wage policy in effect. For workers, trainings are necessary so that they are not misinformed about their wage rights. In the absence of such knowledge, they are less likely to be aware of their exploitation, making the enforcement of their wage rights more difficult. One such government initiative was found in Quebec, where the government decided to invest in training as a core strategy for enforcing labour standards. Indeed, the *Commission des relations du travail* has a well developed public training program. In particular, the Commission staff organizes upon request informative meetings with employers, workers, and other society groups (such as students or cultural communities) (Gallina 2005: 34).

The ILO project called “Better Factories Cambodia” has also invested in capacity building for improving compliance with labour standards in the garment industry. Five different forms of training are provided: a modular training programme, single issues seminars, introduction kit training, factory-based training and supervisors/managers’ skills (Better Factories Cambodia 2009a). The training, geared toward employers’ and workers’ representatives as well as human resource managers, focuses on a wide range of issues, including minimum wage implementation. Workplace relations and working conditions are core issues, and innovative channels were tried out to improve them. Apart from the aforementioned seminars, a video on these issues¹⁰, filmed in the style of a soap opera, and featuring well-known Cambodian personalities, was produced and shown to union representatives and workers’ groups (Better Factories Cambodia 2009b). BFC tries to link the workers’ interest in good working conditions with management’s interest in the company’s performance. For this reason, training seminars are specifically offered to supervisors and skill managers, in order to improve productivity and quality and to avoid passive or authoritarian leadership styles (Better Factories Cambodia 2009c). The BFC capacity building approach, together with its extensive monitoring system, has certainly contributed to the improvement of working conditions in the Cambodian labour industry. Indeed, the compliance rates with most of the indicators for working conditions have shown a positive trend in the last years. Most notably, the minimum wage compliance rate for regular workers increased from 93% to 100%, and the rate for casual workers from 74% to 89% between 2006 and 2009 (Gallina 2005: 15; Skidmore 1999: 428).

¹⁰ Specifically, the issues were: grievance handling; dispute resolution (giving management a chance to fix the problem first) and legal strikes; stealing; Occupational Safety and Health (OSH); Working mothers and breast-feeding (promoting exclusive breast-feeding); Underage workers/ not paying to get a job (Better Factories Cambodia 2009b).

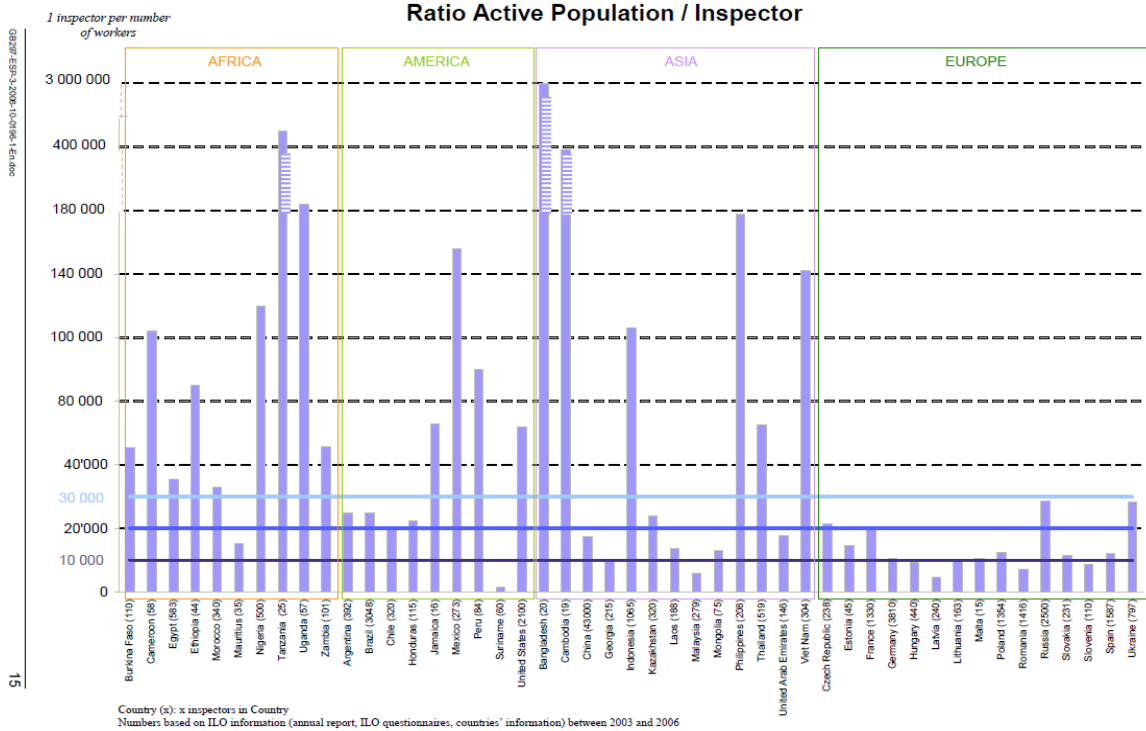
4.4 Monitoring through labour inspections

Both the management and the enforcement approach highlight the importance of monitoring non-compliance. Transparency prevents free riding and allows actors to take targeted measures to defend their rights.

Labour inspections seem to be the main instrument for ensuring monitoring: they are provided by law in the almost one hundred countries included in the ILO Minimum Wage Database. From reports and academic studies, two main problems seem to prevent labour inspections from being an effective enforcement tool. First, labour inspectors are at risk of corruption, also because they are often underpaid (Skidmore 1999: 428). For tackling this problem, the Brazilian government seems to have undertaken effective anti-corruption measures: inspectors are assigned to a subregion (a territorial unit where inspections are circumscribed) for a period of up to twelve months, in order to avoid the creation of cliental relations. Furthermore, inspectors receive a fairly high salary, which can be integrated through performance-based rewards (Almeida & Carneiro 2009: 7).

Secondly, labour inspections are costly, and governments do not invest enough funds for financing them. Employers also consider monitoring structures a cost burden and are not ready to commit to their financing (Gallina 2005: 15; Skidmore 1999: 428). As the ILO reports, labour inspections are often “understaffed, under-equipped, under-trained” (International Labour Office 2006: 4). Regarding the ratio between inspectors and workers, the ILO suggests the following benchmarks, which are calculated according to different phases of economic development: 1/10,000 in industrial market economies; 1/15,000 in industrializing economies; 1/20,000 in transition economies; and 1/40,000 in less developed countries (International Labour Office 2006: 4). In reality, many countries are far off from these ratios as the table below shows:

Table 1



(International Labour Office 2006: 15) quoted in Weil 2008: 352.

As limited resources for inspections do not allow a total coverage of the labour market, two main strategies are used in order to improve the effectiveness of inspections. In the UK, the strategy of “prioritization”¹¹ has been adopted, that is, the sectors considered “at risk” are targeted, in order to use resources in the most effective way (Low Pay Commission 2009: 195 f.). In the US, the system of labour inspections relies mainly on workers’ complaints: in 2007, 75% of labour inspections were conducted following a complaint. Workers complain through unions or directly to government agencies, in order to bring the problem – such as underpayment of minimum wage, unsafe working conditions, etc. - to the attention of the competent authority (Weil 2008: 356).

If investigations can be raised through workers’ complaints, an easy and safe access to complaint procedures needs to be guaranteed. To this aim, confidential hotlines hosted by government agencies are provided in different countries such as in the UK and in Australia. In the US, the Working Hours Division of the Department of Labor has even set up hotlines in different languages through partnerships with the consulates, in order to target migrant workers. Unfortunately, these hotlines as well as the ordinary hotlines were reported to be ineffective by the Government Accountability Office: the staff delivered wrong information or did not return the calls and sometimes there was no answering machine (Government Accountability Office 2008: 18). Online questionnaires may also be useful; in the UK there is the possibility to fill in online complaint forms

11 (Weil 2008: 354)

with or without personal details if you are an (ex-) worker or just if you have information about an employer paying under the minimum wage (HM Revenue & Customs 2010).

Beyond labour inspections, an important method of monitoring compliance is the self-monitoring, record-keeping and self-reporting by the workers. Allowing individual workers and unions to denounce non-compliant employers constitutes a form of monitoring additional to labour inspections and, most of all, it gives workers the opportunity to enforce their rights by themselves, as we shall see in the following section.

4.5 Legal action

In many countries such as the US and the UK workers themselves can take individual legal action against an employer (US Department of Labour 2010; Low Pay Commission 2009: 209). Although this monitoring system facilitates the enforcement of individual rights, it also implies a considerable risk for the worker and, consequently, a deterrent to denounce the underpayment. For this reason, measures are required in order to empower and protect workers and to offer them incentives to complain.¹² First, compensation for underpayment needs to be provided by law. The employer has to compensate the workers by paying them the difference between the paid wage and the minimum wage. In some countries, a time limitation on back-pay is provided for (e.g. in the USA it amounts to two years) but this provision does not seem to be fair towards the workers. On the contrary, the compensation system should provide a full reimbursement to the worker, even for the loss of purchasing power due to inflation over the years. For instance, in Thailand an interest rate of 15% per year is applied and in the UK the arrears have to be paid at the current minimum wage rate (Low Pay Commission 2009: 198; ILO TRAVAIL 2009).

Second, it is necessary to reduce the waiting time for compensation, because long, difficult bureaucratic procedures or trials may discourage the workers from complaining. For this reason, employers in the UK benefit from a penalty reduction if they pay the full arrears quickly (Low Pay Commission 2009: 199). Alternatively, controversies on minimum wage can be solved by arbitration councils at the company or sectoral level in order to make the process speedy and flexible. It is worth pointing out that dispute settlement at the sectoral level seems to have advantages. As the confrontation is less direct, the solution could probably be found more easily. Moreover, it allows the representation of workers through unions even at non-unionized workplaces. This kind of dispute settlement can be found in the Swiss catering industry, where an arbitration council composed by employers' and workers' representatives has been set up. This so called "supervisory joint committee" monitors the application of the collective agreement and decides on individual controversies. Its decision cannot

¹² In this regard, the provision to fine the workers paid under the minimum wage, which can be found in Finland and in the Canadian State of Manitoba (cf. ILO TRAVAIL 2009), seems to be counterproductive, as workers will probably not complain.

be contested and, in case of failing to pay arrears and comply with sanctions, legal action may be undertaken (Hotel&Gastro Union et al. 2010: 29 f.).

Third, in Israel and Trinidad and Tobago – among other countries – it is explicitly provided by law that the employer may not affect the employment of the workers who complained of underpayment (ILO TRAVAIL 2009). These guaranties against employer's retaliation are fundamental, because workers do not complain if it implies putting their job at risk.

Finally, the right to undertake legal action against the employer should be given not only to individual workers, who are inevitably more exposed to retaliation, but also to workers' organizations which can act on behalf of the workers. The option of collective legal action is guaranteed in Australia, for example, where employee organizations are also allowed to go to court¹³ in case of underpayment of wages (Fair Work Act 2009 § 539).

4.6 Legal sanctioning

In case of violations of minimum wage provisions, pecuniary fines are provided by law in almost all the countries included in the ILO Minimum Wage Database. Severe fines are key to the effectiveness of the enforcement system, because only consistent losses represent a deterrent to non-compliance for employers. In fact, if actors follow rational economic calculations, the costs of non-compliance should always outweigh the benefits. In some countries, the amount of the fine is determined by taking the minimum salary and multiplying it by several times; in Colombia, for instance, the fine may amount up to 100 times the minimum salary. In other countries like Morocco, Tunisia and France, the amount of the fine is fixed by law and is multiplied by the number of employees offended. Depending on the severity of the offence, imprisonment is also a possible outcome in countries like India, Israel and the US (ILO TRAVAIL 2009).

Sanctions may become more severe depending on the situation. The fine increases in case of repeated offence; for instance, it doubles in Algeria, Belgium and the Dominican Republic. In Bolivia and Vietnam, even the compulsory cessation of business is provided by law. If the employer refuses to pay the fine, imprisonment may follow in some countries like Guatemala and Venezuela (ILO TRAVAIL 2009). Criminal prosecution is provided for in the UK when the employer refuses to pay the minimum wage or provides false information or records. Nevertheless, cases of criminal prosecution for issues related with the minimum wage are so rare that it cannot be considered an effective deterrent for employers (Low Pay Commission 2009: 200).

Back pay compensation¹⁴ of the workers may also constitute a form of punishment if it is more costly to the employer than the compliance with the minimum wage. For instance, arrears in the UK include take the rate of inflation

¹³ In the Fair Work Act, three different Courts are mentioned: the Federal Court, the Federal Magistrates Court and an eligible State or Territory court (Fair Work Act 2009 § 539).

¹⁴ See sections 4.4. and 5.6.

into account, and therefore the final settlement amount ends up being higher than the regular payment of the minimum wage.

4.7 Naming and shaming and boycott campaigns

Naming and shaming and boycott campaigns represent an underused but probably effective (and cheap) compliance mechanism; by making public the names of the companies which pay their workers under the minimum wage, serious damage can be done to their reputation, which usually entails market losses for the company. In classical terms, naming and shaming does not constitute a sanctioning mechanism *per se*, as a sanction, by definition, is a penalty for non-compliance that is specified and enforced by law. However, naming and shaming has been adopted by governments and trade unions to pressure companies into compliance. Indeed, an effective naming and shaming strategy that results in a negative impact on business would work like a sanction.

This strategy was chosen by the Indonesian government in the nineties to enforce the minimum wage. Non-compliant companies were blacklisted and their names were made public (Rama 1996: 868). In order to be dropped from the list, companies needed to publicly “confess guilty and pledge for apology” (Indonesia Times, 1st March 1995 cit. in Rama 1996: 868). Similarly, the Brazilian government uses blacklisting of companies if they are guilty of employing slave labour. Perpetrators are monitored for two years and are dropped off the list if the crime has not been repeated and all the fines and compensation for the workers have been paid (Repórter Brasil 2010).

Whereas the government can undertake some naming and shaming activities, boycott campaigns are run not by the governments but by other actors such as NGOs and trade unions. The Clean Clothes Campaign (CCC), which is a European network of unions and labour-related organizations collaborating with more than 200 partners all over the world, has been using the naming and shaming strategy for achieving better working conditions (including payment of living wages) in the garment industry of developing countries. The CCC delivers information on what companies are violating workers’ rights and asks the consumers to include considerations on sustainability in their shopping preferences (Clean Clothes Campaign 2008).

In 1998 the Swiss Federation of Trade Unions (SGB) started a campaign for higher minimum salaries, targeting the low-wage sectors such as the retail, clothing and tourism industries. The campaign explicitly addressed the customers and tried to mobilise their social sensibilities by spreading the motto “starvation wages – guests lose their appetite” through the media. In this way, they put the companies under pressure. The campaign, which included many other initiatives, lead to substantial increases in the minimum wages set through collective bargaining (Oesch&Rieger 2005: 15 f.)

5. THE BRITISH CASE: COMBINED APPROACH FOR ENFORCING THE NATIONAL MINIMUM WAGE

As delineated in the theoretical section, minimum wage implementation is the most effective when there are a variety of systems and approaches taken. The UK provides a well-documented example of such a “combined” approach. Indeed, the implementation system of the National Minimum Wage (NMW) constitutes a combination of the approaches described in this paper: persuasion, management and enforcement. The British government has acknowledged the fundamental role of an effective implementation system for ensuring compliance with the NMW, and it has backed this statement with some funding, increasing the budget by 50% each year from 2007 to 2011 (Low Pay Commission 2009: 196).

5.1 The NMW system

The NMW Act was passed in 1998 under the Labour government. It established the minimum wage at the national level, without sectoral or regional distinctions. However, there are three different minimum wage rates according to workers’ age. The lowest rate is for workers under 18, followed by the wage rate for workers between 18 and 21 years old; the adult rate starts at 21. Wage increases are made every year by the Secretary of State following the recommendations of the LPC, which consult workers’ representatives, employers and other actors who are directly affected by the changing rates of the NMW. The LPC is an independent public body constituted by three members with union background, three members with employer background, two labour economists, and the chairman.¹⁵ The task of the LPC is to monitor the implementation and the impact of minimum wage, and to deliver policy recommendations to the government (Low Pay Commission 2010a).

The introduction of the MW was estimated to affect almost 2 millions workers in 1999. In 2008 there were 1.13 million minimum wage jobs, which made up 4.3% of the labour market (Low Pay Commission 2009: 15). The real and relative value of NMW has increased over years: between 1999 and 2009, the adult rate increased by 61 per cent, which is higher than both the average earnings increase (48 per cent) and the price increase (21-31 per cent depending on the index used¹⁶). (Low Pay Commission 2010: 29). Different studies have found that low-paid workers have experienced higher wage increases since the introduction of the NMW and that the latter has had a positive impact at the end of the income distribution (i.a. Butcher et al. 2009; Swaffield 2009 qtd. in Low Pay Commission 2010).

¹⁵ The actual chairman is David Norgrove (Low Pay Commission 2010b).

¹⁶ The Consumer Price Index or the Retail Price Index.

5.2 A supportive public discourse

Persuasion has been considered part of the implementation strategy of NMW since the introduction of the latter. In 1998, the British Department of Trade and Industry (DTI)¹⁷ wrote in its consultation draft on the implementation of minimum wage that “it is far preferable, if at all possible, to encourage employers to comply voluntarily than to have to provide for a huge bureaucracy to do so” (DIT qtd. in Skidmore 1999: 428).

The public discourse has been in favour of the application of NMW for regulating the labour market. In its electoral manifesto for 2010, the Labour Party has indicated the NMW as one of its main achievements and has presented it as core measure if re-elected (Labour Party 2010). Labour government members also supported publicly the NMW on different occasions. For instance, in May 2009, during Prime Minister's Question time¹⁸, Gordon Brown lent his support to USDAW's Wage Concern campaign against Tory's Bill which would have made the NMW optional for workers and employers (Brown 2009). Even the Conservatives do not attack the NMW directly. The Tory leader David Cameron stated already in 2005 that the minimum wage “turned out much better than many people expected, including the CBI” (The Guardian 2009, 13th May). Moreover, the government coalition between Liberal Democrats and Tories stated in its joint programme for Government that they “support the National Minimum Wage because of the protection it gives low income workers and the incentives to work it provides” (Cabinet Office 2010).

Further, employers paying their workers under the NMW are publicly depicted as “exploiters” and “cheaters” by both the government and the employers themselves. Indeed, Pat McFadden, Minister for Employment Relations, declared in his speech for the launch of the information campaign on NMW in 2008 that:

“The National Minimum Wage remains one of the most important new rights introduced by this Government. Employers who don't pay the minimum wage are not only cheating workers, they're undercutting honest businesses.” (UK Government News 2008, January 10th)

Similarly, CBI's director of human resource policy Susan Anderson declared in 2006 that employers support the NMW, and she publicly blamed the “minority of unscrupulous employers who take workers on the black market to avoid paying the minimum wage” (Times Online 2006). Indeed, the NMW system was supported by 87% of employers according to the survey conducted by Personnel Today in 2007 (Personnel Today 2007, 6th March).¹⁹ The moral condemnation of

¹⁷ In 2007 the DTI was merged to other departments in order to constitute the Department for Business, Enterprise and Regulatory Reform (BERP) (BIS 2010). Two years later the Department of Business, Innovation and Skills (BIS) was created by the merger of BERP and the Department of Innovation, Universities and Skills (DIUS) (BIS 2009).

¹⁸ Prime Minister's Question is a British constitutional convention: Every Wednesday the Prime Minister dedicates half an hour for answering the questions of Members of Parliament.

¹⁹ The survey covered 150 business organizations and the percentage reported here does not refer to the specific NMW rate but to the NMW as regulation instrument.

violators and the willingness to punish them is proved by the joint demand by CBI, TUC, and unions such as USDAW to increase the number of criminal prosecutions and penalties for violators of the minimum wage law (Low Pay Commission 2010: 171).

5.3 Campaigns

Campaigns run by the government, unions and other organizations can serve two main purposes. To start with, campaigns can shape the public discourse and spread general information throughout society. In addition, they can be used as a first step of a broader strategy directed towards the interested parties, such as workers and employers. On recommendation of the Low Pay Commission, the Labour government had increased the funding for publicity on minimum wage, which amounts now to £1.2 million (Low Pay Commission 2009: 197). Unfortunately, however, it seems that the massive public cuts of the ConDem government will probably not allow the campaign to be run in 2011.²⁰

For the past several years, the Department of Business, Enterprise and Regulatory Reform (BERR) has been running publicity campaigns on the minimum wage in order to raise public awareness. Between October 2007 and March 2008 it undertook five campaigns, making use of different communication methods such as radio advertising, posters, leaflets, a publicity bus and the internet. The campaign was successful in raising visibility in numerical terms: thirty-two newspapers reported about the campaign, 700,000 people saw the bus, and 130,000 leaflets were distributed. Moreover, the calls to the HMRC helpline²¹ increased by 400%, and the awareness of the rates for different age groups rose from 10% to 70% (Low Pay Commission 2009: 190 f.). In 2008/09 another campaign was run by the Government, which focused on employers and workers in low-paying sectors. It included online advertising aimed at young workers, a direct mail-out and an online campaign for employers, community messaging, washroom posters, and ATM advertising (Low Pay Commission 2010: 177).

The National Minimum Wage Coalition has been campaigning on NMW for 10 years. The members of this coalition are the TUC²² and unions such as Unison, USDAW²³ as well as institutions and organizations like the Institute of Employment Rights, British Youth Council, Child Poverty Action Group, National Union of Students and YWCA England & Wales. The aim of the campaign is to spread information about the NMW, and to promote higher and equal rates across ages and the coverage of apprentices (British Youth Council 2010).

As mentioned in section 4.3, different campaigns were run in the last years by the Department of Trade and Industry (DTI), which targeted specific sectors considered at risk. A study has been conducted on behalf of the Low Pay Commission for assessing the effectiveness of the 2005-06 campaigns in the

²⁰ This piece of information was provided informally by a TUC officer in November 2010.

²¹ See section 5.4.

²² Trades Union Congress.

²³ Union of Shop, Distributive and Allied Workers.

hairdressing sector. The campaign's goal was to raise awareness among workers and employers. A detailed guide on minimum wage was produced for employers and sent to the National Hairdresser's Federation (the employers' organisation) and Habia (the Standards Setting Body for the hair and beauty industry) so that they could circulate it to their members. A shorter guide and a letter containing the entitlements of the apprentices were sent to all the hairdressing apprentices at their home addresses as well as distributed through the hairdressing training providers (White & Croucher 2007: 13 ff.). Also the Welsh Assembly Department for Education and Lifelong Learning (ELWa), Scottish Enterprise, and the Department for Education and Skills (Northern Ireland) were asked to forward the guides to training providers, hairdressing employers and apprentices. The Government ministers published some articles on minimum wage in the hairdressing trade press and the DTI took a stand at the annual international hairdressing conference major in London held in November 2005 (White & Croucher 2007: 15).

The research team conducted phone and post surveys and also more detailed interviews on a smaller focus group in order to verify the raise of awareness. The results of their surveys were difficult to interpret²⁴ but it could be concluded that the campaign had a generally positive impact on awareness level (White & Croucher 2007: 46). The most revelatory data for the effectiveness of the campaign was that workers' minimum wage violation complaints increased by 36% in the hairdressing industry during the time of the campaign (2005/2006) (Low Pay Commission 2007: 222).

Information actions focused in particular on migrant workers. Anticipating post-enlargement migration flows, the government circulated information material on minimum wage in the A8 states²⁵. In the UK, churches, local communities and migrant organizations were asked to disseminate the material on minimum wage among migrant workers (Low Pay Commission 2007: 219).

5.4 NMW labour inspections

Her Majesty's Revenue and Customs (HMRC) is the division in charge of the enforcement of minimum wage. HMRC compliance teams are spread over the UK territory but they work along a central team, which collects the complaints (Low Pay Commission 2010: 165). Workers can make a complaint through three different procedures. First, they can call the HMRC helpline and lodge a complaint against an employer who does not pay the minimum wage. Second, they can download the complaint form and send it by mail. Third, they can fill in the online complaint form and submit it (HM Revenue and Customs 2010). Every complaint is investigated and, if their capacity allows it, further investigations are carried out in the sectors where the risk is assessed to be high (Low Pay Commission 2010: 165).

²⁴ See White and Croucher, Chapter III and IV.

²⁵ The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia.

Inspectors have the power to:

- require employers and employees to produce and explain records about NMW pay;
- require employers and employees to supply further explanations as necessary to determine whether the legislation has been complied with;
- enter the premises at any reasonable time;
- require employers to attend an interview at a place of the officer's choosing;
- remove NMW records from the employers' premises and copy them.

In case of non-compliance, labour inspectors issue a payment notice of the arrears and can also impose a penalty on employers. Further, they can take the employer to court if they deliberately refuse to pay the NMW arrears (Small Business Service 2010).

Data on labour inspections show different trends and they do not allow estimating the extent of non-compliance. The number of HRMC helpline enquiries in 2008/09 declined dramatically in comparison with the previous two years, probably because of the introduction of the online enquiry procedure. The cases of non-compliance increased by 6% and the number of underpaid workers rose by 21%, indicating that there were more cases involving a large number of workers. The amount of cases investigated where non-compliance was found increased from 36% to 40%. This does not necessarily mean that the number of non-compliant employers increased, but could rather indicate that inspections targeted the sectors more at risk. The number of enforcement and penalty notices issued increased over-proportionally with respect to the cases of non-compliance, showing a change of enforcement strategy (Low Pay Commission 2010: 167 f.).

The following table gives an overview of the relevant data on labour inspectors and of their development over time:

Table 2

	2006/07	2007/08	2008/09
Enquiries received by the helpline	52,078	46,849	34,704
Complaints of underpayment	2,210	3,231	2,521
Enquiries completed^a	4,500	4,525	4,317
Cases of non-compliance	1,523	1,650	1,746
Strike rate (per cent)^b	34	36	40
Enforcement notices issued	71	59	96
Penalty notices issued	2	25	30
Value of underpayments identified (£ million)	3.0	3.9	4.5
Average arrears per worker (£)	214	202	193
No. of male workers	4,989	10,475	11,757
No. of female workers	9,200	8,789	11,490
Total workers	14,189	19,264	23,247

Source: HMRC, UK, 2006–2009.

Notes:

- a. Enquiries completed are the number of cases closed after an inspection has been made.
- b. The strike rate is the percentage of the cases investigated where non-compliance was found.

(Low Pay Commission 2010: 168)

5.5 Focus on vulnerable workers

In addition to the NMW team, other bodies are in charge of conducting inspections of the payment of minimum wage in sectors where workers are particularly at risk of exploitation. Further, different projects have been set up, which required collaboration between the NMW team and other agencies.

The DTI is in charge of labour inspection of employment agencies, which often exploit workers, especially migrant workers, by charging them for services (accommodation, job finding, etc.). The DTI Employment Agency Standards Inspectorate has a helpline for collecting workers' complaints, and 24 labour inspectors who follow up on the complaints and perform random checks at other agencies. With the Employment Act of 2008, the inspectorate was further empowered to investigate "serious cases of non-compliance" (Low Pay Commission 2009: 197; Low Pay Commission 2010: 179).

Non-compliant agencies can be fined up to £5,000 and individuals can be forced to leave the agency business for up to ten years (Low Pay Commission 2007: 227). In 2007/08, the EAS Inspectorate received 1,300 complaints and conducted 200

target inspections. In 2007 two agencies were prosecuted and five individuals were prohibited from running an employment agency (Low Pay Commission 2009: 206). In 2009 the EAS prosecuted just one individual but retrieved £125,000 of workers' wages, which doubled the amount from the previous year (Low Pay Commission 2010: 180).

The Gangmasters Licensing Authority, set up in 2005, conducts labour inspections of labour providers within the agriculture, horticulture, fish processing and shellfish gathering industries, or in the packaging or processing of these products. The failed payment of the NMW or of the agricultural minimum wage belongs to the category of the most serious offences (Low Pay Commission 2007: 228). Between 2005 and 2008 GLA revoked 85 licences, but it is not specified how many gangmasters were found liable of not paying the minimum wage (Low Pay Commission 2009: 208).

The Government further improved its enforcement strategy of vulnerable workers' rights. It set up a single enforcement helpline (instead of the previous five helplines), through which the different workers' enquiries can be referred to the competent enforcement body. Further measures were undertaken for enhancing the cooperation between the Employment Agency Standards Inspectorate and local council inspectors, and among five enforcement bodies (Low Pay Commission 2010: 179). For instance, the government started the Joint Workplace Enforcement Pilot (JWEP), which tackles the problem of undocumented migrant workers and their exploitation. As employers of undocumented migrants often violate labour regulation, different bodies are jointly working on this pilot project: UK Immigration Service, HMRC, BERR (formerly the DTI), the Department for Work and Pensions, the Health and Safety Executive and the Gangmasters Licensing Authority (GLA) (Low Pay Commission 2008: 117).

In addition to this, since 2004 the NMW enforcement teams have carried out monthly checks on a sample of 15 companies employing migrant workers. From November 2004 to March 2008, total arrears amounted to £417,162 for 3,114 workers (Low Pay Commission 2009: 205). In December 2009, the Government announced that a Dynamic Response Team would be set up by the Migration Impacts Fund, in order to collaborate with HMRC on the enforcement of the NMW. The new team will work on NMW cases involving migrant labour (Low Pay Commission 2010: 175).

5.6 Individual enforcement

Individual workers can bring their claim for underpayment of minimum wage before an employment tribunal in order to require the payment of arrears. This procedure needs to be started within three months of termination of employment or of the date of the offence (Directgov 2010). Making a claim at the employment tribunal is free of charge unless the claimant employs a solicitor in order to require the payment (Safeworkers 2010)

Alternatively, even after the claim procedure at the Employment Tribunal has been started, the claimant and the employer have the possibility of solving their dispute through conciliation. If both parties agree, they can make use of ACAS services, which are confidential and free of charge (Small Business Service 2010).

The Employment Tribunal cannot enforce the payment of tribunal awards and, if the employer refuses to pay, the worker needs to turn to the civil court in order to seek payment. According to the Citizens Advice Bureau, one monetary award out of ten needed to be enforced in 2008. The British Government produced leaflets in order to inform individual claimants about the possibilities of enforcing the Tribunal awards and set up a customer services general enquiry line. However, the fact that the Employment Tribunal does not have enforcement power is a major problem according to the LPC (Low Pay Commission 2009: 209 f.).

5.7 Alternative methods of enforcement: union power

As written in the 2009 report of the Vulnerable Workers Project, organizing workers is the best strategy at the disposal of unions for defending workers' (wage) rights. For this reason, British unions have started to focus on the so called "vulnerable workers" such as, among others, migrant workers and precarious workers, who have a very low unionization rate (around 10 per cent) but who would benefit a great deal from union support. To begin with, the unionization of the workplace represents a deterrent to employers from underpaying their workers (Vulnerable Workers Project 2009: 10 f.). Furthermore, unions can help their members in case of disputes with employers. They usually provide legal advice and assistance for making the claim. Unions can also represent the claimant worker during ACAS conciliations and before the Employment Tribunal (Purcell 2010; Directgov 2010).

However, unions are not allowed to bring underpayment cases to court on behalf of workers. In fact, the Employment tribunal can only hear cases brought by individual workers. The TUC considers this a real obstacle to implementation because many workers fear that their employers will retaliate, and therefore they do not denounce the violation of the NMWAct. For this reason, the TUC and unions such as USDAW, Unite and the National Union of Journalists (NUJ) have asked to be given the right to undertake collective legal action (Low Pay Commission 2007: 233; Low Pay Commission 2009: 193).

British unions have reported that many workers were dismissed after complaining about underpayment. In order to help workers, the TUC, supported by other unions, proposed in 2008 that unions should be given the right to access information on the outcomes of complaints (Low Pay Commission 2008: 114). The following year, the government allowed HMRC to provide feedback on minimum wage complaints to TUC. However, only aggregate figures can be disclosed, in order to protect the confidentiality of individual employers (Low Pay Commission 2009: 194).

5.8 Arrears and Penalties

Since the 2008 Employment Act came into force in April 2009, the system of arrears and penalties has changed. Minimum wage arrears are to be paid at the current minimum wage rate, in order to avoid any loss from the workers. While penalties used to be issued in the case of non-compliance with an Enforcement Notice, since 2009 penalties are issued when employers fail to pay the minimum wage. The penalty amounts to half of the arrears, from a minimum of £100 to a maximum of £5,000 (Low Pay Commission 2009: 198 f.).

Criminal prosecution is also possible in the cases where employers refuse to pay the minimum wage or furnish false records and information (Low Pay Commission 2009: 199). In practice, criminal prosecution is a procedure which is seldom applied because it is particularly time-consuming. Between 2006 and 2009 there were only five successful criminal prosecutions and just one of them was for neglecting to pay the minimum wage (Low Pay Commission 2009: 200). The LPC, the CBI and unions has advocated an increase in criminal prosecution cases (Low Pay Commission 2010: 171).

Since a few years, the Low Pay Commission has recommended to the government the use of naming and shaming practices. These kinds of practices had already been used by the Home Office in 2008, when the names of companies employing undocumented migrants were made public (Low Pay Commission 2009: 195). As minimum wage has become an established part of labour rights, the British government accepted this suggestion and is now developing a policy for making enforcement more transparent (Low Pay Commission 2010: 169).

6. FURTHER IDEAS FOR IMPLEMENTING THE MINIMUM WAGE

The UK case contains a variety of good practices of minimum wage implementation, and overall has shown that minimum wage is best implemented when a variety of methods work in harmony with one another. Drawing inspiration from these positive attributes and looking to the broader field of labour regulation, a range of additional approaches to minimum wage implementation can be taken into consideration. What follows is a set of suggestions to encourage new ways of thinking of minimum wage implementation, with a view to diversifying and strengthening minimum wage implementation.

6.1 Change the process of minimum wage setting

As illustrated in sections 4 and 5, appropriate rule setting is the first step to achieve compliance. As a consequence of the globalization of markets, companies respond to the strong competitive pressure by undercutting labour costs. For this reason, companies have a high incentive to pay workers under the national minimum wage, especially if enforcement mechanisms are weak. Through a global living wage, wages would be taken out from the competition equation, implying that companies would have to invest in training and technology in order to stay competitive. If a general commitment to a global living wage was achieved, the ILO could undertake the task of estimating the level of living wage in the different countries according to common criteria.²⁶

In the European Union, the creation of a common market through the freedom of capital, goods, labour and services has put on debate in the last years the question of a European coordination of minimum wage policies. Given the different minimum wage levels and the absence of statutory minimum wages in some countries,²⁷ companies have been pitting production sites²⁸ and workers against one another.²⁹ A European minimum wage policy would contribute to stop the ongoing precarization of work and the undermining of social standards (Schulten 2008: 422). Even if a European minimum wage policy will probably not be implemented in the near future, some unions seized the opportunity to coordinate their collective bargaining policy. An example is the Doorn Initiative, a network of unions from Germany and Benelux cooperating to develop a common collective bargaining rule and to monitor the development of the national collective bargaining policies (Eurofound 2009).

26 Possible criterion could be, for instance, that the living wage equals a specific percentage of the median/average wage.

27 European countries without a statutory minimum wage are Austria, Denmark, Germany, Italy and Sweden.

28 See the works by i.a. (Galgóczi et al. 2006; Pedersini 2006) for an overview of the debate on relocation and restructuring in Europe.

29 See the works by i.a. (Blanke 2006; Cremers et al. 2007; Woolfson & Sommers 2006) on posted workers and the freedom of services.

Unions and workers in developing countries whose economies are mainly based on exports experience even stronger pressure on wages and working conditions as a result of MNCs. In particular, companies in the garment sector in Asia strategically undercut labour costs to maintain competitive prices, threatening outsourcing when higher wages are required (Asia Floor Wage Alliance 2005: 8). To tackle this problem, union leaders and labour activists, mainly from Asia but also from the other continents, set up the Asian Floor Wage Alliance in 2005. This network has been developing a strategy for the Asian garment industry which is based on a campaign for a minimum wage floor (Asia Floor Wage Alliance 2008).

International Framework Agreements (IFAs) could also potentially represent a means for implementing minimum wage at the transnational level. These consist of agreements negotiated among Global Unions and MNCs' management and usually include International Labour Standards, and sometimes provide guarantees for decent wages and working conditions. The IFA at Daimler, which was signed in 2002, represents a good example. It has a very broad scope and contains provisions related to industrial relations' issues such as the commitment of the company to the principle "equal pay for equal work" and the obligation of paying workers not less than the minimum wage established in the local labour markets (Telljohann, Volker et al. 2009: 64).

6.2 Access

Making complaint procedures easily available is key to improving compliance with the minimum wage. Online questionnaires and hotlines represent valid tools, but it cannot be assumed that all workers have easy access to internet or speak the national language. Therefore, alternative solutions may be necessary, as, for instance, distributing complaint forms in different languages in "post offices, doctors' surgeries, trade journal, popular magazines", as Skidmore suggested for the implementation of the NMW in UK (Skidmore 1999: 441).

As briefly mentioned in the case study, strong union presence at the workplace is a critical factor contributing to the effective implementation of workers' wage rights. First, it prevents cases of workers' exploitation: unionized workers are usually better informed about their rights and therefore less exposed to the risk of being cheated. Moreover, being a union member makes the workers potentially stronger, which might intimidate the employer and discourage him from violating the minimum wage law. Indeed, unionized workers usually benefit from better pay and working conditions than their non-unionized colleagues (cf. Mishel & Walters 2003). Second, unions can intervene and help their members to get their back pay if they have been underpaid by their employer.

Implementation mechanisms which are potentially effective may be inappropriate or infeasible in certain situations. The opportunity to undertake individual or collective legal action against the employer represents an important channel for enforcing the worker's right to the minimum wage. But this procedure, which may imply risks even for documented workers, is almost impracticable for undocumented migrant workers. In fact, since their presence on

the national territory is undocumented, they can be deported if they decide to come out of the shadows. That makes them particularly vulnerable to blackmail by the employer and makes enforcement of minimum wage very difficult for this category of workers, which is probably the most vulnerable to exploitation. For this reason, special guarantees for undocumented workers need to be provided. In Germany, there have been some successful cases of undocumented migrants getting their back pay thanks to the trade union Ver.di, which has a special desk for undocumented migrants in Berlin and Hamburg (Dohler 2009). Because their presence in court could result in their deportation, an undocumented worker making a claim does not have to personally go to court. Instead, the union can provide a lawyer who is given the right to represent the worker (Ver.di 2010).

These cases show that undocumented migrants' rights are enforceable. Still, it does not guarantee the worker the right to stay in the receiving country. To facilitate minimum wage implementation and enforcement in this context, it would be necessary to protect the undocumented workers who are filling the complaint. Article 18 of the Italian law 286/1998 on migration provides a special measure for migrant women who are victims of sexual exploitation. Experts in the trafficking of women consider this mechanism to be a model worth replicating precisely because it provides protection and an incentive for women to denounce trafficking violations. Women trafficked into prostitution are given a six-month stay permit if they denounce their exploiter and stop working as prostitutes. If they participate in an "integration course", the permit is extended for another six months. A further extension is provided if they integrate in the labour market (Prasad 2005). Guglielmo Epifani, General Secretary of the Italian Trade Unions' Confederation CGIL, has suggested the extension of this mechanism to all the migrant workers who are victims of exploitation (Epifani 2010 qtd. in *Il Giornale di Pozzallo*). Indeed, migrant workers would be significantly empowered if they were given an effective legal tool, protection, and an incentive to claim their rights. Moreover, this measure seems to offer a way to fight illegal immigration, as employers would have a strong incentive to hire legal migrant workers, in order to avoid legal prosecution.

6.3 Transparency

Making the implementation process of minimum wage more transparent would positively contribute to compliance. First of all, transparency is an effective means for fighting potential collusion between inspectors and employers. Ayres and Braithwaite identify "tripartism" as an effective anti-corruption measure: this term implies that Public Interest Groups (PIGs) take part in the regulation negotiations and in the implementation process. PIGs have the role of counterbalancing the regulated actors and represent private interests. In case of labour regulation (such as for the minimum wage), the PIG is constituted by the (sectoral) union and elected union representatives should be entitled to attend labour inspections (cf. Ayres & Braithwaite 1992: 58).

Secondly, transparency would improve the coverage of monitoring, which thus would not rely solely on labour inspectors and workers' complaints. For instance, access to a specific company's information could be guaranteed not only to labour inspectors but also to sectoral unions.³⁰

6.4 The state as employer of last resort

If the economy has a large informal sector, as in the case of many developing countries, the legal minimum wage is obviously hard to enforce beyond the limited formal sector of the economy. For this reason, the role of the state as employer of last resort can be extremely relevant for enforcing the minimum wage (Murgai & Ravallion 2005: 2). For one, low-paid workers in the informal sector are given the opportunity to switch to the formal sector and to be paid the minimum wage as workers directly employed by the state (as in the Indian experience described above). Moreover, various studies have shown that the introduction of the minimum wage in the formal sector can have a positive impact on the wages in the informal economy (cf. i.a. Gindling & Terrell 2005; Lemos 2008). Thus, the state intervention as employer of last resort has a direct and indirect impact on workers' income.

India represents a good case for this kind of state intervention. Indeed, the Indian government has adopted Employment Guarantee Schemes (EGS) as poverty alleviation measures since they provide employment on local public works to poor people. The Maharashtra was the first Indian federal state to have an EGS, which was set up in 1965 (Overseas Development Institute 2006). But, when the National Rural Employment Guarantee Act (NREGA) came into force 40 years later, all the other federal states were required to set up an EGS (The National Portal of India 2010). The EGS provides jobs, that are remunerated at the minimum wage rate and that are available within 15 days from the day of application. The maximum number of working days per household is one hundred per year, and at least one third of the workers participating in this programme must be women (Right to Food Campaign 2010).

EGS seem to have a positive impact on poverty levels. For instance, the evaluation of the Rural EGS in Maharashtra showed that it has conferred significant transfer and stabilisation benefits, even if implementation problems (e.g. ineffective allocation of parts of the funds) have prevented the complete display of the potential benefits (Gaiha & Ima 2005: 4).

6.5 Minimum wage as requisite for loans and procurement works

An alternative sanctioning method that deters employers from violating labour standards is the exclusion of employers from public and private credits. This approach is adopted in Brazilian labour legislation, which empowers the Department of National Integration to suspend all lines of public and private credits for the companies whose names are present on the slave labour blacklist

³⁰ In the case that unions are assigned the monitoring, the state should provide financial support to unions for delivering this service.

mentioned earlier in this paper. (DNI government directive n. 1150, from November 18th, 2003 qtd. in Repórter Brasil 2010).

Conditionality on loans can be used not only as a sanction but also as an incentive to comply with labour standards. For instance, international financing institutions introduced some labour clauses for the award of loans and for procurement works. In 2006 the World Bank (WB) adopted a policy on social and environmental standards which is applied to loans and investments of the International Finance Corporation (IFC). Furthermore, labour clauses were introduced in 2009 in the General Conditions of Contract in the WB bidding documents and extended also to the procurement works of the 13 Multilateral Development Banks. The four core labour standards on Child Labour, Forced Labour, Health and Safety, and Record Keeping were included as mandatory, while the Standards on Workers Organisations and on Non Discrimination as well as the adoption of an HIV policy were just encouraged (Murie 2009: 6).

Regarding the introduction of labour clauses into bidding agreements, ILO Convention No. 94 needs to be mentioned, as it suggests the application of this mechanism for public procurement in the construction sector. This is an attempt to remove labour costs from competition and to ensure wages and working conditions to the workers (International Labour Conference 2008: xiii). Among the 60 ratifying states, the US provides an example of good practice: labour clauses need to be included in public contracts of different size and value and three different laws require the introduction of clauses into federal contracts for construction, services and the manufacture of supply and material (International Labour Conference 2008: 18). The labour clauses provide that contractors, or their subcontractors, pay workers employed directly upon the site of the work “no less than the locally prevailing wages and fringe benefits as determined for different classes of workers and localities by the Secretary of Labour” (International Labour Conference 2008: 39).

Other best practices on public procurement may be found at the national level. In fact, even if not in relation with ILO Convention No. 94, the Dutch government has decided to follow the principle of “the state as model employer” by developing a policy on “sustainable public procurement”. This consists of setting social standards for the purchase of supply chain products by Dutch public authorities.³¹ The minimum social standards to be met are the ILO Core Labour Standards and the UN Universal Declaration of Human Rights, but other clauses, such as the living wage or the number of working hours, may be added for certain products.

³¹ The range of product to which the social procurement policy is applied is broad but not complete because of the limited presence of supply chain initiatives. Therefore, the selected products are the following ones: coffee, tea, cocoa, textiles, natural stone and flowers (Huber 2010).

6.6 Social labelling

Some unions can adopt innovative strategies for promoting labour standards. For instance, they can run label campaigns in order to invite consumers to buy the products which are labelled as socially sustainable. German and US American unions provide two good examples.

In 1999 the German union NGG³² proposed a project called “Fair Catering”³³ in the catering industry, which is traditionally characterized by bad working conditions. Fair Catering would aim to give a “quality label” to catering companies which comply with specific labour and environmental standards. Companies would need to apply for this quality seal and a commission constituted by employers’ and workers’ representatives would decide whether the company accomplished the requirements or not (NGG 1999).

The AFL-CIO has set up a Union Label and Service Trade Department, which collects information on the unionization level of companies and delivers suggestions for shopping on a very broad range of products. Union members and their families in particular are invited to prefer products with the “Union Label”. Almost every two months, the Label Letter is published, which contains an updated list of products that are “union-approved”. (AFL-CIO Union Label and Service Trades Department 2010).

32 Nahrung-Genuss-Gaststätten (IUF translation: Food and Allied Workers’ Union)

33 Unfortunately, the project has never been set in place.

7. CONCLUSION

This paper represents a first attempt to approach the issue of minimum wage implementation. The theoretical framework developed in section 3 delineates three theories about why employers might comply with a minimum wage policy. These logics were then demonstrated through seven examples of approaches to minimum wage implementation. The UK case study then showed how an effective approach to minimum wage implementation is to combine the implementation strategies. First, an effective implementation strategy should take a persuasion approach by building public support for the minimum wage, and targeting employers so that they comply voluntarily. Second, capacity-building measures should be taken so that employers and workers are informed of the minimum wage, and so employers know how to apply it in their firms. Third, the monitoring system should guarantee the detection of non-compliance. Fourth, workers should be empowered so that they can denounce violations of the minimum wage law and also enforce their rights by themselves. Fifth, sanctions should be set such that they act as an effective deterrent for employers.

The data available on the impact of the UK implementation strategy suggests the effectiveness of the measures undertaken by the British government (see section 5.1.) In section 6, additional implementation solutions, drawn from labour regulations in general, but which can be applied to the issue of minimum wage as well, were sketched out.

This paper has served two purposes. By delivering an extensive review of the existing literature and of the empirical data, this paper has made a significant contribution to filling the research gap on minimum wage implementation. In addition, it has suggested that the implementation system of minimum wage can and should include different types of approaches, from “soft” mechanisms, such as persuasion, to more traditional “hard” mechanisms such as sanctioning. The case of the UK has showed that these mechanisms can be effectively combined in a coherent system for achieving compliance with the minimum wage.

Second, this paper has suggested innovative practices and new policy ideas to governments, unions and labour activists for implementing the minimum wage. In fact, it has focussed not only on government interventions and legislative mechanisms, but also on worker empowerment, an aspect which seems to be neglected in most of the national implementation systems of minimum wage. On the contrary, the enforcement of wage rights through the workers themselves and particularly through their unions should be encouraged: workers’ empowerment is vital to fair wage bargaining and to the enforcement of labour market regulation.³⁴

³⁴ On workers’ empowerment as mechanism for achieving better working conditions /decent work see i.a. International Labour Conference 97th 2008: 18; Hepple 2000, ILS Public Lecture.

Finally, this paper identified the need for more field research on minimum wage implementation. Qualitative studies would help to identify the country-specific problems related to implementation and to elaborate more targeted solutions. Moreover, accurate data collection on compliance is needed in order to assess the effectiveness of implementation mechanisms, both as a whole system, and as stand alone mechanisms. Governments should improve data collection on the results of the implementation strategy and make them available to the public. Only in this way they can assess the results of the investments in enforcement and allow improvements.

8. ANNEX

Issues	Enforcement Proposal	Creative Solutions	Empirical Evidence
Employers do not comply because they consider the minimum wage level too high	<u>Improving/changing the process of MW setting</u>	Tripartite decision-making in order to set minimum wage at an agreed level	Uruguay Low Pay Commission
Competition on wages is too strong for enforcing the MW		Cross-border living/ minimum wage	Global Living Wage Asian Floor Wage DOORN Initiative
		Company level minimum wage setting through collective bargaining	IFA at Daimler
Employers do not comply with the MW because they are not well informed	<u>Raising awareness on the minimum wage among employers</u>	National minimum wage instead of sectoral minimum wage in order to keep minimum wage simple	Albania, Brazil, Gabon, UK
		Organization of campaigns and seminars which explicitly target employers	Campaigns of British government Commission des Relations du Travail, Quebec Better Factories Cambodia
Workers do not expect to be paid the minimum wage because of the lack of information	<u>Raising awareness on the minimum wage among workers</u>	National minimum wage instead of sectoral minimum wage in order to keep minimum wage simple	Albania, Brazil, Gabon, UK
		Campaigns run by the government, especially addressing the sectors more at risk	MW campaign in the hairdressing sector in UK Campaign of the NMW Coalition in UK
		Minimum wage rates on payslips, advertising on bus tickets, in post offices, by radio	

The payment of minimum wage is not perceived as an obligation by employers	<u>Persuasion of employers</u>	The public discourse should support the minimum wage and present noncompliant employers as “cheaters”	Public discourse in UK
		Social label of goods produced by companies paying the minimum wage	Union Label initiative in the US Fair Catering NGG
100% coverage of labour inspections is impossible and implies too high costs.	<u>Improving labour inspections from a quantitative and qualitative perspective</u>	Targeted inspections in sectors at risk	UK
		Providing full information right of workers’ representative on all issues in the jurisdiction of labour inspections	
		Targeted inspections following workers’ complaints	USA (75% of labour inspections arisen from complaints)
Inspectors are at risk of corruption		Higher inspectors’ salaries for reducing the danger of bribing (performance-based salaries/ salaries financed through fines)	Brazil
		Workers’ representatives should accompany labour inspectors	
Workers do not complain because the (access to the) procedure is difficult	<u>Making complaint procedure more accessible</u>	Confidential hotline hosted by unions or government agencies (in different languages for foreign workers)	HRMC hotlines, UK US hotline for foreign workers hosted by consulates
		Confidential online questionnaire addressed to unions or government agencies	UK
		Complaint forms in post offices, magazines	
		Membership-based organization should have the right to file the complaints in non-unionized sectors (especially in countries with a large informal sector)	

Workers do not complain for underpayment because of the power imbalance	<u>Empowering workers to complain</u>	Setting up third party enforcement mechanisms (through unions or government agencies)	Australia
		Organize workers for giving them a collective voice	
		Explicit guaranties against retaliation	Israel and Trinidad and Tobago
		Special guaranties and incentives for undocumented immigrants to denounce their exploiters	Italian migration law regarding victims of prostitution
		Anonymous/confidential reporting	Aforementioned hotlines and online procedures
Workers do not complain because they do not get reimbursed	<u>Guarantee the defence of workers' wage rights</u>	Workers' compensation has to be provided and to guarantee the complete reimbursement	Arrears have to be paid at the current minimum wage rate as in UK No time limitation (2 years in the US)
		Minimum wage arbitration councils jointly established by employers and workers organisations would make the process speedy, flexible and less costly (to both parties)	Switzerland ACAS in UK
		For reducing the reaction time of employers, the fine should rise progressively if the deadline is passed.	Algeria, Belgium, Dominican Republic
Fines are too low	<u>Fair and severe fines</u>	Fines must be proportionate to the extent of offence and high enough to constitute a deterrent.	Multiplication of the fine for the number of employees offended as in Morocco, Tunisia and France Withdrawal of business licence in case of reiteration as in Vietnam and Bolivia

		Fines should be higher in case of reiteration	The fine doubles in Algeria, Belgium and Dominican Republic
		Reputation damage through blacklisting by unions and governments as well as naming and shaming or boycott campaigns.	Clean Clothes Campaign Blacklisting by Indonesian government in the Nineties "lista suja" of companies using slave labour in Brazil
		Exclusion from public and private credit lines	Brazil
The extent of the informal sector does not allow the enforcement of MW in developing countries	<u>Focus on the role of state, international agencies and foreign governments as employers and contractors</u>	Government as employer of last resort	Employment Guarantee Scheme in India
		Introduction of a minimum wage clause for public procurement	Application of ILO Convention No.94 in the US
		Payment of MW as requisite for loans from international, governmental and private institutions	Inclusion of four ILO Core Labour Standards in the investment clauses of Multilateral Development Banks
		Purchase of labeled goods produced in the supply chain through public authorities	Social Procurement Policy in the Netherlands.

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