



International  
Labour  
Organization

# Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards

Technical report

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## ▶ Legal Analysis Methodology

- ▶ Identification of provisions pertaining to seasonal workers in ILO standards, international human rights instruments, and non-binding frameworks
- ▶ Desk research to identify official RSE and SWP programme documentation and supporting secondary materials
- ▶ Analysis of alignment with IHR and ILS
- ▶ Follow up consultation with government departments
- ▶ Validation workshops and follow-up bilateral discussions

## International human rights standards and frameworks

### International Labour Organization Conventions and related Recommendations

- Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
- Labour Inspection Convention, 1947 (No. 81)
- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- Protection of Wages Convention, 1949 (No. 95)
- ***Migration for Employment Convention (Revised), 1949 (No. 97)***
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
- Social Security (Minimum Standards) Convention, 1952 (No. 102)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- Employment Injury Benefits Convention, 1964 (No. 121)
- Labour Inspection (Agriculture) Convention, 1969 (No. 129)
- Minimum Wage Fixing Convention, 1970 (No. 131)
- Workers' Representatives Convention, 1971 (No. 135)
- Human Resources Development Convention, 1975 (No. 142)
- ***Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)***
- Occupational Safety and Health Convention, 1981 (No. 155)
- Maintenance of Social Security Rights Convention, 1982 (No. 157)
- Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)
- Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)

- Private Employment Agencies Convention, 1997 (No. 181)
- Maternity Protection Convention, 2000 (No. 183)
- Safety and Health in Agriculture Convention, 2001 (No. 184)

### International Human Rights Treaties

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965
- International Covenant on Civil and Political Rights (ICCPR), 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
- ***International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990***
- Convention on the Rights of Persons with Disabilities (CRPD), 2008

### Non-binding frameworks

- The ILO General Principles and Operation Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs, 2016
- ILO Multilateral Framework on Labour Migration
- The Global Compact on Safe, Orderly and Regular Migration (GCM) United Nations General Assembly, 2018

## ▶ Fieldwork Methodology

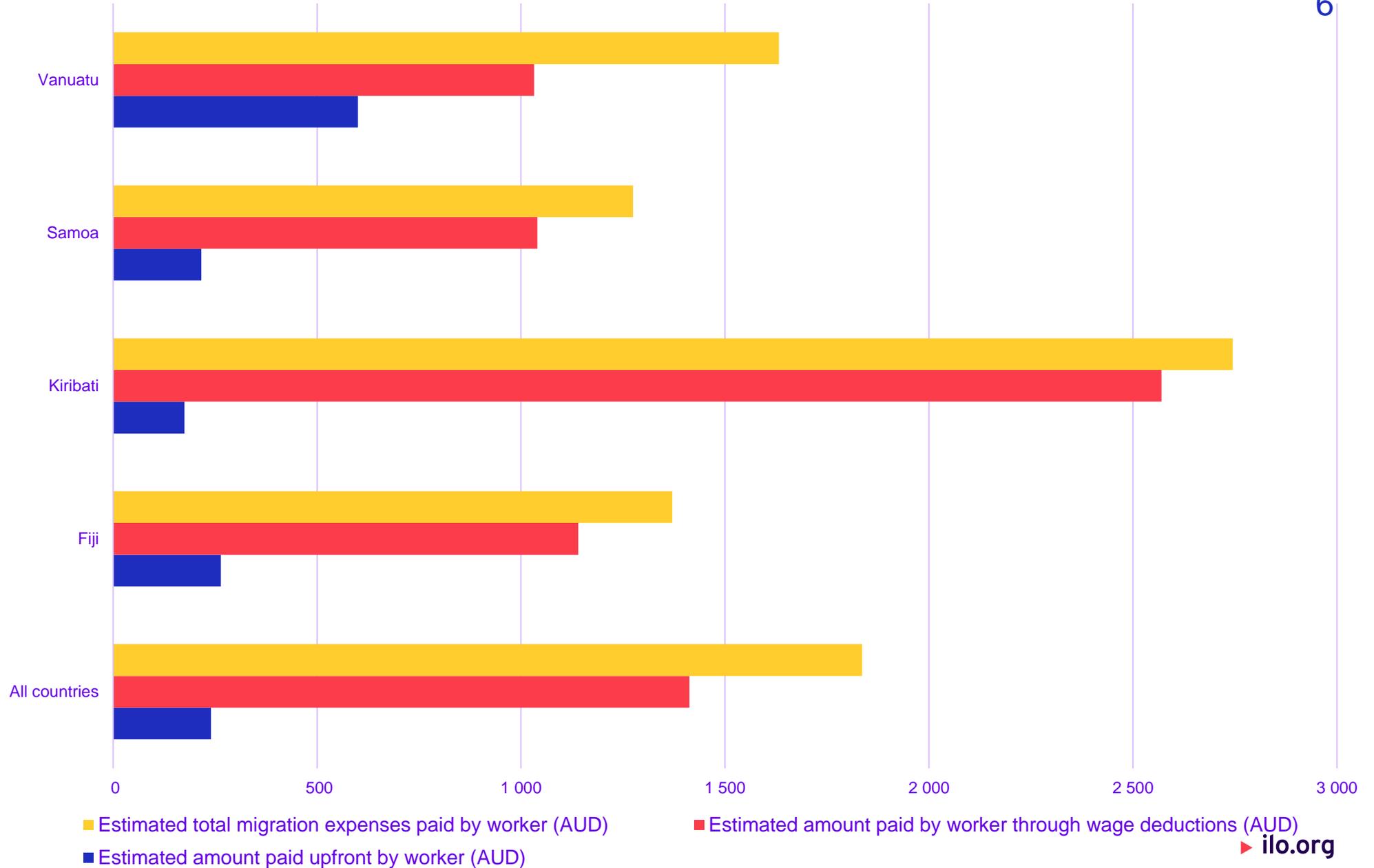
- ▶ Face-to-face interviews with 121 returned seasonal workers in Fiji, Kiribati, Samoa, Vanuatu. Most questions related to their most recent seasonal work experience (63 respondents had been to New Zealand, 58 to Australia)
- ▶ A small sample size and a non-random sampling method mean that sample is not representative, and findings cannot necessarily be generalised
- ▶ Written responses to questionnaires from key informants in government and trade unions in Fiji, Kiribati, Samoa, Tuvalu and Vanuatu; and key informants in government, employer organisations and trade unions in Australia and New Zealand

## ▶ Recruitment Fees and Related Costs

- ▶▶ No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers' (General Principle 7, ILO General Principles and Operational Guidelines for Fair Recruitment )
  
- ▶▶ Related costs are expenses integral to recruitment and placement within or across national borders, taking into account that the widest set of related costs are incurred for international recruitment' (ILO Definition of Recruitment Fees and Related Costs, 2019)

## Recruitment related costs\* paid by workers upfront, through wage deductions and in total, by country of origin (AUD)

\*passport, visa, medical clearance, police clearance, as well as travel expenses which include workers' share of international return airfares, domestic travel (both in the PICs and in Australia/New Zealand) and accommodation expenses during transit.



▶ **Aligning with the legal analysis, this was also a key issue raised by respondents – particularly the costs paid upfront**

- ▶ *The costs of travel and accommodation when travelling to Suva were too high. Also, the expenses for medical and police clearances were a challenge for me.'*
- ▶ *The main challenge for me is paying for another medical certificate and police clearance, and also that I must have enough finance set aside for my family to survive while I am out to travel until my first and second pay overseas.'*

## ▶ Recommendations – Recruitment related costs

### **Review and replace the existing system to cover the upfront costs of migration**

- Recruitment related costs borne by workers are considerable and workers start their seasons in Australia and New Zealand with debts to their employers and/or debts to families, banks and government
- Shift a fairer share of recruitment related costs away from workers

## Choice of employer

- ▣ States should develop and strengthen labour migration and fair and ethical recruitment processes that allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden'. (Global Compact on Migration)
- ▣ Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer' (ILO General Principles and Operational Guidelines on Fair Recruitment, part 1(III), para. 12).
- SWP and RSE: All workers are prohibited from changing visa categories while in Australia/New Zealand. Visas tie workers to specific employers.

## Summary of RSE and SWP consistency with standards related to choice of employer

| International legal standards   | SWP consistency with standard  | RSE consistency with standard  |
|---|--|--|
| <p><b>Conventions</b></p> <p>While assuring migrant workers the right to geographical mobility, the free choice of employment may be made subject to the conditions that the migrant worker has: (a) resided lawfully in its territory for the purpose of employment for a period not exceeding two years, or (b) if its laws provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract. Access to limited categories of employment may be restricted where this is necessary in the interests of the State (Convention No. 143, Art. 14(a, c); Recommendation No. 151, Para. 6).<sup>1</sup></p>  | <p>X</p> <p>In the SWP, workers must continue to work for their Approved Employer. In the Regional Pilot, SWP workers move between a pre-agreed set of Approved Employers, but are not able to determine which employer they will be working for at different times. The DHA website says that during COVID-19 workers can move between any Approved Employer if the employer contacts the DESE.</p> | <p>X</p> <p>In response to COVID-19, workers are able to change their employer, but must apply for a new visa.</p> |
| <p><b>Recommendations and frameworks</b></p> <p>States should develop and strengthen labour migration and fair and ethical recruitment processes that allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden (GCM, objective 6, 22(h)), and “[d]evelop accessible and expedient procedures that facilitate transitions from one status to another” (GCM, objective 7, 23(h)).</p> <p>Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer’s or recruiter’s permission to change employer (ILO General Principles and Operational Guidelines on Fair Recruitment, part 1(III), para. 12)</p> | <p>X</p> <p>Worker permits are tied to an individual employer or group of specific employers.</p>  | <p>X</p> <p>Worker permits are tied to an individual employer.</p>   |

✓ = consistent; X = inconsistent; ∅ = silent or no evidence located.

<sup>1</sup> Note that the ICRMW Article 52 states that the right of temporary migrant workers to freely choose remunerated activities may be limited provided that the migrant has not lawfully resided in the territory for a period “exceeding two years”. This period can be extended to five years if the purpose of restricting freedom of employment is to grant priority of employment to nationals and this is prescribed in a bilateral agreement.

## ▶ Recommendations – Choice of Employer

- **Review of options for extending free choice of employment to workers**, for example within the entire pool of Approved Employers. This could strengthen the alignment of the schemes with ILS and relevant global frameworks. This must be done in a way that facilitates workers' access to alternative employers and ability to bargain.

Related recommendations:

- **Revised standard forms for offers of employment and standard employment contracts** that clearly present information for workers on minimum rights and entitlements. Workers and LSU's should be provide with information to enable them to independently assess the conditions in the offers of employment, especially in regard to proposed deductions for accommodation, transport and others.

## Bilateral labour agreements

### SWP- Memorandum of Understanding and Implementation Arrangements

### RSE Inter-Agency Understanding and Facilitative Arrangements

- ▶ Identical MOU/IAs (Australia)/Near identical IAUs/FAs (New Zealand) for all participating countries suggests limited tailoring of aspects of the MOU/IA to suit the national circumstances and the social and economic impacts of migration in Countries of Origin (ILO R86, Annex, art. 5; R122 paras 1, 30; R151, para. 1; ICRMW art. 64).

## GUIDANCE ON BILATERAL LABOUR MIGRATION AGREEMENTS

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*Employers' organizations can contribute to the identification of skills in demand in the destination countries and the possible skills gap in the origin countries. Workers' organizations can contribute to the identification of areas in which the protection of migrant workers needs to be improved and suggest appropriate solutions.*

*Good practice on social dialogue includes holding consultations with the social partners as BLMAs are being developed.*

## ▶ Recommendations - Bilateral labour agreements

- ▶ Australia and New Zealand should undertake a review of the agreements establishing the SWP and RSE in consultation with participating PICs, unions, workers, employer organizations and civil society in countries of origin and destination.
- ▶ Agreements should be revised based on this review, and PICs should be given the opportunity to negotiate in a group as well as through bilateral discussions.
- ▶ Revised agreements should meet good practice standards established in the ILO Model Agreement on Temporary and Permanent Migration for Employment (Recommendation No. 86, Annex) and be informed by the Guidance on Bilateral Labour Migration Agreements

- ▶ At this critical juncture where schemes are being reviewed, reformed and expanded, international labour standards created through the ILO's unique tripartite system, provide a detailed roadmap to the reforms that are needed to balance the interests of employers, workers and governments and advance decent work.
- ▶ Agreements such as the Global Compact on Migration, that has been negotiated and agreed through multilateral processes as well as human rights standards represent the international norms to which these schemes should also adhere.



# Thank you

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