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Wage Protection Legislation in Africa

Najati Ghosheh

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Conditions of Work and Employment Branch

Wage Protection Legislation in Africa

N. Ghosheh

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Contents

	<i>Page</i>
Preface	v
I. Introduction	1
II. A brief on the labour market in African countries	2
III. Why is wage protection important? Practical and theoretical considerations	3
A. Theoretical considerations on wage protection	3
B. The importance of government and social actors on wage protection: some theoretical considerations	5
i. Theories of labour inspection: considerations for wage protection	5
ii. Alternative policy actions by government to protect wages	7
iii. Other actors outside the government	8
III. International standards addressing MWL: ILO Convention No. 95 and trans-national standards	9
A. Standards on remuneration	9
B. Ratifications	12
V. National Labour Standards in African Countries	15
A. Introduction	15
B. Wage Protection in Labour Legislation: Important Definitional Clauses in National Laws	15
i. Wage protection: who is covered?	15
ii. What is the legal definition of wages?	16
iii. Legal Methods of Wage Payment	18
iv. Legally established periods of wage payment	19
v. Legal elasticity in the period of payment and its importance for wage claims	21
vi. Information on wage payment rates	22
vii. Legal provisions on wage deductions	24
viii. Legal requirements for employer bookkeeping and wages	26
ix. Time frames to file a wage complaint	28
x. Practical concerns about wage rights	28
C. National legal institutions in Africa that address wage protection issues	28
i. Labour inspectorates: The first responders in wage protection	28
ii. Challenges faced by labour inspectorates: financial resources	31
iii. Geographic challenges for labour inspectors	32
iv. Job challenges of being a labour inspector	35
v. Timeframes of wage protection investigations: decisions by labour inspectors and tribunals	36
vi. Sanctions for infractions of wage provisions in labour codes	38
vii. Interest on wages owed: a gap in the law?	42
D. Supplementing institutions to protect wages	43
VI. Conclusions	44
Annex 1. National Legislation	47

Annex 2: Protection of Wages Convention, 1949 (No. 95)	48
Conditions of Work and Employment Series	53

List of tables

	<i>Page</i>
Table I. African Countries Ratifying ILO Conventions No. 95 and 131	12
Table II. African Countries Ratifying ILO Conventions No. 81 and 150	14
Table III. Geographic Size and Transport Systems in Civil Law African Countries	34
Table IV. Geographic Size and Transport Systems in Common Law African Countries	35
Table V. Sample of Fines for Labour Infractions (Including Wage Infractions) in Civil Law Countries	39
Table VI. Sample of Fines for Labour Infractions (Including Wage Infractions) in Common Law African Countries	40
Table VII. Sample of Fines for Labour Infractions (Including Wage Infractions) in Common Law African Countries	42

Preface

The Conditions of Work and Employment Research Series is aimed at presenting the findings of policy-oriented research in the area of working conditions from multidisciplinary perspectives such as laws, economics, statistics, sociology and industrial relations.

Decent work concerns both the quantity and quality of employment, and indeed, the conditions of work and employment have great impacts on workers' well-being and enterprise performance. In recent years, conditions of work and employment have changed significantly in many countries, both advanced and developing, part due to globalization, technological changes, and regulatory shifts. At the same time there has been a growing recognition that improving the quality of work is also an important policy goal. Yet the challenge of what kinds of concrete policy actions need to be developed to improve the every-day reality for workers remains. With this challenge in mind, the Conditions of Work and Employment Series is intended to offer new ideas and insights on improving working conditions. It is also meant to stimulate debates among governments and social partners concerning how to better design and implement policies with the aim of ensuring decent working conditions for all workers.

ILO's Conditions of Work and Employment Branch (<http://www.ilo.org/travail>) is devoted to developing knowledge and policies and to providing technical assistance in the area of working conditions such as wages, working time, work organization, maternity protection and arrangements to ensure an adequate work-life balance.

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I. Introduction

Remuneration is the aspect of work that has the most direct and tangible impact on the day to day lives of workers and their dependents. In most employment relationships, remuneration is obtained in the form of wages paid for the work that is performed. Wages can also determine job choice, the number of hours worked, and inform workers' decision making on when they might prefer not to work (e.g. on holidays). This was emphasised in the International Labour Organisation Constitution of 1919, which listed among the methods and principles guiding the policy making by member States that "the payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country" was an important consideration to keep societies stable.¹

In order for societies to safeguard that wages are paid in an accurate and timely fashion policymakers need to ensure that policies and laws are developed to provide guidance as to how this should be done and what the consequences are when this does not happen. Many countries around the world have sought to develop wage protection legislation, even though their form and method may vary. While it is important to determine the key issues that should make up wage protection legislation it is also vital to develop a better understanding of the challenges that might be faced in the enforcement of this type of legislation.

Curiously, in spite of the recognised importance of wages, wage protection legislation, and enforcement of wage related issues the research on this issue is limited. The majority of the available wage protection and enforcement research examines the legislation and circumstances in industrialised countries, with some information on selected other countries, mainly those in Latin America and China.² Little, if any research is available on African countries. This paper seeks to fill this research gap. The paper will first provide some context as to why wage protection legislation is important. It will then consider international standards and their importance in the legal context of African countries. The paper will then shift to focus on certain key elements in wage protection legislation and the way these elements are addressed in national laws in African countries. It will then investigate what challenges authorities (i.e. labour inspectors, judiciary, etc.) face in their attempts to enforce claims of violations of wage protection legislation.

It will then suggest what other social actors and actions can contribute to wage protection in light of these challenges. The paper will conclude with a few key observations and highlight issues for further research.

¹ ILO: *General Survey of the reports concerning Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949*, International Labour Conference, 91st Session, Geneva, 2003.

² For examples see D. Weil: "A Strategic Approach to Labour Inspection" in *International Labour Review*, Vol. 147, No. 4, 2008, pgs. 349-375; D. Weil, "Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division", Boston: Boston University, 2010; M. Piore and A. Schrank: "Toward managed flexibility: The revival of labour inspection in the Latin world", *International Labour Review*, Vol. 147, No. 1, 2008 pgs. 1-23; S. Cooney: "Making Chinese Labor Law Work: The Prospects for Regulatory Innovation in the People's Republic of China", in *Fordham Journal of International Law*, Volume 30, 2007, pgs. 401-447; A. Halegua: "Getting Paid: Processing the Labor Disputes of China's Migrant Workers" in, *Berkeley Journal of International Law*, Vol. 26, 1, 2008, pgs. 256-321.

The aim of the paper will be to suggest that while laws and institutions may exist to administer wage protection, there may still be barriers that require social actors to take action in order to ensure adequate wage protection is available to workers.

II. A brief on the labour market in African countries

Employment in African countries is generally in the private sector. Recent research suggests that the African private sector employs 55 per cent of working age people.³ This might normally be viewed as quite positive, but these figures are tempered by the fact that most of the jobs are low quality and fewer than 1 in 10 workers hold permanent or formal employment.⁴ The reason for this is the high degree of informality in the labour market of African countries.

According to a recent ILO report the African labour force in 2006 was approximately 368.8 million persons in 2006, representing a participation rate of 68.6 per cent.⁵ African countries account for 11.9 per cent of the world's economically active population. Yet, informal employment is the norm rather than the exception. The same report estimated that 9 in 10 rural and urban workers have informal jobs; this is the case especially for women and youth who often have no choice in the type of work they do to live and survive.⁶ The highest level of informal employment is generally found in low income countries. In sub-Saharan Africa 84 per cent of women non-agricultural workers are informally employed, compared with 63 per cent of male non-agricultural workers. Informality in the form of self-employment represents 70 per cent of informal employment in sub-Saharan Africa and 62 per cent in North Africa.

Regardless of whether workers are employed in the formal or informal economy in these countries, there is a need for legislative protection. Labour law, as will be presented here, does exist in African countries to protect workers' rights, most notably in protecting wage payments to workers for work done. However, owing to a number of factors, from informality in the labour market to limited institutional support, there are additional challenges when it comes to ensuring that all workers, regardless of their position, are properly paid.

As noted, generally the research and policy reports on wage protection, where they are available, tend to focus on industrialised countries.⁷ The available evidence from developing countries on wages suggests that problems relating to wage payments are not anomalous. Many countries with problems of this nature have institutions that are not strong or economies where poverty is endemic.

For example, non-payment or delayed payment of wages has been a severe problem in a number of African countries for over three decades, particularly in public and semi-

³ M. Stampini, R. Leung, S. Diarra, and L. Pla: How Large is the Private Sector in Africa? Evidence from National Accounts and Labor Markets, *IZA Discussion Paper 6267*, Bonn, Institute for the Study of Labor, December 2011.

⁴ Ibid.

⁵ ILO: *The informal economy in Africa: Promoting transition to formality: Challenges and strategies*, ILO Geneva, 2009.

⁶ Ibid.

⁷ For example, the Wages and Hours Division and HM Revenue enforce the minimum wage in the United States and United Kingdom respectively, issuing periodic reports on their investigations.

public sectors of employment.⁸ Research in 2003 noted that severe wage arrears concerns for workers were found in the Central African Republic, Benin, Chad, Ivory Coast, Guinea-Bissau, Madagascar, Niger, Senegal, and Togo.⁹ A recent example of this was reported in Nigeria, where members of the Nigerian Legion Corps in rural outposts went 18 months without payment of wages and salaries.¹⁰ The result of this is impoverishment of the workforce and their families, while it can also have consequences for local and national economies as these workers lose their ability to consume. This may then have a profound impact on economic development in the medium and long term in many of these countries.

III. Why is wage protection important? Practical and theoretical considerations

A. Theoretical considerations on wage protection

Wages are legally defined as compensation for work that should, under normal circumstances, be agreed before work commences. In many countries there are requirements that the wage rate be agreed in the contract and that pay statements are provided indicating what the pay rate is and when payments will be made. The reality in many countries is that, for a number of reasons, this does not always take place. Underpayment or non-payment of wages may be considered a moral or social outrage, but its origin (the wage itself) and its consequences are profoundly economic for the worker, their family, and the community where they live and spend money.

Intriguingly, research on compliance with wage protection legislation has attracted minimal attention from academic or policy research groups. In terms of research, the only group that has gone beyond the work done by legal scholars have been economists, and even then the material is sparse. In spite of this, economic research has played a quite outsized, but contradictory role in terms of wage protection. The seminal research on wage protection issues did not emanate from wage protection or labour law research, but came from the economics of crime. Gary Becker's work on the economics of crime posits that individuals and firms weigh the relative costs and benefits of obeying the law in making decisions regarding compliance (Becker, 1968).

¹¹ If they believe the chance of not getting caught is slim or the penalty marginal, they may try to avoid compliance. This provided the starting point for research by Ashenfelter and Smith on wage compliance, examining the incentives for firms to comply with the Fair Labor Standards Act, which governs minimum wage protection in the United States (Ashenfelter and Smith, 1979).¹²

Using data from 1973, they estimated that 77 per cent of employers complied with minimum wage laws, suggesting that compliance behaviour by employers was not as high as expected because incentives to comply were low.

⁸ ILO (2003) op.cit. p.10.

⁹ A. Linard: "Wage debt – Africa's other plague" in *Labour Education*, No. 128, 2002/3, pgs. 17-24.

¹⁰ Daily Trust Newspaper, "Rebrand" of Nigerian ministry to succeed only if wage arrears paid", 30 June 2009.

¹¹ G. Becker: "Crime and punishment: an economic analysis".in *Journal of Political Economy*, 76, 1968, pgs. 169-217.

¹² O. Ashenfelter and R. Smith: "Compliance with minimum wage law" in *Journal of Political Economy*, Volume 87, No. 2, 1979, pgs. 333-350.

Most telling, they concluded that the legal requirement that the employer pay a fraction of the difference between the minimum and the actual wage did not constitute a penalty for non-compliance that would cause employers to fear it (Ashenfelter and Smith, 1979).¹³ Further research by Grinier confirmed Ashenfelter and Smith's findings in the United States and suggested that this was a central problem with wage enforcement (Grinier, 1982).¹⁴ Ashenfelter and Smith's and Grinier's research noted that the penalties had to exceed the gains of breaking the law or workers would end up working below legally agreed wage levels (in the US context the Federal Legal Minimum Wage).¹⁵ More recently, research by Yaniv suggested that employers may even take a "portfolio choice" approach with regard to paying the minimum wage by paying some workers the minimum wage and others below the minimum wage on the basis of dividing their workforce into risky and non-risky employment (Yaniv, 2001).¹⁶ By using this portfolio approach an employer can cut the wage bill and prevents the full brunt of the law striking if they are found to be underpaying.

In addition to the theoretical temptation of avoiding full and timely wage payment in the absence of or due to limitations in wage enforcement, there are greater consequences for other parts of society. If enforcement of wages is not strong, there is a possibility that not paying a full wage (or minimum wages where they are set) might also be hidden from the tax authorities in order to maximise financial gain. Innovative research by Basu, Chau, and Siddique has examined the relationship between minimum wage non-compliance, informality, and tax evasion.¹⁷ The authors suggest that if enforcement is lax with regard to formal establishments, including tax and wage protection, then they will be tempted to maximise profit by avoiding full wage payment and hiding this from tax authorities. In informal establishments lax enforcement will almost certainly lead to underpayment and tax avoidance. As levels of informal employment are high in many African countries, any issues of enforcement therefore not only have consequences for workers and local economic communities (in terms of people's ability to spend), but also for national governments' abilities to address revenue concerns.

This suggests enforcement of wage and tax legislation have greater overlaps than originally expected, which will require significant consideration by governments and policy makers.

While these factors suggest why institutions on wage protection are important, the importance for workers may go beyond ensuring strict wage payment. Although not explicitly working on wage protection as such, the work of economist Amartya Sen has provided important guidance on the importance of institutions to support and redress wage protection related concerns to average workers. The essence of Sen's research has been to suggest that social rights are the institutionalisation of individual capabilities. These social rights allow for the mobilisation of resources (collectively or individually) for a person or group to become self-sufficient. The social rights are reliant on access to institutions to allow them to exploit what they have or what they are entitled to. With regard to the application of Sen's capabilities approach to wage protection it might be conceived of in the following manner. Workers require wage payments to be complete and paid in a timely

¹³ Ashenfelter, op. cit. p. 337.

¹⁴ G- Grinier: "On compliance with minimum wage law" in *Journal of Political Economy*, 90(11), 1982, pgs. 184-187;

¹⁵ Ashenfelter, op. cit.; Grinier, op.cit.

¹⁶ G. Yaniv: "Minimum wage noncompliance and employment decision" in *Journal of Labor Economics*, 2001, Vol. 19, No. 3, pgs. 596-603

¹⁷ A. Basu, N. Chau, and Z. Siddique: "Tax Evasion, Minimum Wage Non-Compliance, and Informality" *IZA Discussion Paper 6228*, Bonn, Institute for the Study of Labor, December 2011

manner for themselves, their family and their community. Wage protection laws provide guidance on how wages should be paid in a complete and timely manner as well as spelling out which institutions will ensure this process. The laws also detail the sanctions if the prescribed process is not followed. The institutions must be structured to efficiently and effectively perform the monitoring and enforcement task. If the laws and institutions cannot or do not ensure wage payments this undermines the individual capabilities of a worker or group of workers, and by extension their families and communities. Efficient and effective laws and institutions are also necessary to limit the temptation for employers to engage in non-compliance or use the “portfolio approach”, as well as ensuring that workers can easily access the institutions that offer wage protection (e.g. labour inspectorates, labour courts, etc.) in a timely fashion in the event of problems with wage payments. Providing conditions under which access to these institutions is made generally available may help timely and complete wage payment to become a precondition in labour markets where there may be problems of this nature (Deakin, 2003).¹⁸

The need for legislation and strong institutions with regard to wage protection legislation and mechanisms is highlighted further by the challenges for those who make wage claims. Workers’ appeal to their legal rights in many cases can be undermined by a lack of knowledge of the applicable wage rates (especially if they are not provided with a pay statement) and wage protection legislation, and uncertainty as to which institutions will take and hear their case. At the same time, employer records are not always transparent to workers, which can also be a problem for workers trying to determine how much they are owed.

B. The importance of government and social actors on wage protection: some theoretical considerations

The institutional dimension of wage protection is another subject where limited research is available. How institutions address wage protection issues is important on a number of levels from the procedures applied to address wage protection to how information is made available on wage related issues. With regard to wage protection, access to labour inspectorates and the legal system is important.

Just as important, however, is how these legal institutions can reach workers and employers, which can be an enormous challenge.

i. Theories of labour inspection: considerations for wage protection

In general, labour inspection of workplaces, especially for the purposes of ensuring wage protection issues, is important. However, this is one situation where legal development may disguise gaps in institutional development. In other words, while the law is clearly written and established, the institutional execution may still be organising, developing, or adapting to changing socio-economic or political circumstances. In the case of many developing countries, especially in Africa, where laws may be developed, institutions such as labour inspections have not caught up, mainly due to resource shortages. This has implications for enforcement and compliance in areas such as wage protection that may require institutions to develop different or new forms of coordination

¹⁸S. Deakin: “Social rights and the market: an evolutionary perspective”, in B. Burchell, S. Deakin, J. Michie, and J. Rubery (eds.): *Systems of Production: Markets, Organisations, and Performance* (London. Routledge, 2003) p.83.

to ensure wage issues do not come up or can be quickly and satisfactorily resolved between parties.

In industrialised countries, labour inspection has had over a century to develop. The origins of labour inspection began in Europe, before being disseminated globally.¹⁹ The system arose from a social push towards the state regulation of economic forces and the protection of exploited sections of the population.²⁰ As states grew, they developed new legal and administrative entities, including laws and regulatory bodies to enforce them.²¹ These bodies, such as labour inspectorates, were notable at the time for being understaffed, with inspectors having few powers and haphazardly gathering and publishing data on what they did.²² However, as time went by labour inspectors became paid professionals who worked with employers and workers to raise awareness of legal obligations and prevent conflicts. While these conditions would seem very familiar to social actors in developing countries, in African countries labour inspection can be an important institution in furthering economic development. As labour inspection enforces the written law, it can push firms to adapt and improve management and production practices.²³

Regardless of other considerations, the most important dimension of labour inspection as it relates to wage protection is to ensure compliance with the law and enforcing the law where it is necessary. In the context of enforcement of wage protection, the work of David Weil provides important insight. Weil's research has led to his construction of the central regulatory task and four main principles for strategic enforcement of wage violations (Weil, 2006, 2010).²⁴ Although his strategic construction was meant to apply to labour inspectorates addressing wage issues, it can be modified to include labour institutions that address enforcement and compliance of wage related issues.

The central issue is that labour related ministries and institutions (e.g. labour inspectorates, labour administration, and labour courts) often operate on constrained institutional resources. While the need for additional resources is important, there is also a need for better institutional development and reforms that ensure that enforcement mechanisms function to improve compliance regarding the payment of wages that are owed. According to Weil, strategic components of enforcement are needed to improve wage enforcement (Weil, 2010, p.3). First, labour inspectorates and administrations need to have a clear plan of the industries that are deemed priorities and of the existing employer behaviour. The "prioritisation" strategy end requires entities to put in place coordinated investigation procedures built around business industries rather than focusing strictly on workplaces. Secondly, there is a need to enhance deterrence at the industry and geographic levels. Deterrence can be improved by changing how investigations are carried out and penalties are assessed and levied. Third, better integrated complaint and directed investigation activities should be developed. In the context of wage protection this might entail incorporating handling procedures for wage complaints to improve information and as a part of system-wide enforcement plans. Finally, there is a need to find policies that enhance the sustainability of enforcement. These policies focus on the impact of enforcement initiatives on employer behaviour as an on-going process.

¹⁹ W. Von Richthofen: *Labour Inspection: a guide to the profession* (Geneva, International Labour Office, 2002).

²⁰ R. Pires: *Labour inspection and development: Some Reflections* (Geneva, International Labour Office, 2011).

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Weil (2008), op.cit.

In addition to Weil's structure, two further elements should be considered, especially in developing countries. Weil's research is based on information and data from the United States where such information is, by comparison, plentiful. Data regarding general labour law compliance is rather scarce in African countries and even scarcer when considering wages and wage payment issues. Thus, one key provision that needs to be considered among labour inspectorates and administrations is how information regarding wage violations can be compiled and disclosed, as well as how transparency can be improved so that cases can be more effectively addressed. Improved information and transparency in the presentation of this information can act as a powerful deterrent if made public and can provide a history for labour institutions to use to determine if wage related cases are isolated incidents or reflect a persistent system of employer gambling on non-compliance with wage laws.

ii. Alternative policy actions by government to protect wages

Theoretically and practically there are also some other actions that labour ministries or agencies can undertake to help with compliance and enforcement issues. Some of these policy actions have already been used in different parts of the world, but merit consideration especially in those instances where labour inspectorates face underfunding or are under-resourced, as in many developing countries.

One method that could be used is to examine wage provisions which are not considered often, but may have significant implications for a sector or industry. An example of this has been highlighted by Weil in the United States.²⁵ The U.S. Fair Labor Standards Act (FLSA) provides the basis for wage enforcement at the national level in the United States.

A long neglected provision of the FLSA, Section 15 (a), allows the U.S. Wages and Hours division (the wage inspection branch of the U.S. Department of Labor) to embargo goods that were found to be in violation of provisions of the FLSA, including wage payments. This provision, called the "hot cargo" provision, while limited to the retail-apparel supply chain, can raise costs in a supply chain as it allows the Wages and Hours Division to delay delivery of products. In addition to the potential financial losses caused by the legal delays, the added civil penalties can result in higher costs to the establishment than the savings made through non-payment of wages. Targeted sanctions of this nature, particularly when they concern an industry that is dominant or high profile in a country, can have an impact, especially if the establishment is part of a domestic or international supply chain.

Another possibility for potential enforceable legislation is to require publication of violations of wage protection legislation. Incorporating "Name and shame" provisions in wage protection legislation can begin with the publication of legal decisions by labour inspectors, mediation and arbitration services, or labour and other courts. This can also take the form of publicly publishing the results of labour inspections by labour ministries in order to demonstrate that enforcement is taking place. Subsequently, this information could be used by governments to monitor establishments that seek government contracts and to restrict business with repeat offenders. The effects of "name and shame" as a legal policy are twofold. First, it acts as a deterrent to those who might consider violating wage related provisions by exposing them when such violations are found to have taken place. Secondly, in countries where the resources of the labour inspection or ministries are restricted such efforts can help to limit the incidences that they may need to investigate, as

²⁵ D. Weil: "Crafting A Progressive Workplace Regulatory Policy: Why Enforcement Matters" in *Comparative Labor Law and Policy Journal*, Vol. 28, 2007, pgs. 125-154.

establishments consider the potential damage to their reputation and business if they were to be exposed for wage related violations.

Ministries of labour, and labour inspection services more specifically, may need to operate with less than desirable resources, so maximising resources is critically important. In this context finding areas of overlapping or related interests between government ministries and inspectors has proved useful. In the context of wage protection there may be linkages between wage inspectors and tax authorities. As noted, there is evidence to suggest a link between non-payment or underpayment of wages and tax avoidance by establishments. If this is the case then shared investigations between labour and tax authorities (usually in treasury ministries) might provide a way to share resources and expertise. An example of the treasury being involved in wage inspection can be found in the United Kingdom where a division of Her Majesty's Revenue and Customs is a non-ministerial department of the British Government responsible for the collection of taxes as well as enforcing wage protection. The Revenue and Customs Department is legally obliged to work with the Department of Business Innovation and Skills to coordinate actions on minimum wages and minimum wage violations.²⁶ In this case the Revenue and Customs Department acts as enforcer with the ability to investigate claims in the same way a labour inspection service would conduct its investigations and sanction infringements. This allows investigations of wage complaints to be executed by investigators with the training and skills to examine financial records, which labour inspectors (owing to their varied and wide brief) might lack. As said, it also allows a sharing of resources on what can be difficult and time-consuming cases.

iii. Other actors outside the government

While the government and its agencies are needed to enforce the law and help employers and workers understand what their rights and obligations are with regard to ensuring wage protection, other actors in society can assist the government in both of these roles. One group that can play an important role are trade unions. Generally, they have the capacity and resources (greater than any individual worker's) to help ensure legal obligations are followed by establishments. In addition, there is evidence that other social actors (e.g. NGO's, quasi-governmental agencies, etc.) can play a role in wage protection. As Cooney noted, both the state and non-state actors can be more productive if there are better ways to coordinate their activities.²⁷

Trade unions are recognised in many parts of the world as representatives of workers in social dialogue, collective bargaining, and helping to enforce collective agreements. Through social dialogue trade unions can work with companies and government to develop labour policies, including wage policies that have implications for all workers in a country. More specifically, trade unions are charged with monitoring the implementation of wage provisions negotiated in collective agreements and compelling legal enforcement for their membership when necessary. In Australia the trade unions have had a regulatory function supported by the legal framework of the federal conciliation and arbitration system, leading them to be considered "joint regulators" along with government agencies, the federal tribunal and employers under the conciliation and arbitration system.²⁸ In this

²⁶ For further information see the UK Government DBIS website: <http://www.businesslink.gov.uk/bdotg/action/layer?r.11=1073858787&r.12=1081657912&r.s=tl&topicId=1096714534> or HMRC Government website at <http://www.hmrc.gov.uk/pay/payroll/day-to-day/nmw.htm>

²⁷ S. Cooney. op.cit.; Weil, op.cit.

²⁸ T. Hardy and J. Howe: "Partners in Enforcement? The New Balance between Government and Trade Union Enforcement of Employment Standards" in *The Australian Journal of Labor Law*, 22 AJLL No. 3, 2009, pgs.1-22.

context a key aspect of their regulatory function is their role in monitoring and ensuring compliance with agreed legal payments determined by social partners and authorities for both trade union members and non-members working across the relevant industry or occupation.²⁹ Trade unions' ability to help ensure wage protection can, in developing countries such as those in Africa, where it might be difficult to recruit members, help provide workers with an incentive to join a union.

In addition to trade unions, other social actors can help both in an official and unofficial capacity to help authorities with wage protection efforts. In China an organisation called "Little Bird" was originally established to help serve as an information centre where (internal) migrant workers could share information and learn about resources available to them. Settling labour disputes between these workers and employers constituted 70 per cent of their work, with 80 per cent of these cases involving deferral of wage payments to workers.³⁰ Owing to this work, in 2004, it became a People's Mediation Committee, which, though these committees are technically "mass organisations", enjoyed close ties to the government and came to be seen as an organ of the government by Chinese people. This status allowed Little Bird in 2006 to process 66 cases of unpaid wages for 1273 workers, leading to a wage recovery of 5.7 million Yuan.³¹

While becoming an official organ of the government is the most important factor in its success, the perception that such organisations have the blessing of legal authorities or that there is collaboration of some sort with such organisations can help to ensure wages protection, even for workers who often suffer from poor enforcement of labour rights, such as the migrant workers that Halegua identifies.

What is clear from these examples is that though the government authorities, notably the labour inspection, cannot be replaced, creative solutions can be found to assist them. As this paper will discuss later, many labour inspectorates in African countries suffer from poor resourcing (both in financial and personnel terms) and any alternatives that can help to bridge these resourcing gaps are important to ensure wage protection is addressed in these countries.

III. International standards addressing MWL: ILO Convention No. 95 and trans-national standards

A. Standards on remuneration

Remuneration and working time are at the core of any form of employment relationship. They have the most direct and tangible impact on the organisations that employ workers and in the lives of the workforce. Before examining wage protection legislation and issues in Africa, it is useful to examine international labour standards on wage protection issues. International standards can be especially important in providing legislative definitions, determining institutional responsibilities, and addressing the rights and responsibilities of social actors. In countries where wage protection legislation may not

²⁹ The "award" system as this was called was a central feature of determining many aspects of the collective employment relationship, including working conditions such as wage levels and payment.

³⁰ Halegua, *op.cit.*

³¹ *Ibid*, pg. 300.

exist or is underdeveloped, international standards can also provide a framework for developing these laws and institutions. In the African context, as this part will demonstrate, ILO standards on wage protection have already been influential in the development of wage protection legislation at the national level.

Owing to the importance of wages in the employment relationship, the International Labour Organisation, since its inception in 1919, has considered fair labour remuneration practices and standards for protecting the wages of workers part of its core mandate. The ILO Constitution refers to the “provision of an adequate living wage” as one of the improvements urgently needed to promote universal peace and combat social unrest.³² This position was reinforced in the 1944 Declaration of Philadelphia in which the ILO emphasises the need for world programmes which achieve “policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of social protection.”³³

However, while the ILO did create an international standard to outline the machinery necessary to set up minimum wages, the ILO Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)³⁴, it was not until the end of the 1940’s that an international standard was needed to specifically protect wages.

A report prepared for the 26th Session of the International Labour Conference in 1944 emphasised that “a Convention or Recommendation on methods of wage payment dealing with periodicity of wage payments, deductions from wages, advances in wages, the prohibition of the “truck” (system), the adequacy of remuneration in kind, the protection of wages in legal proceedings and similar subjects would also be of great value in relation to many parts of the world...”³⁵

The results of these reports and debates by ILO constituents were the ILO Protection of Wages Convention, 1949 (no. 95) and the Protection of Wages Recommendation, 1949 (no. 95). These international labour instruments were the first to deal in a comprehensive manner with dimensions of wages such as the form and manner of payment and sought to accord the fullest possible protection to workers’ remuneration.³⁶ The premise is to protect the wages intended for workers and their families. These international standards are intended to provide guidance and a framework for the key principles that underlie wage protection and their incorporation into national legislation. The provisions in these standards are united by a common principle, which is to ensure prompt payment of wages directly to a worker. As such, many of the provisions in these standards focus on the employer’s obligations to pay wages while also allowing the worker the individual freedom to decide how to dispose of their wages. Unusually, but perhaps in a practical sense, these standards go beyond traditional wage concerns to create protection for workers from employers’ creditors and workers’ creditors, establish limitations on the attachment or assignment of wages, and create specific priorities for payments to creditors.

³² ILO (2003), op.cit.

³³ Ibid, p. 2. .

³⁴ This convention has since been updated by the ILO Minimum Wage Fixing Convention, 1970 (No. 131).

³⁵ ILO: *Report I*, International Labour Conference, 26th Session, Geneva, 1944, p. 51.

³⁶ ILO: *Record of Proceedings* International Labour Conference, 31st Session, Geneva, 1948, pp. 459-469.

The main aim of ILO Convention No. 95 is to ensure comprehensive wage protection. As such the articles which make up ILO Convention No. 95 are interrelated and designed to create a coherent system of wage protection. This system is made up of five key elements: 1) form and method of wage payment; 2) freedom of workers to dispose of their wages; 3) duty of information; 4) wage guarantees; and 5) enforcement.³⁷ With regard to form and method of payment, the Convention sets out a number of principles as to where, when, and how remuneration is to be paid, including alternative methods of payment. Other provisions are meant to guarantee the workers' discretion with regard to disposing of their wages as they see fit. A central component of ILO Convention No. 95 is the importance attached to keep workers informed in an appropriate and easily understandable manner of the wages they can expect before commencing employment and of what they have been paid during each pay period. Further provisions of the convention are designed to guarantee total payment of wages and protect workers from arbitrary, unfair, or unpredicted decreases in remuneration. Finally, and crucially, the ILO convention has provisions which outline the need for enforcement and emphasises the need for laws to carry effective sanctions to both prevent and punish legal infringements.

Two other standards should be noted in the wage context, as it addresses an important issue in wage underpayment. The ILO Minimum Wage Fixing Convention, 1970 (No.131) and Recommendation (No.R135) are meant to help ILO member states establish a system of minimum wages.³⁸ The key objective is to give wage-earners the necessary social protection in terms of minimum permissible levels of wages.

In addition to establishing minimum wages, these standards address an important issue not addressed by ILO Convention No. 95, namely underpayment of a minimum wage, which is addressed in ILO Convention No. 131.³⁹ Article 2, Paragraph 1 of ILO Convention No. 131 addresses this and further suggests that "appropriate penal and other sanctions" be applied in national law to address any failures to pay the minimum wage.

What is often lost in the analysis of wage protection legislation is the importance of data collection and information. In this context the data and information collection needed refers to the number of cases regarding wage related complaints (e.g. non-payment of wages, underpayment of wages, etc.) that are filed with the labour inspectorate and the court system.

ILO Convention No. 95 and the accompanying ILO Recommendation No. 85 on wage protection are both silent on data collection of this nature. However, other ILO conventions, such as the ILO Labour Inspection Convention, 1947 (No. 81) and the ILO Labour Administration Convention, 1978 (No. 150), might provide guidance on how this gap might be filled. . In addition to the central part that labour inspection plays in ensuring accurate wage payments, Article 21 of ILO Convention No. 81 requires that the labour inspection service compile a report on all investigations conducted during a calendar year. Article 6 of Convention No. 150 obligates the labour administration to coordinate functions and information to help to determine national labour policy. Similar provisions would help to fill the information gaps that tend to take place with regard to wage payment information in countries (as noted in the theory section above). Again, these provisions can be adopted in national law regardless of ratification of ILO standards, though that would ultimately be the most beneficial.

³⁷ ILO (2003), *op. cit.*, p.8

³⁸ Article 1, paragraph 1 of Convention No. 131

³⁹ Article 2, Paragraph 1 of ILO Convention No. 131 states, "Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions".

B. Ratifications

Globally, ratification of the two main conventions addressing wage compliance is reasonably high. Convention No. 95 has been ratified by 96 ILO member states⁴⁰ and Convention No. 131 has been ratified by 51 ILO member states.⁴¹ In Africa 31 countries have ratified ILO Convention No. 95, but only 9 countries have ratified ILO Convention No. 131.

When ratifications of ILO Convention No. 95 and No. 131 are considered together, only 8 countries in Africa have ratified both.

Table I. African Countries Ratifying ILO Conventions No. 95 and 131

Ratification of ILO Convention No. 95	Ratification of Convention No. 131	Ratification of Convention No. 95 & No. 131
Algeria	Burkina Faso	Burkina Faso
Benin	Cameroon	Cameroon
Botswana	Central African Republic	Central African Republic
Burkina Faso	Kenya	Libya
Cameroon	Libya	Niger
Central African Republic	Niger	Swaziland
Chad	Swaziland	Tanzania
Comoros	Tanzania	Zambia
Congo	Zambia	
The DRC		
Cote d'Ivoire		
Egypt		
Gabon		
Guinea		
Libya		
Madagascar		
Mali		
Mauritania		
Mauritius		
Niger		
Nigeria		
Senegal		
Sierra Leone		
Somalia		
Sudan		
Swaziland		
Tanzania		
Togo		
Tunisia		
Uganda		
Zambia		

Based on Available data ILOLEX June 2011

⁴⁰ The United Kingdom denounced Convention No. 95 in 1983 and has not since reversed its position.

⁴¹ No denunciations.

With regard to the ILO Labour Inspection Convention, 142 countries have ratified it. In Africa 44 countries have ratified Convention No. 81. The ILO Labour Administration Convention has been ratified by 70 countries globally and 21 of these countries are in Africa. However, only 19 countries in Africa have ratified both the ILO Labour Inspection Convention and the Labour Administration Convention.

Table II. African Countries Ratifying ILO Conventions No. 81 and 150

Ratification of Convention No. 81	Ratification of Convention No. 150	Ratification of Conventions No. 81 and No. 150
Algeria	Algeria	Algeria
Angola	Benin	Benin
Benin	Burkina Faso	Burkina Faso
Burkina Faso	Central African Republic	Central African Republic
Burundi	Congo	Congo
Cameroon	The DRC	The DRC
Cape Verde	Egypt	Egypt
Central African Republic	Gabon	Gabon
Chad	Ghana	Ghana
Comoros	Guinea	Guinea
Congo	Lesotho	Lesotho
The DRC	Liberia	Liberia
Cote d'Ivoire	Malawi	Malawi
Djibouti	Mali	Mali
Egypt	Mauritius	Mauritius
Gabon	Morocco	Morocco
Ghana	Namibia	Seychelles
Guinea-Bissau	Seychelles	Tunisia
Guinea	Tunisia	Zimbabwe
Kenya	Zambia	
Lesotho	Zimbabwe	
Liberia		
Libyan		
Arab Jamahiriya		
Madagascar		
Malawi		
Mali		
Mauritania		
Mauritius		
Morocco		
Mozambique		
Niger		
Nigeria		
Rwanda		
Sao Tome and Principe		
Senegal		
Seychelles		
Sierra Leone		
Sudan		
Suriname		
Swaziland		
Tanzania		
Tunisia		
Uganda		
Zimbabwe		

Based on Available data ILOLEX June 2011

V. National Labour Standards in African Countries

A. Introduction

To this point the paper has examined the principles of wage protection and international standards which can provide guidance on national laws and policies. In this section the national legislation in African countries will be examined to determine how key provisions of wage protection are addressed at this level. With regard to wage protection legislation, much like ILO Conventions No. 95 and 131, there are a number of issues that can be addressed by this legislation. Regulations with regard to important issues such as workers' freedom to dispose of their wages, allowable assignments of wages, and wage claims in an employer bankruptcy can help ensure wage protection for workers. Nevertheless, as the paper is meant to examine the key provisions affecting wage protection for workers in Africa the emphasis of the paper will be on legally defining several key issues: definitions of "worker/employee" and "wage"; legally defined types of wage payment; periodicity of wage payment; duty to provide information on wages; wage deduction issues, and penalties for non-compliance with wage protection provisions of the law.⁴² Where applicable in each section relevant social and economic considerations will also be highlighted to provide a more complete contextual picture of the circumstances affecting wage protection. Owing to the number of countries in Africa, and to better present material in a clear and systemic fashion, the organisation of the analysis in African countries will be clustered by legal systems based on whether countries have Civil Law traditions or Common Law traditions..

B. Wage Protection in Labour Legislation: Important Definitional Clauses in National Laws

Before examining the legal definitions of wage related issues in national labour law it is important to determine who the labour law is meant to cover. To do so, it is useful to examine what legal definitions are given of employees and workers. The legal definitions are generally based on traditional definitions found in many industrial settings in industrialised countries, but they are central in determining who has a right to file a case for underpayment or non-payment of wages. In the African context, these definitions may also contribute to explaining why informal employment is dominant in these labour markets as well as why there are so few cases concerning wage protection.

i. Wage protection: who is covered?

Who is covered by the labour law in Civil Law countries in general is important in determining who has the right to file a case if there are issues with wage payment. Most labour codes will define the groups of workers that are included or excluded quite early in the code, usually with the first five articles or sections. The Labour Code in Tunisia includes such provisions and, unusually among Civil Law countries, applies wage protection to all workers without exception.⁴³ Most other countries in this group set up some restrictions in applying the labour code, and wage protection provisions included within it, usually to groups of workers. Thus, in Algeria, Benin, Cameroon, Chad, Congo, Democratic Republic of Congo, Ivory Coast, Gabon, Madagascar, Niger, Rwanda,

⁴² Enforcement of wage provisions, including some penalties, will be covered in the labour inspection and labour administration portions of the sections.

⁴³ Section 1 Labour Code of Tunisia 1996

Senegal, and Togo persons appointed to permanent posts, public services, or the military are excluded from the labour law coverage.⁴⁴ Other countries have restricted other groups as well, such as in Benin and Madagascar, where maritime workers are excluded from the labour code because they are to be covered by other standards.⁴⁵ Labour law in Rwanda excludes informal workers from coverage, which is unusual in that informal workers are defined as a legal category and excluded from protection of the labour law with no guidance as to alternative protections that might be available with regard to wage or other employment protections.⁴⁶ This provision in the Rwandan labour code means that informal workers have no real means to fight non-payment or underpayment of wages and highlights the exposure of informal workers, which in most African countries is estimated to be a large portion of the labour market.

Many Common Law African countries, such as Botswana, Egypt, Gambia, Kenya, Malawi, Namibia, Tanzania, and Uganda, have generally broad definitions of workers.⁴⁷ On the other hand some Common Law African countries do stipulate categories that are not included in the definition of worker or employee. For example, in Liberia, a workman is any worker whose earnings do not exceed one hundred dollars per month with the exception of workers in agriculture, forestry, processing products for agriculture and forestry or administration of aid, comfort, or care to the sick.⁴⁸ In Libya, the law applies to all persons working under an employee contract, except members of the employer's family, domestic workers, persons in agriculture, crews of maritime vessels, and government workers.⁴⁹ It should be clearly noted that, much as in Civil Law African countries, government workers are also often excluded from coverage by labour codes, as they are governed by government administrative procedures and rules that are not applicable to private sector workers.

The laws in most African countries are quite comprehensive in terms of the groups addressed by the labour code, those addressed by different legislation, and those not included at all. It is difficult to determine whether establishments in African countries have attempted to reduce the influence of labour law by changing the designation of employment status (e.g. changing the legal status of an employee contract to a sub-contracting contract for work) as such information is not readily available. However, the large degree of informality of labour markets in African countries, noted earlier, suggests that this might be one way in which establishments may try to avoid formal legal wage claims.

ii. What is the legal definition of wages?

When defining the term “wages” most would define it as money paid for work. However, in legal terms this definition may be too restrictive. For example, Article 1 of ILO Convention No. 95 defines the term “wages” as meaning “remuneration or earnings,

⁴⁴Algeria Act on Labour Relations, Art. 2; Benin Labour Code 1998, Art. 2; Cameroon, Labour Code, 1992, Art. 2; Chad Labour Code 1996, Art. 2; Congo Labour Code 1975, Art. 2, Democratic Republic of Congo Labour Code 2002 Art. 1; Ivory Coast Labour Code 1995, Art. 2; ; Gabon Act No. 12/2000 Labour Code, Section 1; Madagascar Labour Code 1995, Art. 2; Niger Labour Code 1996, Sec. 2; Law Regulating Labour in Rwanda 2009, Art. 2 and 3; Senegal Labour Code 1997, Art. 2; Togo Labour Code 2006, Art. 2.

⁴⁵Benin Labour Code 1998, Art. 2; Madagascar Labour Code 1995, Art. 2

⁴⁶Law Regulating Labour in Rwanda 2009, Art. 2 and 3

⁴⁷Employment Act of Botswana 2008, Section I, Art.2; Egypt Labour Law 2003, Art. 1; Kenya Employment Act 2007, Part I, Para. 2; Malawi Employment Act 2000, Part I, sec. 3; Namibia Labour Act 2007, Sec.1; Tanzania Employment and Labour Relations Act, 2004, Sec. 4; Uganda Employment Act 2006, Sec. 2

⁴⁸Liberia Labour Law, 1986, Para. 21 (a)

⁴⁹Libya Labour Code 1970, Art. 1.

however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by and employer to an employed person for work done or to be done or for services rendered or to be rendered". The legislation in most countries, including those in Civil Law countries in Africa, can vary in terms of how broad this definition is construed. In the context of wage protection this can be important as it defines what payments an employer is expected to pay to a worker, which can help to determine the likelihood that a worker might pursue legal action of under-payment or non-payment.

For example, the law in Cameroon is faithful, almost to the word, to the ILO definition of "wages" found in Article 1 of ILO Convention No. 95.⁵⁰ For the laws in other countries the baseline of the legal definition of wages begins with the minimum wage level. In Benin, Burundi, Cameroon, Democratic Republic of Congo, the Republic of Congo, Gabon, Ivory Coast, Madagascar, Niger, Rwanda, Senegal, and Togo the minimum wage is set by National Ministries of Work or tripartite Commissions of Work that advise the Minister of Labour who then sets the minimum wage. This wage or a higher wage negotiated with the employer is then what can be the focus of legal action if underpaid or not paid in a timely manner. However, in a few of the countries the minimum or established wage between worker and employer does not make up the whole definition of wages. In Benin, Cape Verde, Chad, Gabon, Guinea, the Ivory Coast, and Niger, wages form part of much larger "remuneration" definitions, which in these countries include other benefits paid in kind or cash, directly or indirectly, to an employed person on account of their employment.⁵¹ Some of the countries, however, use the more expansive definition of "wages". Thus, in Burkina Faso and Senegal the legal definition of wages is taken to mean basic remuneration, however this is designated, wage supplements, allowances for paid absences, and benefits, compensations and allowances of all kinds.⁵² Some countries do not use "wages" as a defining term, but incorporate the more expansive notion of "remuneration" into their legislation. For example, in Tunisia the law defines remuneration as including the basic wage irrespective of how it is calculated as well as any wage supplements, whether in cash or in kind, general or specific, standard or changing, except for the reimbursement of expenses.⁵³ Similarly in Mozambique the remuneration includes the basic wage as well as subsidies, bonuses for night work, pay for difficult working conditions, efficiency payments, age bonuses or other divided bonuses for exceptional work shared between workers.⁵⁴ The importance of broader definition is clearly the extension from simple wage protection to remuneration protection, thus permitting workers who are not compensated in the legally listed manner to be able to file a case with the labour inspectorate or labour courts if they are not compensated fully or at all on any of the remuneration provisions. This is important if an employer attempts to apply a different form of payment to get around wage or wage related pay.

Legal definitions of wages, salaries, and remuneration in Common Law African countries are also varied in scope and construction. For example, some countries adhere closely to the definition of "wages" as outlined by Article 1 of Convention No. 95. These

⁵⁰ Cameroon Labour Code 1992, Section 61.

⁵¹ Benin, Labour Code 1998, Sec. 207; Cape Verde, General Statute on Labour Relations, Legislative Decree No. 62/87, Article 1; Chad Labour Code 1996, Sec. 246 ; Gabon Act No. 12/2000 Labour Code, Section 18 ; Guinea Labour Code, Sec. 206 ; Cote d'Ivoire Labour Code 1995, Sec. 31; Niger Labour Code 1996, Sec. 147

⁵² Burkina Faso, Labour Code 1992, Sec. 116; Senegal Labour Code 1997, Sec. L 118

⁵³ Tunisia Labour Code 1996, Sections 134-142. The labour code rights are those available before the 2011 uprisings. At the time of writing they are still legally applicable and it is unclear whether changes will be taking place for the foreseeable future.

⁵⁴ Article 109 Labour Code of Mozambique, 2007

countries include Nigeria, Swaziland, and Zambia.⁵⁵ However, a more expansive definition can be found in Egypt where the term means any monies received by the worker for work done that can also be supplemented by payments in kind, periodical increments, cost of living and family allowances, commissions, or other payments (e.g. bonuses and tips).⁵⁶

The law in Sudan defines the term “wage” as the total basic wage as well as all other benefits (including value in cash of food, fuel, or housing) or any other payment for overtime work or any other special benefit paid for job performance, but does not include required employer contributions to social security or similar expenditures.⁵⁷ In Botswana the term “wages” means the aggregate of basic pay and all other forms of remuneration, including overtime payments and other remuneration (including production bonus or cost of living adjustment). By contrast, the Botswana Employment Law does not include the value of a house, accommodation or free amenities; any ex-gratia payments, gifts, or value of travel allowance; employer contribution to pension fund; or any severance benefits.⁵⁸ This legislation in Botswana is similar to the labour law provisions in Ethiopia.⁵⁹ The law in Seychelles also identifies exclusions, such as not including wages for overtime work or incidental work in its definition of wages.⁶⁰

iii Legal Methods of Wage Payment

Another topic where general understanding and legal protection may not intersect is with regard to methods of wage payments. In order for workers and their families to have discretion as to how earned wages are used, it is important that the law establish what is considered legal in terms of wage payment. ILO Convention No. 95 permits payments in cash, bank cheque, money order, or payment in kind.⁶¹ Some countries, such as Chad, Senegal, and Togo, require wages to be paid in the legal tender of the country, even if there is an agreement to the contrary.⁶² The labour code in Madagascar requires all wages to be paid in full in the legal tender of the country.⁶³ However in the Democratic Republic of Congo wages must be paid in cash after any applicable deductions of the cash value of benefits provided in kind.⁶⁴ Payments in kind are a tricky issue with regard to wage payments as the determination of what is payment in kind is often a judgement call between the parties, though generally benefiting the employer. Countries which permit payment in kind often impose stringent rules that ensure that a wage is not paid one hundred per cent in kind. The labour code of Tunisia has incorporated such rules.⁶⁵ Other countries allow forms of payment in kind as long as they relate to the work being done by a worker, such as in the case of workers performing their job away from home. The labour

⁵⁵ Nigeria Labour Act 1990, Sec. 91; Swaziland Employment Act 1990, Sec. 2; Zambia Labour Act to 1989, Sec. 3

⁵⁶ Labour Code of Egypt 2003, Art. 1(c)

⁵⁷ Sudan Labour Code 1997, Chapter VI. The reference here is to Sudan before the 2011 separation between North and Southern Sudan. It is unclear whether southern Sudan will retain the existing labour law or develop and implement a new law.

⁵⁸ Employment Act of Botswana 2008, Section I, Art.2

⁵⁹ Ethiopia Labour Proclamation, 2004, Article 53

⁶⁰ Seychelles Employment Act 1995, Sec.2

⁶¹ Credit transfer and bank transfers are also permitted under this definition.

⁶² Chad Labour Code 1996, Sec. 257; Senegal Labour Code 1997, Sec. L114 ; Togo Labour Code 2006, Sec. 95

⁶³ Madagascar Labour Code, Sec. 72.

⁶⁴ Democratic Republic of Congo Labour Code, 2002, Sec. 79

⁶⁵ Tunisia Labour Code 1996, Sec. 139

codes of Benin, Cameroon, Niger, and Togo permit this form of in kind payment.⁶⁶ What is important in this context is that wage and remuneration claims are clearly addressed in labour codes and that workers can base their claims on payment of a wage in currency rather than just in kind, which almost never results in equitable solutions for workers.

There are a number of types of payment that can be legally defined as wage payment for work in Common Law African countries. Including such legal provisions is important to ensure that workers get paid in a medium that they then can decide what to buy with rather than being paid in a manner that restricts choice. Restricting workers' choice as to what they do with their wages may have unintended consequences for local, regional, and national economic development as they may engage in economically wasteful activities or reinforce economically unbeneficial markets. As in other countries, most Common Law African countries require payment in the legal tender of the country, though this can vary somewhat. For example, in Libya the labour code requires wages to be paid in Libyan currency, but in Egypt wages must be paid in the legal currency that is in circulation.⁶⁷ The law in Sudan is most basic in that it requires all remuneration be paid in cash, but does not specify the legal tender or currency that can be used.⁶⁸ Other countries retain the payment of wages in legal tender requirement, but the labour code will qualify this under certain circumstances (e.g. remuneration in kind). Ghana, for instance, legally requires that the employment contract stipulate that the whole of salary, wages, and allowances of the worker shall be made payable in legal tender in addition to any non-cash remuneration.⁶⁹ The labour legislation in some Common Law African countries forbids the use of anything but legal tender to pay wages. The labour laws of Botswana and Nigeria are examples and both stipulate that any contract which provides payment of the whole or any part of the wage in anything other than the legal tender of the country is illegal, null, and void.⁷⁰

iv. Legally established periods of wage payment

It is also important that wages are paid at appropriate intervals that are clearly understood by workers and employers. Article 12, paragraph 1 of ILO Convention No. 95 recognises this by stipulating that wages shall be paid regularly and that, except where other appropriate arrangements exist to ensure payment at regular intervals, the national laws or regulations fixed by collective agreement shall contain such provisions. The legal requirements that ensure periodicity of payment are important in that they allow workers to organise their life with a reasonable degree of certainty and security.⁷¹ The absence of this requirement or breaking of legal obligations on regularly agreed payment dates can lead to huge problems for workers living from wage to wage who may also have families to support. In the extreme it can lead to unpaid wages, a problem not unknown in parts of French speaking Africa.⁷² Thus, laws that ensure periods of wage payment are crucial pieces of information for workers.

⁶⁶ Benin, Labour Code 1998, Sec. 211 ; Cameroon, Labour Code 1992, Sec.66 ; Niger Labour Code 1996, Sec. 151 ; Togo Labour Code 2006, Art. 89

⁶⁷ Libya Labour Code 1970, Art. 32; Labour Code of Egypt 2003, 33

⁶⁸ Sudan Labour Code 1997, Sec. 35

⁶⁹ Ghana Labour Act 2003, Art. 67.

⁷⁰ Employment Act of Botswana 2008, Art. 82; Nigeria Labour Act 1990, Sec. 1(1)

⁷¹ ILO (2003) op.cit. .

⁷² For example, in 2000 in the Congo, non-payment of wages reached 220 Billion CFA Francs with delays in payment ranging from 18-22 months. The Central African Republic and Chad have also had payment problems for workers (ILO General Survey of the reports on the Protection of Wages, 2003).

The periods of pay stipulated in labour legislation can vary to some degree, though there may be other factors that influence the intervals. The periods of wage payment allowed by law are generally daily, weekly, fortnightly (every two weeks), and, at most, monthly in the labour legislation of most Civil Law countries. In most of these countries the payment of wages is not less than monthly. For example, in Cameroon, Cape Verde, Chad, and the Democratic Republic of Congo, wage payment in law cannot be less than once a month.⁷³ In addition legislation in the Democratic Republic of Congo further states that the wage payment cannot be made more than six days after the month, which establishes a boundary where a late wage payment becomes a wage arrears.⁷⁴ The laws in these countries further allow collective agreements, enterprise agreements, and individual contracts of employment to provide for shorter intervals for wage payments. The legislation also stipulates that the intervals for wage payment can be dependent on the employment relationship or the categorisation of workers in the national workforce. In this context, the national law differentiates between manual workers or workers who perform “intellectual” work (i.e. office or professional workers). Manual workers can be paid by the day, hour, or the week, while professional workers are generally paid fortnightly or monthly. The labour legislation in Benin, Burkina Faso, Central African Republic, Gabon, Ivory Coast, and Tunisia permits the dichotomy in wage payment based on worker category.⁷⁵ In some of these countries the labour legislation goes further to address short term workers who work by the day or for periods of a day, which is the case in the Republic of the Congo, Mali, Niger, Mauritania, and Senegal.⁷⁶ These laws stipulate that workers should be paid at the end of their work day. While many Civil Law countries include these specified variations in their legislation, countries such as Algeria and Madagascar, though the law stipulates regular intervals for wage payments, do not establish how regularly these intervals must be, leaving it to workers and employers to determine.⁷⁷

Most Common Law African countries stipulate that wage payments be paid not less than once every month. For example, the labour legislation in Libya and Nigeria require wage payments at least once a month.⁷⁸ The labour laws in Botswana, Sudan, and Zambia allow wage intervals to be stipulated in contracts so long as they are not less than one week or more than one month.⁷⁹ Realistically the periods depend on the work done by the worker and when it would be reasonable to receive payment for that work, which many labour codes reflect. Thus in Namibia, Tanzania, and Uganda different intervals are spelled out in the respective national laws. In these three countries the law requires payment for daily work on the day, weekly work, bi-weekly work, and monthly payments.⁸⁰

This approach is slightly different from Civil Law Africa where the labour legislation sets exceptions in periodicity of payment based on the type of work rather than the work

⁷³Cameroon, Labour Code 1992, Sec. 68(1); Cape Verde General Statute on Labour Relations 1993, Sec. 118; Chad Labour Code 1996, Sec. 259; Democratic Republic of Congo Labour Code, 2002, Sec. 90.

⁷⁴ Democratic Republic of Congo Labour Code, 2002, Sec. 90.

⁷⁵ Benin Labour Code 1998, Sec. 221; Burkina Faso Labour Code 1992, Sec.113; Central African Republic 1961, Sec.105; Gabon Labour Code 2000, Sec. 152; Ivory Coast Labour Code 1995, Sec. 32(3); Tunisia Labour Code 1996, Sec. 140.

⁷⁶ Congo Labour Code 1996, Sec.88; Mali Labour Code 1996, Sec. L103; Niger Labour Code 1996, Sec. 160; Mauritania Labour Code 1963, Sec. 90; Senegal Labour Code 1997, Sec. L115.

⁷⁷ Algeria Labour Relations Act 1990, Sec. 88; Madagascar Labour Code 1995, Sec. 112.

⁷⁸ Libya Labour Code 1970, Art. 32; Nigeria Labour Act 1990, Sec. 18

⁷⁹ Botswana Employment Act 2008, Art. 74; Sudan Labour Code 1997, Sec. 35; Zambia Labour Act to 1989, Sec. 48

⁸⁰ Namibia Labour Act 2007, Art. 10; Tanzania Employment and Labour Relations Act 2004, Art. 26; Uganda Employment Act 2006, Art. 43(3)

period. Nevertheless, Civil Law countries do seem to establish time boundaries for wage payments not found in Common Law African countries.

v. Legal elasticity in the period of payment and its importance for wage claims

As noted previously, periodicity of wage payments can be found in virtually all labour codes in Civil Law African countries. The periods can vary from daily to bi-weekly to monthly depending on factors such as the type of work, industry, or profession. However, this does not legally prevent employers in some of these countries from getting a few extra days beyond agreed periods of payment to pay their workers without legally being in breach of payment provisions. Thus, in the Democratic Republic of Congo an employer has what amounts to six days of grace after the legally established date of payment, while in Cameroon and Niger the law allows 8 extra days.⁸¹ While not perfect, provisions of this nature ensure that employers who are genuinely struggling to obtain finances to pay workers get a brief window to extend their attempts and at the same time that workers can be secure that there is a limit to the leniency given to employers.

There are limitations with regard to how long a wage payment claim by a worker can extend. In countries such as Rwanda the labour code suggests that a wage claim can be made up to two years after the date that the wage payment was to be paid.⁸² In Cameroon the law permits up to three years and in Togo up to five years for a wage claim to be filed.⁸³ Owing to the difficulties of making official requests of labour inspection and labour administration, which will be discussed later in this paper, such provisions are important to protect the right of a worker to claim non-payment or underpayment of a wage within a time frame that might permit a just decision by the authorities. Such a period also allows employers to examine their records, update material not entered, and present records to authorities for evaluation and decision.

Contrary to Civil Law countries employers in Common Law African countries would appear to have much stronger legal obligations to pay workers within the time frames established by the labour laws. In some Civil Law countries, as noted above, the labour legislation extends a few days extra for employers to pay beyond the time frame established in law presumably to build some flexibility into payment and establish an outer boundary for worker payments before they can take legal action. Among Common Law African countries only Zambia provides that wages be paid at regular intervals established in the law, but no later than five days after the established date of payment.⁸⁴

The absence of this employer extension in the labour legislation of most Common Law African countries might be explained as a jurisprudential issue in which the legal authorities can establish these time frames or simply by the fact that employers are expected to pay their workers on time without fail. While the latitude is lost, if the latter case applies, it does help both employers to know that they need to meet their wage payment obligations in a timely fashion and workers to know when they can expect payment and from when they may need to consider legal action in the event such payments do not arrive on time.

⁸¹ Democratic Republic of Congo Labour Code, 2002, Art. 99; Cameroon Labour Code 1992, Art. 68(2); Niger Labour Code 1996, Sec. 160

⁸² Rwanda Law No 13/2009 of 27/05/2009 Regulating Labour in Rwanda, Art. 83

⁸³ Cameroon Labour Code 1992, Art. 74; Togo Labour Code 2006, Art. 135

⁸⁴ Zambia Labour Act to 1989, Sec. 48

vi. Information on wage payment rates

Perhaps one of the most important, yet least examined provisions in ensuring wage payments is the information provided to workers indicating their wages and wage related information held by employers. ILO Convention No. 95 requires effective measures to be taken to inform workers of the conditions and wages.⁸⁵ It is important that workers have this information before being hired and during the course of their employment for two reasons. First, the worker needs to know what they can expect in terms of pay for their work and what they can request as they progress within an enterprise. Second, if they are not paid in a timely and proper manner, this information becomes important with regard to asserting their rights to labour inspectors and the court system. There are different ways for this condition to be satisfied, including requiring the wage to be specified in the employment contract, the placement of wage information in a visible space in the workplace, through pay slips, and through employer records.

Many Civil Law countries require at least some indication in the initial employment contract of the wages to be expected. The labour law in Cape Verde, Congo, and Democratic Republic of Congo requires an employment contract to include the terms of remuneration to the worker.⁸⁶ The laws in Niger and Senegal go further, requiring that contracts must be concluded in writing with the wage amounts, and the methods and timing of payments specified.⁸⁷ Some countries, such as Benin, Cameroon, Mali, and Mauritania, require only specific categories of workers or workers on specific contracts, such as apprenticeships, to be made aware of wage terms.⁸⁸ However, in the laws of the Ivory Coast and Madagascar only require the labour contract or letter of appointment to list wages and other supplemental compensation, with no other wage related information required.⁸⁹

Some legislation in Common Law African countries requires information about wages to be included within the employment contract. Zambia requires an employer, before hiring a new employee or when changes take place in their employment, to explain the wage rates and conditions relating to payment to the employee.⁹⁰ In Egypt a labour contract must be in writing and include the agreed wage, the manner and date of payment, and other monetary in kind agreements.⁹¹ The Egyptian law is similar to that in the Sudan, where terms of the employment contract containing wage rates and dates of payment must be included, and South Africa, where wage particulars must be included in the employment contract at the beginning of employment.⁹² Instead of in the contract, the legal requirements in Botswana required this information be placed on an employment card given to an employee, but the 2008 change in the labour law has rendered the new legal requirements similar to Egypt's.⁹³ The labour law in Ghana requires every employment contract to indicate payment terms in a clear and unambiguous manner.⁹⁴ The legal

⁸⁵ Articles 14 and 15 ILO Wage Protection Convention, 1949 (no. 95).

⁸⁶ Cape Verde General Statute on Labour Relations 1993, Sec. 9(2); Congo Labour Code 1996, Sec. 32; Democratic Republic of Congo Labour Code, 2002, Sec. 187.

⁸⁷ Niger Labour Code 1996, Sec. 26(2); Senegal Labour Code 1997, Sec. 3.

⁸⁸ Benin Labour Code 1998, Sec. 65; Cameroon, Labour Code, 1992, Art. 27(1); Mali Labour Code 1996, Sec. L27 ; Mauritania Labour Code 1963, Sec. 42

⁸⁹ Ivory Coast Labour Code 1995, Sec. 3; Madagascar Labour Code 1995, Sec. 17

⁹⁰ Zambia Labour Act to 1989, Sec. 24, 30, and 51

⁹¹ Labour Code of Egypt 2003, Art. 32

⁹² Labour Code of Sudan 1997, Sec. 30; South Africa Basic Conditions of Employment Act 1997, Art. 29

⁹³ Employment Act of Botswana 2008, Sec. 14 and 15

⁹⁴ Ghana Labour Act 2003, Art. 12, 13, and 16

provision that appears to go the furthest among Common Law African countries is in the employment law of Nigeria where employers are required to provide their workers with written statements specifying wage rates, methods of calculation, and the manner and period of wage payment within three months of beginning work; should there be a change in the terms of employment, the law then requires a written statement no later than one month after the changes.⁹⁵

One of the most important mechanisms to ensure that workers know exactly how much they are being paid is through general or itemised pay slips. In practice, upon payment of wage, either directly to the worker or to the worker's preferred financial institution, the worker receives a wage statement or pay slip indicating the amount of the payment as well as any deductions or withholding amounts kept by the employer.⁹⁶ Pay slips can also act as legal documents should there be a dispute about pay, the timing of pay, or other associated issues. While wage slips are critically important for those paid in cash at the workplace, electronic payslips with similar information are now also growing in use when money is deposited in banks or other financial institutions and can be just as beneficial in any wage related legal action.

The legislation in almost all of Civil Law countries contains a legal requirement for pay slips. For example, the law in Mozambique requires that the employer provide the worker at the time of payment with a statement indicating the worker's name, net amount payable, the period concerned, and any deductions made.⁹⁷

Legal requirements for the provision of wage slips with similar information also exist in Algeria, Burkina Faso, Cameroon, Democratic Republic of Congo, Gabon, Ivory Coast, Madagascar, Mali, Mauritania, Niger, and Tunisia.⁹⁸

The same legal provisions in Cameroon, the Democratic Republic of Congo, and Gabon also require that the wage slip must be signed by the worker when they collect their wage payment, which acts as a means of verification of payment to the worker.

The labour legislation in most Common Law African countries have provisions requiring some form of pay slip with different degrees of information. In Namibia the law requires a quite detailed pay slip that includes the ordinary hourly, daily, weekly, fortnightly, or monthly scale of remuneration of the employee, the pay period, the amount paid in basic pay, overtime, night work, work on holidays, and any allowances, the gross and net amount of remuneration payable, and any deductions.⁹⁹ In addition to the name of the employee and their occupation, most of the requirements for legal wage pay slips that are used in Namibian law, more or less, can also be found in the labour legislation of Gambia, Kenya, Malawi, South Africa, Swaziland, Tanzania, and Uganda.¹⁰⁰ The number

⁹⁵Nigeria Labour Act 1990, Sec. 7

⁹⁶Some charges are illegal, such as withholding money for unspecified items or reasons, but others are legal (such as deductions for social security payments, taxes, etc.).

⁹⁷Mozambique Labour Act 1998,

⁹⁸Algeria Labour Relations Act, 1990, Sec. 86; Burkina Faso Labour Code 1992, Sec.114; Cameroon, Labour Code,1992, Art. 69; Democratic Republic of Congo Labour Code, 2002, Art. 104; Gabon Labour Code 2000, Sec.153; Ivory Coast Labour Code 1995, Sec. 32; Madagascar Labour Code 1995, Sec. 74; Mali Labour Code 1996, Sec. L104; Mauritania Labour Code 1963, Sec. 91; Niger Labour Code 1996, Sec. 163; Tunisia Labour Code 1996, Sec. 143

⁹⁹Namibia Labour Act 2007, Art. 10

¹⁰⁰ Gambia Labour Act 2007, Art. 77; Kenya Employment Act 2007, Art. 20 and 21; Malawi Employment Act 2000, Art. 51; South Africa Basic Conditions of Employment Act, 1997, Art. 33; Swaziland Employment Act 1980, Sec. 61(1); Tanzania Employment Relations Act 2004 Art 27 and 28; Uganda Employment Act 2006, Art. 51

of Common Law African countries who have such a provision appears to be less than that among Civil Law countries, which in theory at least means that workers in Civil Law African countries should know more about how much they are paid from their wage slips.

An important mechanism to permit workers to follow changes in wage levels, and therefore ensure they are paid the correct amount, is the legal requirement to post current wage rates within the workplace. The laws in some countries require employers in enterprises of certain sizes to develop internal rules which are made clear and plain to their workforce. Thus, Chad and Mali labour legislation requires that any industrial or commercial workplaces employing over ten workers must post rules for wage payment in an appropriate and accessible place for consultation at the workers' discretion.¹⁰¹ Alternatively labour legislation in Cameroon, Ivory Coast, and Senegal deems workplace rules addressing compensation that are solely authored by employers to be legally null and void.¹⁰² Governments may also legally obligate wage information to be placed openly in the workplace. Legislation in the Central African Republic, Djibouti, and Togo requires minimum wage rates to be posted in employee offices and, more significantly, where workers are paid.¹⁰³ It would appear that only a few countries legislate for this kind of information, which, if kept up to date, would help workers to assess whether they have a legal entitlement to a wage rise.

Legislation on posting rules for wages can include a number of wage related issues. For example, the laws in some countries also require the period of payment to be posted. The employment laws of Tanzania and Zambia obligate employers to post employees' rights under the law, including wage rates and orders affecting them.¹⁰⁴ The law in South Africa raises an important, but often overlooked issue in this context, which is that the employment rights posted must be in the official languages spoken in the workplace.¹⁰⁵ Other countries in Common Law and Civil Law Africa do not appear to make such a specific requirement, though it may be useful in light of the number of indigenous languages found in different countries. The requirement to post this information is critical for many workers who may not have any other means to find out what official wage rates are in their country. However, it places a responsibility on both the government to deliver the information in a form that can be posted in the workplace and it means the employer must post it there. If these parties do not coordinate or if the employer does not comply in a timely manner, workers may miss out on the information or be misled by old wage rates. It does not appear that explicit sanctions are attached to this provision where it does exist, which may compromise its effectiveness in practice, especially if it is not noted or addressed by the national labour inspectorate.

vii. Legal provisions on wage deductions

In general, workers rarely receive the full amount of remuneration they are owed. Deductions normally are taken from wages, which represent the difference between the gross amount of wages and the net amount that a worker actually receives. Some of the deductions are made for legitimate reasons, such as to pay taxes, whereas others may have a more spurious basis, requiring legislation to protect workers. Many African countries

¹⁰¹ Chad Labour Code 1996, Art. Sec. 81 and 88; Mali Labour Code 1996, Sec. L64 and L67

¹⁰² Cameroon, Labour Code, 1992, Art. 29; Ivory Coast Labour Code 1995, Sec. 51; Senegal Labour Code 1997, Sec. L100

¹⁰³ Central African Republic Labour Code 1961, Sec. 102; Djibouti Labour Code 1952, Sec. 97; Togo Labour Code 2006, Art. 124.

¹⁰⁴ Tanzania Employment and Labour Relations Act 2004, Art. 16; Zambia Labour Act to 1989, Sec. 52

¹⁰⁵ South Africa Basic Conditions of Employment Act 1997, Art. 30

have legal provisions which deal with a variety of issues associated with wage deduction, which will be explored here.

A number of African countries list the types of permissible legal deductions, and many of these laws further stipulate that deductions not formally authorised may be prohibited. This is the case in Common Law countries such as Nigeria and Uganda.¹⁰⁶ Among Civil Law countries the laws in Benin, Burkina Faso, Cameroon, Central African Republic, Djibouti, Gabon, Mauritania, and Niger include restrictions of this nature.¹⁰⁷ These provisions provide a legal foundation for deductions, their different types and how they might be formulated.

While deductions for mandatory payments to income tax or social security schemes may be included as permissible forms in these countries, in some countries there are other deductions that can be made from workers' wages. Trade union fees may be deducted from wages based on arrangements made between the union and the establishment where the worker is employed.

The legislation may go further by allowing deductions from the wages of non-unionised workers who have benefitted from the collective bargaining agreement between a trade union and an establishment. This is the case in Nigeria and in Cameroon, though the conditions under which this can be done will vary.¹⁰⁸ In Nigeria the worker may contract out of the system in writing, while in Cameroon this type of deduction can only be made with the agreement of the worker, given by signing a form accepted by the establishment and the trade union that can be withdrawn at any time or tacitly renewed, except in the event of a change in the fee owed to the union.

The law and practice in some African countries permits some deductions from wages in the form of security payments. In such an instance the establishment can make deductions for the purposes of building up a security to guarantee that workers meet their commitment to return to the establishment goods, products, money or anything that the worker has been placed in charge of, with the money placed in the worker's name with a bank or similar institution. The establishment has preferred security on this money and it can be used to address a debt or the worker's failure to address their commitment with the establishment. The amount can be restored to the worker or the establishment by mutual agreement and with a court order. Mostly Civil Law African countries have implemented this, including Burkina Faso, Central African Republic, and Gabon.¹⁰⁹

Some African countries allow for deductions relating to the damaging of products or goods in the workplace. Deductions of this nature can be problematic and Paragraph 2 of the ILO Wage Protection Recommendation, 1949 (No. 85) suggests that national legal provisions should be devised to ensure that it is demonstrated that the worker is clearly responsible for loss or damage, that the amount of the deduction should not exceed the actual amount of loss or damage, and that the worker should be allowed a reasonable amount of time to demonstrate why the deduction should not be made. Labour legislation in Kenya, Nigeria, and Zambia includes provisions similar to the ILO Recommendation

¹⁰⁶ Nigeria Labour Act 1990, Sec.4 and 5; Uganda Employment Act, 2006, Art. 45, 46, and 49

¹⁰⁷ Burkina Faso Labour Code 1992, Sec. 128 and 131; Cameroon, Labour Code, 1992, Art. 75; Central African Republic Labour Code 1961, Sec. 112; Djibouti Labour Code 1952, Sec. 107 and 109; Gabon Labour Code 2000, Sec. 161 and 162; Ivory Coast Labour Code 1995, Sec. 34; Madagascar Labour Code 1995, Sec. 79 and 80; Mali Labour Code 1996, Sec. L121; Mauritania Labour Code 1963, Sec. 107; Niger Labour Code 1996, Sec. 4 and 5

¹⁰⁸ Nigeria Labour Act 1990, Sec 5; Cameroon, Labour Code, 1992, Art. 21

¹⁰⁹ Burkina Faso Labour Code 1992, Sec. 131 to 134; Central African Republic Labour Code 1961, Sec. 92-95; Gabon Labour Code 2000, Sec. 136-139.

with regard to deductions from workers' wages based on damage to or loss of products or goods.¹¹⁰ This legislation, while allowing the possibility of deduction for damage or loss, also sets boundaries as to how much can be taken. For example, in Kenya the legislation allows a deduction for damage done or loss of property in possession of the employer by the wilful default of the employee, but also stipulates that the worker cannot lose more than two-thirds of their wages as a result.¹¹¹ Such boundaries are critically important to protect worker wages from deductions that could be onerous and would place workers in the position (in extreme cases) of earning nothing to make up for (perceived) losses incurred by the establishment.

Another concern regarding wage deductions arises with regard to those deductions made for disciplinary reasons. Historically, establishments in many countries used wage deductions for insubordination or other disciplinary reasons to regulate worker behaviour. However, deductions of this nature can be subjective and are easily abused without some form of regulation. A number of countries have included provisions in their national labour legislation to limit this possibility, including those in Civil and Common Law Africa. For example, similarly to deductions for damage to goods or losses, Common Law countries such as Nigeria and Kenya limit or prohibit disciplinary fines in their national labour legislation.¹¹² Examples of such regulations can also be found in the national legislation of Civil Law countries such as Benin, Burkina Faso, and Mauritania.¹¹³

Limitations on wage deductions, as noted in previous paragraphs, are important, but these limitations need to go beyond damages, losses, or discipline. Borrowing from an employer or others can lead to demands for wage deductions in order to repay loans made to a worker in many countries. The national labour legislation in many countries sets up progressive ceilings for deductions of certain portions of wages. These deduction rates can vary from one twentieth to two thirds of monthly wages and are meant to protect the worker and their family from not having any wage income coming in while paying off debts. Among African Civil Law countries, Burkina Faso, Cameroon, Central African Republic, Djibouti, Mauritania, and Niger all limit the amount that can be deducted from a worker's monthly wage.¹¹⁴ Among Common Law countries the labour legislation in Nigeria allows up to a one-third deduction and Kenya allows up to two thirds.¹¹⁵ The importance of these legal protections is critical, but further research is needed to determine the extent to which these provisions are adequate and the way they are applied in practice.

viii. Legal requirements for employer booking keeping and wages

Legal requirements requiring employers to keep records of workers and payments have also played a role in wage protection in some African countries. For example, in Algeria employers must keep a pay book that includes a worker's name and position, pay

¹¹⁰ Kenya Employment Act No. 11 of 2007, Sec. 19; Nigeria Labour Act 1990, Sec 5; Zambia Labour Act to 1989, Sec. 45

¹¹¹ Kenya Employment Act No. 11 of 2007

¹¹² Kenya Employment Act No. 11 of 2007; Nigeria Labour Act 1990

¹¹³ Benin Labour Code 1998, Art. 215; Burkina Faso Labour Code 1992, Sec. 127; Mauritania Labour Code 1963, Sec. 104

¹¹⁴ Burkina Faso Labour Code 1992, Sec. 128 and 129; Cameroon, Labour Code, 1992, Art. 75 and 76; Central African Republic Labour Code 1961, Sec. 112 and 113; Djibouti Labour Code 1952, Sec. 107 and 108; Gabon Labour Code 2000, Sec. 161 and 162; Mauritania Labour Code 1963, Sec. 105 and 106; Niger Labour Code 1996, Sec. 170, 171, and 218

¹¹⁵ Kenya Employment Act No. 11 of 2007; Nigeria Labour Act 1990

period, basic wage, benefits, and any overtime paid.¹¹⁶ Similarly, in the Democratic Republic of Congo, the law requires an employer to keep a pay book with records of wage payments to workers.¹¹⁷

These records also play a role in the verification of employment of workers and wage payments. Nevertheless, in real terms they may also be abused by employers, who may keep more than one set of wage records, one for government inspectors and one for themselves with actual figures. In such cases it might be difficult to determine if the payment records are accurate, which may require some expertise on the part of inspectors if the only accurate information is located in the pay slips.

Employer payroll records, in addition to fulfilling labour and tax law obligations, also provide workers with a potential source of information regarding the wages they are being paid. Many countries with legal requirements for pay slips have similar requirements for the upkeep of payroll records. For example, in Swaziland every employer is obliged to keep a wage register containing all particulars required to appear in the statement of earnings, and to keep such a register for a period of three years from the date of the last entry for every worker.¹¹⁸ The legal requirements in South Africa are quite similar to those in Swaziland.¹¹⁹ The labour law in Malawi requires a record of pay, as well as gross pay and deductions, made to every worker over a three-year period, and a worker is able to file a complaint with local labour authorities if this is not being done.¹²⁰ The labour laws in some of these countries do not make a linkage between wage slips and employer payroll records, but they do require payroll records to be made available upon request of different individuals or groups. The law in Ethiopia does not require an employer to provide payment slips, but does require an employer to keep a wage register which must be made accessible and explained to a worker upon their request.¹²¹ Employers in Zambia are only required to maintain records of the wages paid and deductions made and to keep such records at the workplace so that they can be examined at the request of authorities.¹²² In similar fashion to Zambia, the law in Botswana requires employers to keep records, books, and accounts for all workers employed, which can be examined by labour authorities at their discretion.¹²³ In Nigeria the law only requires the employer to keep such records of wages as are necessary to show that they are in compliance with provisions of the labour code.¹²⁴ The differing requirements are interesting, and again, as with the issue of wage slips, the legal requirements for employer payroll records in Common Law Africa appear to be less explicit than in Civil Law Africa. This may in part be explained by the overlap between labour law and tax law as such provisions are addressed or addressed more thoroughly in the tax laws of Common Law African countries. In the absence of this, however, a rather large legal and informational lacuna does seem to exist in Common Law African countries that could be exploited by employers to underpay wages or make payments to workers in a manner so as to avoid social contributions where they exist (e.g. cash payments).

¹¹⁶ Algeria Labour Relations Act, 1990, Sec. 156; Sections 3, 13, and 17 of Algerian Executive Decree No. 96-98 of 6 March 1996 on the special books and registers which employer must keep and their contents

¹¹⁷ Democratic Republic of Congo Labour Code, 2002, Art. 197

¹¹⁸ Swaziland Employment Act 1980, Sec. 151

¹¹⁹ South Africa Basic Conditions of Employment Act 1997, Art. 31

¹²⁰ Malawi Employment Act 2000 Art. 51

¹²¹ Ethiopia Labour Code 2003, Art. 60

¹²² Zambia Labour Act to 1989, Sec. 93

¹²³ Botswana Employment Act Art. 92

¹²⁴ Nigeria Labour Act 1990, Sec. 75

ix. Time frames to file a wage complaint

Whereas the laws in Civil Law African countries are sometimes very clear regarding the timeframe within which a worker can make a wage claim through the legal system, Common Law African laws appear to be silent regarding these time frames. It is possible that the time frames are established in administrative rules within the labour inspectorates or court systems, but there does not appear to be evidence of this at the time of writing. The time frame or “statute of limitations” for a worker filing a wage related complaint with the proper authorities in their country is an important consideration in wage payment controversies as such provisions can limit (or not) the amount of time an employer might face litigation for wage related concerns. In theory this would heighten the importance of employers keeping accurate wage records for an extended period of time in order to protect themselves from spurious wage claims. From a worker perspective the importance of speed in filing a wage related case is understood, but having extended periods of time to file a complaint could be important procedurally in light of the limitations of the labour inspectorates’ and courts’ reach in these countries. Not having limitations to the timeframe in which a complaint can be filed also means that if there are long-standing patterns of wage related problems (e.g. non-payment of wages on the legally designated pay day), such patterns could be used to demonstrate bad faith by a non-compliant employer, which the labour law is designed to respond to with some severity depending on the country.

x. Practical concerns about wage rights

The legal information to this point would indicate that the legislation in the majority of African countries is fairly strong in terms of outlining the rights of workers regarding wages and wage payments. Most also appear to have requirements that would make sure that information is available to workers so that they know what their rights are, what the employer’s obligations are, and what the government needs to do make sure that wage laws are followed. Nevertheless, no studies or reports are available to confirm or deny workers’ knowledge of their rights with regard to wages, whether employers fully understand their legal obligations, or if the government is actively enforcing the existing provisions. In addition to this, as general literacy, poor communication/transmission of information and a lack of legal awareness are general problems in these countries it raises the question of how institutions such as labour inspectorates and labour administration should deal with these issues.

C. National legal institutions in Africa that address wage protection issues

With regard to wage protection, the ultimate aim of the law is to ensure that wages are paid to workers in a timely fashion in the amount owed to the worker. If the laws in these countries are fairly specific regarding wage rights and obligations of the social actors, it provides justice in cases of their breach. This section will examine the laws that create these institutions and how they function.

i. Labour inspectorates: The first responders in wage protection

The main institutions charged with addressing wage protection issues are the labour inspectorate and the court system. The courts determine the merits of wage cases, enforce the rights of workers to receive the wages they are owed, and in some instances sanction

employers for non-payment or ignoring legal institutions such as the labour inspectorate. The courts form a last line of defence in wage related cases, but at the forefront are the labour inspectorates, which derive their authority from labour codes or national laws. Their task includes determining, in the first instance, if wage complaints have merit and what should be done in the event they do.

Labour inspectorates generally have certain things in common regardless of the part of the world they operate in, but also some characteristics that are specific to the legal system in which they operate. These factors can have a bearing on wage protection. Generally, under the ministries of labour, labour inspectorates are legally charged with the application of the labour code and laws, especially relating to remuneration, working conditions, and health and safety. As labour inspectors are authorised to enter and examine confidential information in businesses, they are normally required to exercise confidentiality and integrity in their work. Labour codes spell out their functions, which permit them to enter a workplace without prior warning and at any time of day or night; to inquire or investigate workplaces to see if labour law is being applied by examining collective agreements or interviewing workers and employers; to demand financial ledgers, books, or wage slips as well as to require notices on wages to be posted in the workplace if required by law; to formulate suggestions for employers, as well as to file warnings and refer cases to judicial authorities if there are failures in complying with the law, including wage provisions.

How labour inspectorates function, however, can vary. In Civil Law countries the labour codes include provisions that lay out the rights and obligations of the labour inspectorate.¹²⁵ At the same time these countries also have what has been termed a “Franco-Latin Model” of labour inspection.¹²⁶ This type of labour inspection is based on the French model and proceeds from the premise that non-compliance with the law is a product of ignorance, inefficiency, and poverty of employers. It views punitive sanctions as potentially making problems worse rather than offering relief or resolution. Employers are considered not prepared for business and non-compliance is a function of ignorance as well as greed. The French model was thus designed to propagate best practices from larger firms to smaller ones. In practice this means that labour inspection is generally unified in one system and is conciliatory and instructional when confronted with non-compliance with the law. This type of labour inspectorate is responsible for enforcement of the labour code and can also administer provisions of collective bargaining agreements. Employers are expected to come into compliance with the law in this system. Once a French model labour inspector determines legal infractions, the inspector works with the employer to bring the organisation into compliance. While fines can be imposed by the inspector in this system, the ultimate aim is to ensure compliance with the law. To achieve this end the labour inspector in this system has a great deal of discretion. Thus, labour inspectors in the French model have a great deal of authority and some autonomy when it comes to deciding how to achieve compliance.

¹²⁵ For example among Franco-Portuguese countries labour inspectorates can be found in the following labour codes and labour legislation: Algeria Loi No. 90-03 6 Fevrier 1990 relative a l’inspection du travail; Benin Labour Code 1998, Title 7, Chapter 1 ; Burundi Labour Code 1993, Title 8, Chapter 2; Cameroon Labour Code 1992, Part VII; Chad Labour Code 1996, Book 6, Title 1, Chapter 1; Congo Labour Code 1975, Title 6, Chapter 1; Democratic Republic of Congo Labour Code 2002, Title IX, Chapter II; Gabon Law Number 3/94 (Labour Code 2000), Title V, Chapter II; Ivory Coast Labour Code 1995, Title 9, Chapter 1; Madagascar Law Number 2003-044 (Labour Code 2003), Title VII, Chapter I, Section I; Morocco Law Number 65-99 (Labour Code 2004), Book V; Niger Ordinance Number 96-039 (Labour Code 1996), Title 5, Chapter 1; Rwanda No 13/2009 of 2009 Law regulating labour in Rwanda, Title X, Chapter One, Section One; Senegal Law Number 91-17 (Labour Code 1997) Title 12, Chapter 1; Togo Labour Code 2006, Title VIII, Chapter I, Section I; Tunisia Law no 66-27 (Labour Code of 1966), Book IV.

¹²⁶ M. Piore, *op.cit.*

Labour inspectorates in Common Law African countries do not structurally appear to take the form they do in most other Common Law countries, but appear to resemble their counterparts in Civil Law Africa. As Piore and Shrank have noted, in the United States labour market regulation is handled by different agencies that may have expertise in a particular subject matter.¹²⁷ Thus, the Wages and Hours Division of the United States Department of Labor is responsible for infractions of wage laws, while other agencies deal with other labour law issues.¹²⁸ The labour codes in Common Law African countries suggest that, at least with regard to enforcement of the labour legislation, the labour inspectorate handles all complaints, including those that are wage related. One explanation for this is the fact that there are generally scarce resources allocated to labour inspection in these countries, which means that the generalist structure that exists would be most cost effective.

The Labour Codes in Civil Law African countries outline the responsibilities of labour inspectorates. In principle this means that these labour inspectorates are charged with making sure compliance with the law is the ultimate aim of the labour inspectorate. Due to the authority and manner in which labour inspectors are required to operate in this system, they must generally be educated and have full comprehension of the laws they are enforcing. For instance, in Niger labour inspectors have teaching obligations in schools and training centres to promote compliance with the law.¹²⁹

However, because labour codes deal with a variety of issues that are not always the same or similar, there are topics on which labour inspectors in Civil Law African countries may require expert opinions. Health and safety is one area where the labour codes of these countries take this into account. Many of the labour codes explicitly permit labour inspectors to request technical advice regarding health and safety issues from scientific or medical personnel. For example, in Benin, Cameroon, Chad, Congo, Gabon, Madagascar, Niger, and Senegal labour inspectors are permitted to bring medical or health and safety specialists with them to determine if health and safety standards are being followed.¹³⁰ There is some logic to this as medical or scientific personnel have in-depth training and knowledge regarding scientific issues that labour inspectors do not have. Yet, this is the only exception provided for in the labour codes of these countries. The assumption would appear to be that labour inspectors do not require any other assistance to enforce the code. This could be problematic when considering the issues associated with wage protection. While the labour codes in these countries clearly spell out rights and obligations regarding wages, there are a variety of ways that employers can disguise employment to circumvent the payment of full wages or overtime wages. It is unclear whether all labour inspectors have the expertise to understand the financial materials that they may be required to examine in order to determine if wages are being paid in full or not. This is especially problematic in large national or multi-national companies that have complex accounts, which may need special financial and accountancy expertise to investigate them. For the purposes of wage protection there may be a need to work with others that have such

¹²⁷ Ibid.

¹²⁸ Other Common Law countries have divided labour law enforcement functions over different ministries. In the United Kingdom, for example, wage issues are addressed by the Inland Revenue (Taxation Authorities) while all other labour law issues are addressed by the Employment Agency Standards Inspectorate.

¹²⁹ Niger Labour Code 1996, Sec. 510(1)

¹³⁰ Benin Labour Code 1998, Sec. 272 & Art. 276; Cameroon Labour Code 1992, Sec. 111; Chad Labour Code 1996, Art. 148; Congo Labour Code 1996, Art. 156-2; Gabon Labour Code 2000, Art. 237; Madagascar Labour Code 1995, Art. 244; Niger Labour Code 1996, Art. 260-261; Senegal Labour Code 1997, Art. L.197

expertise, such as tax authorities, in order to fully determine whether the labour codes are being complied with and what action should be taken if this is not the case.¹³¹

In functional terms the labour authorities in some Common Law African countries are responsible for ensuring the payment of wages. They have broad powers and are entitled to perform a wide range of duties to make sure there is adherence to labour legislation, including wage provisions. Some of their authority includes discretion in granting exemptions, extending time limits, making orders and imposing sanctions. Controlling authorities in charge of general labour law and more specifically wage protection provisions are designated in the labour laws of Uganda and Zambia.¹³² These labour authorities have powers to take on and resolve labour law questions, including wage related issues.

ii. Challenges faced by labour inspectorates: financial resources

In practice, labour inspectorates in African countries face a number of challenges that can impact on how investigations and information collections are conducted, including those involving wage protection issues. One of the main problems that they face, in spite of the recognition of the importance of the labour inspectorate in the labour codes, are chronic financial shortfalls. In some Civil Law countries such as Algeria, Gabon, and Mali the labour inspection budget falls under the ministerial department charged with labour relations.¹³³ As an ILO report on labour inspection has noted, the allocation of financial resources to labour inspectorates is not always determined in a precise and definitive manner.¹³⁴ In many countries the labour inspectorate does not receive a specific budgetary allocation, which poses challenges for their operations. For example, in Mozambique, no part of the general labour administration budget is specifically allocated for labour inspection and as a consequence provincial offices have neither transport nor other means locations for work related travel.¹³⁵ In Mali, fines that result from labour violations pay for some portion of the labour inspectorate budget but 60 per cent of fines goes to the public revenue department and only 40 per cent to the labour administration services. However, the financing of the labour inspectorates in many Civil Law countries is generally only the beginning of the problem.

The lack of resources can have a profound effect on the cases chosen by labour inspectorates, the amount of time they can devote to each case, and even where they go to pursue these cases. Examples from Civil Law African countries demonstrate some of the problems. In Benin, inspectorates lack space so inspectors share offices with other

¹³¹ An example of this can be found in the United Kingdom where the HM Department of Inland Revenue (tax authorities) examine wage protection related issues, including examining employer books and employee wage slips.

¹³² Uganda Employment Act 2006, Art. 10-14; Zambia Labour Act to 1989, Part II

¹³³ ILO: *Report III (Part 1b) General Survey on the reports concerning the Labour Inspection Convention, 1947 (no. 81) and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Convention 1947, Labour Inspection (Mining and Transport) Recommendation, 1947 (no. 82), the Labour Inspection (Agriculture) Convention 1969 (no. 129) and the Labour Inspection (Agriculture) Recommendation, 1969 (no. 133)*, 98th Session of International Labour Conference (2006), Geneva, 2006

¹³⁴ Ibid.

¹³⁵ Ibid.

government groups¹³⁶ Labour inspectorates in Mali suffer from deterioration of offices, inadequate space and poor ventilation.¹³⁷

In Mauritania labour inspectors work in decrepit and poorly maintained offices that in some cases lack water and electricity and may also lack the necessary resources to pay rent on office space.¹³⁸ Resource problems are so severe in the Central African Republic and Mali that performing the job is hampered by a lack of writing materials.¹³⁹ These examples concern the office space of labour inspectorates, which in theory are supposed to act as central contact points as well as record repositories for cases investigated. These conditions provide some explanation as to why there is virtually no collection of information on infractions, even wage infractions, by employers or even a collation of existing information to provide some idea as to the extent of wage or overtime related problems in these countries.

In practice, the financing of labour authorities is as much of a concern in Common Law African countries as it is in Civil Law countries. Resources available to labour inspections are often insufficient for the labour inspectorate to be generally effective, much less when investigating specific issues such as wage claims. Governments in these countries are not often clear about how labour inspectorate budgets are determined in one or multiple years. The labour inspection budgets for Common Law African countries would appear to fall under ministries of labour and social affairs, but these budgets are not often determined in a precise and definitive manner in a financial or time period. In South Africa the labour inspectorate budget is revised and adjusted as necessary and within the limits of available resources.¹⁴⁰ What is also curious is that this takes place in spite of the fact that some of these countries do obligate internal reports by labour inspectorates to senior ministry offices. In Malawi, for example, the labour law requires the Commissioner to publish an annual general report, which includes work done by the labour inspectorate, though there is no indication that this has a legal or other linkage with the budgeting process for the labour inspectorate. It is difficult, therefore, to precisely identify how the labour inspectorates in Common Law African countries are financed and, consequently, if policies that might address strategic issues, such as wages, could or would be successful in practice.

iii. Geographic challenges for labour inspectors

In many African countries, the labour markets can generally be characterised as having urban employment concentrated in a few large cities, with agricultural and natural resources related work being the dominant form of work in rural areas and the economy in general. For example, a recent study in Uganda reports 2009 statistics that indicate 82 per cent of workers are employed in agriculture (which is also the largest form of revenue for Uganda), 5 per cent in industry, and 13 per cent in services.¹⁴¹ In Kenya, almost 67 per cent of workers worked in agricultural and thus rural areas.¹⁴² Similarly, in Ghana, statistics from 2008 indicate that 52.3 per cent of workers work in agriculture, 14.5 per cent work in

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ ILO (2006), op.cit.

¹⁴¹ B.N. Mpanga, and D.E. Ochola, D.E.: *National Employment Law Monograph for Uganda*, Walters-Kluwer, April 2011, p. 23

¹⁴² J.Kimani Njenga, and S. Owino, : *National Employment Law Monograph for Kenya*, Walters-Kluwer, August 2010, p. 30

retail, and 11.1 per cent in manufacturing.¹⁴³ These figures provide a general sample of what is experienced in many labour markets in Africa. While the migration rates to cities are beginning to grow in many African countries, the concentration of employment still remains with establishments that are not particularly concentrated in a specific area.

For labour authorities this geographic breakdown of employment can pose a number of challenges. However, for labour inspectorates, if the lack of resources were not enough, their challenges are heightened as they must also contend with travel across large areas and general access issues within rural and urban establishments in order to investigate labour code compliance in their countries.

By the very nature of their work, labour inspectors must be mobile. They may need to visit organisations, enterprises, and workplaces that cover an extended area of the country. A look at the geographic table below indicates the challenges faced. The size of the countries can themselves cause difficulties, but the degree of transport development also plays a role.¹⁴⁴ With regard to transportation, in more than 80 per cent of the Civil Law countries listed, only between 10 to 30 per cent of the roadways are paved. In some countries there are waterways for transport, but travel of this nature can take even longer than road or rail travel. This is compounded by the absence of transport equipment or allowances in many Civil Law countries. For example, in Burundi the government indicated that one vehicle was available for the entire General Directorate of Labour, including labour inspection.¹⁴⁵ In Mauritania the labour inspectorate has no vehicles, and in Benin and Niger they do not have sufficient resources for petrol.¹⁴⁶ The labour inspectorate in Burkina Faso not only did not have enough resources for vehicle maintenance, but, after a government inspection, it was found that the only vehicle available in a regional labour inspectorate was a bicycle.¹⁴⁷ Additionally, the reimbursement of labour inspectors' expenses has also been patchy at best in Civil Law countries. The lack of transport in Benin has meant that labour inspectors must pay to carry out their duties and are legally entitled to reimbursement. However, the procedures that must be followed and the rules for how reimbursement is made is not clear from the labour code in Benin. For labour inspectors in some other countries reimbursement is even more problematic. In the Central African Republic and Chad non-observance of reimbursement for travel costs or overly complicated procedures to obtain it could affect the extent to which a labour inspector will investigate compliance issues. Gabon, Mali, and Mozambique would not appear to have arrangements in practice for reimbursing the expenses incurred by labour inspectors while doing their jobs.¹⁴⁸

¹⁴³ K. Panford: *National Employment Law Monograph for Ghana*, Walters-Kluwer, August 2010, p. 33

¹⁴⁴ Transport development includes roads and rail connections. The effects of political instability, which has plagued parts of Franco-Portuguese Africa over recent decades, are not considered here.

¹⁴⁵ ILO (2006), op.cit.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

Table III. Geographic Size and Transport Systems in Civil Law African Countries

Country	Country Size (Square KM)	Roadways (KM)	Railways (KM of Track)
Algeria	2,381,741	108,302	3,973
Angola	1,246,700	51,429	2,764
Benin	112,622	16,000	438
Burkina Faso	274,200	92,495	622
Burundi	27,830	12,322	0
Cameroon	475,440	50,000	987
Central African Republic	622,984	24,307	0
Chad	1.284 million	33,400	0
The Democratic Republic of Congo	2,344,858	153,497	4,007
Gabon	267,667	9,170	649
Madagascar	587,041	65,663	854
Mali	1,240,192	18,709	593
Morocco	446,550	57,625	2,067
Niger	1.267 million	18,949	0
Togo	56,785	7,520	568
Tunisia	163,610	19,232	2,165

Source: CIA, The World Factbook; <https://www.cia.gov/library/publications/the-world-factbook/> (Checked 8 September 2011)

The fact that overall budgets for Common Law African countries are at best unclear has consequences for the overall working conditions that existing inspectors confront in performing their jobs. The absence of proper offices, equipment, and facilities is a problem in Common Law African countries, though the extent to which these countries provide more or less than their Civil Law counterparts cannot be established. A further obstacle to labour inspection is absence of transport. In Ghana, where vehicles were available for labour inspection, there were not enough resources to pay for their maintenance.¹⁴⁹ In most Common Law African countries between 10 per cent and 50 per cent of the roads are paved, making some parts of these countries exceptionally difficult to reach at the best of times (see table). In addition, though the railways are quite developed in some countries, many still suffer from the fact that the gauge size of the trains is variable, causing wheels and tracks not to match, which means that continuous travel within the country may not be possible. Waterways are used in some countries for transportation where rivers extend to key areas, such as in Gambia, but there is little information on the efficiency of this form of travel. Such issues not only restrict where labour inspectors might go to conduct preliminary investigations, but it also complicates the situation when a worker has filed a complaint regarding a wage issue. As noted, wage issues tend to be time sensitive as the worker often needs the financial resources as soon as possible.

Any delays due to a lack of government resources or a difficult geography can create significant problems for such workers. The challenges posed by insufficient resources allocated to labour inspection coupled with those issues posed to labour inspectors attempting to travel beyond urban areas or large cities raises questions about how many wage cases can be taken on or effectively addressed in these countries.

¹⁴⁹ ILO (2006), op.cit.

It also raises questions as to whether employers, aware of these challenges, may attempt to exploit the circumstances by not meeting their legal obligations on wage related issues. At this juncture the data is insufficient to reach any definitive conclusions.

Table IV. Geographic Size and Transport Systems in Common Law African Countries

Country	Country Size (Square KM)	Roadways (KM)	Railways (KM of Track)
Egypt	1,001,450	65,050	5,083
Ethiopia	1,104,300	36,469	681
Gambia	11,295	3,742	0*
Ghana	238,533	62,221	947
Kenya	580,367	160,886	2,066
Libya	1,759,540	100,024	0
Malawi	118,484	15,451	797
Namibia	824,292	64,189	2,626
Nigeria	923,768	193,200	3,505
South Africa	1,219,090	362,099	20,192
Tanzania	947,300	91,049	3,689
Uganda	241,038	70,746	1,244
Zambia	752,618	91,440	2,157

*Gambia has no rail system, but 390 km of waterways

Source: CIA, The World Factbook;

<https://www.cia.gov/library/publications/the-world-factbook/> (Consulted 8 September 2011)

iv. Job challenges of being a labour inspector

These factors and other work related factors may explain why labour inspection is not a popular profession in much of Africa. The lack of resources to perform the job and the generally poor compensation available to labour inspectors in theory would impact on the number of people choosing to do this job. The reason this proposition is theoretical is that there is a general lack of information regarding not only the available resources, but also the number of labour inspectors in African countries. For example, according to the ILO Report on Labour Inspection in 2006, Cameroon had 75 labour inspectors for the year 2000.¹⁵⁰ No other figures were available about the interval to 2005 (when the report was written) and no other current data is available to determine if the number has gone up or down. The absence of information on labour inspection and labour inspectors not only creates unnecessary challenges for research, it poses serious challenges to workers and policy makers who are left with little to no information regarding how well the labour inspectorate is performing.

While the labour codes in some Civil Law countries require the labour inspectorate to prepare reports that are submitted to the labour ministry, with the few labour inspectors that may work in these countries, it is unclear what they would have to report. The reports also raise information issues as they are not generally made available to sources outside the Ministry of Labour. Thus, it is almost impossible to determine the effectiveness of labour inspection, which labour issues receive the most attention, or any other details, notably relating to wages. This lack of information could also be problematic for workers in determining whether to file cases with the labour inspectorate as they have no basis to judge whether the labour inspectors are generally successful in helping with wage claims or not.

¹⁵⁰ ILO (2006), op.cit.

These problems for labour inspectors would appear to be a general problem in Africa. For example, according to a recent ILO report, Ethiopia increased the number of labour inspectors from 44 in 2003 to 120 in 2009.¹⁵¹ South Africa was also looking to add to its 965 labour inspectors at the start of 2011. However, their ability to do so successfully is less clear as a different report from 2010 noted that South Africa had 400 vacancies for labour inspectors which were not being filled due to poor pay and working conditions.¹⁵² A number of the factors noted above would appear to account for the recruiting difficulties of the labour inspectorate: annual budget uncertainty; unreliable equipment to travel to locations; poor compensation; and the often vast geographical area to be covered. These factors will likely limit not only the effectiveness of the labour inspectorate in investigating wage claims, but may actually encourage employers to circumvent laws about wage payments or the timing of these payments due to the limited chance of getting caught and sanctioned. In the absence of more complete information on labour inspectorates and their approach to wage related issues, it is likely that these issues, in large part, are continuing to either be resolved unofficially or not at all.

v. Timeframes of wage protection investigations: decisions by labour inspectors and tribunals

Time is an important variable when considering wage protection issues. Whether the problem is non-payment due to delays or lack of intention to pay on the part of the employer, pay issues have profound consequences for workers, as they may struggle to provide for their needs and those of their families. It can also have consequences in terms of the amount that is recovered as most labour codes only account for outstanding wages and not any other monies owed.¹⁵³ This knowledge becomes important to workers and employers as the length of time needed to resolve wage cases may influence their choice of action when confronted with wage protection issues.

As labour inspection in Civil Law countries follows the French model of labour inspection, time can be an issue. The French model of labour inspection, as noted above, is about educating an employer and trying to find solutions, with fines being a final resort employed to ensure compliance. The labour codes define what the labour inspector is meant and permitted to do and outline responsibilities. The labour codes do not, however, provide a timeframe for investigation. Thus, once alerted to a problem, the labour inspector must travel to the location, which, as noted, in Civil Law African countries can be a challenge due to limited resources and geographic difficulties. Upon arrival, the labour codes establish that labour inspectors can investigate by interviewing staff, looking at organisational records, and performing checks within the workplace. The aim of the investigation for a wage case would be to find a way to ensure employers pay workers what they are owed in a timely manner and to develop workplace policies to ensure any problems do not reoccur. It is not specified whether such an investigation should take hours or days to complete and records of the achieved timeframes are not available. Owing to the restrictions outlined above, it is likely that such procedures would last at least a few days. Moreover, if the employer does not agree with the determination by the labour inspector, especially in the event that the labour inspector imposes a fine on the employer, or the worker is unhappy with the result, the law allows for appeals.

¹⁵¹ ILO: *Labour administration and labour inspection*, Report V, International Labour Conference, 100th Session, Geneva, 2011, pg.70.

¹⁵² Times Live (South Africa) *Labour inspectors leaving*, 28 September, 2010, 13:10, (<http://www.timeslive.co.za/business/article679944.ece/Labour-inspectors-leaving>)

¹⁵³ For example, interest on the money not paid for the duration of any legal case may not always be factored into the legal decision.

The appeals process involves a tribunal or labour court. Once again geography, and therefore time, becomes an issue as these courts tend to be found either in the capital or in larger cities. Most of the labour codes in Civil Law Africa allow employers or workers up to eight days to file a case with the court if they feel unjustly treated. The case is then presented in court or at the tribunal and according to some of the codes must be heard within a few days. Once the court or tribunal has heard the case they then legally have up to 15 days to decide. In some countries the case ends at this stage because the labour code allows no further appeals. In others a case can be referred to a higher court which can take more time for the case to be considered and determined, such as in Benin.¹⁵⁴

Two conclusions can be drawn from this. First, if the labour inspector is unable to resolve the claim regarding wages to the satisfaction of both parties, a case can take up to a couple of months to resolve (including the time of the initial labour inspection). This means that for a worker filing a case about lost or unpaid wages who lives from payday to payday, the financial consequences can be severe. Second, due to the absence of recorded information regarding the time it takes labour inspectors to investigate cases (and specifically wage cases), the time it takes for a case to get to and go through the legal appeals system, and the success rate for workers and employers in such cases there is no firm way to determine how long it will take, on average, to resolve a wage related claim. This lack of information adds to the difficulties in determining whether to file a case, notably for the worker, or consider alternative routes to try and achieve their aims (e.g. direct confrontation with the employer, seeking local union assistance if available, etc.). Moreover, in the absence of this information, economic theory suggests that employers will be incentivized to not pay the legally agreed wage, which may be a factor as to the prevalence of informality in the labour market in African countries. Ideally, therefore, information about the timeframes of wage protection investigations should be prepared in report form by labour ministries and made available to the public and employers.¹⁵⁵

When a wage case (or other labour violation) is filed there are several issues the labour inspectorate must address. First, there is the practical concern of travelling to investigate the claims, which may not be a quick and easy journey if it requires the labour inspector to travel to remote parts of the country. Second, there are procedural issues which must be addressed. The labour inspector, upon arrival at the workplace, must investigate the complaints. If the employer is compliant with the investigation it could take anywhere from days to weeks to investigate claims; the actual timeframe, in the absence of government collected data, is difficult to determine. In some countries there are procedural time limits to such investigations and the addressing of violations. In Liberia, for example, the law requires the labour inspector to instruct an employer to cease violation in a written notice specifying a reasonable period of not less than three months and not more than six months for compliance.¹⁵⁶ However, though the legislation in most other Common Law African countries provides that the labour inspector can issue a compliance order to rectify any issues that might exist (including wage related issues) they do not indicate the timeframe for the resolution of the compliance order. Resolution of the order can either be accomplished if the employer admits to and rectifies the violation or if the order is appealed to either the labour commissioner or arbitration. If the result is again unsatisfactory, cases can be appealed to labour courts for final resolution. The legislation in Common Law African countries generally does not spell out the timeframe for the procedures or for judicial decision-making.

¹⁵⁴ Benin Labour Code, Title 6, Chapter 2

¹⁵⁵ Labour Codes in Gabon (Gabon Labour Code 2000, Art. 247) and Rwanda (Labour Code 2009, Art. 157) are some of the few that require labour inspectorates to compile reports, but there is no stipulation in the labour code or elsewhere that requires them to be circulated outside of the labour ministry.

¹⁵⁶ Liberia Labor Law 1986, Para. 56

In the absence of this data and information about the jurisprudence of these countries, it is not really possible to determine the timeframe for cases filed, including those regarding wage related issues.

In addition to the time required by labour inspectors, if wage compliance cases are appealed by employers there is the issue of the location of the arbitration board, labour tribunal, or labour court. The laws found in Common Law African countries are unclear about the number of courts or where they are located. This not only is problematic for the appealing employer, but can cause severe problems for the worker if they have to give evidence in person or provide other substantive materials to the judicial authorities. It is unclear exactly how long such cases can take from beginning to end, but presumably administrative rules on the conduct of the labour authorities would restrict the timeframe for them to render a decision or judgement. Again, as this information does not appear to be publicly available, it is difficult to judge how long a wage related case may take. This would appear to be a substantive difference to Civil Law countries, where time related provisions are incorporated in many cases. As noted, information about timeframes is important as it can determine if or when a wage complaint that is filed can be resolved and how efficiently. If the process takes an extended period of time it may lead to workers attempting to address the problem directly with their employer. This may in part confirm the research findings of Lee and McCann, where brief questionnaires of workers in Tanzania about working conditions revealed that these workers were more likely to confront employers about working issues than go to authorities for resolution.¹⁵⁷ In any case, the importance of publicly available information regarding the efficiency of the labour inspectorate and judicial authorities is vitally important in guiding the decision-making of the workers and employers when they attempt to resolve wage related issues.

vi. Sanctions for infractions of wage provisions in labour codes

Virtually all Civil Law country labour codes include sanctions for infractions of provisions contained within them. In almost all of these countries the labour codes identify the applicable sanctions for violations of any portion of the code, including violations relating to the terms or manner of wage payments. The sanctions can either be monetary (e.g. fines) or penal (e.g. jail sentences for the violator) or a combination of both, and the sanctions are generally grouped together near the end of labour codes.

Many of the issues highlighted previously, such as the timely payment of wages, regular periodic payments of wages, the inclusion of a wage slip with the wage payment, and employers keeping wage registers (books), and others such as payment in kind, wage deductions, and the lawful operation of a company store are all open to being sanctioned for violations. Sanctions in the labour codes of most Civil Law countries commence with fines. If the employer persists, repeats, or systematically engages in violations of the code's wage provisions, the fine goes up (normally it doubles) and imprisonment becomes possible. The labour codes in different countries allow imprisonment for a minimum of days to a maximum of 12 months. The labour codes in Benin, Burkina Faso, Cameroon,

¹⁵⁷ S. Lee and D. McCann, Measuring legal effectiveness: lessons from Tanzania, *Presentation to the IIRA 2009 Study Group on Labour Market Regulations*, Sydney, 24 August 2009 (Website: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/meetingdocument/wcms_146098.pdf)

Chad, the Congo, Gabon, Mali, Mauritania, Niger, Senegal, and Togo include such provisions, which can be applied to violations of wage provisions.¹⁵⁸

However, in the absence of reports from the ministries or labour inspectorates of the countries, it is not possible to discern how often and which types of sanctions are applied in the event of violations of wage provisions.

The monetary sanctions in labour codes are very important in the process of ensuring employer compliance. As noted, though it is difficult to determine if and to what degree employers in Civil Law Africa are sanctioned, it is not terribly likely that they will be imprisoned, making the monetary sanction most important. A look at the following table of fines for non-compliance with wage provisions gives some idea of how severe the sanctions can actually be.¹⁵⁹ Some labour codes would seem to provide for fines of small amounts in a restricted bandwidth, as is the case in Algeria or the Democratic Republic of Congo. Others, such as Benin and Mauritania, have wider bandwidths of sanctions that can be applied by the legal authorities. Rwanda would appear to have the most significant sanctions of the group. The amounts given in these sanctions, while not appearing high by some standards should not be taken as non-punitive to employers. In the countries where these sanctions can be applied these amounts may represent sizable financial penalties. In the event of the employer choosing not to comply with the penalty or engaging in the same or similar violations of wage provisions, the labour codes provide even more stringent financial fines. However, as above, how often the financial penalties are applied and to what amount on average is information that is unavailable at the time of writing.

Table V. Sample of Fines for Labour Infractions (Including Wage Infractions) in Civil Law Countries

Country	(National Currency Equal To One International Dollar)	Fines in Labour Codes (In International Dollar)
Algeria	41.33	48.40 – 96.78 (R) 96.78 – 193.56
Benin	290.41	12.05 – 150.51 (R) 24.10 – 241.03
Burundi	624.30	4.00 – 8.00 (R) 8.00 – 16.02
Cameroon	308.69	323.94 – 3239.49 (R) 647.90 – 4859.24
Chad	355.62	41.33 – 206.68 (R) 206.68 – 826.73
Democratic Republic of Congo	421.55	23.72 – 47.44 (R) 47.44 – 85.39
Gabon	448.60	66.87 – 668.75 (R) 133.75 – 1337.50
Mauritania	143.31	139.56 – 558.23 (R) 279.12 – 1395.58
Niger	282.79	35.36 – 176.80
Rwanda	326.19	153.28 – 919.71
Senegal	307.13	1627.96 – 3255.95
Togo	293.84	85.08 – 170.16 (R) 170.16 – 340.32

¹⁵⁸ Benin Labour Code 1998, Sec. 298, 300, and 302; Burkina Faso Labour Code, 1992, 237(a) and 238 (a); Cameroon Labour Code 1992, Sec. 168 and 170; Chad Labour Code 1996, Art. 288, 291; Congo Labour Code 1996, Art. 251, 255; Gabon Labour Code 2000, Art. 195; Mali Labour Code 1992, Sec. L319, L321; Mauritania Labour Code 2004, Art. 439; Niger Labour Code 1996, Art. 330, 331; Senegal Labour Code, 1997, L279; Togo Labour Code 2006, Art. 287, 288, 295, 298

¹⁵⁹ Fines in the table have been converted into international dollars

Tunisia	0.74	27.03 – 81.08 (R) 54.06 – 162.16
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National Currency Based on data from 2009; World Bank Database

(http://api.worldbank.org/datafiles/PA.NUS.PRVT.PP_Indicator_MetaData_en_EXCEL.xls); Fines taken from National Labour Codes in local currency and converted into international dollar; (R) = Repeat Offender

Violations of the wage provisions highlighted in this paper also carry sanctions in Common Law African countries. If an employer is found to be in violation of the wage related provisions of the labour legislation, the sanctions commence with fines imposed on the employer for the breach of each provision. As in Civil Law African countries, if the employer ignores the labour inspector citation, repeats a cited violation, or systematically engages in violations of the labour code and its wage provisions, then the fines may not only double but are then assessed per worker whose wage rights have been violated. Imprisonment is also a possibility, but is more often a punishment for false statements made to the labour inspectors or courts, false wage record keeping, or impeding an investigation by labour inspectors or legal labour authorities.

Among Common Law African countries the shortest amount of jail time for an employer in violation of the labour code, including its wage provisions, is 3 months (Kenya) and the longest is up to 2 years, with most imposing 6-month sentences.¹⁶⁰ However, as with Civil Law countries, the absence of publicly available reports from the ministries or labour inspectorates means that it is not possible to determine how often fines, imprisonment, or a combination of both are actually imposed for wage related offences. It is also unclear what preferences exist within the labour courts or general courts in terms of sanctioning employers for wage related violations alone or in combination with sanctions for violations of other portions of the labour legislation.

Table VI. Sample of Fines for Labour Infractions (Including Wage Infractions) in Common Law African Countries

Country	(National Currency Equal To One International Dollar)	Fines in Labour Codes (in International Dollar)
Botswana	4.48	Up to 334.82 (for one type of wage violation) Up to 446.43 (for another type of wage violation)*
Egypt	2.86	34.97 – 174.83 (Repeat Offence Doubles Fines)
Ethiopia	5.16	Up to 232.56
Ghana	.69	Up to 362.32*
Kenya	51.54	Up to 970.12
Liberia	29.19	17.13 – 34.26**
Libya	.94	21.28 – 53.19
Malawi	75.14	Up to 66.54
Namibia	6.20	Up to 1612.90
Nigeria	101.55	1.97 (violation of record keeping)
Tanzania	623.42	Up to 1604.06
Uganda	977.82	Up to .05**
Zambia	3963.15	Up to .32 (violation of labour law) Up to .63 (violation of record keeping)**

Fines taken from National Labour Codes in local currency and converted into international dollar; National Currency Based on data from 2009; World Bank Database (http://api.worldbank.org/datafiles/PA.NUS.PRVT.PP_Indicator_MetaData_en_EXCEL.xls);

(R) = Repeat Offender

* = units (labour law does not report fine in national currency, but in units)

** = Figure from 2005 (World Bank Database)

¹⁶⁰ Kenya Employment Act 2007, Art. 88 suggests up to 3 months imprisonment. Nigeria Labour Act 1990, Sec. 75 and Uganda Employment Act 2006, Art. 96 suggest imprisonment for up to 2 years.

Fines are also important in Common Law African countries. Fines would appear to be the only real sanction in these countries for violations of labour legislation, including wage related provisions. In law and practice, the use of imprisonment as a sanction against employers only appears to take place for impeding investigations or providing false information to authorities in these countries. This only heightens the importance of fines for wage violations. Rather than relying on a bandwidth of fines, as in Civil Law African countries, the laws in Common Law African countries are structured from zero to the highest amount that can be applied, which is cited in the law. Examining the table of fines applicable in the event of non-compliance gives some idea of the severity of fines.¹⁶¹ One striking feature in the table is how extremely varied the fines are in Common Law African countries. While the unequal value of the international dollar might have something to do with this, it is still notable that fines in Uganda and Zambia are less than one international dollar.¹⁶² At the same time the laws in countries such as Botswana, Kenya, and Namibia include fines that are noteworthy, especially when compared with other Common Law African countries.¹⁶³ The law in South Africa varies from these range based fine assessments to create a formula in a table of fines for underpayment, which is based on a percentage of the amount due plus any interest for each underpayment infraction.¹⁶⁴ The variations in the amounts with regard to fines in Common Law African countries suggests that there may be greater attempts to violate wage provisions in some countries than in others, where the higher fines might deter wage related abuses of the law. In countries with comparatively low fines it may not even deter multiple violations that would normally suggest higher fines, as the amounts would still not be prohibitive, especially for large companies or multinational corporations. Information on the application of fines and penal sanctions does not appear to be available outside of the ministries, which may be legally required to collect wage related case information. In some other countries, the information does not seem to be collected at all.

¹⁶¹ Fines in the table have been converted into international dollars

¹⁶² Uganda Employment Act 2006, Art. 96; Zambia Labour Act to 1989, Art. 55 and Chapter 276 Minimum Wage and Conditions of Employment Act 1994, Art. 4

¹⁶³ Botswana Employment Act Art. 151; Kenya Employment Act 2007, Art. 88; Namibia Labour Act 2007, Art. 127.

¹⁶⁴ South Africa Basic Conditions of Employment Act 2002, Schedule Two. The Schedule also includes fines relating not to underpayment, but to violations of the Act. Wage issues beyond underpayment can therefore be prosecuted and fined under this Act.

Table VII. Sample of Fines for Labour Infractions (Including Wage Infractions) in Common Law African Countries

Country	(National Currency Equal To One International Dollar)	Fines in Labour Codes (in International Dollar)
Botswana	4.48	Up to 334.82 (for one type of wage violation) Up to 446.43 (for another type of wage violation)*
Egypt	2.86	34.97 – 174.83 (Repeat Offence Doubles Fines)
Ethiopia	5.16	Up to 232.56
Ghana	.69	Up to 362.32*
Kenya	51.54	Up to 970.12
Liberia	29.19	17.13 – 34.26**
Libya	.94	21.28 – 53.19
Malawi	75.14	Up to 66.54
Namibia	6.20	Up to 1612.90
Nigeria	101.55	1.97 (violation of record keeping)
Tanzania	623.42	Up to 1604.06
Uganda	977.82	Up to .05**
Zambia	3963.15	Up to .32 (violation of labour law) Up to .63 (violation of record keeping)**

Fines taken from National Labour Codes in local currency and converted into international dollar;

National Currency Based on data from 2009; World Bank Database

(http://api.worldbank.org/datafiles/PA.NUS.PRVT.PP_Indicator_MetaData_en_EXCEL.xls);

(R) = Repeat Offender

* = units (labour law does not report fine in national currency, but in units)

** = Figure from 2005 (World Bank Database)

vii. Interest on wages owed: a gap in the law?

An important financial issue to distinguish in this analysis is the difference between fines as sanctions for violation of wage provisions of the labour code and restitution to the worker for wages not paid in full in a timely manner. From the general society perspective the fine is an important sanction as it indicates to employers what wage related behaviours will not be tolerated by society. The fines in the labour code imposed on the employer for non-compliance are paid to the judicial authorities and can be used to pay for government functions such as labour inspection. The fines have no bearing on any wage differentials that would need to be paid by the employer to the worker in the event of non-payment or insufficient payment.

Thus, in addition to the employer paying the fines detailed above if found guilty of wage violations, they would still also have to pay the worker the amount owed. Most codes, however, are silent on any interest that workers might be entitled to in order to account for any financial losses incurred while waiting for restitution.

Only South Africa has provisions in its labour law that require the payment of interest of a specified amount.¹⁶⁵ If an employer is found not to have paid wages in the proper manner, a government determined interest rate is added (compounded) to the owed wage over the period until payment is made. If the case is based on wage underpayment, the amount will include fines also based on percentages of the amount owed for underpayment of wages and restitution (also including percentage additions).¹⁶⁶ If either of these multiples on wages is owed to more than one worker, the amounts for underpayment can rise quickly.

As noted above, going from filing a case to achieving resolution according to the law can take months at a minimum and result in lost interest on the moneys to which the worker had been entitled. The issue of lost interest is not to suggest that workers in these countries all have bank accounts or invest in financial markets. Quite the contrary, workers in these countries have reason to fear inflation, which has been extreme in various African countries at different times. The consequence of lost interest on monies owed is that the purchasing power that a worker and their family might have if wages are paid in full and on time may be lost, placing even greater pressure on the worker to bridge the gap. Thus, in the event of a legal finding of underpayment, non-payment, or untimely payment of wages there is a need to include interest on lost wages to make sure the worker who lost these wages is wholly compensated. Nevertheless, further data is needed before a complete picture can be drawn of whether and how this issue is addressed in the African context.

D. Supplementing institutions to protect wages

As indicated, government authorities in most African countries struggle with poor resources to address a number of labour and employment law issues, including wage protection. However, as evidenced by institutions that protect wages in other countries, there are some options that can supplement existing systems to help ensure protection of full wage payments to the workforce.

One option that could be considered is strategic targeting by labour authorities of industries where wage protection might be a problem. Limited resources mean that the means available must be used strategically to ensure optimal utilisation as well as the most effective enforcement of wage payment legislation possible. As Pires points out, targeting a region or national industry may be a useful way to begin to develop information as to where the greatest impact on violations of labour law, including wage provisions, might be made.¹⁶⁷ It is important, as part of this process, to begin by accumulating information that can then be examined over time to determine how best to tackle wage protection issues.

Another option would be the linkage of work done by different ministries, which might individually suffer from a lack of resources, but together could produce better overall results. In this context, efforts by the British government to link the work of the tax authorities (HMRC) to the Department of Business Innovation and Skills, which handles employment related issues generally, could serve as an example. As human and financial resources for many governments in African countries can be limited, initiatives of this nature can help resolve any wage related issues more effectively.

Outside of government, some have suggested that trade unions can play a role in wage protection. Hardy and Howe have noted that, in the Australian context, trade unions were

¹⁶⁵ South Africa Basic Conditions of Employment Act 2002, Art. 75

¹⁶⁶ South Africa Basic Conditions of Employment Act 2002, Schedule Two.

¹⁶⁷ R. Pires, *op.cit.* R.

instrumental in ensuring collective agreement awards were adhered to during the life of the agreement.¹⁶⁸ This ability to monitor compensation gave the trade union a particular authority to make sure wages were paid in a timely and proper manner as well working with authorities to ensure unpaid wages were addressed. One of the main problems faced by trade unions in African countries is that their effectiveness has been limited by some governments. Government hostility to trade unions in some African countries has led to attempts to apply divide and rule tactics, which has limited the organisational, financial, and administrative capability of national African trade unions.¹⁶⁹ An issue such as wage protection might allow trade unions to more effectively work together and to recruit new members, especially if they can (as trade unions in Australia) establish a presence that would allow them to act as guardians of wage payments within a collective agreement, industry, or region. Efforts might also be considered to bring trade unions in contact with labour inspectors to gather information that could enhance or speed up the process of ensuring wage payments.

VI. Conclusions

There are a number of issues to be considered at this point regarding wage protection in African countries. The main considerations can be sub-divided into legal, institutional, and policy related concerns.

In legal terms, it is clear that labour laws in Africa have taken wage protection into account as an issue that requires attention. While the laws vary in the degree to which the subject is covered, there are several key issues that merit attention. First of all, it is important that the legal definition of wages be as elastic as possible to include all aspects of payment. While judicial decision making can resolve this issue, it is important to be as clear as possible within the law so non-legal experts, such as employers and workers, can fully understand their responsibilities and rights. Second, legal definitions need to be expansive as to which workers the law applies to, especially in the African case. It is clear from the national labour laws in Africa that wage protection provisions generally are applicable to traditional employment contract situations, but in some countries the definition of the employment relationship is more broadly construed. As there is a high level of labour market informality in African countries, the use of an expansive definition means that more workers will have the right to get paid in a timely and accurate manner.

At the same time this is not in conflict with what an employer has promised, as the legislation in many of these countries indicates that agreement on wages should happen before work commences (usually in the agreement on the employment relationship stage). Also, legal provisions on timely payment (periodicity of payment) are critical, even if some flexibility is built in as to the dates on which employers can pay, as these provide a clear guideline as to when an employer can be deemed to be in violation of the law.

Information on wage protection is both a legal and institutional issue. In this case the insertion of a legal requirement would be meant to increase the amount of action taken by government authorities to make information widely known and available.

For example, in legal terms, most African countries do not appear to have a mechanism that obligates reporting on labour inspection, other than in internal reports to labour ministers, or on wages specifically. Nor is there an obligation to make these internal

¹⁶⁸ T. Hardy and J. Howe, op.cit.

¹⁶⁹ C. Fenwick, E. Kalula, and I. Landau: "Labour Law: A Southern African Perspective" in T. Tekle (ed.) *Labour Law and Worker Protection in Developing Countries* (Oxford, Hart Publishers, 2010)

reports, if they are required, public. There is also little to no practical information available on the actual amount of time it takes to go from requesting an investigation to achieving a finding if a case goes to court. Furthermore, there is little information about whether employers who are systematically found to be violating wage protection legislation provisions are identified publicly and sanctioned. These are areas in which an additional provision in the labour codes or legislation would be an important way to obligate action. Creating a legal obligation to report and to make these reports public would help to inform workers about how often wage related cases are examined, how often they are prosecuted, and to what result. This in turn could influence a worker's choice as to whether they pursue a case or attempt to reconcile wage problems between them and the employer. Including similar public reports on the average length of time to reach a result on wage cases will also help to indicate the efficiency of the institutions meant to address wage protection and whether more resources might be needed. Finally, including legal provisions that publicly identify serial offenders of wage protection legislation can help workers to get full payment, through public pressure, or help workers to make decisions on whether or not to work for a particular employer.

Another wage protection issue that needs both legal and institutional consideration is interest paid on restitution of wages. When a wage or associated remuneration (e.g. overtime payment) is not paid it is not only that the worker loses, but the family they support may also suffer. Any cases that are filed require time for labour inspection filings, cases, and even judicial decision-making during which the wage or remuneration in question is not paid or available to the worker and those they support. This situation is problematic enough, but can be made worse if there is significant inflation in the country (as has happened in many parts of the developing world, including Africa). If inflation is high, the original wage loses its value the longer it is not paid and without a legal obligation to pay interest it could actually create even more profound problems for the unpaid worker. Creating a legal provision that creates a financial interest obligation for an employer who is found guilty of non-payment or untimely payment of full wages or remuneration would have a two-fold effect. First, it would make the worker whole in terms of the money or remuneration they were owed for the work they did. Second, it may act as a deterrent to employers who, based on financial calculations, might consider not paying a worker or taking a "portfolio" approach (i.e. paying some but not all workers the full amount owed).

Institutionally, a critically important issue concerns the amount of resources available to national institutions such as labour inspectorates and judicial authorities that render decisions on wage protection issues. While more information is needed, it is clear from the available data that many labour inspectorates in African countries do not have sufficient funds to perform the work they need and want to do, including investigating wage related complaints. The limited financial resources can have a number of consequences on wage protection such as limiting investigations to certain regions of a country or limiting investigations overall. In addition, if the economic theory on wage payment presented early in this work holds, employers may be encouraged to not fully pay agreed wages due to the lack of investigations taking place. While increased financial resources for investigating wage related complaints is the quickest way to address these issues, it is by no means the only method. Regardless of the amounts spent, there needs to be a strategic consideration of how to best utilise the resources that are available. In many countries this may mean strategically targeting certain industries where there is a history of wage related problems or perhaps focusing on the region where the most effective prosecutions can set a national tone for addressing wage issues. Such strategies could be agreed within labour ministries in consultation with the labour inspectors.

Alternatively, consideration might be given to developing a short to medium term policy process where multiple ministries might be able to help enforce wage protection legislation. In this case, using the United Kingdom model, the labour ministry would be in

charge of determining the wage protection legislation, but would work with national tax authorities to seek out where wage problems are taking place. The shared cost of investigation, in conjunction with the financial expertise of tax authorities, might help improve labour inspectors' awareness of how to best investigate the finances of companies to determine if wages are being properly paid or not. By linking up, the ministries would grow their inspector numbers and any fines or infractions could be shared between the ministries. Such arrangements would not inherently be permanent, but could provide a temporary bridge until more resources were allocated to labour ministries and inspectorates.

In terms of policy, the information gathered on wage protection should feed into national economic discussions. For example, if policy makers are engaging in wage setting, it would be helpful to understand how many in the labour force will benefit from such changes. If the general assumption is that any wages that are set by authorities or social actors are universally paid within a country, it would be helpful to consider legal cases of wage related complaints gathered by a labour inspectorate to determine whether this is actually the case. While household and labour market surveys provide a significant amount of information regarding the wages being earned in a country, the cases collected by a labour inspectorate and the judiciary can help to provide contextual information about individuals or groups that might not be benefiting from any new wage (e.g. women, members of ethnic minorities, etc.). This could help to fill in the picture for policy makers and make sure that wages are fully paid and in a timely manner to all workers in the labour markets in African countries.

Finally, for all of the information we have about wage protection in African countries, there is a great deal more that is needed to fully understand and address wage protection issues in this part of the world. Further research is needed in a number of areas. Improved data gathering of labour market statistics, including wage related information in Africa is important.

Greater understanding of the types of labour contracts or employment relationships found in African countries' labour markets would help in determining which contracts might be more susceptible to wage related problems. Further information from governments on labour inspection specifically relating to wage complaints might help to establish some proxies for the extent to which wage related problems exist in an industry, a region, or for a particular group of people within the country. These and other data related questions would help to fill in the picture of wage protection issues and their impact on greater economic issues in African countries.

Annex 1. National Legislation

Country	Legislation
Algeria	Code du Travail d'Algérie
Botswana	Chapter 47:01 Employment Act 2008
Benin	Code du Travail, Loi no. 98-004 du 27 Janvier 1998
Burkina Faso	Labour Code 1992
Burundi	Code du Travail, Décret Loi no 1-037 du 07 Juillet 93
Cameroon	Code du Travail, Law no. 92/007 de 14 Août 1992
Cape Verde	General Statute on Labour Relations, Legislative Decree No. 62/87
Central African Republic	Labour Code 1961
Chad	Convention Collective Générale Applicable Aux Travailleurs De La République du Tchad
Congo	Code de Travail, Loi no 45-75 de 15 Mars 1975
Democratic Republic of Congo	Code du Travail, Loi No 015/2002 de 16 Octobre 2002
Egypt	Labour Law No. 12/2003
Ethiopia	Proclamation No. 377/2003, Labour Proclamation
Gabon	Gabon Act No. 12/2000; Code du Travail de Gabon, Loi no. 3/94 du 21 Novembre 1994
Gambia	Labour Act, 2007
Ghana	Labour Act, 2003; The Fair Wages and Salaries Commission Act, 2007
Guinea	Guinea Labour Code
Ivory Coast	Code du Travail, Loi no 95/15 de 12 Janvier 1995
Kenya	The Employment Act, 2007, No. 11 of 2007
Liberia	Labour Law, Title 18
Malawi	Employment Act 2000, No. 6 of 2000
Madagascar	Loi no. 2003-044, Portant Code du Travail
Mali	Code du Travail Loi no 92-020 du 23 Septembre 1992 ; Arrête d'application de Code du travail no 1566/MEFPT-SG de 7 Octobre 1996
Mauritania	Loi No 2004-017 portant code du travail
Morocco	Loi no. 65-99 relative au Code du Travail
Mozambique	Labour Code of Mozambique, 2007 ; Mozambique Labour Act 1998
Libya	Labour Code, Act No. 58-2970
Namibia	Labour Act, 2007
Niger	Code du Travail, Ordonnance no 96-039 du 29 Juin 1996
Nigeria	Labour Act, Chapter 198
Rwanda	Law Regulating Labour Law in Rwanda No. 13/2009 of 27/05/2009
Senegal	Code du Travail Loi no 97-17 du 1 Décembre 1997
Seychelles	Seychelles Employment Act 1995
Sudan	1997 Labour Code
South Africa	The Basic Conditions of Employment Act, 2002; The Basic Conditions of Employment Act, 1997; Labour Relations Amendment Act 2002
Swaziland	Swaziland Employment Act 1980
United Republic of Tanzania	Employment and Labour Relations Act, 2004
Togo	Loi no 2006-010 du 13 Décembre 2006 portant code du travail
Tunisia	Code du Travail, La Loi no. 96-62 de 15 Juillet 1996
Uganda	The Employment Act, 2006
Zambia	Chapter 268 The Employment Act; Chapter 276 Minimum Wages and Conditions of Employment Act

Annex 2: Protection of Wages Convention, 1949 (No. 95)

**Convention concerning the Protection of Wages (Entry into force: 24 Sep 1952)
Adoption: Geneva, 32nd ILC session (01 Jul 1949)
Status: Up-to-date instrument (Technical Convention)**

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the protection of wages, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Protection of Wages Convention, 1949:

Article 1

In this Convention, the term wages means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered.

Article 2

1. This Convention applies to all persons to whom wages are paid or payable.
2. The competent authority may, after consultation with the organisations of employers and employed persons directly concerned, if such exist, exclude from the application of all or any of the provisions of the Convention categories of persons whose circumstances and conditions of employment are such that the application to them of all or any of the said provisions would be inappropriate and who are not employed in manual labour or are employed in domestic service or work similar thereto.
3. Each Member shall indicate in its first annual report upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation any categories of persons which it proposes to exclude from the application of all or any of the provisions of the Convention in accordance with the provisions of the preceding paragraph; no Member shall, after the date of its first annual report, make exclusions except in respect of categories of persons so indicated.
4. Each Member having indicated in its first annual report categories of persons which it proposes to exclude from the application of all or any of the provisions of the Convention shall indicate in subsequent annual reports any categories of persons in respect of which it renounces the right to have recourse to the provisions of paragraph 2 of this Article and any progress which may have been made with a view to the application of the Convention to such categories of persons.

Article 3

1. Wages payable in money shall be paid only in legal tender, and payment in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited.
2. The competent authority may permit or prescribe the payment of wages by bank cheque or postal cheque or money order in cases in which payment in this manner is customary or is necessary because of special circumstances, or where a collective agreement or arbitration award so provides, or, where not so provided, with the consent of the worker concerned.

Article 4

1. National laws or regulations, collective agreements or arbitration awards may authorise the partial payment of wages in the form of allowances in kind in industries or occupations in which payment in the form of such allowances is customary or desirable because of the nature of the industry or occupation concerned; the payment of wages in the form of liquor of high alcoholic content or of noxious drugs shall not be permitted in any circumstances.

2. In cases in which partial payment of wages in the form of allowances in kind is authorised, appropriate measures shall be taken to ensure that--

(a) such allowances are appropriate for the personal use and benefit of the worker and his family; and

(b) the value attributed to such allowances is fair and reasonable.

Article 5

Wages shall be paid directly to the worker concerned except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award or where the worker concerned has agreed to the contrary.

Article 6

Employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages.

Article 7

1. Where works stores for the sale of commodities to the workers are established or services are operated in connection with an undertaking, the workers concerned shall be free from any coercion to make use of such stores or services.

2. Where access to other stores or services is not possible, the competent authority shall take appropriate measures with the object of ensuring that goods are sold and services provided at fair and reasonable prices, or that stores established and services operated by the employer are not operated for the purpose of securing a profit but for the benefit of the workers concerned.

Article 8

1. Deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award.

2. Workers shall be informed, in the manner deemed most appropriate by the competent authority, of the conditions under which and the extent to which such deductions may be made.

Article 9

Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited.

Article 10

1. Wages may be attached or assigned only in a manner and within limits prescribed by national laws or regulations.

2. Wages shall be protected against attachment or assignment to the extent deemed necessary for the maintenance of the worker and his family.

Article 11

1. In the event of the bankruptcy or judicial liquidation of an undertaking, the workers employed therein shall be treated as privileged creditors either as regards wages due to them for service rendered during such a period prior to the bankruptcy or judicial liquidation as may be prescribed by national laws or regulations, or as regards wages up to a prescribed amount as may be determined by national laws or regulations.

2. Wages constituting a privileged debt shall be paid in full before ordinary creditors may establish any claim to a share of the assets.

3. The relative priority of wages constituting a privileged debt and other privileged debts shall be determined by national laws or regulations.

Article 12

1. Wages shall be paid regularly. Except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award.

2. Upon the termination of a contract of employment, a final settlement of all wages due shall be effected in accordance with national laws or regulations, collective agreement or arbitration award or, in the absence of any applicable law, regulation, agreement or award, within a reasonable period of time having regard to the terms of the contract.

Article 13

1. The payment of wages where made in cash shall be made on working days only and at or near the workplace, except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award, or where other arrangements known to the workers concerned are considered more appropriate.

2. Payment of wages in taverns or other similar establishments and, where necessary to prevent abuse, in shops or stores for the retail sale of merchandise and in places of amusement shall be prohibited except in the case of persons employed therein.

Article 14

Where necessary, effective measures shall be taken to ensure that workers are informed, in an appropriate and easily understandable manner--

(a) before they enter employment and when any changes take place, of the conditions in respect of wages under which they are employed; and

(b) at the time of each payment of wages, of the particulars of their wages for the pay period concerned, in so far as such particulars may be subject to change.

Article 15

The laws or regulations giving effect to the provisions of this Convention shall--

(a) be made available for the information of persons concerned;

(b) define the persons responsible for compliance therewith;

(c) prescribe adequate penalties or other appropriate remedies for any violation thereof;

(d) provide for the maintenance, in all appropriate cases, of adequate records in an approved form and manner.

Article 16

There shall be included in the annual reports to be submitted under Article 22 of the Constitution of the International Labour Organisation full information concerning the measures by which effect is given to the provisions of this Convention.

Article 17

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may, after consultation with the organisations of employers and workers concerned, where such exist, exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation any areas in respect of which it proposes to have recourse to the provisions of the present Article and shall give the

reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.

3. Each Member having recourse to the provisions of this Article shall, at intervals not exceeding three years, reconsider in consultation with the organisations of employers and workers concerned, where such exist, the practicability of extending the application of the Convention to areas exempted in virtue of paragraph 1.

4. Each Member having recourse to the provisions of this Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of this Article and any progress which may have been made with a view to the progressive application of the Convention in such areas.

Article 18

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 19

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 20

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate --

(a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 22, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 21

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 22, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 22

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 23

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 24

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 25

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 26

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 22 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 27

The English and French versions of the text of this Convention are equally authoritative.

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