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Gender pay transparency mechanisms: Future directions for South Africa

The gender pay gap – that is, the difference in wages between men and women for the same or substantially the same work, or work of equal value – still features prominently as a stumbling block in achieving South African gender equality. If South Africa is to dislodge its stagnant gender pay gap, especially for women in the middle and upper levels of the wage distribution, pay transparency – making gender differences in wages known to employees, government and the public – can compel employers to remunerate fairly and equally. We undertook a comparison between the global and national mechanisms of gender pay transparency to propose a way forward to increase transparency in gender pay for South Africa. In addition to a discussion of existing mechanisms, a summary of the gender pay transparency mechanisms of 16 countries is provided as supplementary material to the article. We found that South Africa could strengthen legislated transparency mechanisms, especially with regard to pay reporting and pay audits, provided that sanctions are attached to non-delivery of these duties. Reigniting the debate on strengthening and improving South African legislation and interpretation of existing governance codes in relation to the implementation, monitoring and enforcement of gender pay transparency mechanisms could strengthen the existing collective bargaining framework and provide the impetus to demonstrate that South Africa sees gender equality as an achievable reality, not an improbable ideology.

Significance:

- Despite the presence of constitutional rights and enabling legislation to prevent workplace gender discrimination, South Africa continues to see a stagnant median gender pay gap of between 23% and 35%.
- This study provides a global analysis to reinvigorate the debate on how South Africa can strengthen transparency mechanisms to close the gender pay gap.
- Legislators, activists, board members, trade unions, academics, and organisational leaders are provided with suggestions on transparency mechanisms to improve efforts towards economic gender equality for South Africa.

Introduction

We consider how transparent mandatory gender pay or wage gap mechanisms, as implemented around the globe, could inform future directions in closing the gap in South Africa. The gender pay gap relates to differences in wage earnings between women and men, and is evident at two levels: (1) job-specific gaps (or job and occupational families), in which equal pay for the same or similar jobs, or jobs of equal value is determined, and (2) at the aggregated level, where organisational, industry/sector or national data, over time, show wage gap patterns between women and men.

A recent study by Mosomi¹, utilising 23 years' South African aggregated labour force panel data over a period ending 2015, confirms that the median gender pay gap was stubbornly stagnant in this period after controlling for level of education, amongst other relevant characteristics. More recently, the International Labour Organization (ILO) reported that, in 2017, the median gap was 28.8% based on hourly wages, and 30.3% based on monthly earnings.² These statistics show South Africa to be performing poorly in addressing the gap, given that the average global gap is approximately 20%.² Mosomi's study also provides varied results for labour force participation at, especially, the lower and upper ends of the wage distribution. At the 10th percentile, the gap has narrowed, which may be a result of collective bargaining³ and the introduction of national minimum wages¹ for those in the lowest-paying and vulnerable jobs. At the 90th percentile, the wage gap for women at the executive level of organisations initially seemed to be closing, but, in the last 10 years of the Mosomi data set, the gender wage gap widened, and is continually increasing for these women. With the exception of employers that utilise standardised wages, such as in the public sector, where a small but definite gap remains, the South African gender pay gap continues to be problematic.

Whilst South Africa could be regarded as a champion of gender equality in Africa (with a first-place ranking on the Africa Gender Equality Index⁴ and the 19th place globally amongst 149 countries on the Gender Gap Index⁵), it is in the details that the picture regarding South African women's economic empowerment is troubling. When turning to household composition, we start understanding why South Africa's gender wage gap as a factor in gender equality issues is especially deserving of attention.

It is estimated that 37.9% of South African households are headed by women⁶, female-headed households are approximately 40% poorer than those headed by men⁷, and 48.2% of female-headed households support extended family members, in comparison to 23.1% of male-headed households doing the same⁸. Women prioritise spending on household and parenting responsibilities, and they have a longer life expectancy than men.⁹ Because women in South Africa support many children and extended family members, and are more likely than men to be employed in occupations with the lowest wages¹⁰, 'finding a man and then sticking to him, is often as much a matter of economic necessity as it is a romantic choice'¹¹. It is in economic dependency that power relations are skewed in favour of men, where domestic violence, which is alarmingly high in South Africa¹², may occur and be perpetuated. Beyond household structure, the shaping of women's identities regarding their societal worth and contribution, as



well as their access to resources to improve their own and others' lives, makes the attainment of pay parity significant.

In South Africa, the private sector labour market is largely market-driven.¹³ When there is greater reliance on the market, the impact of pay distortions may be increased, as the inherent role of transparent criteria, as enforced through regulatory rules, is reduced, instead favouring subjective criteria.¹³

Wage transparency constitutes what is known to others¹⁴ about wages, beyond what is known to the employer. Given that 'policies and measures to reduce gender pay gaps...need constant monitoring and reinforcement'¹⁵, we set out to do a comparison between the global and national mechanisms of gender pay transparency, to propose a way forward to increase transparency in gender pay for South Africa.

Method

Data sampling, collection and analysis

This study was based on publicly available data on the Internet in English. Data constitute digital literature found on webpages and in reports and documents collected from websites of legislative and governance bodies, utilising the keywords 'gender pay gap public reporting' and 'gender pay gap transparency'. Two main documents provided the springboard for specific country research: the 2018 DLA Piper Report¹⁶ and the 2017 European Commission Report¹⁷. The 16 countries (excluding South Africa) selected to form part of this study had some form of legislated gender wage transparency obligation allocated to employers operating in those countries. The countries are: Canada (federal), Australia (Commonwealth), Scandinavian countries, the United Kingdom (UK), and countries identified by the European Commission (EC) of the European Union (EU) as having implemented a form of gender wage gap reporting in terms of its 2014 Recommendation.¹⁸ Although 'great accuracy cannot compensate for inaccessibility'¹⁹, we attempted to mitigate the possibility of missing important country data by doing an additional Internet keyword search using the words "gender pay gap" OR "gender wage gap" AND the name of each of the 192 countries that are recognised by the United Nations as member states²⁰. Country-level data are provided in Supplementary tables 1–3. India, Peru and Japan were added to the country data as Supplementary table 3, as they have initiated equality reporting measures. The United States of America does not feature in this comparison, because, despite plans to introduce a reporting mechanism, the Trump presidency has put these plans on the back burner.¹⁶ In addition, we consulted library databases ISAP Sabinet, Jutastat and SA ePublications to supplement our Internet searches.

Ethics and permission

'Manual, nonautomated access of information on publicly available web pages should be acceptable without special permissions or actions'^{21(p.607)}. Ethical approval to conduct the study was sought, and the study was exempted by the University of Stellenbosch Business School (USB-2019-10369).

Results

Countries in South America (other than Peru), Africa (other than South Africa), and Asia (other than India and Japan) do not have mandatory reporting obligations²² – which is most likely a reflection of various aspects relating to development, including under-developed formal labour markets and a poor track record of gender rights^{23,24}.

Process of implementation

The implementation of the reporting mechanisms has been found to take one of two forms: (1) blanket implementation by all qualifying companies, regardless of size, from the date imposed by law, or (2) a phased implementation in which different dates for compliance are set for qualifying entities, depending on the number of their employees and whether the employer is a state entity, or in which different dates are set for degrees of compliance.

Qualifying employers

The selection of qualifying employers determines the scope of the implementation of gender pay enforcement mechanisms, i.e. it is the

nature of the selection that determines how much of the workforce is included in the mechanism's ambit. Both the size of the employer in terms of number of employees in its workforce and whether the employer is public or private were used as qualifying criteria in the countries included in this research. The workforce size requirement is as few as 10 employees in Sweden, and as many as 500 employees in Germany. However, if the countries are looked at in terms of workforce size, it appears that those with smaller workforces (e.g. Sweden, Iceland, Denmark and Finland) have lower thresholds for implementation of the mechanisms that apply. There are exceptions, such as France, which has a workforce comparable to that of the UK and Germany, but has a low threshold of 50 employees. However, as a general rule, countries with larger workforces have higher thresholds, e.g. the UK (250 or more), Australia (100 or more) and Germany (500 or more). The rationale behind a higher threshold is to prevent smaller employers from being burdened with expensive and time-consuming reporting that may not have much influence on the gender pay gap¹⁷, while lower thresholds are aimed at covering a greater proportion of the workforce. Some countries with lower thresholds have instituted a phased implementation, from larger to smaller employers, presumably to allow smaller employers more time to comply with the requirements. Most countries do not differentiate between public and private employers. However, Austria and Australia limit compliance to the private sector. One reason for this differentiation could be pre-existing reporting mechanisms, such as detailed annual reports, and collective bargaining. Another factor to consider is that legislation may specifically protect private sector pay information under data-protection and privacy laws.²⁵ In such cases, employers are prohibited from releasing pay information, and employees have no legal duty to do so.²⁵ The third part of this requirement is the existence of other qualifying criteria besides the above two, e.g. an obligation to publish management reports (Germany), being subject to federal regulation of employment matters or a federal contractor (Canada), or companies not being required to prepare annual reports (Norway). The overarching rationale for additional criteria would be to include certain types of companies in the mechanisms, e.g., in Canada, the federal government ensures that all companies with which it contracts are compliant with the mechanisms, while, in Germany, only certain types of companies have to produce management reports that enable deeper analysis of the operations of the company.

Reporting as a transparency mechanism

The use of a gender pay report was compared in the form of reporting with which qualifying employers must comply (report, survey, audit, etc.), the reporting period, and to whom the report must be provided. In France, employers only have to publish information on the size of the gender pay gap on their website. In Denmark, reporting takes the form of information submitted to Statistics Denmark; the data are then gender-segregated and returned to the employer, and employees also have access to this information. Finland uses an equality plan that is made available to employees, while Iceland requires certification of compliance with an Icelandic Standard with regard to the gender wage gap. By comparison, in India, companies are mandated to compile a register of employee data, including, *inter alia*, the number of men and women employed, their remuneration, and a breakdown of the components of remuneration, but there is no obligation to report this information. Similarly, Peru has, since 2017, required that companies compile detailed tables of employee categories and functions, including salary information. Finally, in Japan, companies must perform research on the gender pay gap and submit an action plan based on that research, which details how they will address the pay gap.

In terms of the frequency of using the reporting mechanisms, 2 of the 16 countries under study require reporting every 3 years, 7 require annual reporting, and 4 require biannual reporting. Of the remaining three countries, two do not have reporting requirements, and the last country only requires that a once-off plan be reported. While increased frequency has the disadvantage of increased administration to collect the required data, it is beneficial in ensuring that equitable gender pay practices are upheld.

Another important consideration in the present study was the target of the reporting mechanism, that is, whether it is internal or external to the



organisation. Internal transparency relates to information available to an organisation's employees within the organisational system. External transparency may serve various audiences, namely trade unions, regulatory bodies such as government, and the public. It was found that six countries require some form of external reporting, such as on the organisation's or public institution's website, or in the federal gazette. In four countries, the information is only available to local union representatives or the employer's works council. In Finland, the information need only be communicated to employees. In Austria, if there is no works council, the information must be made available directly to employees. However, in Peru and India, the information need not be communicated at all, but must be available for inspection by the appropriate authorities.

Indicators or measures used in different countries

What is actually reported on is crucial to understanding the nature of the gender wage gap in a particular country. The gap may be present in only certain occupational levels or industries, or within different components of the remuneration package. Identifying the source of the gap in a given employer's remuneration is key to formulating a response to reduce it. One common measure reported on is the gender pay equity objectives and policies in place at the employer. This measure is usually coupled with an analysis of the effects or results of such policies (Australia, Germany, Norway). Other countries have to report on the actual remuneration and bonuses paid to male and female employees, as performance bonuses and variable pay may contribute to the gender wage gap to a greater extent than base pay.¹⁵ Another indicator is the number of men and women in each occupational level, which illustrates the distribution of men to women among the various jobs at an employer, or among different industries in a country, e.g. more women in health care and more men in mining. Australia has the additional requirement that each employer report on whether a remuneration gap analysis has been performed. This requirement encourages the employer to take a proactive stance in identifying and remedying internal gender wage gaps using internal statistics and data within the entity and to try to resolve any gaps identified before outside forces compel them to do so.

Penalties for non-compliance

Penalties for non-compliance should be sufficiently significant to be a deterrent. Non-compliance can refer to not reporting or to non-compliance with the obligation to pay women the same as men for work of equal value or the same work. The countries under study were found to have different approaches in this regard, ranging from no sanctions to public naming and shaming and financial penalties. In Australia and the UK, legislation does not provide for any sanction. In Australia, non-compliant employers could be named and shamed by the Workplace Gender Equality Agency, and the employer could be precluded from government tenders. In Sweden, an employee who is paid less than a comparable employee can raise a claim for equal payment. In Germany, failure to file the required gender equality report could be considered tantamount to not having filed an annual report, which could, but probably will not, lead to a fine. Iceland, Belgium, Denmark and Canada provide for administrative fines in their legislation. Canada and Iceland fine organisations fixed amounts for not filing reports or failure to obtain certification, while Belgian legislation provides for fines of variable amounts, depending on the number of employees affected by the non-compliance.

Mechanisms currently used in South Africa

The Constitution

The foundation of South African law is the Constitution of the Republic of South Africa of 1996 (the Constitution).^{26(s1(c))} In Chapter 2, the Bill of Rights states that neither the state, nor any person, may unfairly discriminate directly or indirectly against anyone on the grounds of, inter alia, gender or sex.^{26(s9(3),(4))} Furthermore, the state is obliged to enact national legislation 'to prevent or prohibit unfair discrimination'^{26(s9(4))}. This obligation must be examined in light of South Africa's ratification of the ILO's Equal Remuneration Convention of 1951.²⁷

National legislation

In terms of the *Promotion of Equality and Prevention of Unfair Discrimination Act* (PEPUDA)²⁸, which came into force on 15 January 2003, a complainant

may allege a case of unfair discrimination, which, if based on any of the prohibited grounds listed in this Act, including gender, would necessitate the respondent proving that the discrimination was fair^{28(s13)}. If the complainant succeeds in her or his claim, the presiding officer of the Equality Court 'may make an appropriate order in the circumstances, including an award of damages in favour of the complainant or an order directing that specific steps be taken to stop the unfair discrimination'^{28(s21(2))}. This is an after-the-fact remedy, rather than a preventative measure, and is not limited to the workplace. However, the PEPUDA will only apply in instances in which the *Employment Equity Act*²⁹ (EEA), discussed below, does not apply³⁰. Thus, both Acts have circumscribed areas of application.

Section 28 of the PEPUDA identifies the duty and responsibility of all persons to eliminate gender discrimination and to promote equality.^{28(s28(3))} (a) This responsibility must be carried out via audits, promulgating appropriate laws, developing progressive policies, implementing codes of good practice, and instituting viable action plans.^{28(s28(3)(b))} Finally, the Act contains a Schedule listing several practices occurring in different sectors 'which are or may be unfair, that are widespread and that need to be addressed'^{28(s29(1))}, ensuring that, in the appropriate circumstances, legislative and other measures are taken^{28(s29(2))}. One of the practices identified in the 'Labour and Employment' section is '[f]ailing to respect the principle of equal pay for equal work'^{28(Sch1(1)(c))}. Thus, the practice of not paying women equally to men for work of equal value has been identified as an unfair practice that the state has a duty to address.

In support of addressing the EEA²⁹, which came into force on 1 December 1999, was amended on 1 August 2014. Specifically, Section 6(4) states that '[a] difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on [gender], is unfair discrimination'^{29(s6(4))} – the position already taken by the Labour Court prior to these amendments³¹.

The Regulations to the EEA³² provide clarification on the definition of work of equal value, how to apply Section 6(4) of the EEA, and how to assess whether work is of equal value. Further to promoting gender wage equality, designated employers have a duty to submit an annual report (Form EEA2) to the Director General of the Department of Labour, including information regarding the workforce profile, numerical targets, and goals and skills development, but this information does not include employee pay information.^{29(s21(1))}

The EEA defines a designated employer as: (1) a person employing at least 50 employees; (2) a person employing fewer than 50 employees, where such person has a total annual turnover equal to or exceeding that of a small business in terms of Schedule 4; (3) a municipality; (4) an organ of state, but not the National Defence Force, National Intelligence Agency, or the South African Secret Service; and (5) an employer that has been appointed a designated employer in terms of the EEA by virtue of a collective agreement in terms of Section 23 or 31 of the *Labour Relations Act 66 of 1995*.^{29(s1)} A designated employer must also submit an Income Differential Statement (IDS – EEA4) that details the average remuneration and benefits received by employees on each occupational level of the employer's workforce – segregated by gender, race, and nationality, which must be submitted to the Employment Conditions Commission (ECC).^{29(s27(1)), 32(Reg12(1))} Additionally, employers must provide remuneration details divided into fixed/guaranteed and variable portions of the highest paid employee in each subcategory of each occupational level, except at the lowest occupational level, where the remuneration amounts of the employee with the lowest total remuneration must be provided (Section D).^{32(EEA4)} Thus, the actual data reported in this statement are a comparison of the total remuneration per occupational level in subcategories, and, as such the statement does not enable comparison of total remuneration of men to that of women for a given level. It only reports on subcategories, such as total remuneration of white women compared to that of African men. It is possible to derive those data from the statement, but it shows the more intersectional nature of the data that the Department of Labour is seeking.

The section titled 'Reasons for Income Differentials' requires employers to identify the reasons for income differentials at each occupational level. However, the employer is not required to specify to which income differential(s) related to gender, race or nationality the reason(s) apply.



It must be noted that the EEA4 is not a public document, in contrast to the EEA2 form, which may be requested by the public from the Department of Labour.³²(reg10(11)) However, during collective bargaining, the parties thereto may request the information contained in an IDS for the purpose of collective bargaining.

The purpose of an IDS is reflected in Section 27(2) of the EEA, being to determine whether there are 'disproportionate' income differentials, or whether there exists unfair discrimination in terms of Section 6(4).²⁹(s27(2)) The EEA protects individual employees' privacy by prohibiting the ECC from disclosing any identifying personal information.²⁹(s27(5)) If an employer is found to have unfairly discriminated against an employee, the Labour Court has the power to award compensation to the employee, to direct the employer to take steps to prevent the same unfair discrimination or similar practice occurring in future, or to direct an 'undesignated' employer to comply with Chapter III of the EEA, including an order to provide an IDS.²⁹(s50(2)) The court will probably order that the affected employee's remuneration be increased to that of the comparator.³³ Additionally, failure to submit the IDS could result in a fine being imposed on the employer.²⁹(ss21(4B),27(1)) If the employer has had no previous contravention, the maximum fine that may be imposed is the greater of ZAR1 500 000 or 2% of the employer's turnover.²⁹(sch1) The fine increases with the number of previous contraventions the employer has committed.²⁹(sch1)

Governance codes

According to the King IV Report on Good Governance (2016), a company's board must approve reports on and the implementation of its remuneration policy, which should reflect that 'the organisation remunerates fairly, responsibly and transparently'³⁴. The King IV Report is binding on companies listed on the JSE Limited.³⁵(s3.84(c)) The policy and report must be tabled at the company's annual general meeting for a separate, non-binding advisory vote by shareholders.³⁵(s3.84(k)) If 25% or more of shareholders vote against either document, the company must invite dissenting shareholders to provide reasons for their vote.³⁵(s3.84(k)) Additionally, the annual report must indicate the remuneration of the company's directors.³⁵(s8.62-3),36(ss30(4)-(6)) Therefore, gender is not specifically targeted in the JSE's requirement for reporting of directors' remuneration, which information could be used to determine the existence of a gender pay gap at director level.

Recommendations

Despite ILO Conventions No. 100 (Equal Remuneration) and No. 111 (Discrimination: Employment and Occupation) having been in existence for over 60 years, the gender pay gap is still a concern in industrialised countries, and an even greater one in developing countries.⁵ Taking into consideration that 'policies targeting the gender wage gap must be adjusted to account for the different experiences of women in different parts of the wage distribution'¹¹ and the phased approach highlighted in the global comparison, we make the following recommendations.

The first requirement is the passing of laws at regional and national level that place a duty on employers to give men and women equal remuneration for the same or similar work, or work of equal value.²⁵ South Africa achieved this requirement with the implementation of Section 6(4) of the EEA. The criteria to determine designated employers, as stipulated in the EEA, follow global trends, reflecting appropriateness for the size of South Africa's workforce. Inclusion of both public and private organisations in mandatory reporting aids identification of patterns in gender wage gaps, and could be used to formulate targeted policies to close the gap. However, the EEA addresses mainly pay discrimination at the individual job level, and addressing the issue through litigation is costly and intricate for affected individuals.

Whilst the IDS serves as a preliminary mechanism to flag inconsistencies regarding a number of intersectional wage differentials at aggregated level and the gender wage gap receives specific attention, the format of the data only enables national comparison in pre-determined occupational categories. Legislation specifying duties of employers and penalties for non-compliance, as seen in Belgium and Sweden³⁷, is the preferred method to promote pay transparency and equality²⁵, and it is in this area

that South Africa can improve. Specifically, the EC Recommendation¹⁸ provides a benchmark of four mechanisms that South Africa could employ.

The first mechanism is the strengthening of pay reports by further refining an annual reporting obligation on gender-segregated average remuneration for medium and large companies already targeted by the EEA. Supplementary tables 1–3 provide a description of various measures or indicators employed globally. A selection of indicators of the UK, Australia and Canada would provide the widest coverage of gender-relevant aggregated data. Reports should be lodged with the ECC as a first step, with consideration to phasing in the publishing of company data more publicly in future, once implementation problems have been resolved. Reporting that is too generic, as is presently the case with the IDS in South Africa, conceals structural inequalities, leaving policymakers to apply a one-size-fits-all approach instead of targeted solutions. Data could remain anonymous through the inclusion of a criterion of a minimum number of employees per reporting category, e.g. there must be at least five employees at a specific level in order for that level to be reported on¹⁷. Whilst the complexities in reporting the annualised value of non-vested share incentive schemes are acknowledged (these are currently included in the IDS only as part of the variable remuneration figure), inclusion thereof in pay reports as a separate category of reporting is essential in identifying gender-based differences in performance-related pay, and should be phased in in the near future. A rapid gain could be made if the JSE expanded its interpretation of King IV's stipulation that 'the organisation remunerates fairly, responsibly and transparently' by mandating gender gap reporting in annual reports, through the Listing Requirements, for all employees in the bottom, middle and top of the wage distribution of an organisation, including directors. Such gender-specific reporting covering the main infliction points in the wage distribution could inform targeted policies to close the gap in listed companies.

The EU recommendation that employers regularly communicate pay report information to employees or trade unions (or other representatives) is absent in South African legislation, and should be considered. The pay report mechanism will further be strengthened if the parties analyse such a pay report and raise queries regarding gender pay discrepancies. In this regard, employees should be educated in remuneration principles and practices in order to limit misinformed queries and ungrounded discontent and disputes. A pay report that specifically provides gender-segregated pay information could be used as a precursor to an employee's right to request pay information.

The second mechanism, an employee's right to query another employee's pay, could be problematic in South Africa, due to a person's right to privacy and confidentiality²⁶(s14), as also identified in the EC report. The EEA prohibits the ECC from disclosing any information pertaining to individual employees or employers, which would include details of the IDS.²⁹(s27(5)) This restriction is especially pertinent where companies have very few employees in the respective occupational level or gender grouping.

Another consideration is that the *Protection of Personal Information Act*³⁸ (POPI) regulates the processing and distribution of personal information. However, the relevant sections of the POPI Act concerning employee information are not yet in force, and are thus not further discussed here.³⁹ With reference to the *Basic Conditions of Employment Act* (BCEA)⁴⁰, an employee may disclose his or her own remuneration^{40(s78(1)(b)),41}. An employer may not contractually prohibit an employee from disclosing this information.^{40(s79(2)),41} Thus, an employee may obtain a comparator's salary information directly from the comparator.^{33(p.829),40(s78(1)(b))} However, an employee may not disclose information regarding another employee's salary if contractually bound to keep such information confidential.⁴² In this respect, the use of the *Promotion of Access to Information Act*⁴³ (PAIA) may be of help in securing this information. Section 63(2) (f) thereof states that a record may not be refused if the information – including remuneration – relates to the official of a private body (see Section 34(2)(f) for a similar provision regarding public bodies).⁴³ An 'official' is defined as 'any person in the employ (permanent or temporary, full time or part time) of the public or private body'^{43(s1)}. Thus, an employee would, in terms of PAIA, be able to obtain the remuneration information of another employee upon such request.^{44(p.106)} However, as the duty to disclose is subject to other legislation, such as



the EEA⁴³⁽⁶⁵⁾, salary information would more likely have to be requested from the employer and not from the ECC, which could be prohibited from disclosing such information, even in terms of PAIA.

The EC has also found several other barriers to implementing this employee right, such as cultural sensitivity against disclosure, the administrative and cost burden thereof, and contractual non-disclosure clauses.¹⁷ It must also be considered that an employee needs to have the will and ability, specifically financially, to enforce this right, but having the support of a trade union could alleviate the burden of such a potentially cumbersome and costly process.²⁵ Despite these issues, the legislature should seek to give an employee this right, especially when the employee is attempting to prove a claim in terms of Section 6(4) of the EEA, in which case the correct comparator is needed.

The third proposed measure is a pay audit at the level of the employer.¹⁸ The key differentiator between an audit and a pay report is the analysis of pay gaps found in the former.¹⁷ Such analysis⁴⁵ could enable the identification of the problem and the development of targeted countermeasures¹⁷. The implementation of a pay audit could provide useful data, but has the downside of costs in terms of time and expert fees to analyse the data and devise measures to close gaps.¹⁷ However, in order to meet the requirements of fair, responsible and transparent remuneration practices, as stipulated in King IV, companies with a strong governance ethos would benefit from mandatory pay audits. Smaller companies, however, may not have the means with which to conduct such audits. Thus, legislated comprehensive pay audits may not be ideally suited to the current South African context; however, in following the principle of a phased approach, we recommend that gender pay audits be legally mandated for large and listed companies as an initial step.

The final recommended measure is ensuring that companies discuss, as a separate issue, equal gender pay, including pay audits, during collective bargaining.^{17,18} The effectiveness of such a measure depends on the development of collective bargaining in a specific sector.¹⁷ The more developed the collective bargaining structures are and the more unionised the workforce is, the easier it will be to implement this measure.¹⁷ In South Africa, collective bargaining almost always occurs in the government, resources and industrial sectors, while small companies, in general, may have few or no worker representatives.⁴⁶ The inclusion of gender pay equality as a collective bargaining issue may be legally mandated or a soft law duty on the parties to collective bargaining.¹⁷ This measure will also be more effective if the state was allowed to intervene during the collective bargaining process.¹⁷ This measure carries the advantage of creating an awareness of gender pay issues at a higher sectoral level, but could impose onerous duties on the parties to collective bargaining, which may already be burdened with setting remuneration for different levels of workers in different companies.¹⁷ Furthermore, trade unions may view this measure as a threat to their autonomy¹⁷, especially when considering the *Labour Relations Act*⁴⁷, wherein no role is identified for the state in collective bargaining processes. Due to the conflicts that have arisen around collective bargaining in South Africa, we suggest that a soft law stipulating that companies discuss equal pay, including pay audits, during collective bargaining be introduced into the King codes as a matter of good remuneration governance.

Lastly, an important component of effective transparent mechanisms is penalties for non-compliance with stipulations. This component necessitates diligent monitoring for non-compliance and enforcement of penalties. It is recommended that a financial penalty be levied for unjustifiable and stagnant gender pay gaps among the employees of the same employer – one that is sufficient to act as a deterrent to non-compliance (as a fixed amount per period of non-compliance), as is done in Iceland, or be calculated per employee found to have been discriminated against, as is done in Belgium. Penalties should thus promote compliance with gender pay legislation and transparency mechanisms, and ultimately disincentivise discriminatory pay practices.

Conclusion

The World Economic Forum estimates that it may take another 202 years before the gender economic gap is closed.⁴⁸ Embedded in this gap is

the gender wage gap. South Africa has made great strides towards addressing gender inequality, but purposeful momentum towards this goal has waned. The proposals in this paper are aimed at reigniting debate and motivating action to attain gender wage equality by amending policies towards transparency.

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Authors' contributions

A.B. conceptualised the study and co-wrote the article. S.B. collected data and co-wrote the article.

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