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No. 42060

THE PRESIDENCY

No. 1303 27 November 2018

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 9 of 2018: National Minimum Wage Act, 2018

VHUPRESIDENDE

No. 1303 27 November 2018

Zwi khou qivhadziwa henefha uri mupresidende o tendelana na uyu mulayo une wa khou andadziwa hu u itela ngivhadzo kha tshitshavha:—

Nom 9 ya 2018: Mulayo wa Muholo wa Fhasisa wa Lushaka, 2018

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—————
(English text signed by the President)
(Assented to 23 November 2018)
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ACT

To provide for a national minimum wage; to establish the National Minimum Wage Commission; to provide for the composition and functions of the National Minimum Wage Commission; to provide for the review and annual adjustment of the national minimum wage; to provide for exemption from paying the national minimum wage; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING that the Republic of South Africa is one of the most unequal societies in the world and that there are huge disparities in income in the national labour market;

NOTING the need to eradicate poverty and inequality;

ACKNOWLEDGING the need to promote fair and effective competition in the labour market and labour market stability;

NOTING the constitutional obligation on the State and employers to promote and fulfil the right to fair labour practices,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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4. National minimum wage
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(English text signed by the President)
(Assented to 23 November 2018)

MULAYO

U ita mbetshelo nga ha muholo wa fhasisa wa lushaka; u ita uri hu vhe na Khomishini ya Muholo wa Fhasisa wa Lushaka; u ita mbetshelo nga ha mishumo na kuvhumbelwe kwa Khomishini ya Muholo wa Fhasisa wa Lushaka; u ita mbetshelo malugana na u gonyisa muholo wa fhasisa wa lushaka na u ita tholo n'waha nga n'waha zwi tshi kwama muholo wa fhasisa wa lushaka; u ita mbetshelo nga ha u tendelwa uri mutholi a sa vhothiwe nga mulayotibe wa muholo wa fhasisa wa lushaka; na u ita mbetshelo kha zwo teaho.

MVULATSWINGA

HU TSHI KHOU VHONWA uri Riphabuḽki ya Afrika Tshipembe ndi inwe ya zwitshavha zwine hu khou shaea u lingana ha vhathu kha jifhasi nahone hu na u sa lingana ho kalulaho ho sedzwa muholo kha maraga wa zwa mishumo kha lushaka;

HU TSHI DZHIELWA NṰHA thodea ya u fhelisa vhushai na u sa lingana ha vhathu;

HU TSHI KHOU ṰANGANEDZWA thodea ya u alusa mutatısano u pfa dzaho nahone wavhuḽi kha maraga wa zwa mishumo na vhudziki kha maraga wa yone mishumo;

HU TSHI DZHIELWA NṰHA u kombetshedzwa ha Muvhuso na vatholi nga ndayotewa zwi tshi ḽa kha mafhungo a u tuṰwedza na u tevhedza ppanelo kha zwa maitele a pfa dzaho mishumoni,

U KHWAṰHISWE nga Phalamennde ya Riphabuḽki ya Afrika Tshipembe, nga nḽila i tevhelaho:—

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CHAPTER 1

INTERPRETATION, PURPOSE AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise—
- “**Basic Conditions of Employment Act**” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); 5
- “**Cabinet**” means the cabinet referred to in section 91 of the Constitution of the Republic of South Africa, 1996;
- “**Commission**” means the National Minimum Wage Commission established in terms of section 8; 10
- “**employer**” means any person who is obliged to pay a worker for the work that that worker performs for that person;
- “**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995);
- “**Minister**” means the Minister of Labour; 15
- “**national minimum wage**” means the national minimum wage determined in Schedule 1 and adjusted annually in terms of section 6;
- “**NEDLAC**” means the National Economic Development and Labour Council established in terms of section 2 of the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994); 20
- “**ordinary hours of work**” means the hours of work permitted in terms of section 9 of the Basic Conditions of Employment Act or in terms of any agreement in terms of section 11 or 12 of the Basic Conditions of Employment Act;
- “**organised business**” means organised business as defined in the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994); 25
- “**organised community**” means those non-governmental organisations contemplated in the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);
- “**organised labour**” means organised labour as defined in the National Economic Development and Labour Council Act; 30
- “**prescribed**” means prescribed by regulation under this Act;
- “**this Act**” includes the regulations made under this Act;
- “**wage**” means the amount of money paid or payable to a worker in respect of ordinary hours of work or, if they are shorter, the hours a worker ordinarily works in a day or a week; and 35
- “**worker**” means any person who works for another and who receives, or is entitled to receive, any payment for that work whether in money or in kind.

Purpose of Act

2. The purpose of this Act is to advance economic development and social justice by— 40
- (a) improving the wages of lowest paid workers;
 - (b) protecting workers from unreasonably low wages;
 - (c) preserving the value of the national minimum wage;
 - (d) promoting collective bargaining; and
 - (e) supporting economic policy. 45

Application of Act

3. (1) This Act applies to all workers and their employers except members of the South African National Defence Force, the National Intelligence Agency and the South African Secret Service.

NDIMA YA 1

THALUTSHEDZO, NDIVHO NA ZWINE MULAYO WA KWAMA

Thalutshedzo

1. Kha uyu Mulayo, nga nnda ha musu nyimele i tshi sumbedza nga inwe ndila—
- Mulayo wa “Basic Conditions of Employment Act”** zwi amba Mulayo wa *Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997)*; 5
- “Khabinete”** zwi amba khabinete yo bulwaho kha khethekanyo ya 91 ya Ndayotewa ya Riphabuḽiki ya Afrika Tshipembe, 1996;
- “Khomishini”** zwi amba Khomishini ya Muholo wa Fhasisa wa Lushaka yo thomiwaho hu tshi tevhedzwa khethekanyo ya 8; 10
- “mutholi”** zwi amba muthu muḽwe na muḽwe ane a vhoḽwa uri a badele mushumi kha mushumo we uyo mushumi a u ita a tshi itela onoyo mutholi;
- “Mulayo wa Labour Relations Act”** zwi amba Mulayo wa *Labour Relations Act, 1995 (Act No. 66 of 1995)*;
- “Minista”** zwi amba Minista wa zwa mishumo; 15
- “muholo wa fhasisa wa lushaka”** zwi amba muholo wa fhasisa wa lushaka wo tiwaho kha Shedulu ya 1 nahone une wa gonyiswa ḽwaha nga ḽwaha u ya nga khethekanyo ya 6;
- “Khoru ya Mishumo na Mvelaphanda ya Ikononi ya Lushaka (NEDLAC)”** zwi amba *Khoru ya Mishumo na Mvelaphanda ya Ikononi ya Lushaka (NEDLAC)* 20 yo thomiwaho u ya nga khethekanyo ya 2 ya Mulayo wa *National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994)*;
- “awara dzo ḽowealeho dza mushumo”** zwi amba awara dza mushumo dzo tendelwaho u ya nga khethekanyo ya 9 ya Mulayo wa *Basic Conditions of Employment Act* kana u ya nga thendelano hu tshi khou tevhedzwa khethekanyo ya 25 11 kana 12 kha Mulayo wa *Basic Conditions of Employment Act*;
- “vhubindudzi ho dzudzanaho”** zwi amba vhubindudzi ho dzudzanaho sa zwe zwa ḽalutshedzwa kha Mulayo wa *National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994)*;
- “tshitshavha tsho dzudzanaho”** zwi amba madzangano a si a muvhuso o 30 bulwaho kha Mulayo wa *National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994)*;
- “mishumo yo dzudzanaho”** zwi amba mishumo yo dzudzanaho sa zwo ḽalutshedzwaho kha Mulayo wa *National Economic Development and Labour Council Act*; 35
- “u randela”** zwi amba zwo randelwaho nga fhasi ha Mulayo uno;
- “uno Mulayo”** hu katelwa ndangulo dzo itwaho nga fhasi ha uno Mulayo;
- “muholo”** zwi amba tshelede i badelwaho kana ine ya badelwa mushumi malugana na mushumo wa awara dzo ḽowealeho dza u shuma kana, arali iri dzi ḽhukhu, awara dze mushumi a shuma dzo ḽowealeho kha ḽuvha kana kha vhege; na 40
- “mushumi”** zwi amba muthu muḽwe na muḽwe ane a shuma kha muḽwe muthu nahone ane a ḽanganedza, kana o tewaho nga u ḽanganedza muholo muḽwe na muḽwe kha uyo mushumo we a shuma, hu nga vha muholo wa tshelede kana tshithu tshinwe na tshinwe.

Ndivho ya Mulayo 45

2. Ndivho ya Mulayo uno ndi u khwiḽisa mvelaphanda ya ikononi na vhutshilo nga u—

- (a) gonyisa miholo miḽukusa ine ya holelwa vhashumi;
- (b) tsireledza vhashumi kha u holelwa miholo miḽukusa zwi sa pfadzi;
- (c) tsireledza ndeme ya muholo wa fhasisi wa lushaka; 50
- (d) ḽutuwedza nyambedzano; na
- (e) tikedza mbekanyamaitela ya ikononi.

Zwine Mulayo wa kwama

3. (1) Uno Mulayo u kwama vhashumi vhoḽthe na vtholi vhavho vhoḽthe nga nnda ha mirado ya Mmbi ya Vhupileli ya Afrika Tshipembe, Zhendedzi ḽa Vhusevhi ḽa Lushaka 55 na Tshumelo ya Tshidzumbo ya Afrika Tshipembe.

(2) This Act does not apply to a volunteer, who is a person who performs work for another person and who does not receive or is not entitled to receive, any remuneration for his or her services.

CHAPTER 2

NATIONAL MINIMUM WAGE

5

National minimum wage

4. (1) Subject to subsections (2) and (3), the national minimum wage is the amount stated in Schedule 1 as adjusted annually in terms of section 6.

(2) (a) The Commission must, within 18 months of the commencement of this Act, conduct a review of the national minimum wage contemplated in item 2(a) and (b) of Schedule 1—

- (i) in accordance with the process contemplated in section 6; and
- (ii) taking into account the goals contemplated in section 7(a) and the factors listed in section 7(b),

make recommendations to the Minister on the adjustment of the national minimum wage contemplated in item 2(a) and (b) of Schedule 1, which recommendations must, subject to the findings of the review contemplated in this paragraph, reflect an adjustment that is equivalent to the national minimum wage contemplated in item 1 of Schedule 1, or as close to that amount as the Commission's findings allow.

(b) The Minister must, within two years of the commencement of this Act, and taking the recommendations of the Commission into account, determine an adjustment of the national minimum wage contemplated in item 2(a) and (b) of Schedule 1 in accordance with the process contemplated in section 6.

(3) The national minimum wage in respect of workers in the extended public works programme as contemplated in item 2(c) of Schedule 1 must be increased proportionately to any adjustment of the national minimum wage as contemplated in section 6.

(4) Every worker is entitled to payment of a wage in an amount no less than the national minimum wage.

(5) Every employer must pay wages to its workers that is no less than the national minimum wage.

(6) The payment of a national minimum wage cannot be waived and the national minimum wage takes precedence over any contrary provision in any contract, collective agreement, sectoral determination or law, except a law amending this Act.

(7) The national minimum wage must constitute a term of the worker's contract except to the extent that the contract, collective agreement or law provides a wage that is more favourable to the worker.

(8) It is an unfair labour practice for an employer to unilaterally alter wages, hours of work or other conditions of employment in connection with the implementation of the national minimum wage and sections 191, 193, 194(4) and 195 of the Labour Relations Act apply, unless the context indicates otherwise.

(9) Sections 32, 33 and 34 of the Basic Conditions of Employment Act apply to the payment of the national minimum wage to workers.

Calculation of wage

5. (1) Despite any contract or law to the contrary, the calculation of a wage for the purposes of this Act is the amount payable in money for ordinary hours of work excluding—

- (a) any payment made to enable a worker to work including any transport, equipment, tool, food or accommodation allowance, unless specified otherwise in a sectorial determination;

(2) Uno Mulayo a u kwami muthu o dikumedzelaho u shuma a sa holi ane ndi muthu ane a khou shuma kha muñwe muthu nahone a sa wani muholo kana a sa tei u wana muholo kha idzo tshumelo dzine a khou qetshedza.

NDIMA YA 2

MUHOLO WA FHASISA WA LUSHAKA

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Muholo wa fhasisa wa lushaka

4. (1) Hu tshi khou tevhedzwa khethekanyo (2) na (3), muholo wa fhasisa wa lushaka ndi mutengo wo bulwaho kha Shedulu ya 1 une wa gonyiswa ñwaha nga ñwaha hu tshi khou tevhelwa khethekanyo ya 6.

(2) (a) Khomishini hu sa athu u fhela minwedzi ya 18 ho thoma u shuma uno Mulayo, i tea u ita pholo kha muholo wa fhasisa wa lushaka wo bulwaho kha tshiteñwa tsha 2(a) na (b) zwa Shedulu ya 1—

(i) u ya nga kuitele kwo bulwaho kha khethekanyo ya 6; nahone

(ii) hu tshi khou dzhielwa ñha zwipikwa zwo bulwaho kha khethekanyo ya 7(a) na zwi re kha mutevhe wa khethekanyo ya 7(b),

iite themendelo kha Minista nga ha u gonyiswa ha muholo wa fhasisa wa lushaka wo bulwaho kha tshiteñwa tsha 2(a) na (b) zwa Shedulu ya 1, dzine idzo themendelo dzi tea u tevhedza mawanwa a pholo yo bulwaho kha ino pharagirafu, hu sumbedzwe u gonya ha muholo hune ha lingana na muholo wa fhasisa wa lushaka sa zwo bulwaho kha tshiteñwa tsha 1 tsha Shedulu ya 1, kana une wa vha tsini na mutengo une mawanwa a Khomishini a qo tendela.

(b) Minista hu sa athu u fhela minwaha mivhili musi ho thoma u shumiswa uno Mulayo, nahone a tshi khou dzhiela ñha themendelo dza Khomishini u tea u ta/lavhelesa kugonyele kwa muholo wa fhasisa wa lushaka sa zwo bulwaho kha tshiteñwa tsha 2(a) na (b) kha Shedulu ya 1 u ya nga kuitele kwo bulwaho kha khethekanyo ya 6.

(3) Muholo wa fhasisa wa lushaka malugana na vhashumi vha re kha mbekanyamushumo ya muhasho wa mishumo ya tshitshavha sa zwo bulwaho kha tshiteñwa tsha 2(c) tsha Shedulu ya 1 u tea u gonya wa livhanyiswa na wonoyo muholo wa fhasisa wa lushaka sa zwo bulwaho kha khethekanyo ya 6.

(4) Mushumi muñwe na muñwe o fanelwa nga u holelwa muholo mutuku kha muholo wo tiwaho wa fhasisa wa lushaka.

(5) Mutholi muñwe na muñwe u tea u badela mushumi wawe muholo une wa sa vhe fhasi ha muholo wa fhasisa wa lushaka we wa tiwa.

(6) Mbadelo ya muholo wa fhasisa wa lushaka a u pfukwi nahone muholo wa fhasisa wa lushaka ndi wone une wa vhothosa u fhira mbetshelo inwe na inwe ine ya nga amba zwo fhambanaho na ino mbetshelo khamusi hu kha thendelano, nyambedzano dza thendelano, zwo tiwaho nga sekithara kana mulayo, nga nnqa ha mulayo une wa vha u khou khwinisa uno Mulayo.

(7) Muholo wa fhasisa wa Lushaka u tea u vha tshipiqa tsha thendelano ya mushumi kha khontiraka ya mushumo nga nnqa ha musi khontiraka, thendelanogute kana mulayo u tshi ita mbetshelo ine muholo wa vha muzhi lune zwa thusesa mushumi.

(8) Zwi pfi ndi maitela a mushumoni a sa pfadzi arali mutholi a shandukisa miholo, iri dza mushumo kana dzinwe nyimele mushumoni zwi tshi kwama u shumiswa ha khethekanyo dza 191, 193, 194(4) na 195 dza Mulayo wa *Labour Relations Act*, nga nnqa ha musi nyimele i tshi sumbedza nga inwe ndila.

(9) Khethekanyo dza 32, 33 na 34 dza Mulayo wa *Basic Conditions of Employment Act* dzi a shuma kha u badelwa ha muholo wa fhasisa wa lushaka kha vhashumi.

Uvhalelwa ha muholo

5. (1) Naho hu na thendelano ifhio na ifhio kana mulayo une wa vha na phambano na uno, u vhalelwa ha muholo u itela ndivho dza uno Mulayo ndi mutengo une wa badelwa u tshedele kha awara dzo qowealeho dza mushumo hu sa katelwi—

(a) mbadelo inwe na inwe yo itwaho u itela uri mushumi a shume hu tshi katelwa malamba a tshindedzi/a u enda, tshishumiswa, zwiñwiwa kana vhumalo; nga nnqa ha musi zwo taluswa nga inwe ndila kha zwe zwa lavheleswa kha sekithara;

(b) any payment in kind including board or accommodation, unless specified otherwise in a sectoral determination;

(c) gratuities including bonuses, tips or gifts; and

(d) any other prescribed category of payment.

(2) Subject to section 9A of the Basic Conditions of Employment Act, a worker is entitled to receive the national minimum wage for the number of hours that the worker works on any day. 5

(3) Subject to subsection (2), if the worker is paid on a basis other than the number of hours worked, the worker may not be paid less than the national minimum wage for the ordinary hours of work. 10

(4) Any deduction made from the remuneration of a worker must be in accordance with section 34 of the Basic Conditions of Employment Act, provided that a deduction made in terms of section 34(1)(a) of the Basic Conditions of Employment Act does not exceed one quarter of a worker's remuneration.

Annual review 15

6. (1) The Commission must review the national minimum wage annually and make recommendations to the Minister on any adjustment of the national minimum wage, which minimum wage must commence on a date fixed by the President by proclamation in the *Gazette*.

(2) The review report to the Minister must reflect any alternative views, including those of the public, in respect of any recommendations made in terms of subsection (1). 20

(3) The Commission must forward the report on its review and its recommendations for the next year to the Minister on a date fixed by the President by proclamation in the *Gazette*.

(4) If the Minister does not agree with, or requires clarity in respect of, the report and recommendations, the Minister may, in the prescribed manner, refer the report and recommendations back to the Commission to clarify or reconsider its recommendations. 25

(5) The Minister must, by a date fixed by the President by proclamation in the *Gazette*, determine the adjustment to the national minimum wage, and by notice in the *Gazette*, amend the national minimum wage contained in Schedules 1 and 2. 30

(6) The Minister must, within seven days of the publication of the amended Schedules in the *Gazette*, table the amended Schedules 1 and 2 in Parliament and publish the final report of the Commission in a prescribed manner.

Conduct of annual review

7. For the purposes of conducting an annual review and recommending adjustments, the Commission must— 35

(a) promote—

(i) the medium term targets referred to in section 11(d);

(ii) the alleviation of poverty; and

(iii) the reduction of wage differentials and inequality; and 40

(b) consider—

(i) inflation, the cost of living and the need to retain the value of the minimum wage;

(ii) wage levels and collective bargaining outcomes;

(iii) gross domestic product; 45

(iv) productivity;

(v) ability of employers to carry on their businesses successfully;

(vi) the operation of small, medium or micro-enterprises and new enterprises;

(vii) the likely impact of the recommended adjustment on employment or the creation of employment; and 50

(viii) any other relevant factor.

- (b) mbadelo inwe na inwe hu tshi katelwa u bodara kana vhudzulo; nga nn̄a ha musu zwo taluswa nga inwe n̄ila kha zwe zwa tou lavheleswa nga sekithara;
- (c) malamba a u livhuwa hu tshi katelwa bonasi, thiphi kana dzimpho; na
- (d) khethekanyo inwe na inwe yo randelwaho ya mbadelo.

(2) Hu tshi khou tevhedzwa khethekanyo ya 9A ya Mulayo wa *Basic Conditions of Employment Act*, mushumi o fanelwa nga u holelwa muholo wa fhasisa wa lushaka kha tshivhalo tsha iri dze mushumi a shuma kha d̄uvha jinwe na jinwe. 5

(3) Hu tshi khou tevhedzwa khethekanyo ya (2), arali mushumi a tshi khou badelwa ho sedzwa zwi si tshivhalo tsha iri dze mushumi a shuma dzone, mushumi uyo a nga si badelwe muholo wa fhasi kha muholo wa fhasisa wa lushaka kha iri dzo d̄oweleaho nga d̄uvha. 10

(4) Tshelode inwe na inwe yo tumbulwaho kha muholo wa mushumi i tea u t̄uswa hu tshi khou tevhedzwa khethekanyo ya 34 ya Mulayo wa *Basic Conditions of Employment Act*, tenda muholo wa t̄uswa hu tshi khou tevhedzwa khethekanyo ya 34(1)(a) ya Mulayo wa *Basic Conditions of Employment Act* nahone yo t̄uswaho ya sa fhire kota ya muholo wa mushumi. 15

T̄holo ya n̄waha nga n̄waha

6. (1) Khomishini i tea u t̄ola muholo wa fhasisa wa lushaka n̄waha muinwe na muinwe nahone Khomishini i dovhe hafhu u ita themendelo i dzi fhe Minista nga ha u gonyisa ha muholo wa fhasisa wa lushaka, hune uho u gonyiswa hu tea u thoma u vha hone nga datumu yo dzudzanywaho nga Minista nga kha mulevho wa Gazete. 20

(2) Muvhigo wa t̄holo u yaho kha Minista u tea u sumbedza miinwe mihumbulo ine ya nga thusa, hu tshi katelwa mihumbulo i bvaho tshitshavhani, malugana na themendelo dzo itwa u ya nga khethekanyo t̄hukhu ya (1).

(3) Khomishini i tea u rumela muvhigo wa t̄holo ye ya ita khathihi na themendelo u itela n̄waha u tevhelaho kha Minista nga datumu yo dzudzanywaho nga Phresidennde nga mulevho kha Gazete. 25

(4) Arali Minista a sa tendelani na, kana a tshi khou t̄oda t̄handavhudzo malugana na muvhigo na themendelo, Minista nga n̄ila yo randelwaho u d̄o humisa muvhigo na themendelo henengei murahu kha Khomishini uri a t̄andavhudzelwe kana themendelo dzi lavheveheswe zwavhuḍi. 30

(5) Nga datumu yo vhwaho nga Phresidennde nga kha mulevho wa Gazete, Minista u tea u ta magonyele a muholo wa fhasisa wa lushaka, nahone nga n̄divhadzo kha Gazete, a khwinise muholo wa fhasisa wa lushaka kha Shedulu 1 na 2.

(6) Hu sa athu u fhela maḍuvha a seven ho itwa nyanḍadzo kha Gazete ya Shedulu dzo khwiniswaho, Minista u tea u ita uri Shedulu 1 na 2 dzo khwiniswaho dzi rerwe Phalamenndeni nahone a anḍadze muvhigo wa mafhelelo wa Khomishini nga n̄ila yo randelwaho. 35

U itwa ha t̄holo ya n̄waha nga n̄waha

7. U itela ndivho dza u ita t̄holo ya n̄waha nga n̄waha na u ita themendelo dza u gonyisa muholo wa fhasisa wa lushaka, Khomishini i tea u— 40

(a) t̄juwedza—

(i) zwine zwa tea u swikelwa zwine zwo bulwaho kha khethekanyo ya 11(d);

(ii) u fhungudza vhushai; na 45

(iii) u fhungudza phambano na u sa lingana zwi tshi d̄a kha sia ja muholo; na

(b) lavhelesa—

(i) u gonya ha mitengo, u d̄ura ha vhutshilo na t̄hodea ya uri muholo wa fhasisa u dzule u na tshileme;

(ii) levhele dza muholo na mvelelo dza nyambedanogute; 50

(iii) zwibveledzwa zwa fhano hayani zwothe;

(iv) vhubveledzi;

(v) vhukoni ha vtholi malugana na u bvela phanḍa na mabindu avho zwavhuḍi;

(vi) u shuma zwavhuḍi ha mabindu maḥuku, a vhukati na maswa; 55

(vii) khonadzeo ya u vha hone ha masiandoitwa a u gonyiswa ha muholo wa fhasisa ho sedzwa mishumo kana u sikwa ha mishumo; na

(viii) tshinwe na tshinwe tsho teaho.

CHAPTER 3**NATIONAL MINIMUM WAGE COMMISSION****Establishment of Commission**

8. The National Minimum Wage Commission is hereby established.

Composition of Commission 5

9. (1) The Commission comprises of the following members:

- (a) A chairperson appointed by the Minister;
- (b) three members nominated by organised business;
- (c) three members nominated by organised community;
- (d) three members nominated by organised labour; and 10
- (e) three independent experts, who are knowledgeable about the labour market and conditions of employment, appointed by the Minister.

(2) The members of the Commission must be citizens or permanent residents of the Republic.

Appointment and termination of appointment of members of Commission 15

10. (1) The Minister, after consultation with NEDLAC, appoints—

- (a) the chairperson and the three independent experts; and
- (b) the members nominated by organised business, organised community and organised labour.

(2) The term of office for the members of the Commission is for a maximum period of five years but members may be re-appointed. 20

(3) The members of the Commission are appointed on a part-time basis and on terms and conditions prescribed by the Minister in consultation with the Minister of Finance.

(4) Termination of appointment may be effected in the following manner:

- (a) The member's death; 25
- (b) the resignation of a member giving three months' notice to the Minister; and
- (c) subject to due process of law, the removal of a member from office by the Minister for the following reasons:
 - (i) Serious misconduct;
 - (ii) permanent incapacity; 30
 - (iii) failure to attend three successive meetings without a reasonable explanation; or
 - (iv) engaging in any activity that undermines the integrity of the Commission.

(5) The chairperson and members of the Commission— 35

- (a) must act impartially when performing any function of the Commission;
- (b) may not engage in any activity that may undermine the integrity of the Commission; and
- (c) must recuse themselves from advising the Minister on any matter in respect of which they have a direct or indirect financial interest or any other conflict of interest. 40

(6) The Commission must appoint a member to act as chairperson whenever the chairperson is absent from the Republic or from duty, or for any reason is temporarily unable to function as chairperson.

Functions of Commission 45

11. The functions of the Commission are to—

- (a) review the national minimum wage and recommend adjustments;
- (b) investigate and report annually to the Minister on the impact of the national minimum wage on the economy, collective bargaining and the reduction in income differentials and make such information available to the public; 50

NDIMA YA 3

KHOMISHINI YA MUHOLO WA FHASISA WA LUSHAKA

U thomiwa ha Khomishini

8. Hu khou thomiwa Khomishini ya Muholo wa Fhasisa wa Lushaka.

Miraḡo ya Khomishini

5

9. (1) Khomishini i na miraḡo i tevhelaho:

- (a) Mudzulatshidulo o tholwaho nga Minista;
- (b) miraḡo miraru yo ṅangiwaho nga vhubindudzi ho dzudzanaho;
- (c) miraḡo miraru yo ṅangiwaho nga tshitshavha tsho dzudzanaho;
- (d) miraḡo miraru yo ṅangiwaho nga zwa mishumo zwo dzudzanaho; na
- (e) miraḡo miraru ya vhaḡivhi vho imaho nga vhoṡhe vhane vho tholwa nga Minista.

(2) Miraḡo ya Khomishini i tea u vha i vhadzulapo kana vhadzuli vha tshoṡhe kha ino Riphabuḡiki.

U tholwa na u fhelisa vhuṛaḡo kha Khomishini

15

10. (1) Minista nga murahu ha musi o kwama Khoro ya Mishumo na Mvelaphanḡa ya Ikonomi ya Lushaka (*NEDLAC*), u thola—

- (a) mudzulatshidulo na vhaḡivhi vhararu; na
- (b) miraḡo yo ṅangiwaho nga vhubindudzi ho dzudzanaho, tshitshavha tsho dzudzanaho na zwa mishumo zwo dzudzanaho.

(2) Tshifhinga tshine miraḡo yo tholwaho ya Khomishini ya tea u shuma kha ofisi tsho fhelela ndi miṅwaha miṅanu, fhedzi miraḡo i nga tholwa hafhu.

(3) Miraḡo ya Khomishini i tholwa uri i shume lu si lwa tshifhinga tsho ḡalaho nahone hu tshi tevhelwa milayo yo randelwaho nga Minista musi o kwamana na Minista wa zwa Masheleni.

(4) U fhelisa u tholwa ha muraḡo hu nga itwa nga ṅḡila i tevhelaho:

- (a) Musi muraḡo o tou lovha;
- (b) musi muraḡo o rula mushumo nga u tou ṅetshedza Minista ṅḡivhadzo ya Miṅwedzi miraru; na
- (c) hu tshi tevhedzwa kuitele kwa mulayo, muraḡo a nga thathiwa kha ofisi nga Minista zwo vhangwa nga zwi tevhelaho:
 - (i) U sa ḡifara zwavhuḡi lwo kalulaho;
 - (ii) u sa tsha kona u shuma mushumo lwa tshoṡhe;
 - (iii) u kundelwa u dzhenela miṅangano miraru i tshi khou tevhokana hu si na mbuno ine ya pfala; kana
 - (iv) u ḡidzhenisa kha zwiito zwine zwa tsitsa tshirunzi Khomishini.

(5) Mudzulatshidulo na miraḡo ya Khomishini—

- (a) vha tea u shuma vha sa dzhiḡ sia kha mushumo muṅwe na muṅwe wa Khomishini;
- (b) vha nga si tee u ḡidzhenisa kha zwiito zwine zwa ita uri Khomishini i nyadzisee; nahone
- (c) vha tea u ḡibvisa kha u eletshedza Minista kha zwine vha vhona vha na dzangalelo ḡa zwa masheleni ḡo livhaho kana ḡi songo livhaho kana arali hu na huṅwe u kuḡana ha madzangalelo.

(6) Khomishini i tea u thola muraḡo uri a imele mudzulatshidulo misi yoṡhe musi mudzulatshidulo a si ho kha Riphabuḡiki kana a si ho mushumoni, kana zwi tshi itwa nga mbuno ifhio na ifhio ine ya ita uri mudzulatshidulo a sa kone u shuma lwa tshifhinganyana.

Mishumo ya Khomishini

11. Mishumo ya Khomishini ndi u—

- (a) ḡola muholo wa fhasisa wa lushaka ya ita themendelo dza uri u gonye;
- (b) sedzulusa na u vhigela Minista nga ṅwaha nga ṅwaha nga ha masiandoitwa a muholo wa fhasisa wa lushaka kha ikonomi, nyambedzanogute na u fhungudzea ha u sa lingana ha miholo na u ita uri iyo ṅḡivhiso i vhe hone tshitshavhani;

- (c) investigate income differentials and recommend benchmarks for proportionate income differentials;
- (d) set medium term targets for the national minimum wage within three years of the commencement of this Act; and
- (e) advise the Minister on measures to reduce income differentials or any other matter on which the Minister requests the Commission's advice; 5
- (f) advise the Minister on sectoral determinations;
- (g) advise the Minister on any matter concerning basic conditions of employment; and
- (h) perform any such function as may be required of the Commission in terms of any other employment law." 10

Conduct of meetings of Commission

12. The Commission must determine its own rules on the conduct of meetings, provided that those rules—

- (a) require the Chairperson to act impartially; and 15
- (b) provide that the chairperson has no deliberative vote or casting vote.

Secretariat of Commission

13. Subject to the laws governing the public service, the Minister must provide the Commission with a secretariat and the necessary resources to perform the following functions: 20

- (a) The administration of the Commission;
- (b) the conduct and procurement of research for the Commission; and
- (c) the monitoring and evaluation of the impact of the national minimum wage on the economy and the reduction of income differentials.

Funds of Commission 25

14. The funds of the Commission consist of money defrayed from the budget vote of the Department.

CHAPTER 4

GENERAL

Exemptions 30

15. (1) An employer or an employers' organisation registered in terms of section 96 of the Labour Relations Act, or any other law, acting on behalf of a member, may, in the prescribed form and manner, apply for an exemption from paying the national minimum wage.

- (2) An exemption granted in terms of this section— 35
 - (a) must specify the period for which it is granted, which may not be longer than one year;
 - (b) must specify the wage that the employer is required to pay workers; and
 - (c) may contain any other relevant condition.

(3) The Minister may delegate or assign powers or duties arising out of the application of this section, excluding the power to make regulations, in accordance with the provisions of section 85 of the Basic Conditions of Employment Act. 40

Regulations

16. (1) The Minister must, after consulting NEDLAC and where appropriate after consulting the Commission, make regulations relating to— 45

- (c) sedzulusa nga ha phambano ya miholo na u ita themendelo uri phambano ya miholo i vhe nga ndila ine ya pfadza;
- (d) ta zwine zwa tea u swikelwa nga u tshanyanya ho sedzwa zwenezwi zwa muholo wa fhasisa wa lushaka kha miñwaha miraru musi ho thoma u shumiswa uno Mulayo; 5
- (e) tsivhudza Minista nga ha maga a u fhungudza phambano ya miholo kana fhungo liñwe na liñwe line Minista a humbela Khomishini uri i mu tsivhudze;
- (f) tsivhudza Minista kha zwi kwamaho zwine zwa tiwa ho sedzwa sekithara;
- (g) tsivhudza Minista kha fhungo liñwe na liñwe li kwamaho nyimele dza ndeme dza mushumo; na 10
- (h) shuma mushumo muñwe na muñwe une Minista a ri Khomishini i shume u ya nga mulayo wa zwa mushumo.

U farwa ha miřangano ya Khomishini

12. Khomishini i tea u diitela milayo ya kutshimbidzele kwa miřangano, tenda iyo milayo ya— 15

- (a) ita uri Mudzulatshidulo a sa dzhie sia; na
- (b) ita mbetshelo ya uri Mudzulatshidulo ha na voutu kana ha na vouthu ya u dzhia tsho musi vouthu dzo wa thai.

Vhuñwaleli ha Khomishini

13. Hu tshi khou tevhedzwa milayo i vhusaho tshumelo ya tshitshavha kana muvhuso, Minista u tea u fha Khomishini muthu wa zwa vhuñwaleli na zwiko zwi todeaho u itela uri mishumo i tevhelaho i shuñwe: 20

- (a) Vhulangi kha Khomishini;
- (b) u ita na u renga tshumelo dza todisiso hu tshi itelwa yone Khomishini; na
- (c) u lavhelesa na u vhona masiandoitwa a muholo wa fhasisa kha ikonomi na kufhungudzele kwa phambano ya miholo zwi sa pfadzi. 25

Masheleni a Khomishini

14. Masheleni a Khomishini ndi masheleni ane a avhiwa a tshi bva kha mugaganyagwama wa Muhasho.

NDIMA YA 4 30

NYANGAREDZO

U vhořhololwa

15. (1) Mutholi kana dzangano la vhatholi lo ñwalisaho u ya nga khethekanyo ya 96 ya Mulayo wa *Labour Relations Act*, kana mulayo muñwe na muñwe, lo imelaho mirado ya lo, nga ndila yo randelwaho, mutholi uyo kana ilo dzangano li nga ita khumbelo ya u tendelwa u badela vhashumi muholo mutuku kha muholo wa fhasisa wa lushaka we wa vheva nga Mulayo. 35

(2) U tendelwa/vhořhololwa uhu u ya nga ino khethekanyo hu—

- (a) tea u talusa tshifhinga tsha uri u tendelwa hu guma lini, ngauri u tendelwa a hu tei u vha tshifhinga tshine tsha fhira ñwaha muthihi; 40
- (b) hu tea u taluswa muholo une mutholi a tea u badela vhashumi; nahone
- (c) hu nga katelwa na nyimele yo teaho.

(3) Minista a nga hwesa kana u fha maanda kana mishumo ya ino khethekanyo, hu sa katelwi maanda a u ita ndangulo, u ya nga mbetshelo dza khethekanyo ya 85 ya Mulayo wa *Basic Conditions of Employment Act*. 45

Ndangulo

16. (1) Minista nga murahu ha u kwama Khoro ya Mishumo na Mvelaphanda ya Ikonomi ya Lushaka (*NEDLAC*) nahone hune zwa vha zwo tea nga murahu ha u kwama Khomishini u do ita ndangulo malugana na—

- (a) the form and manner in which exemptions must be made in terms of section 15(1), which include the—
- (i) procedure for applying for an exemption;
 - (ii) information to be submitted with an exemption application;
 - (iii) obligations on employers to consult with employees or trade unions concerning an exemption application; 5
 - (iv) criteria that must be applied when evaluating exemption applications;
 - (v) period within which an application must be made; and
 - (vi) period within which a decision on an exemption application must be made; and 10

(b) the publication of data on exemptions.

(2) The Minister may make regulations which the Minister considers necessary or expedient to be prescribed in order to achieve the primary objects of this Act.

(3) The Minister must publish the draft of any regulations that the Minister proposes to publish in terms of this Act in the *Gazette* and allow interested parties at least 21 days to comment in writing on the draft regulations. 15

(4) If the Minister alters the draft regulations based on the comments received from interested parties, it shall not be necessary to publish those alterations before making the final regulations.

(5) The Minister must table the regulations in Parliament. 20

Short title and commencement

17. (1) This Act is called the National Minimum Wage Act, 2018.

(2) Subject to subsections (3) and (4), the Act comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(3) Schedule 1 comes into effect on a date fixed by the President by proclamation in the *Gazette*. 25

(4) Section 4(6) takes retrospective effect from 1 May 2017.

- (a) nq̄ila ine u tendelwa zwa tea u itwa u ya nga khethekanyo ya 15(1), zwine zwa katela—
- (i) kuitele kwa u ita khumbelo ya u vhofohololwa;
 - (ii) nq̄ivhiso ine ya tea u iswa khathihi na khumbelo ya u vhofohololwa;
 - (iii) zwi vhofohaho vhatholi uri vha kwame vhatholiwa kana madzangano a vhashumi zwi tshi kwama khumbelo ya u vhofohololwa; 5
 - (iv) nq̄ila dzine dza tea u shumiswa musi hu tshi t̄hathuvhiwa khumbelo dza u vhofohololwa;
 - (v) tshifhinga tshine ngatsho khumbelo ya tea u itwa; na
 - (vi) tshifhinga tshine ngatsho tsho ya khumbelo ya u vhofohololwa ya tea u itwa; na 10
- (b) nyandadzo ya nq̄ivhiso nga ha u vhofohololwa.
- (2) Minista a nga ita ndangulo dzine ene muṅe a vhona dzi tshi t̄oḁea nga u t̄avhanya kha u randelwa, u itela u swikelela zwipikwa zwa uno Mulayo.
- (3) Minista u tea u anq̄adza mvetamveto dza ndangulo dzine a khou dzinginya u anq̄adza u ya nga uno Mulayo kha Gazete nahone a fhe vha re na dzangalelo maḁuvha a 21 a u n̄etshedza mahumbulwa nga u tou n̄wala malugana na iyo mvetamveto. 15
- (4) Arali Minista a shandukisa mvetamveto dza ndangulo zwo itiswa nga mahumbulwa o ḁiswaho u bva kha avho vha re na dzangalelo, a zwi nga t̄oḁi Minista a tshi anq̄adza idzo tshanduko phanḁ ha musi a tshi ita ndangulo dza u fhedzisela. 20
- (5) Minista u tea u dzudzanya uri ndangulo dzi iswe Phalamenndeni u ambiwa nga hadzo.

Dzina jipfufhi na u thoma u shumisa Mulayo

17. (1) Uno Mulayo u vhidzwa upfi Mulayo wa Muholo wa Fhasisa wa Lushaka, 2018. 25
- (2) Hu tshi tevhelwa khethekanyo dza (3) na (4), Mulayo u ḁo thoma u shuma nga ḁuvha jine Phresidennde a ḁo ji vheya nga mulevho kha Gazete.
- (3) Sheduḁu ya 1 i ḁo thoma u shuma nga datumu ine ya ḁo vheya nga Phresidennde nga Mulevho kha Gazete.
- (4) Khethekanyo ya 4(6) yone i thoma u shuma nga dzi 1 Shundunthule 2017. 30

SCHEDULE 1**NATIONAL MINIMUM WAGE****(Section 6(6))**

1. Subject to item 2, the national minimum wage is R20 for each ordinary hour worked.
2. Despite item 1—
 - (a) farm workers are entitled to a minimum wage of R18 per hour from a date fixed by the President by proclamation in the *Gazette*;
 - (b) domestic workers are entitled to a minimum wage of R15 per hour from a date fixed by the President by proclamation in the *Gazette*;
 - (c) workers employed on an expanded public works programme are entitled to a minimum wage of R11 per hour from a date fixed by the President by proclamation in the *Gazette*; and
 - (d) workers who have concluded learnership agreements contemplated in section 17 of the Skills Development Act, 1998 (Act No. 97 of 1998), are entitled to the allowances contained in Schedule 2.
3. For the purposes of item 2—

“farm worker” means a worker who is employed mainly or wholly in connection with farming or forestry activities, and includes a domestic worker employed in a home on a farm or forestry environment and a security guard on a farm or other agricultural premises, excluding a security guard employed in the private security industry in terms of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);

“domestic worker” means a worker who performs domestic work in a private household and who receives, or is entitled to receive, a wage and includes—

 - (a) a gardener;
 - (b) a person employed by a household as a driver of a motor vehicle;
 - (c) a person who takes care of children, the aged, the sick, the frail or the disabled; and
 - (d) domestic workers employed or supplied by employment services; and

“expanded public works programme” means a programme to provide public or community services through a labour intensive programme determined by the Minister in terms of section 50 of the Basic Conditions of Employment Act and funded from public resources.

SHEDULU YA 1**MUHOLO WA FHASISA WA LUSHAKA****(Khethekanyo ya 6(6))**

1. Hu tshi khou tevhedzwa tshiteñwa tsha 2, muholo wa fhasisa wa lushaka ndi R20 nga awara inwe na inwe yo dowealeho ya mushumo.

2. Naho hu na tshiteñwa tsha 1—

- (a) vhashumi vha mabulasini vha tea u hola muholo u si ho fhasi ha R18 nga awara u bva kha datumu ine ya do vhewa nga Phresidennde nga mulevho kha Gazete;
- (b) vhashumi vha muḍini vha tea u hola muholo u si ho fhasi ha R15 nga awara u bva kha datumu ine ya d vhewa nga Phresidennde nga mulevho wa Gazete;
- (c) vhashumi vho tholwaho nga mbekanyamushumo ya mishumo ya muhasho wa mishumo ya tshitshavha vhone vha tea u hola muholo u si ho fhasi ha R11 nga awara u bva kha datumu in Phresidennde a do i vhea nga mulevho kha Gazete; na
- (d) vhashumi vhe vha khunyeledza thendelano ya vhugudamushumo zwo bulwaho kha khethekanyo ya 17 ya Mulayo wa *Skills Development Act, 1998 (Act No. 97 of 1998)*, vha tea u wana malamba ane o sumbedzwa kha Sheduḷu ya 2.

3. U itela ndivho dza tshino tshiteñwa tsha 2—

“**mushumi wa bulasini**” zwi amba mushumi o tholwaho kanzhisa kana zwi hulusa zwi tshi kwama mishumo ya maḱakani kana bulasini, nahone hu katelwa mushumi wa muḍini o tholwaho muḍini u re bulasini kana maḱakani na mushumi wa u linda henengei bulasini kana zwifhaḱoni zwa vhulimi-vhufuwi, hu sa katelwi mushumi wa u linda o tholwaho kha ndowetshumo ya zwa u linda ya phuraivethe hu tshi khou tevhelwa Mulayo wa *Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001)*;

“**mushumi wa muḍini**” zwi amba mushumi ane a shuma mushumo wa muḍini kha muḍi wa phuraivethe nahone ane a ḱanganedza, kana o teaho u ḱanganedza, muholo nahone hu tshi katelwa—

- (a) mushumi wa ngadeni;
- (b) muthu o tholwaho nga muḍi sa mureili wa moḱoro;
- (c) muthu ane a shuma u londola vhana, vhaaluwa, vhalwadze, vhahoḱa kana vhaholefhal; na
- (d) vhashumi vho tholwaho kana vha ḱetshedzwaho nga tshumelo dza zwa mushumo; na

“**mbekanyamushumo ya mishumo ya tshitshavha yo ḱandavhuwaho**” zwi amba mbekanyamushumo ya u ḱetshedza tshitshavha kana tshumelo dza tshitshavha nga kha mbekanyamushumo ya mushumo yo tiwaho nga Minisṱa u ya nga khethekanyo ya 50 ya Mulayo wa *Basic Conditions of Employment Act* nahone yo lambedzwaho nga zwiko zwa tshitshavha.

SCHEDULE 2

LEARNERSHIP ALLOWANCES

(Section 6(6))

1. For the purposes of this Schedule—

“**allowance**” means the amount of money paid or payable to a learner in terms of regulation 3 of the Sectoral Determination 5: Learnership made under the Basic Conditions of Employment Act, published in Government Notice 519 of 15 June 2001 as amended by Government Notice R.234 of 15 March 2011;

“**credit**” means a credit earned as defined in the Regulations made under the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), Government Notice R.452, published in Government *Gazette* 18787 of 28 March 1998;

“**learner**”—

(a) means a learner who has concluded a learnership agreement in terms of section 17 of Skills Development Act, 1998 (Act No. 97 of 1998); and

(b) includes an apprentice;

“**NQF level**” means a level on the national qualifications framework contemplated in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008).

2. The learnership allowances are as follows:

NQF level	Credits already earned by learner	Minimum allowance per week
Levels 1 to 2	0-120	R301.01
	121-240	R601.99
Level 3	0-120	R301.01
	121-240	R566.93
	241-360	R928.11
Level 4	0-120	R301.01
	121-240	R602.05
	241-360	R928.11
	361-480	R1354.51
Levels 5 to 8	0-120	R301.01
	121-240	R652.15
	241-360	R975.75
	361-480	R1374.61
	481-600	R1755.84

SHEDULU YA 2**MALAMBA A ZWA VHUGUDAMUSHUMO****(Khethekanyo ya 6(6))****1. U itela ndivho dza ino Sheduḷu—**

“**malamba**” zwi amba mutengo wa tshedele ine ya badelwa mugudi u ya nga ndangulo ya 3 ya *Sectoral Determination 5: Vhugudamushumo ho itwaho nga fhasi ha Mulayo wa Basic Conditions of Employment Act*, yo anḡadzawho kha Nḡivhadzo ya Muvhuso ya 519 ya dzi 15 Fulwi 2001 sa zwe zwa khwiḡiswa nga Nḡivhadzo ya Muvhuso ya R.234 ya dzi 15 Thafamuhwe 2011;

“**khiredithi**” zwi amba khiredithi ine ya wanwa sa zwo ḡalutshedzwaho kha Ndangulo dzo itwaho nga fhasi ha Mulayo wa *South African Qualifications Authority Act, 1995 (Act No. 58 of 1995)*, Nḡivhadzo ya Muvhuso ya R.452, yo anḡadzawho kha *Gazete* ya Muvhuso ya 18787 ya dzi 28 Thafamuhwe 1998;

“**mugudi**”—

(a) zwi amba mugudi ane o khunyeledza thendelano ya vhugudi u ya nga khethekanyo ya 17 ya Mulayo wa *Skills Development Act, 1998 (Act No. 97 of 1998)*; nahone

(b) zwi katela u guda mushumo;

“**Levheḷe ya NQF**” zwi amba levheḷe kha mutheo wa ndalukano dza lushaka sa zwo bulwaho kha Mulayo wa *National Qualifications Framework Act, 2008 (Act No. 67 of 2008)*.

2. Malamba a vhugudamushumo ndi a tevhelaho:

Levheḷe dza <i>NQF</i> ^	Khiredithi dzo no wanwaho nga mugudi	Malamba a fhasisa nga vhege
Levheḷe dza 1-2 ^	0-120 121-240	R301.01 R601.99
Levheḷe ya 3 ^	0-120 121-240 241-360	R301.01 R566.93 R928.11
Levheḷe ya 4 ^	0-120 121-240 241-360 361-480	R301.01 R602.05 R928.11 R1354.51
Levheḷe dza 5-8 ^	0-120 121-240 241-360 361-480 481-600	R301.01 R652.15 R975.75 R1374.61 R1755.84

