


MINIMUM WAGE, MAXIMUM DISPARITY: A CRITICAL EXAMINATION OF LAW ENFORCEMENT IN BRAZIL AND PROPOSALS FROM GLOBAL BEST PRACTICES

SALÁRIO MÍNIMO, DISPARIDADE MÁXIMA: UMA ANÁLISE CRÍTICA DA APLICAÇÃO DA LEI NO BRASIL E PROPOSTAS DE MELHORES PRÁTICAS GLOBAIS

SALARIO MÍNIMO, DISPARIDAD MÁXIMA: UN ANÁLISIS CRÍTICO DE LA APLICACIÓN DE LA LEY EN BRASIL Y PROPUESTAS BASADAS EN LAS MEJORES PRÁCTICAS MUNDIALES

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ABSTRACT

This paper examines regional disparities affecting the enforcement of labour laws, specifically Article 7 of the Brazilian Federal Constitution and Chapter 3 of the Consolidation of Labor Laws, which mandate the implementation of a national minimum wage. Findings show significant informal employment in Brazil's northern and northeastern regions, where many earn below the legal minimum wage. In contrast, the central and southern regions provide better salaries and formal employment. According to 2023 PNAD data, the northeastern region has the highest percentage of workers earning below the minimum wage. Key institutions like the Ministry of Labor and Social Security, State Economic Development Secretariats, and the Superior Labor Court are responsible for addressing these issues. Based on our comparative legal analysis, we propose improvements for Brazilian institutions by integrating international practices and minimum wage policies from the UK, Germany and Australia.

Keywords: Regional Disparities. Minimum Wage. Labor Laws. Fundamental Rights.

RESUMO

Este artigo examina as disparidades regionais que afetam a aplicação das leis trabalhistas, especificamente o Artigo 7 da Constituição Federal Brasileira e o Capítulo 3 da Consolidação das Leis do Trabalho, que determinam a implementação de um salário mínimo nacional. Os resultados mostram um emprego informal significativo nas regiões norte e nordeste do Brasil, onde muitos ganham abaixo do salário mínimo legal. Em contraste, as regiões central e sul oferecem melhores salários e emprego formal. Segundo dados da PNAD de 2023, a região nordeste tem a maior porcentagem de trabalhadores ganhando abaixo do salário mínimo. Instituições chave como o Ministério do Trabalho e Previdência Social, as Secretarias Estaduais de Desenvolvimento Econômico e o Tribunal Superior do Trabalho

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são responsáveis por abordar essas questões. Com base em nossa análise jurídica comparativa, propomos melhorias para as instituições brasileiras, integrando práticas internacionais e políticas de salário mínimo do Reino Unido, Alemanha e Austrália.

Palavras-chave: Disparidades Regionais. Salário Mínimo. Leis Trabalhistas. Direitos Fundamentais.

RESUMEN

Este artículo examina las disparidades regionales que afectan la aplicación de las leyes laborales, específicamente el artículo 7 de la Constitución Federal Brasileña y el capítulo 3 de la Consolidación de las Leyes Laborales, que determinan la implementación de un salario mínimo nacional. Los resultados muestran un empleo informal significativo en las regiones norte y noreste de Brasil, donde muchos ganan por debajo del salario mínimo legal. Por el contrario, las regiones central y sur ofrecen mejores salarios y empleo formal. Según datos de la PNAD de 2023, la región noreste tiene el mayor porcentaje de trabajadores que ganan menos del salario mínimo. Instituciones clave como el Ministerio de Trabajo y Previsión Social, las Secretarías Estatales de Desarrollo Económico y el Tribunal Superior del Trabajo son responsables de abordar estas cuestiones. Basándonos en nuestro análisis jurídico comparativo, proponemos mejoras para las instituciones brasileñas, integrando prácticas internacionales y políticas de salario mínimo del Reino Unido, Alemania y Australia.

Palabras clave: Disparidades Tegionales. Salario Mínimo. Leyes Laborales. Derechos Fundamentales.

1 INTRODUCTION

The paper argues that although Brazil has a complex legal and institutional structure for minimum wage enforcement, regional disparities suggest an important gap between legal provisions and their implementation, raising a problem of compliance. We will analyse the minimum wage policies of Australia, Germany, and the UK. These countries were selected based on ILO criteria: consistent implementation of a rising monthly minimum wage and a multifaceted enforcement structure.

We observed that today the systems considered most effective in enforcing the legal minimum wage are labour inspections, legal actions and legal sanctions. A lowest common denominator will be systematic labour inspections or inspections based on different reports that workers or trade unions can make, and for employers who are non-compliant with the legal minimum wage, a system of fines and legal actions that penalise these behaviours. But in addition to this "punitive" enforcement system, we will also see cases of what we call "positive enforcement", a system based on persuasion, information and capacity building, and we will focus on this to understand how it can be implemented in a complementary way to labour inspections in Brazil.

Our proposal stems from the dialogue that has always existed between economics and law on the enforcement of rules applied on economic actors.

In economic literature, there has been some reflection on the enforcement instruments available to public authorities in view of the budget constraints of the same authorities to ensure compliance (Stigler, 1974).

On the one hand, it was argued that the primary objective of regulatory law should be criminal sanctions, as they would have a long-term consequence on the behaviour of economic agents, e.g. an entrepreneur, since "businessmen abhor the idea of being branded as 'criminals'". Moreover, the preventive threat of criminal sanction has been interpreted as a good incentive to arrive at less punitive solutions. (Ball, Friedman, 1965).

Others have based their analysis on the interaction of factors such as the minimisation of costs for the regulator and the information asymmetry generated by the absence of complete information on the firm. Thus, it has been argued that a penalty-based system requires fewer resources than a system based on the enforcement of regulatory standards. Regulators would have more interest in building a system that revolves around the monitoring of standards and will seek to make regulations enforceable and the behaviour of companies observable. Meaning more controls and sanctions (Ricketts, Peacock, 1986).

A second approach addresses information asymmetries in a different way, i.e. as an element of negotiation between the authority and the company subject to the rules. With the same set-up of public authorities and companies wanting to minimise costs, it has been shown that waiving formal legal sanctions and bargaining to induce compliance can be cost-effective, because of the natural propensity of individuals and organisations to reach cooperative solutions. (Fenn, Veljanoski, 1988).

Another proposal in literature suggests that if government enforcement is random, firms are naturally inclined to systematically violate its provisions in such a way as to mitigate what would otherwise be its major effects (Ashenfelter, Smith, 1979). This is compatible with our proposal for more targeted inspections of fragile groups of workers (as we show in section 6) and a positive enforcement policy.

Our comparative research takes a bridging approach between enforcement based on inspections and sanctions and what we call 'positive enforcement', i.e. aimed at cooperation between economic actors and educational objectives in the labour market.

Our approach is also supported by experimental evidence that reputation effects due to informational asymmetries can generate cooperative behaviour (Kreps, Milgrom, Wilson, 1981), which is a case very similar to the compliance to the minimum wage regulations, but also a large literature which exposes the preference for cooperative behaviour over egoistic in firms' strategies.

On the comparative aspect of the standards adopted in the different countries, we refer to a literature that today proposes analyses on implementation policies in the European Union (Eurofund, 2024) and developing countries (Rani, et al. 2013) still missing a comparison between the two aimed at policy solutions as we propose in this article for Brazil.

Existing literature provides a multifaceted view of this topic, highlighting both the successes and challenges of implementing minimum wage policies. Melo (2015) explores the role of the minimum wage campaign in Brazil as a tool for combating inequality, while Lemos, Rigobon, and Lang (2004) analyse the employment effects of minimum wage policies, demonstrating their complex impact on the labour market. Gindling, Mossaad, and Trejos (2015) provide a comparative perspective through their evaluation of the enforcement of minimum wage laws in Costa Rica, offering valuable insights into the potential consequences of increased legal enforcement in similar contexts. Amadeo, Gill, and Neri (2000) discuss the critical pressure points within Brazilian labour legislation, shedding light on the inherent challenges in ensuring effective compliance with wage standards.

Building on this body of research, our paper offers a new contribution by critically examining the enforcement of minimum wage laws in Brazil. By juxtaposing Brazil's approach with successful global practices, this study seeks to identify actionable reforms that could enhance the enforcement and compliance of minimum wage laws.

The structure of this paper is as follows: Section 3 explores the International Labour Organization's (ILO) recommendations on minimum wage enforcement, conducting a comparative analysis of practices in the UK, Australia, and Germany. Section 4 shifts to Brazil, detailing the country's constitutional and legal framework on minimum wage and examining the institutions responsible for enforcing these laws. Section 5 assesses the effectiveness of Brazil's labour inspection and compliance mechanisms in ensuring adherence to minimum wage regulations. Section 6 discusses regional disparities in minimum wage compliance in Brazil, focusing on socioeconomic factors and their broader implications for workers. Section 7 proposes strategies to address these disparities, drawing on lessons from international comparisons. Section 8 presents the conclusions.

2 METHODOLOGY

We conducted a legal analysis in conjunction with an institutional investigation to determine which entities are responsible for ensuring the enforcement of minimum wage laws. Following this legal and institutional review, the study aimed to assess whether the regulatory framework had a practical impact, by analysing empirical data from the National Household Sample Survey (PNAD) and the Brazilian Institute of Geography and Statistics (IBGE). We extracted data for salaried workers from PNAD Continua from the last quarter of 2023 and processed the descriptive statistics found in section 6.

This empirical analysis revealed important regional disparities, particularly in the northern and northeastern regions of Brazil. Given the apparent difficulties in enforcing minimum wage laws effectively across the country, the research then shifted focus to examine compliance and implementation systems in countries with notable success in minimum wage enforcement: specifically the United Kingdom, Germany, and Australia. This comparative study was grounded in an initial examination of the International Labour Organization's (ILO) regulatory framework on the subject. By analysing the mechanisms through which these countries implement and monitor minimum wage policies, and contrasting them with the Brazilian approach and its shortcomings, the research aims to identify which of these international practices could be adapted to the Brazilian context.

3 ILO STANDARDS AND COMPARATIVE ANALYSIS

3.1 INTERNATIONAL LABOUR ORGANISATION'S RECOMMENDATIONS ON MINIMUM WAGE ENFORCEMENT

The International Labour Organization (ILO) Minimum Wage Fixing Convention, 1970 (No. 131) and Minimum Wage Fixing Recommendation, 1970 (No. 135) underscore a robust enforcement framework for minimum wage legislation. Convention No. 131, Article 2 mandates that minimum wages possess the force of law. Non-compliance with statutory minimum wages subjects the offending parties to appropriate penal or other sanctions. Article 5 of the same Convention stipulates the necessity of implementing adequate inspections and complementary measures to ensure the effective enforcement of minimum wage provisions. Recommendation No. 135 provides measures to enhance the effective application of minimum wage laws, as delineated in Article 5 of the Convention which contains also the following measure of what we call “positive enforcement”: countries must ensure the dissemination of minimum wage provisions in languages and dialects accessible to the workers requiring protection, with adaptations for illiterate individuals. Countries that commit to simplify legal provisions and procedures to empower workers to effectively exercise their rights under minimum wage laws, including the recovery of underpaid wages. Employers' and workers' organisations must be engaged in safeguarding workers against exploitative practices. Governments and ministries of labour must provide robust protection for workers against retaliatory actions.. The ILO's current policy results in a balanced framework both emphasising stringent enforcement through inspections and penal measures and some positive enforcement actions through protection of workers policies and promotional campaigns between workers and employers. In countries that have adopted a national minimum wage, there is still an opportunity for enhancing the former framework through the development and implementation of positive reinforcement strategies. This dual approach would not only deter violations but also foster a proactive culture of compliance and awareness. The ILO's approach forms the cornerstone of the minimum wage enforcement strategies utilised in the United Kingdom, Australia, and Germany. These nations have adopted similar frameworks, emphasising the importance of inspections and penalties, but also some policies of positive reinforcement.

3.2 UK. LABOUR INSPECTIONS AND PENALTIES: WHEN INSPECTIONS MEET POSITIVE ENFORCEMENT

In the UK the National Minimum Wage Act in 1998 has introduced a statutory minimum wage to which almost all workers are entitled in the country. Under Section 17 of the 1998 Act, a qualifying worker who receives less than the minimum wage for any pay reference period is legally entitled to receive arrears of payment from their employer. The UK system relies on inspections and penalties, but not only that, awareness campaigns and a transparent public compliance system. Inspections and penalties for non-compliant employers. This is the so-called enforcement which is delegated to the “His Majesty's Revenue and Customs” department (HMRC) which has in itself compliance officers responsible for the enforcement specifically for the national minimum wage. The 1998 Act grants compliance officers the authority to require and hold documents containing information from an employer's premises as part of enforcing minimum wage laws. A Notice of Underpayment (NoU) is issued when a compliance officer determines that minimum wage arrears were outstanding at the beginning of an investigation. A Notice of Underpayment (NoU) usually isn't issued if an employer has already repaid all arrears before an investigation starts, especially if they've corrected issues in response to HMRC's "nudge" activities. These nudges, where HMRC sends reminders to multiple employers to help them spot underpayments, are in the middle of an enforcement strategy that starts with data inspection but doesn't mark the start of a formal investigation. HMRC officers can decide whether to issue an NoU based on the specifics of each case. While NoUs are common when arrears are found, there are situations where cooperation and proactive correction by the employer can prevent penalties, public naming, or enforcement action.. In some cases, HMRC may allow employers to self-correct, particularly when there is confidence in the employer's willingness to cooperate, commit to future compliance, and if they haven't had similar issues in the past six years. Various calculation measures are then taken to ensure that the compensation from the employer at fault is fair, considering some sort of interest rate that takes into account the time since the underpayments and the adjustment for cost of living. To enforce NMW compliance, HMRC has several legal tools at its disposal. For minor breaches, HMRC might offer out-of-court solutions. For serious cases, criminal investigations and prosecutions may be pursued if there is sufficient evidence. These actions ensure that employers who violate NMW laws are held accountable. Criminal offences under the NMW Act include: refusing or neglecting to pay the NMW, failing to keep accurate records, making

false entries in records or providing false information and obstructing or refusing to cooperate with compliance officers, which are public officers. So HMRC takes civil enforcement actions (through inspections and affirmative actions) to recover unpaid wages alongside criminal prosecutions. This dual approach aims to ensure that workers are paid what they are owed and that employers face appropriate penalties for non-compliance.

3.2.1 Labour market enforcement coordination: the role of the director

To combat persistent and severe breaches of labour law, the Labour Market Enforcement Orders has been introduced. These orders target employers who repeatedly violate labour laws and fail to rectify their practices. Non-compliant businesses can be required to undertake corrective actions, with further legal consequences, including court orders or custodial sentences of up to two years, if they fail to comply. Central to this enforcement framework is the Director of Labour Market Enforcement, a role established under the Immigration Act 2016. The Director provides crucial leadership and coordination among three key enforcement bodies: HMRC's National Minimum Wage (NMW) team, the Employment Agency Standards Inspectorate (EAS), and the Gangmasters and Labour Abuse Authority (GLAA). The Director's role involves overseeing a unified strategy to address various forms of non-compliance, ranging from minor infringements to serious criminal activities. By leading an intelligence hub that integrates data from HMRC, GLAA, EAS, and the Home Office, the Director ensures a cohesive approach to tackling labour market issues. This coordination enables the strategic allocation of resources and the formulation of effective policies to address exploitation and non-compliance, ensuring a focused and efficient response to labour market abuses.

3.2.2 Name and shame policy: a carrot and stick approach?

In October 2010, the UK government introduced a new scheme to publicly name employers who violate minimum wage laws. The primary goal of the scheme is to leverage social and economic pressures to encourage compliance, recognizing that some employers may be more motivated by the public exposure of their payment practices than by financial penalties alone. By making the details of non-compliance public, the government seeks to not only dissuade employers from breaking the law but also to encourage underpaid workers to come forward and report such issues. In addition, the British Naming Scheme contains an affirmative element consisting of the so-called "Educational Bulletin" that accompanies the

list, with a detailed description of the cases mentioned and how they are prosecuted by law. The educational trait of this operation, places it in the positive enforcement actions. When an employer receives a Notice of Underpayment (NoU) from HMRC, outlining arrears and associated penalties, HMRC subsequently refers the case to the Department for Business and Trade (DBT) for potential public naming, which occurs after the issuance of the HMRC case closure letter. The threshold for public naming is set at £500 or more in general cases involving arrears. However, a lower threshold of £100 applies if the employer has received another NoU within six years, has an outstanding Labour Market Enforcement Order, or has previous convictions related to National Minimum Wage (NMW) offences. Employers have the opportunity to contest their naming by submitting written representations to DBT, particularly in cases where personal harm, national security risks, or exceptional public interest factors may be involved. DBT employs stringent criteria in reviewing such representations and accepts only a limited number of cases, requiring employers to provide strong evidence to support their claims. Employers are informed in advance of their potential naming and are given 14 days to present their representation. If these representations are not accepted, the employer will be publicly named after a minimum of 10 working days.

3.3 AUSTRALIA

The 2009 Fair Work Act officially introduced the minimum wage in Australia which from 1 July 2024 is \$24.10 per hour or \$915.90 per 38 hour week (before tax). The Fair Work Ombudsman (FWO), established by the Fair Work Act 2009, operates under the Compliance and Enforcement Policy to ensure adherence. The FWO's functions include: promoting positive workplace relations and compliance through education and assistance; monitoring and investigating potential breaches of the Act or related instruments; taking legal action to enforce compliance; and referring cases to other relevant authorities when necessary. When the Fair Work Ombudsman (FWO) identifies potential non-compliance with the Fair Work Act, a Fair Work Inspector may initiate an investigation or inquiry. Investigations can be triggered by specific allegations of non-compliance, while inquiries may also be conducted proactively to monitor compliance. Fair Work Inspectors are equipped with various statutory powers to support their investigative and compliance functions. On-site, Fair Work Inspectors are authorised to: inspect work processes, objects, and documents, conduct interviews, request information on who holds or has access to records, require the production of records either immediately or by a specified date, make copies of documents, including those stored

on computers,. Inspectors may also be accompanied by experts, such as interpreters or forensic accountants, to assist with translation or the analysis of digital records.

3.3.1 Enforceable undertaking

When the Fair Work Ombudsman (FWO) detects a potential breach of the Fair Work Act, it may offer an “Enforceable Undertaking” (EU) instead of pursuing costly court actions. Accepting an EU shows the FWO's preference for cooperative resolutions and compliance. Once accepted, the FWO cannot take court action for those specific breaches but can do so if the terms are not followed. EUs are often offered in cases of self-disclosure and efforts to correct issues, and may require a contrition payment, assessed based on factors such as the nature of the contraventions, the steps taken to address them, and the proportionality of any potential court penalties.

3.3.2 Enforcement outcomes: investigations or inquiries

Following an investigation or inquiry, Fair Work Inspectors may determine various outcomes based on their findings. These outcomes can include issuing a Compliance Notice, an Enforceable Undertaking, or pursuing other enforcement actions. The specific enforcement approach depends on the nature of the findings and the parties' willingness to cooperate. Upon completing an investigation or inquiry, the FWO will notify the employer of the outcome through an assessment letter. If no contraventions are found, the notification will reflect this. If insufficient evidence is available to confirm a contravention, the FWO may issue a caution or recommendation to help ensure compliance, such as advising independent legal consultation. For identified contraventions, a Contravention Letter may be issued. The contravention letter contains details about the failure to comply, requires corrective action within a specified timeframe, requests notification of actions taken to comply and outlines potential further actions by the FWO if compliance is not achieved. In order for the inspectors to monitor the correct payments of the legal minimum wages, employers must maintain a clean and clear record keeping. If there are contraventions related to record keeping, pay slips, or job advertisements, the FWO may issue an Infringement Notice. This notice imposes penalties up to \$1,878 for individuals and \$9,390 for corporations for Fair Work Act breaches, and lower amounts for breaches of Fair Work Regulations. Paying an Infringement Notice does not constitute an admission of guilt, and compliance prevents further court action for the same issue. Then, litigation is reserved for more severe or

persistent non-compliance cases. It serves to enforce the law and deter others from similar conduct (general deterrence), ensure compliance by individuals and entities (specific deterrence) and clarify legal obligations and rights (legal clarity). The FWO may pursue litigation in cases involving deliberate, repeated, or serious non-compliance, exploitation of vulnerable workers, failure to rectify issues after prior warnings, or where there is a history of non-compliance. Even if contraventions are rectified, litigation might be pursued to achieve deterrence. The Fair Work Ombudsman (FWO) is authorised to represent employees or outworkers in court or in proceedings before the Fair Work Commission when such representation is deemed to support compliance with the Fair Work Act. Legal action may be pursued against various parties involved in contraventions, including employers, company directors, human resources managers, external advisors, and other individuals associated with the breach. The decision to commence litigation is contingent upon the presence of sufficient evidence and an assessment of public interest. In determining whether to proceed with legal action, the FWO evaluates the likelihood of success, the potential impact on resources, and the broader public interest.

3.3.3 The Australian “positive enforcement”: public communication in compliance and enforcement policy

The Fair Work act system equipped itself with a statute on communication and media publications to build civil consciousness. By informing the community about significant compliance and enforcement activities, the Fair Work Ombudsman FWO aims to deter non-compliance and foster a cooperative workplace environment. The FWO manages public communication strategically to promote compliance with workplace laws and maintain transparency. In legal proceedings, the FWO issues media statements at key stages, ensuring public awareness while protecting the integrity of ongoing cases. For compliance activities, the FWO publicises enforcement outcomes, but typically avoids media releases for specific notices that have been complied with. However, it does announce Enforceable Undertakings (EUs) and Proactive Compliance Deeds (PCDs), publishing key details while protecting privacy.

The FWO also communicates on educational initiatives to foster a culture of compliance. In certain cases, it may identify third parties involved in non-compliance, especially if their actions significantly contributed to the breach or if they benefited from it. This identification

is done with care to ensure fairness and accuracy. Overall, the FWO's communication efforts aim to enhance public confidence and encourage adherence to workplace laws.

3.4 GERMANY

Beyond the system of penalties, In Germany, works councils (*Betriebsrat*) have a crucial role in enforcement activities in workplaces, having the right to check the wages applied. Unlike the customs authorities, they can guarantee anonymity to complaining workers. The Federal Ministry of Labour and Social Affairs (BMAS) and the DGB run a minimum wage hotline to provide support to workers and employers.

3.4.1 Exclusion from public procurement procedures

In Germany, a naming and shaming system has been directly applied through the use of award certificates aimed at promoting compliance and highlighting non-compliant employers. SOKA-BAU, an organisation responsible for managing contributions to social funds in the construction sector, awards these certificates to companies that adhere to collectively agreed working conditions, including the correct payment of contributions. Companies that receive these certificates may use them as certified documents when bidding for public contracts, thus creating a system that rewards compliance and excludes non-compliant companies, such as those paying less than the minimum wage, from accessing public grants and tenders.

4 LEGAL FRAMEWORK IN BRAZIL ABOUT MINIMUM WAGE

4.1 CONSTITUTIONAL AND LEGAL FOUNDATIONS: THEORY AND PRACTICE

The legal framework for the minimum wage in Brazil is designed to ensure that all workers receive fair compensation that meets basic living standards (Carneiro, Foguel, Albrecht Ramos, 2001). This framework is primarily anchored in the Federal Constitution and further detailed through specific labour laws and regulations. Article 7, of the Federal Constitution guarantees a national minimum wage, which must be periodically adjusted to preserve its purchasing power and ensure it is sufficient to meet essential needs such as housing, food, education, health, leisure, and transportation. This constitutional provision forms the bedrock of Brazil's commitment to protecting workers' earnings. It also establishes a broad set of rights for workers, ensuring that they are afforded basic protections and benefits in the workplace. These rights are designed to promote fair labour practices and

improve the quality of life for employees, such as working hours, paid annual leave, employment stability, social security, right to unionise, maternity and paternity leave.

Complementing this, Article 76 of the Consolidation of Labour Laws (CLT) specifies the criteria for setting and adjusting the minimum wage, ensuring a systematic approach to maintaining wage adequacy in line with economic conditions. It specifies that the minimum wage should be established based on several criteria. Firstly, the minimum wage must be sufficient to cover the basic needs of a worker and their family. Then, Art. 118 comes to compliance and enforcement prescribing that workers who are paid less than the minimum wage shall have the right, notwithstanding any contract or agreement to the contrary, to claim from their employer the supplement to their minimum wage.

Art. 119 says that actions to recover the difference shall be barred in 2 (two) years, counting for each payment from the date on which it was made.

More practically, Art. 126 states that The Minister of Labor, Industry and Commerce will issue the necessary instructions for the inspection of the minimum wage, and may entrust this inspection to any of the component bodies of the respective Ministry, as well as to the inspectors of the Retirement and Pension Institutes in the form of the legislation in force.

Moreover, Law No. 14,663, of August 28, 2023 defines the minimum wage amount starting from May 1, 2023; establishes the permanent minimum wage appreciation policy to take effect from January 1, 2024; and amends the values in the monthly table of the Income Tax for Individuals referred to in Article 1 of Law No. 11,482, of May 31, 2007, as well as the deduction values provided in Article 4 of Law No. 9,250, of December 26, 1995.

To ensure compliance with laws, the Federal Labor Inspection System, under the responsibility of the Ministry of Labor and Employment, decree 4.552 from 2002 requires that the distribution of Labor Inspectors among the different inspection areas of the same district will obey the rotation system, carried out by public lottery, with reappointment to the same area in the following period being prohibited. Labour inspectors will remain in the different inspection areas for a maximum period of twelve months to ensure independence and rotation.

Brazil's minimum wage framework has been shaped by various decisions from the Supreme Federal Court (STF), the Superior Labor Court (TST), and Regional Labor Courts. In Direct Action of Unconstitutionality (ADI) No. 1.458-7, the STF addressed the constitutionality of Provisional Measure No. 1.415/1996, noting that the minimum wage at the time was insufficient for basic needs. The court decided not to annul the law, as this

would have reverted to an even lower wage, worsening workers' conditions. The STF ruled that the failure to adjust the minimum wage partially violated the Constitution but could only notify legislators to address the issue, not enforce changes directly.

In Case No. TST-Ag-AIRR - 571-47.2021.5.20.0003, the TST upheld a lower court's decision requiring an employer to pay wage differences due to non-compliance with the minimum wage. The employer's failure to meet the legal minimum was deemed a breach of contract, justifying indirect termination under Article 483 of the CLT. This case highlighted the serious legal consequences of not adhering to minimum wage requirements.

At the regional court level, Tribunal Regional do Trabalho 13^a Região TRT-13 - Recurso Ordinário Trabalhista: ROT 0000169-37.2021.5.13.0010 addressed minimum wage compliance, emphasizing that remuneration must meet the legal minimum for an eight-hour workday (Article 7, IV, CF/1988). The court ruled in favor of the plaintiff, noting that the wage difference was due as there was no evidence of regular payment.

Despite a robust legal framework, challenges persist, reflecting the complexity of minimum wage issues in Brazil's highest courts.

4.2 INSTITUTIONAL ROLES IN MINIMUM WAGE ENFORCEMENT

The Ministry of Labor and Employment (MTE) serves as the central authority, formulating labour policies and overseeing their implementation. At the regional level, Delegacias Regionais do Trabalho (DRTs) operate as state labour offices under the MTE. Located in the capital cities of each state, DRTs are responsible for the local implementation of federal labour policies, including the enforcement of minimum wage laws. Regarding the minimum wage, the following should be observed by the Statistics Service of Social Security and Labor: provide opinions on issues related to labour inspection and on draft regulations concerning working conditions; instruct the processes for registering labour contracts and maintain records of these contracts; examine the contracts for extending working hours, instructing the respective processes; instruct processes originating from violations of the laws and regulations referred to in item I of this article; organise the registry of offenders (Decree No. 41,478, of May 8, 1957).

The Superintendências Regionais do Trabalho e Emprego (SRTE), Gerências Regionais do Trabalho e Emprego (GRTE), and Agências Regionais are state-based service units responsible for implementing, supervising, and monitoring public labour and employment policies. In addition to promoting job creation and income generation, they

manage the Sistema Público de Emprego, oversee labour inspections, and mediate and arbitrate in collective bargaining processes.

The Superior Labor Court (TST) serves as the judicial authority that adjudicates labour disputes and ensures consistent interpretation and application of labour laws across Brazil.

The TST plays a critical role in upholding workers' rights and resolving conflicts related to minimum wage compliance.

5 LABOR INSPECTION AND COMPLIANCE IN BRAZIL

5.1 APPROACHES TO SANCTIONING ABUSIVE EMPLOYERS

One of the strategies in Brazilian labour legislation is the use of sanctions that exclude employers from accessing public and private credits if they are found to be in violation of labour standards. This approach, as highlighted by Benassi (2011), includes the infamous “Dirty List” (“Lista Suja”) of companies using slave labour, enforced by the Department of National Integration. Companies listed for engaging in practices like forced labour are not only subject to criminal procedures and fines but are also cut off from financial support, which serves as a powerful deterrent against non-compliance.

5.2 LABOUR INSPECTION SYSTEM AND ITS EVOLUTION

The Federal System of Labor Inspection, established by the 1988 Constitution, recognized the critical role of labour inspectors in enforcing compliance (Posthuma & Bignami, 2014). This system, managed by the Ministry of Labor and Employment (Ministério do Trabalho e Emprego, MTE), operates through its regional offices known as Regional Labor Offices (Delegacias Regionais do Trabalho, DRT), and is overseen by the Labor Auditor (Auditor Fiscal do Trabalho). The Labor Auditor's responsibilities include inspecting workplaces to ensure compliance with labour laws, including minimum wage provisions. Inspections can be both scheduled and random, based on risk assessments or specific complaints. If a violation is detected, the auditor has the authority to impose penalties, such as fines, which can be doubled in cases of repeat offences. Moreover, Brazil's labour laws allow employees to report violations anonymously, providing a safeguard against retaliation (Benassi, 2011; Posthuma & Bignami, 2014).

5.3 CHALLENGES AND COMPLIANCE SOLUTIONS FOR LABOUR INSPECTION

Brazil has about 3,050 labour inspectors, a number that has remained relatively stable since 1990 (Neil, 2013). However, the effectiveness of labour inspection has improved due to changes in incentive structures and new methods for meeting inspection targets. For instance, to reduce the risk of corruption among inspectors, there has been an emphasis on higher, performance-based salaries (Neil, 2013). Inspectors' salaries can be partially financed through fines collected from non-compliant employers (Posthuma & Bignami, 2014). Labour inspection has been bolstered by procedural innovations, such as the formation of specific inter-ministerial teams like the Special Mobile Inspection Group, which focuses on detecting and penalising grave labour violations, including child labour and forced labour (Nocchi et al., 2011). The integration of 'hard' and 'soft' tactics - combining enforcement with technical support and education - has proven effective in helping firms achieve compliance (Posthuma & Bignami, 2014).

The Federal Constitution guarantees the right to a minimum wage, which is periodically adjusted to reflect economic conditions, particularly inflation. This adjustment process is designed to progressively increase the real value of the minimum wage, thereby safeguarding workers' purchasing power (Neil, 2013).

The enforcement of the minimum wage is the responsibility of labour inspectors from the Ministry of Labor, with support from trade unions (Cacciamali et al., 2015). The Labor Justice system also plays an active role by reviewing complaints against non-compliant employers, imposing fines, and ordering compensation payments to affected workers (Cacciamali et al., 2015).

The effectiveness of minimum wage enforcement has been enhanced by various factors. The Ministry of Labor has improved control over informality through virtual monitoring tools integrated with the Ministry of Finance and the Ministry of Social Security (Cacciamali et al., 2015). Additionally, the National Plan to Combat Informality (Plano Nacional de Combate à Informalidade dos Trabalhadores Empregados - PNCITE) established in 2014 institutionalised measures such as increased wages for inspectors, hiring more qualified personnel, and intensifying their training (Cacciamali et al., 2015).

6 REGIONAL DISPARITIES IN MINIMUM WAGE COMPLIANCE IN BRAZIL

6.1 DRAMATIC REGIONAL DISPARITIES IN WAGE DISTRIBUTION AND WORKING CONDITIONS AROUND THE COUNTRY

The effectiveness of a minimum wage policy in Brazil depends not only on the coverage of its legal provisions but also on the level of compliance across different Brazilian regions. Compliance can be assessed in several ways, with a common method in empirical studies being the calculation of the percentage of workers earning less than the legal minimum wage. We therefore calculated this share for the different regions of Brazil (Table 1) The only region where the population gaining less than the legal minimum wage exceeds the population gaining more, is in the North-East region, where the quote of workers earning less than the national minimum wage arrives to 50.35% in the last trimester of 2023, a dramatic number considering that the North-East population represents around 26.91% of Brazilian population, with 54,6 million people living there (IBGE 2022). According to this analysis this should mean that in the North-East of the country around 29,2 million people are working with very low wages and in informal jobs.

Table 1

Shares of workers under minimum wage (0) for each state of Brazil

	Minimum Wage	NO Minimum Wage
South	84.29%	15.71%
Center-West	80.71%	19.29%
South-East	78.36%	21.64%
North	62.30%	37.70%
North-East	49.65%	50.35%

Source: PNAD Continua Data (Q4 of 2023), Authors' elaboration

Minimum wage compliance policies can be targeted, so the analysis can be extended, one example, the tragic race inequalities perpetuated in Brazil. It is possible to see how access to work covered by the national minimum wage is greater for white workers throughout the country, meaning that white workers have access to higher quality jobs, both in terms of wages, national health insurance, working hours and vacations (Table 2). We can see that the category of white men is the one mostly covered by the national minimum wage with a national share of 81.44%. It is followed by white women where this share gets to

almost 76%. While we can see that only 66% of black men population in Brazil receives the national minimum wage, and the most dramatic number, only 59% of black women receives the national minimum wage, meaning that in Brazil around 41% of black women might be receiving a wage lower than what the Federal State assumes to be decent.

Table 2

Shares of workers under minimum wage for sex and race, aggregate national data

	Minimum Wage	NO Minimum Wage
White Men	81.44%	18.56%
White Women	75.74%	34.16%
Black Men	65.84%	24.26%
Black Women	59.75%	40.25%

Source: PNAD Continua Data (Q4 of 2023), Authors' elaboration

Now if we consider only the North-East region, this is what happens to our Table 3:

Table 3

Share of minimum wage earning workers by sex and race in North-East of Brazil

	Minimum Wage	NO Minimum Wage
White Men	56.73%	43.27%
White Women	57.46%	42.54%
Black Men	47.90%	52.10%
Black Women	45.93%	54.07%

Source: PNAD Continua Data (Q4 of 2023), Authors' elaboration

Only the populations of white men and white women are those in which people gaining more than the minimum wage exceed those who gain less.

A first key to interpreting these data is that the white population in the Northeast has access to better quality formal jobs and therefore enjoy the national minimum wage, but it could also mean that monitoring and compliance policies on the minimum wage are failing, especially in the Northeast of the country, where the most fragile populations are not to be protected.

6.2 THE WAGE GAP BETWEEN METROPOLITAN AND URBAN WORKERS

The dramatic inequalities between men and women and black and white people seen in the previous paragraph, are observed also in metropolitan areas (Table 4).

Table 4

Average wages of urban and rural workers for sex and race

	Average Wages (Urban) R\$	Average Wages (Rural) R\$
White Men	2725,664	2308,719
Black Men	2403,705	2127,585
White Women	2389,279	1838,288
Black Women	1971,946	1464,212

Source: PNAD Continua Data (Q4 of 2023), Authors' elaboration

Again, white men workers in metropolitan areas earn on average at least 300 reais more than black men, white women and black women.

What emerges from our analysis is a dramatic figure for black women in both metropolitan and rural areas. On average, black women earn 1970 reais per month, 1,000 less than white men and 700 less than white women. Such a dynamic is exacerbated within groups in the rural areas and also between groups (Metropolitan-Rural disparity) for remunerations under 5500 reais.

Our analysis shows that workers in local rural employment areas are less likely to receive a wage above the statutory minimum wage than urban workers. The same applies to women and black/white/indigenous workers. The strong figure that emerges is also that of informal work (Table 5). That is, being employed in informal work massively increases the probability of receiving less than the minimum wage.

Table 5

Probit model showing probabilities of receiving less than minimum wage for workers

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. probit y urban sexo raca anosest informal
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Iteration 0: log likelihood = -36964.871
 Iteration 1: log likelihood = -26735.631
 Iteration 2: log likelihood = -26655.915
 Iteration 3: log likelihood = -26655.817
 Iteration 4: log likelihood = -26655.817

Probit regression

Log likelihood = -26655.817

Number of obs	=	53331
LR chi2(5)	=	20618.11
Prob > chi2	=	0.0000
Pseudo R2	=	0.2789

y	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]
urbano	-.423328	.0144626	-29.27	0.000	-.4516743 - .3949818
sexo	-.4041441	.0133205	-30.34	0.000	-.4302519 - .3780363
raca	-.1515274	.0143726	-10.54	0.000	-.1796972 - .1233577
anosest	-.0744428	.0015698	-47.42	0.000	-.0775196 - .0713661
informal	1.286736	.0129912	99.05	0.000	1.261273 1.312198
_cons	.6050948	.0238417	25.38	0.000	.5583659 .6518238

More specifically, urban workers have 42% less likelihood of getting a job that pays less than the national minimum wage. The same goes for men workers where this percentage is 40%. These data anticipate that a policy of compliance and monitoring the enforcement of minimum wage laws, should increase the focus on businesses located in rural areas, businesses that hire black workers and female workers, with greater intensity in the northeast of the country.

7 CONCLUSIONS AND LESSONS LEARNED FROM A COMPARATIVE ANALYSIS OF MINIMUM WAGE ENFORCEMENT

The effective implementation and enforcement of minimum wage policies must tackle the most pressing socio-economic disparities at both national and regional levels. Across the countries analysed, it is evident that a system of control mechanisms with inspections and penalties, plays a central role in ensuring compliance. However, what stands out in our comparative analysis is that enforcement must go beyond mere punitive measures and should integrate educational and awareness-raising efforts to foster a culture of compliance. Our analysis reveals that in countries like the UK and Brazil, enforcement mechanisms such as the "Name and Shame List" and the "Suja List" can pressurise employers through reputational risks. However, the UK's approach, which combines this list with an 'Educational Bulletin,' adds a valuable dimension by fostering awareness and compliance through

education for both workers and employers. This creates a positive culture of compliance and reinforces labour rights. The German certification system could be an element to be added for higher scores when participating in public tenders and funding.

In Brazil, labour inspections should prioritise protecting the most vulnerable workers—those concentrated in non-decent working conditions, particularly in rural areas and the northeastern states, where over 50% of salaried workers earn less than the minimum wage. A targeted focus on companies that hire black women, who face the highest exposure to below-minimum-wage jobs, is crucial. In this context, "positive reinforcement" strategies must go beyond penalties and fines. Continuous training for both workers and employers on rights and obligations is essential, with particular attention to regions where inequality and non-compliance are most rampant. To address these challenges, we propose that Brazil's Escola Trabalhador 4.0 expand its current vocational training to include courses on occupational health and safety, as well as fundamental labour rights such as the minimum wage. Additionally, incorporating mandatory training on these topics into the National Employment System (NES) would reinforce these efforts. The NES already plays a central role in organising the labour market, and by integrating rights education, it can further support workers across the country. Trade unions should also actively participate in these campaigns, focusing on awareness and training initiatives that address the structural inequalities present in the labour market. These combined efforts can ensure a more robust and equitable enforcement of the legal minimum wage. Finally, a proactive system of case negotiation, as in Australia without immediately entering into legal disputes and sanctions, has still little relevance in Brazilian legislation and inspection processes. However, a focus on the possibilities opened up by more affirmative and cooperative operations requires greater investment in personnel, and here we return to the economic problem of sustaining the activities of superintendencies which we reserve to investigate further in the future.

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