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16 March 2018

The Chair of the Portfolio Committee

National Parliament

Cape Town

Dear Chair and Committee

**ENDORSEMENT OF SUBMISSION BY ORGANISED LABOUR ON THE NATIONAL MINIMUM WAGE BILL AND BASIC CONDITIONS OF EMPLOYMENT AMENDMENT BILL BY COMMUNITY CONSTITUENCY**

Community Constituency (CC) is one of the four social partners represented at NEDLAC, the National Economic and Labour Council. We represent SANCO, the Financial Sector Campaigns Coalition, the South African Youth Council, the National Women’s Coalition, the Disabled People South Africa, and the South African National Apex of Cooperatives. In addition, our broader constituency includes informal and vulnerable workers and communities that are not represented through any other social partner.

Community Constituency was represented both on the Committee of Principals (COP) on the National Minimum Wage and Labour Relations, as well the two Task Teams appointed by the COP. This communication to the Portfolio Committee is based on that participation.

1. CC endorses the submission by organised labour to this committee in general.
2. We wish to add our concern about the quite significant changes that slipped in between the agreement of February 2017 and the draft bills submitted both to NEDLAC and now to Parliament. We are concerned that this has had the effect of watering down of the Bills ’ability to achieve the objectives of the process agreed to with the now President under the Ekurhuleni Declaration. This relates particularly to the ability of the Bills to reduce the levels of poverty and inequality that currently characterise the realities of South Africa, and progressively realise the rights guaranteed in the Constitution.
3. During negotiations, CC was consistent in insisting that the introductory level of the NMW be annually adjusted above inflation in order to progressively realise a medium term target that represented a **living** as opposed to a **minimum** wage. The current bill does not very clearly stipulate this as a principle of the review and adjustment of the operation of the NMW. Any cost of living indexing in addition is to linked to the inflationary level as experienced by the lowest income quintile in South Africa as it is accepted that the inflationary pressures and levels experienced by the poor differs considerably from that experienced by the middle classes and elites.
4. CC is vehemently opposed to the possibility of Employer Organisations being empowered to apply for block exemptions for their members as set out in Section 15(1). We were witness to the misunderstanding between social partners as to the meaning of this subsection within NEDLAC which opened up the possibility for this misunderstanding. Throughout negotiations it was understood that exemptions had to be applied for by individual employers to ensure that full disclosure of necessary information was made and that the well-being of their worker was protected as far as possible.
5. We do however support Labour’s recommendation on the inclusion of bargaining councils for low wage sectors.
6. CC further affirms the position that exemptions are only valid for 12 months after which time they automatically end, and that these dates must be clear in the Exemption Notice.
7. In addition, we affirm Labour’s position that exemption criteria need to be reviewed every 12 months by the NMW Commission.
8. We further affirm that it was agreed to in the negotiating process that the introductory discounted tier for domestic workers and farm workers would only be valid for two years whereafter it would fall away. We believe that this exemption process has the potential to be challenged constitutionally on the grounds of gender discrimination, given that the vast majority of domestic workers are women, and we do not believe that this is a position that can be supported for any longer than as agreed to in negotiations.
9. We further agree that the enforcement mechanisms need to be strengthened. We are concerned that in the negotiating process we had to move away from our first position on enforcement which comprised criminal sanction for breach of the provisions of the NMW. We also in the process reluctantly agreed that the enforcement mechanisms would only kick in after two years as we believe that that this sends out the wrong message at the commencement of this legislation.

We thank the Chair and the Committee for considering this communication and we do hope that the Committee will be guided in its deliberations by the contents of the original February 2017 agreement rather than the contents of the Bill before it right now. We are committed to the successful introduction and implementation of the National Minimum Wage in order to achieve the objectives and principles contained in the Constitution.

Yours faithfully

**Thulani Tshefuta**

**Overall Convenor**