

A SEASONAL LABOUR SOLUTION? A POLICY DISCUSSION OF A MIGRATION-FOR-WORK STRATEGY WITH THE PACIFIC ISLANDS

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Introduction

New Zealand is consistently experiencing shortages of unskilled labour in the horticulture and viticulture industries. There has been recent discussion around implementing a seasonal labour scheme, and a pilot scheme is currently in progress. The Pacific Island Community is requesting that New Zealand consider an arrangement where the labour shortages can be relieved by temporary labour from the Pacific Islands. If such a policy is to go ahead, the present issues concerning migrant worker exploitation in New Zealand need to be recognised and addressed.

As a contribution to the discussion developing around a potential seasonal labour policy, this article analyses the debates on Pacific migrant access and the economic and social implications from such policy, with a focus on the protection of migrant workers' rights within New Zealand.

A. Background

1. Competing Concerns

There is a labour shortage in New Zealand in the horticulture and viticulture industries of seasonal jobs such as the picking and packing of fruit. The Pacific Island countries are encouraging a policy where seasonal work permits can be issued to Pacific Islanders interested in carrying out this work in New Zealand. In contemplating a seasonal labour strategy, the New Zealand government is torn between a number of competing issues. A priority consideration in the discussion is how temporary migrant labour would relieve labour shortages in the

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horticulture and viticulture industries, allowing for business expansion. This would consequently have a beneficial impact on the New Zealand economy. That aside, the Government has obligations to New Zealand's own unemployed and there is a fear that a migrant labour scheme will give jobs to migrants that could be filled by New Zealanders. Importing temporary migrants to fill labour shortages raises issues around New Zealand's obligations to protect those migrants from exploitation while they are in the country. In the context of the Pacific Islands, the issue of seasonal labour requires adherence to aid and development agreements, and the evaluation of overseas pressure for liberalised markets in the Islands as an exchange for seasonal labour. The primary focus of this paper is the protection of the rights of the migrant workers in New Zealand, and how a seasonal labour agreement can be reached with the Pacific Islands that gives appropriate weight to these competing issues.

2. A valuable horticulture industry with labour shortages

Horticulture is a lucrative business in New Zealand; in fact the horticulture and viticulture industries export products worth over \$2.2 billion per year and supply most of New Zealand's domestic requirements.¹ The industry has undergone increased sophistication in terms of its operations, and has continued to grow.² The recent expansion of orchards and vineyards has meant that demand for labour is constantly evolving and increasing.³

This is all taking place in a climate of low unemployment rates in New Zealand, which had reached an historical low of 3.6% in 2005.⁴ Low rates of unemployment have resulted in a decrease in the availability of seasonal labour from traditional sources, such as the local labour

¹ Department of Labour "Horticulture/ Viticulture Seasonal Labour Strategy Launch" (Media Release, 08 December 2005) <http://www.dol.govt.nz/news/media/2005/horticulture-strategy.asp> (at 12 April 2006), p 4.

² Ibid.

³ Ibid.

⁴ Hon David Cunliffe "The Future of the Pacific Labour Market Conference" (Speech delivered at The Future of the Pacific Labour Market Conference, Te Papa, Wellington, 29 June 2006). <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=26296> (at 1 August 2006).

supplies.⁵ Further, the horticulture and viticulture industries are struggling to attract the labour market due to poor perceptions of employment in the industries.⁶ The concern is that these labour shortages are anticipated to be an ongoing problem, which will exacerbate in the future.⁷ The lack of net seasonal labour in the horticulture and viticulture industries could significantly limit industry performance, profitability and future prospects.⁸ Chris Ward, Horticulture New Zealand business manager, says highly profitable horticultural exports can be compromised at the last minute if there are not enough pickers in the seasonal peak.⁹

Increasing pressure has been placed on immigration to meet immediate labour requirements from overseas.¹⁰ The New Zealand government has reacted by allowing a large number of visitors to New Zealand to participate in seasonal work, under the current immigration policies, such as the Working Holiday Scheme and the Approval in Principle mechanism.¹¹ History suggests however that such shortages are likely to be cyclical, and it is therefore necessary to assess what policy adjustments might be appropriate.¹²

B. New Zealand's Current Temporary Labour Policy

New Zealand does not currently have a specific seasonal migrant labour scheme. Migrants are able to obtain work permits under general immigration categories, which allow for the employment of both

⁵ Department of Labour "Horticulture/ Viticulture Seasonal Labour Strategy Launch" (Media Release, 8 December 2005) <http://www.dol.govt.nz/news/media/2005/horticulture-strategy.asp> (at 12 April 2006), p 4.

⁶ Ibid.

⁷ Ibid, p 5.

⁸ Ibid.

⁹ Dev Nadkarni "Views from Auckland: Seasonal Labour Pains" (Media Article, 2006) http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=15829/overrideSkinName=issueArticle-full.tpl (at 1 August 2006).

¹⁰ Hon David Cunliffe "The Future of the Pacific Labour Market Conference" (Speech delivered at The Future of the Pacific Labour Market Conference, Te Papa, Wellington, 29 June 2006). <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=26296> (at 1 August 2006).

¹¹ Ibid.

¹² Ibid.

seasonal and fulltime workers. The number of temporary migrant workers allowed through current immigration mechanisms is inadequate to meet the seasonal labour demands. There are a number of other problems with these schemes, which will be discussed briefly below.¹³

1. **Working Holiday Scheme (WHS)** - This programme applies to countries with which New Zealand has a reciprocal agreement, and in 2003 19,652 WHS visas were issued to 18-30 year olds under the scheme. Such schemes tend to favour European countries, namely those in the developed world that are not reliant on migrating to earn a living.¹⁴ Australian experience in the Working Holiday Maker Scheme has shown tourists to be an unreliable source of labour, as holiday-making is a priority over employment.¹⁵
2. **Variation of Conditions (VOC)** - Under this mechanism, visitors already in New Zealand are able to change their visa status to allow them to work for a finite period where an absolute labour shortage is declared. During the 2003-2004 season 2,100 VOCs were issued. This system potentially has the same problems as the Working Holiday Scheme, as it does not allow people to migrate solely for the purpose of work.¹⁶
3. **Approval in Principle (AIP)** - This was an idea tested by a pilot scheme for 2004-2005, and allows employers to employ people from overseas on the condition that they also commit

¹³ Peter Silcock *Medium- Long-Term Horticulture and Viticulture Seasonal Labour Strategy* (The Horticulture and Viticulture Seasonal Working Group, 2005) www.hortnz.co.nz/communications/docs/Seasonal_Labour_Strategy.doc (at 12 April 2006), p 12.

¹⁴ *Ibid.*

¹⁵ Dev Nadkarni "Views from Auckland: Seasonal Labour Pains" (Media Article, 2006) http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=15829/overrideSkinName=issueArticle-full.tpl (at 1 August 2006).

¹⁶ Peter Silcock *Medium- Long-Term Horticulture and Viticulture Seasonal Labour Strategy* (The Horticulture and Viticulture Seasonal Working Group, 2005) www.hortnz.co.nz/communications/docs/Seasonal_Labour_Strategy.doc (at 12 April 2006), p 12.

to employ New Zealanders.¹⁷ In the 2005-2006 financial year, the Department of Labour figures show that New Zealand employed nearly two thousand workers using the Approval in Principle Scheme. These people came from countries such as Fiji, Kiribati, Samoa, Tonga and Vanuatu, to work in jobs such as fruit growing, as nursery workers, and market-garden labouring.¹⁸ It is extremely difficult to get approval for workers to come into New Zealand for short-term employment, as there is a very high threshold under the Approval in Principle Scheme. One requirement is proof that there are no suitable New Zealanders to fill the position.

4. **Pacific Island Quota Programme** - this quota programme enables Pacific Islanders to be recruited to fill fulltime positions. The problem with this mechanism is that this does not allow for seasonal labour, and thus the migrant has to leave their home to live in New Zealand, rather than being able to return with their earnings.¹⁹
5. **Horticulture Work Permit Pilot** - A pilot was established for the 2005-2006 season to allow work in the horticulture and viticulture industries for up to nine months. This scheme also allows for the return to work in New Zealand again if the time spent out of New Zealand is longer than the time spent in New Zealand.²⁰ This pilot policy is evaluated in section G of this report.

¹⁷ Ibid.

¹⁸ Angela Gregory "Pacific Solution Considered to Labour Market Shortages" *The New Zealand Herald* (New Zealand, 24 June 2006) http://www.nzherald.co.nz/author/print.cfm?a_id=61&objectid=10388069 (at 25 July 2006).

¹⁹ Peter Silcock *Medium- Long-Term Horticulture and Viticulture Seasonal Labour Strategy* (The Horticulture and Viticulture Seasonal Working Group, 2005) www.hortnz.co.nz/communications/docs/Seasonal_Labour_Strategy.doc (at 12 April 2006).

²⁰ Ibid.

1. The lean towards change

In the past, seasonal labour policy has not been considered as an appropriate solution to the demand for temporary unskilled labour.²¹ A 2001/2002 Work Permit Review concluded that while Working Holiday Schemes may relieve some pressure for labour shortages, other schemes for temporary immigration were not a desirable policy alternative.²² The review considered the unavailability of labour was caused by a lack of employees prepared to work for the going rates, and immigration did not solve this problem.²³

This lack of available seasonal labour has been aggravated by the narrowing of the New Zealand labour market. In the last few years, unemployment has decreased from 6.3 percent at the end of 1999, to just 3.6 percent at the end of 2005.²⁴ Over the same period, employment has increased by 10 percent.²⁵ Reports have indicated that employers are having substantial difficulty in recruiting unskilled labour; as many as twenty-five percent of employers have raised the complaint.²⁶

In response to employers' concerns, the New Zealand government is currently undertaking work on the interface of various responses to labour market shortages. The use of immigration policy is now being considered as one possible response to seasonal labour unavailability.²⁷ This policy would be looking to increase the numbers of unskilled workers able to enter New Zealand for employment. The specific category of 'unskilled work' is broadly defined in this context as low or unskilled occupations that can be learnt in a relatively short period of time.²⁸

²¹ Cat Moody *Migration and Economic Growth: A 21st Century Perspective* (Working Paper 06/02, New Zealand Treasury, 2006) www.treasury.govt.nz/workingpapers/2006/twp06-02.pdf (at 13 April 2006), p 35.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

2. Approach by the Government

The general attitude being expressed by New Zealand's current Government is that a seasonal labour scheme would be beneficial to industry in New Zealand, but it needs to be weighed against the risks and possible detriments to the New Zealand unemployed.²⁹ At a Forum Island Leaders meeting in Port Moresby in 2005, Helen Clark indicated that New Zealand was willing to look into the issue of seasonal labour, but noted "the issues related to the risk of overstaying and potential exploitation would need to be addressed carefully"³⁰. The New Zealand Government expressed its support for the Pacific Plan, which was in the process of being launched at the Forum Island Leaders meeting.³¹ The goal of access to labour markets from the Pacific Islands is a vital part of the process of the Pacific Plan, and this is something currently under consideration. The foreign minister of Papua New Guinea stated that part of New Zealand and Australia's commitment to the Pacific Plan should include permitting increased seasonal labour, as "it is one way to demonstrate that they are serious about assisting island countries to develop their capacity and their economics."³² The Department of Labour has been scoping out the possibility of a seasonal labour scheme by evaluating past schemes in New Zealand, as well as those operating overseas.³³

In addressing the significant labour shortages in the horticulture and viticulture industries, the Government has come through in its endeavour to consider the seasonal labour question. A Seasonal Labour Pilot for the horticulture and viticulture industries was implemented for

²⁹ Hon David Cunliffe "The Future of the Pacific Labour Market Conference" (Speech delivered at The Future of the Pacific Labour Market Conference, Te Papa, Wellington, 29 June 2006). <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=26296> (at 1 August 2006).

³⁰ Ibid.

³¹ Ibid.

³² Nic Maclellan and Peter Mares "Labour Mobility in the Pacific: Creating Seasonal Work Programs in Australia" Paper presented to Globalisation, Governance and the Pacific Islands Conference, Australia National University, Canberra, 25-27, October 2005, p 13.

³³ Hon David Cunliffe "The Future of the Pacific Labour Market Conference" (Speech delivered at The Future of the Pacific Labour Market Conference, Te Papa, Wellington, 29 June 2006) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=26296> (at 1 August 2006).

the 2005-2006 harvesting season.³⁴ The next step will be to find a replacement for the pilot, and there are indications the focus will be on increasing the use of accredited employers and working alongside them in a partnership approach.³⁵ The horticulture and viticulture industries in the meantime have been working on a long-term seasonal labour strategy, which contemplates the prospect of recruitment of short-term labour from the Pacific.³⁶

The New Zealand Government has indicated it will consider the requests from the Pacific Islands Countries to include them in any temporary labour policy. The interests of the Pacific have been given more attention in light of the recent recommendations from the World Bank report. The Foreign Affairs Minister of New Zealand, Winston Peters commented that the issue of labour access for the Pacific, as raised in the World Bank report, was part of New Zealand's development obligations to the Pacific.³⁷ He described New Zealand's relationship with the Pacific as a "symbiotic relationship, one where the successes and challenges of the Pacific impact on New Zealand and likewise our successes and challenges impact on the wider Pacific".³⁸ Peters commented that labour mobility is a huge and complex issue for the Pacific, with significant long lasting implications and flow on effects.³⁹ In approaching the issue, Peters communicated that the Government was actively considering the matter with some urgency.⁴⁰

It therefore appears that the government is giving the issue of temporary labour serious consideration. Significant research and consultation will be necessary to implement a policy that best caters to

³⁴ Mark Williams "Unskilled Labour and Seasonal Work Permit Category" Paper presented to Lexis Nexis Professional Development Immigration Law, Auckland, New Zealand, 2006, p5.

³⁵ *Ibid.*

³⁶ Angela Gregory "Pacific Solution Considered to Labour Market Shortages" *The New Zealand Herald* (New Zealand, 24 June 2006) http://www.nzherald.co.nz/author/print.cfm?a_id=61&objectid=10388069 (at 25 July 2006).

³⁷ Winston Peters "New Horizons: The Pacific's Economic Challenge" (Speech to the New Zealand Pacific Business Council, Ellerslie Novotel Hotel, Auckland, 18 August 2006).

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

the interests of both the New Zealand industries with labour shortages, and the source countries of the temporary labour.

C. Why the Pacific?

1. The current policy

The Pacific Islands have been encouraging increased temporary labour access, and New Zealand is in need of their labour. Under current policy, the Approval in Principle mechanism has allowed around two thousand Pacific Island workers to be issued temporary work permits.⁴¹ This small number does not meet the demand for seasonal workers in New Zealand, nor does it satisfy the pressure from the Pacific Islands for places in a temporary work scheme.⁴²

New Zealand has special relationships with the Pacific Island Countries, and has in place policies to allow for flows of migration. Immigration policy currently allows free movement between New Zealand and the home countries of nationals of the Cook Islands, Niue and Tokelau, who are all New Zealand citizens.⁴³ New Zealand also has a unique Treaty of Friendship with Samoa, which allows a quota of 1,100 citizens of Samoa to be granted New Zealand residence each year.⁴⁴ Similar agreements are held under the Pacific Access Category, allowing up to 250 Fijian, 250 Tongan, 75 Kiribati and 75 Tuvalu citizens New Zealand residence each year.⁴⁵ All these arrangements are subject to a guarantee of employment, age, and standard health and character, requirements. In addition, principal applicants under the Samoan Quota and the Pacific Access Category must meet a minimum

⁴¹ Dev Nadkarni "Views from Auckland: Seasonal Labour Pains" (Media Article, 2006) http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=15829/overrideSkinName=issueArticle-full.tpl (at 1 August 2006).

⁴² Ibid.

⁴³ Hon David Cunliffe "The Future of the Pacific Labour Market Conference" (Speech delivered at The Future of the Pacific Labour Market Conference, Te Papa, Wellington, 29 June 2006) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=26296> (at 1 August 2006).

⁴⁴ Ibid.

⁴⁵ Ibid.

level of English ability.⁴⁶ Pacific nationals from all states can also apply under other residence categories, for example, family or skilled migrant categories.⁴⁷

These agreements with the Pacific Islands are largely aimed at residency and citizenship. The successful applicants are given the opportunity to immigrate to New Zealand permanently, and not temporarily for seasonal labour. This means that the horticulture and viticulture labour shortages are not filled, as the new migrants are usually required to have already secured permanent work in New Zealand before entry.

2. The Logic of Favouring the Pacific Island Countries

Utilising labour from the Pacific Islands is by no means a new concept for New Zealand. New Zealand has profited from the efforts of workers in the Pacific Island States in the past, such as in the 1960s and 1970s when their labour was vital for filling vacancies during the industrial boom.⁴⁸ Pacific people have since continued to contribute significantly to New Zealand's culture and have strengthened and diversified such things as sports, music, arts, dance and political fabric.⁴⁹ This relationship signals that New Zealand has an obligation to its Pacific neighbours to prefer their contribution to our labour requirements over other countries. New Zealand has promised to strengthen and protect its special relationship with the Pacific Island Countries, and facilitating a temporary labour agreement is one way in which it can do so.

Both Australia and New Zealand have an increasing demand for seasonal labour, while at the same time, the Pacific is experiencing an excess of available labour.⁵⁰ This is due to a consistent increase in the population of working-age people in the Pacific Islands, and a lagging

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ New Zealand Council of Trade Unions *Submission on the Immigration Act Review Discussion Paper* (June 2006), p11.

⁴⁹ Ibid.

⁵⁰ Dev Nadkarni "Views from Auckland: Seasonal Labour Pains" (Media Article, 2006) http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=15829/overrideSkinName=issueArticle-full.tpl (at 1 August 2006).

economy.⁵¹ Employing labour from the Pacific is advantageous to New Zealand, as it provides an easily accessible and available, largely reliable, easily trainable and English-speaking workforce.⁵² There are clearly advantages to facilitating labour from the Pacific Islands over other countries.

However, New Zealand and Australia have not responded willingly to suggestions from all quarters to facilitate a greater labour movement from the Islands, even on a seasonal basis.⁵³ One reason for this rejection of Pacific labour seems to be a preference for seasonal workers from European developed countries. For example, Australia approved permits to over ten thousand backpacker-tourists from developed western countries in 2005.⁵⁴

3. Overstaying

The threat of large numbers of migrants overstaying is a major reason used to explain the inflexibility in the government machinery in dealing with the labour movement issue, and this continues to be the case even at the cost of hurting the country's labour-intensive industries.⁵⁵ The issue of overstaying is particularly raised in discussion of temporary labour from the Pacific Islands. The concern is not entirely unjustified. In New Zealand alone, in 2005, a third of the twenty thousand illegal over-stayers were people from the Pacific Islands.⁵⁶ There are a number of problems caused by overstaying, which range from issues with law and order, human rights and international relations, to issues of an ethno-cultural nature.⁵⁷

However, there is also the suggestion that the concern of overstaying is out of perspective. Research carried out by Australian Peter Mares,

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Dev Nadkarni "Views from Auckland: Seasonal Labour Pains" (Media Article, 2006) http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=15829/overrideSkinName=issueArticle-full.tpl (at 1 August 2006).

⁵⁶ Ibid.

⁵⁷ Ibid.

research fellow for the Institute of Social Research, Swinburne University of Technology has shown that there have been minimal issues with overstaying in the Canadian Seasonal Agricultural Workers Programme (CSAWP).⁵⁸ Mares believes the problem of over-stayers is greatly embellished, and noted that under the CSAWP over fifteen thousand workers entered Ontario as seasonal labourers in 2004, and fewer than one and a half percent were later listed as absent without leave from their job. Some had simply gone home early, and by the year's end all had returned.⁵⁹

The issue of overstaying can be addressed in policy. A number of suggestions have been raised, such as holding a large part of the workers' earnings in a trust account for them, and have it only accessible at the airport on their way home.⁶⁰ The worker could be paid enough wages daily for sustenance, and keep the incentive of the remainder of their pay to ensure they leave once their permit has expired.⁶¹ The chances of overstaying would substantially decrease once the period of seasonal labour had ended simply because of the lack of access to extra funds. Another alternative is for employers to have to supply guarantees for the workers. This arrangement has been successfully used in some European countries, and could be suitable for use in New Zealand.⁶²

D. Economic and Social Implications for the Pacific Island Countries

1. Pacific labour economic benefits

Implementing a labour arrangement with the Pacific has mutual

⁵⁸ Nic Maclellan and Peter Mares "Labour Mobility in the Pacific: Creating Seasonal Work Programs in Australia" Paper presented to Globalisation, Governance and the Pacific Islands Conference, Australia National University, Canberra, 25-27 October 2005, p 4.

⁵⁹ Ibid.

⁶⁰ Dev Nadkarni "Views from Auckland: Seasonal Labour Pains" (Media Article, 2006) http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=15829/overrideSkinName=issueArticle-full.tpl (at 1 August 2006).

⁶¹ Ibid.

⁶² Ibid.

benefits for both the Pacific nation and New Zealand. One such benefit for New Zealand is labour reliability, especially in a scheme where workers can return each season, enabling employers to plan production with greater confidence and build up a skilled workforce.⁶³

Working abroad provides benefits for Pacific Island workers such as higher pay rates and the opportunity to send remittances home to improve the quality of life of their family and community.⁶⁴ On returning home, the seasonal workers have obtained skills and life experience that can be passed on and utilised within their home community. A recent report by the World Bank emphasised this point, in finding that remittances can contribute significantly to the economic and social well-being of the workers, their families, and the wider community.⁶⁵ A reciprocal arrangement for temporary migration between developing and industrial country partners not only assists the process of remittance flows and skill attainment, but also deepens cultural, economic, and political ties across the region.⁶⁶ Remittances have been shown to improve income distribution, as well as alleviate poverty, encourage savings and more spending on education.⁶⁷

The Pacific Island Countries are experiencing difficulties retaining workers, as many permanently migrate overseas in search of employment. This is due to extremely limited employment opportunities in the Islands. Paid, formal sector work is scarce in many of the Pacific Island nations, with persistently high population growth and young people numbering up to forty percent of the overall

⁶³ Angela Gregory "Pacific Solution Considered to Labour Market Shortages" *The New Zealand Herald* (New Zealand, 24 June 2006) http://www.nzherald.co.nz/author/print.cfm?a_id=61&objectid=10388069 (at 25 July 2006).

⁶⁴ *Ibid.*

⁶⁵ The World Bank "World Bank Eyes Fix for Pacific Islands Unemployment" (Media Release, 15 August 2006) http://www.nzherald.co.nz/section/print.cfm?c_id=3&objectid=10396281 (at 15 August 2006).

⁶⁶ Satish Chand *Labour Mobility for Sustainable Livelihood in the Pacific Island States* (Research Paper, The Australian National University, Canberra, 2004), p3.

⁶⁷ The World Bank "World Bank Eyes Fix for Pacific Islands Unemployment" (Media Release, 15 August 2006) http://www.nzherald.co.nz/section/print.cfm?c_id=3&objectid=10396281 (at 15 August 2006).

population.⁶⁸ Fewer than ten percent of the job seekers in some Pacific nations will find paid work at home.⁶⁹ Projections show that by about 2015 about 270,000 people in the Solomon Islands and over 110,000 people in Vanuatu will not find jobs in the formal employment sector.⁷⁰

The need to migrate for employment impacts on the community through a loss of young, skilled people, and in some remote areas it threatens the outcome of depopulation. Temporary migration to countries such as Australia and New Zealand, would enable the continued increase of remittance flows to Pacific Island Countries, while at the same time preventing depopulation of the small communities, as the migration for work is only temporary.⁷¹ The reverse flow of retirees, tourists, and volunteers will simultaneously replace some of those migrating for work within remote communities.⁷² Thus, temporary migration is one solution to this, as the Pacific Island Country can earn revenue offshore while not losing its population.

2. Remittances

Pacific Island Countries rely heavily on remittances from overseas labour for income. Income earned from workers abroad, unlike aid, is likely to provide a sustainable source of revenue, thus relieve the resource constraints currently an issue in the Pacific Islands.⁷³ A number of Pacific Island Countries have unstable economies and rely heavily on remittances, which are their biggest revenue earners.⁷⁴ Remittances already constitute a significant part of the economies of the Cook Islands, Fiji, Niue, Samoa, and Tonga. Easing conditions for temporary movement of unskilled workers will give remittances an even a greater role in the sustenance of island economies and remote

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Satish Chand *Labour Mobility for Sustainable Livelihood in the Pacific Island States* (Research Paper, The Australian National University, Canberra, 2004), p 3.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Dev Nadkarni "Views from Auckland: Seasonal Labour Pains" (Media Article, 2006) http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=15829/overrideSkinName=issueArticle-full.tpl (at 1 August 2006).

communities of the Pacific.⁷⁵ The impact of remittances on the Fijian economy was researched by the Swinburne Institute of Social Research, which noted that in Fiji remittances grew F\$56 million in 1994 to F\$306 million in 2004.⁷⁶ Historically, Fiji relied on sugar and gold, then tourism and garment manufacturing, but over the past decade the amount of remittances increased to a level where they earn more foreign exchange than all other sectors except tourism.⁷⁷ The International Labour Organisation notes that the sum of US\$100 billion that is sent home in remittances every year by migrant workers far exceeds the sums for overseas development assistance, and is second in the international commodity trade only to global petroleum exports.⁷⁸

It is estimated that the reliance on remittances is unlikely to change in the future, as many countries depend upon remittances and aid from overseas. Tuvalu Prime Minister Maatia Toafa acknowledges the dependence on remittances, saying that labour mobility is one of the few ways his highly-dependent resource-poor country can contribute to its own economic survival as well as to the economies of Australia and New Zealand.⁷⁹

Increased opportunities for seasonal work in New Zealand would secure this influx of revenue, allowing for stability for the time being. This would allow Pacific Island Countries to plan how to use this revenue for enterprise and development, and aim towards self-sufficiency. Seasonal labour could be the means to provide short term funds, allowing for long term planning. A recent report by the World Bank has shown that remittances induce higher savings in both Fiji and

⁷⁵ Satish Chand *Labour Mobility for Sustainable Livelihood in the Pacific Island States* (Research Paper, The Australian National University, Canberra, 2004), p 3.

⁷⁶ Angela Gregory "Pacific Solution Considered to Labour Market Shortages" *The New Zealand Herald* (New Zealand, 24 June 2006) http://www.nzherald.co.nz/author/print.cfm?a_id=61&objectid=10388069 (at 25 July 2006).

⁷⁷ *Ibid.*

⁷⁸ New Zealand Council of Trade Unions *Submission on the Immigration Act Review Discussion Paper* (June 2006), p 4.

⁷⁹ Nic Maclellan and Peter Mares "Labour Mobility in the Pacific: Creating Seasonal Work Programs in Australia" Paper presented to Globalisation, Governance and the Pacific Islands Conference, Australia National University, Canberra, 25-27, October 2005, p 13.

Tonga and there is some evidence of remittances stimulating business activities in Tonga.⁸⁰ This sort of strategy could be part of the seasonal labour arrangement between the Pacific Islands and New Zealand.

3. Social impacts on the Pacific Islands

A facet of the seasonal labour debate which needs to be considered is the negative effect that temporary migration schemes have on the source country. Research carried out by the Swinburne Institute for Social Research has raised a number of adverse impacts in the Pacific Islands.⁸¹ The Pacific Islands are undergoing significant changes in social structures, in the areas of employment, gender roles and urbanisation.⁸² It was noted in the research that a number of the people interviewed expressed concern that seasonal worker schemes could further intensify the changes taking place in the traditional rural village economies.⁸³ The research uncovered a thread of social impacts that temporary migration has had on the communities, such as a number of family break-ups, infidelity and new relationships forming.⁸⁴ The community leaders were anxious about how gender roles would be affected by more people heading overseas to participate in temporary labour schemes.⁸⁵ The concerns were about the loss of male role models, an ageing population left with agricultural work in the rural areas while the young migrated to work, and the burdens on ageing women in terms of care for young children in the family.⁸⁶ These social impacts need to be weighed against the economic benefit of remittances to determine whether it is worth it. In developing a seasonal labour strategy with the Pacific Islands, a partnership

⁸⁰ The World Bank *At Home and Away- Expanding Job Opportunities for Pacific Islanders Through Labour Mobility* (World Bank, 2006) <http://siteresources.worldbank.org/INT/PACIFICISLANDS/Resources/Executive-Summary-Labour-Mobility-Report.pdf> (at 24 August 2006), p 8.

⁸¹ Nic Maclellan and Peter Mares "Labour Mobility in the Pacific: Creating Seasonal Work Programs in Australia" Paper presented to Globalisation, Governance and the Pacific Islands Conference, Australia National University, Canberra, 25-27, October 2005, p 9.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*, p 10.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

arrangement needs to be reached where New Zealand addresses these concerns and works to reduce the negative social impact.

E. Risks of Worker Exploitation

1. Poor working conditions

The conditions offered to migrant workers are often only the statutory minimum, and in some cases below. The jobs carried out by labourers in the horticulture and viticulture industries are physically difficult, dangerous and dirty.⁸⁷ Undesirable occupational duties, coupled with the minimum wage, create an unpleasant and unfair working environment for migrant workers.⁸⁸ This leads to a preference of workers willing to accept the conditions, rather than an incentive for employers to improve them.

The provisions allowing the importation of migrants to work for lower wages have raised concerns in Australia. There is a history of exploitation of migrant workers in the Victorian Gold Rush of the 1850s, as well as in the sugar cane fields of nineteenth century Queensland.⁸⁹ Not only did these policies lead to the exploitation of workers in terms of wages and working conditions, but also created a popular antipathy to 'cheap foreign labour' due to a fear of foreign workers 'stealing' Australian jobs.⁹⁰ This attitude, while expressing concern for the treatment of the migrants, shows the prevalent desire to look after the members of the host country first and foremost.

The hazardous nature of horticultural work puts migrant workers at risk from careless employers who do not correctly adhere to the occupational health and safety laws.⁹¹ There have been a number of cases reported in the media recently where workers have been injured,

⁸⁷ New Zealand Council of Trade Unions *Submission on the Immigration Act Review Discussion Paper* (June 2006), p 10.

⁸⁸ *Ibid.*

⁸⁹ Nic Maclellan and Peter Mares *Remittances and Labour Mobility in the Pacific* (A Working Paper on Seasonal Work Programs, Swinburne Institute for Social Research, 2006) <http://www.sisr.net/cag/docs/remittances.pdf> (at 20 July 2006), p 28.

⁹⁰ *Ibid.*, p 27.

⁹¹ *Ibid.*, p 40.

and the correct protocol has not been followed.⁹² There can be complex issues for seasonal workers returning to their home country with workplace injuries, in terms of accident compensation, which may not be available in their country.⁹³

There is evidence that workers in the unskilled positions are vulnerable to sexual harassment in the workplace.⁹⁴ The risk is further increased if the worker is a migrant and a woman. An Australian survey concluded that one in three women surveyed had been sexually harassed in the workplace, but the rates were higher still for those in unskilled occupations, where forty-seven percent of women surveyed had been harassed.⁹⁵ The research showed that these women were more vulnerable due to their subordinate role, lack of information about labour rights and cultural perceptions of relationships to men.⁹⁶ These problems are intensified when women are away from their own country, lacking a support network and information.

2. Migrant Labour Substituted for an Improvement in Conditions

Employers are aware of the poor working conditions temporary migrant employees are exposed to, though often they do not remedy them. Treasury notes that the poor working conditions, low remuneration and lack of training may contribute to the cause of labour shortages in the unskilled employment sector.⁹⁷ This view is reinforced by the statistics that show there is capacity for the unemployed in New Zealand to fill the labour gaps in the horticulture and viticulture industries. The number of jobless in New Zealand in June of this year

⁹² Sam Huggard "Problems for Tauranga Police translate to even bigger problem for migrant workers" (Council of Trade Unions Media Release, 22 June 2006) <http://www.union.org.nz/news/652.html> (at 23 June 2006).

⁹³ Nic Maclellan and Peter Mares *Remittances and Labour Mobility in the Pacific* (A Working Paper on Seasonal Work Programs, Swinburne Institute for Social Research, 2006) <http://www.sisr.net/cag/docs/remittances.pdf> (at 20 July 2006), p 40.

⁹⁴ *Ibid.*, p 34.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ Cat Moody *Migration and Economic Growth: A 21st Century Perspective* (Working Paper 06/02, New Zealand Treasury, 2006). www.treasury.govt.nz/workingpapers/2006/twp06-02.pdf (at 13 April 2006), p 35.

was 161,200.⁹⁸ The Council of Trade Unions advocates that these numbers of people are able to meet the demand for seasonal labour, but a disincentive from them doing so is the poor conditions and wages offered in the industries.⁹⁹

Migrant labour is being used to substitute the requirement to reform conditions, wages and the provision of training.¹⁰⁰ Thus, as opposed to raising the standards to make the industry more desirable for New Zealanders, employers are finding migrants who will accept the conditions without improvement. Using immigration to undercut the working conditions in unskilled labour fields could adversely impact on employment opportunities for New Zealanders and reduce the incentives for employers to invest in training and education, as well as offer a better working environment.¹⁰¹ This undercuts improvements in a tight labour market, and consequently goes against the strategy of developing a high skills, high wage economy.¹⁰²

Irrespective of the fact that these conditions are often compliant with the statutory minimums, if workers already residing in New Zealand will not perform work at the levels of pay or conditions offered, then they cannot be deemed acceptable for migrants to endure.¹⁰³

3. A Lack of Information Leading to a Lack of Enforcement

Temporary migrant workers do not have access to good information about their rights in New Zealand, or how to seek redress when they believe their rights have been breached.¹⁰⁴ Further, complex processes to attain entitlements such as tax returns and workers' compensation can result in temporary migrant workers missing out, especially when

⁹⁸ New Zealand Council of Trade Unions Submission on the Immigration Act Review Discussion Paper (June 2006), p 7.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Cat Moody *Migration and Economic Growth: A 21st Century Perspective* (Working Paper 06/02, New Zealand Treasury, 2006). <http://www.treasury.govt.nz/workingpapers/2006/twp06-02.pdf> (at 13 April 2006), p35.

¹⁰² New Zealand Council of Trade Unions *Submission on the Immigration Act Review Discussion Paper* (June 2006), p 8.

¹⁰³ Ibid.

¹⁰⁴ Ibid, p 10.

the process requires negotiating with bureaucratic systems.¹⁰⁵ The language barrier further complicates this for migrants, when trying to determine what their rights are, or whether they are receiving what they have been promised in terms of employment.¹⁰⁶ Migrant workers are concerned that if they make a complaint about their treatment or conditions that they risk losing their job, which means they would be deported.¹⁰⁷

Restrictions on enforcement of migrant workers' rights and employer accountability arise when contractors are used to supply labour.¹⁰⁸ It is estimated that more than half of the horticulture and viticulture industries' labour is supplied through contractors, who also supervise on the property.¹⁰⁹ This allows both the contractors and the employers to pass the buck when it comes to obligations and responsibility for treatment of workers.

The current Approval in Principle (AIP) programme appears to lack any enforcement or supervisory mechanism for employers who are not meeting their obligations.¹¹⁰ It is unclear what consequences, if any, employers in breach of the AIP programme will be subject to, as there is no evidence at all of any enforcement.¹¹¹ Employers recruiting migrant workers under other programmes are equally likely to escape liability for exploitation.¹¹² The Immigration Reform Discussion paper notes that no prosecutions at all have been made since a new three-tier

¹⁰⁵ Nic Maclellan and Peter Mares *Remittances and Labour Mobility in the Pacific* (A Working Paper on Seasonal Work Programs, Swinburne Institute for Social Research, 2006) <http://www.sistr.net/cag/docs/remittances.pdf> (at 20 July 2006), p 41.

¹⁰⁶ Sam Huggard "Problems for Tauranga Police translate to even bigger problem for migrant workers" (Council of Trade Unions Media Release, 22 June 2006) <http://www.union.org.nz/news/652.html> (at 23 June 2006).

¹⁰⁷ *Ibid.*

¹⁰⁸ Department of Labour "Horticulture/ Viticulture Seasonal Labour Strategy Launch" (Media Release, 08 December 2005) <http://www.dol.govt.nz/news/media/2005/horticulture-strategy.asp> (at 12 April 2006).

¹⁰⁹ *Ibid.*

¹¹⁰ New Zealand Council of Trade Unions *Submission on the Immigration Act Review Discussion Paper* (June 2006), p5.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

system of liability was introduced in June 2003.¹¹³ Thus, employers who fail to honour their commitment to pay market-rate wages, or provide conditions above the minimum, for example, may not be reprimanded at all. It is not difficult to see how such a system has provisions for the manifestation of exploitation.

A lack of advocacy for migrant workers makes the opportunities for exploitation worse still. There is concern that unions are not automatically involved to inform and protect temporary migrant workers.¹¹⁴ The Council of Trade Unions and other unions support an approach to migration issues within the context of looking at the industry as a whole, addressing issues such as investment in training, labour-matching, improved wages and conditions, technology, productivity and industry strategies.¹¹⁵ Unions are able to monitor conditions and increase the bargaining power of migrant workers through collective advocacy. The Council of Trade Unions has implemented a new migrant employment-related education project, which is aimed to assist in situations of exploitation, and preferably prevent it through education of rights.¹¹⁶

4. Rogue employers

In this climate of low accountability migrant labour exploitation, a number of rogue employers have emerged, taking advantage of the situation by employing migrant workers to undermine the terms and conditions of the industry as a whole.¹¹⁷ By reducing the conditions of their workers, employers are able to consequently reduce their labour costs.

Rogue employers are at an advantage under seasonal labour programmes that allow for only one employer to be specified on the migrant's work permit.¹¹⁸ This means temporary migrants risk

¹¹³ Ibid.

¹¹⁴ Ibid, p 9.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid, p 6.

¹¹⁸ Nic Maclellan and Peter Mares *Remittances and Labour Mobility in the Pacific* (A Working Paper on Seasonal Work Programs, Swinburne Institute for Social Research, 2006)

expulsion from the country if the employer dismisses them, so they are unlikely to make a complaint. Rogue employers are able to get away with exploitation and abuse of workers who are unable to protest against dangerous working conditions, underpayment or unreasonable demands by their employer.¹¹⁹

A recent example involving a rogue employer in New Zealand was where the Service and Food Workers Union came across a young Samoan worker who arrived in New Zealand to work in the horticulture industry in the Hawkes Bay. After the fruit picking season was over, he carried out all necessary protocol to apply for a further work permit for a job in Wellington. His employer was left to provide the necessary information to complete the permit, but instead took advantage of the situation, and used the permit application to force the worker to accept new employment conditions. The employer subsequently dismissed the worker.¹²⁰ Situations such as this one are occurring all the time in New Zealand, with a lack of enforcement allowing rogue employers to take advantage of vulnerable employees unable to enforce their rights.

F. International Obligations

This section will discuss New Zealand's obligations at an international level, with regard to how international conventions can help to reduce worker exploitation and improve employer accountability. In particular the section will evaluate New Zealand's compliance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and the International Labour Organisation's Migration for Employment Convention.

1. New Zealand's Compliance with International Conventions

Temporary migrant workers are vulnerable to mistreatment by their employers and the community at large. One such way to strengthen the rights of migrant workers, and to offer some protection, is for the

<http://www.sisr.net/cag/docs/remittances.pdf> (at 20 July 2006), p 40.

¹¹⁹ Ibid.

¹²⁰ New Zealand Council of Trade Unions *Submission on the Immigration Act Review Discussion Paper* (June 2006), p 6.

government to endorse international treaties that impose obligations on New Zealand that can be enforced by the international community. The Council of Trade Unions supports a rights-based approach to immigration issues, and points out that there are a number of international instruments in this area that New Zealand has not recognised.¹²¹ Such rights-based approaches are found in the International Labour Organisation's Migrant Workers Convention and the United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their families.¹²²

As part of the international community, New Zealand has obligations to migrant workers. The United Nations has drafted covenants that New Zealand should comply with, and which prescribe the expectations of treatment of migrant workers, both permanent and temporary. New Zealand has not acceded to the United Nations Convention on the Rights of Migrant Workers and their Families, and has only ratified the International Labour Organisation Convention 143. Yet, the Human Rights Commission points out that "the standards used in these instruments can be used as the basis for reviewing legal provisions relating to migrant workers and their families with a view to increasing compliance."¹²³ Therefore, even though New Zealand is not yet a party to these conventions, the provisions can be used to guide the development of a seasonal labour strategy.

The fact remains that vast numbers of migrant workers are uninformed and ill-prepared to cope with life and work in a foreign country. Equally, most of them are unaware of the human rights protections and fundamental freedoms which they are guaranteed under international treaties and national laws.¹²⁴ The best way to deal with this is the implementation of these treaties and conventions, and education of both employers and employees of their rights and obligations under international law. The more information out in the open, the less room

¹²¹ New Zealand Council of Trade Unions *Submission on the Immigration Act Review Discussion Paper* (June 2006), p 1.

¹²² *Ibid*, p 15.

¹²³ *Ibid*, p 16.

¹²⁴ Office of the High Commissioner for Human Rights Fact Sheet No. 24 *The Rights of Migrant Workers*, International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Art.2, para 1 UN Doc A/Res/45/158 (1990), p3.

there is for exploitation.

2. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

In December 1990 the General Assembly adopted the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (ICPRMW).¹²⁵ The ICPRMW is a comprehensive international treaty, inspired by existing legally binding agreements, by United Nations human rights studies, by the conclusions and recommendations of meetings of experts, and by the debates and resolutions on the migrant worker question in United Nations bodies over the past two decades.¹²⁶ The need to adhere to the International Convention has been recognised by the Pacific Conference for Churches, which is calling on New Zealand, and other Pacific countries to sign, ratify and implement the provisions of the convention.¹²⁷ To date, this has not been done by Australia, New Zealand or any Forum Island state. There has been a significant international dialogue around the promotion, ratification and implementation of the ICPRMW and the other ILO Conventions.¹²⁸ The controversy is over the incompatibility of a human rights approach to social protection and the increasingly deregulated globalised use of labour.¹²⁹ New Zealand's approach to international conventions is to ratify those with which it is already compliant. The ILO has outlined the policy requirements for compliance with the ICPRMW, which New Zealand will have to address, ideally, before ratification. These are a human-rights approach to:

- migration policies and practices;
- an informed and transparent labour migration admission system;
- enforcement of minimum national employment conditions;

¹²⁵ Ibid, p 1.

¹²⁶ Ibid.

¹²⁷ Nic Maclellan and Peter Mares *Remittances and Labour Mobility in the Pacific* (A Working Paper on Seasonal Work Programs, Swinburne Institute for Social Research, 2006) <http://www.sisr.net/cag/docs/remittances.pdf> (at 20 July 2006), p 39.

¹²⁸ Human Rights Commission *The Rights of Migrants and Their Families*, Human Rights Commission, Human Rights in New Zealand Today <http://www.hrc.co.nz/report/chapters/chapter17/migrants01.html> (at 4 August 2007).

¹²⁹ Ibid.

- challenges to discrimination and xenophobia; and
- institutional mechanisms to ensure coordination of Government and social partners.¹³⁰

This sort of approach would require New Zealand to completely revisit its outlook on migration for labour, which currently targets the highly skilled categories, and people seen of most benefit to the economy.

As a well-researched internationally recognised convention, the ICPRMW provides a reliable framework of rights for New Zealand to apply to a seasonal labour strategy. The articles of the Convention address many of the exploitation issues discussed above, and require specific action by the party state to alleviate the risks of exploitation. Broad human rights issues are addressed in the convention, such as entitlement to fundamental human rights and basic labour protections. Migrants are also entitled to certain human rights protections specifically linked to their vulnerable status.¹³¹ The ICPRMW stipulates the human right to safe working conditions and a clean and safe working environment, as well as reasonable limitations of working hours, rest and leisure.¹³² These provisions address the concern that the employment of temporary migrant workers is being used as a substitute for an improvement in conditions in New Zealand. The convention can help regulate the working conditions in the horticulture and viticulture industries through setting standards of what is acceptable. Further, granting labour protections that can be assessed at an international level may increase employer accountability where abuses occur.

Part of the cause of worker exploitation in New Zealand is a lack of information, leading to a lack of enforcement. Article 33 of the ICPRMW requires state parties to ensure that migrant workers and members of their families are openly and freely informed, in a language they are able to understand, of their rights under the Convention and on all matters that will enable them to comply with administrative or

¹³⁰ Ibid.

¹³¹ Office of the High Commissioner for Human Rights Fact Sheet No. 24 *The Rights of Migrant Workers*, International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Art. 2, para 1 UN Doc A/Res/45/158 (1990), p 2.

¹³² Ibid.

other formalities in the state of employment.¹³³

As with other United Nations conventions, the ICPRMW is not binding international law. The criticism is that the non-binding nature makes such conventions more something to aspire to than a statement of the reality. However, if New Zealand were to ratify the convention, and incorporate it in New Zealand law, it would be binding on employers and contractors who are to blame for the exploitation of migrant workers. The rights of migrant workers encoded in the ICPRMW would become more than an ideal, and be legally enforceable.

3. International Labour Organisation's Migration for Employment Convention

Unlike the United Nations Convention mentioned above, the International Labour Organisation's (ILO) Migration for Employment Convention has been ratified by New Zealand. The ILO Convention provides a Multilateral Framework on Migration, which is founded on a respect for human rights.¹³⁴ The ILO believes that a human rights base is important for migrant policies to prevent detrimental costs on individual migrants and their home societies, and this is recognised in Article 1 of the Convention.¹³⁵ The ILO places emphasis on member states ensuring the equality of opportunity and treatment of migrant workers at Article 10, particularly in the areas of employment and right to participate in trade unions.¹³⁶ This is particularly useful in the New Zealand context, as one cause of worker exploitation is a lack of union involvement. The membership of a trade union strengthens the enforcement of worker rights, and a seasonal labour strategy could systematically register temporary migrant workers with a trade union at the commencement of their employment in New Zealand.

¹³³ Ibid.

¹³⁴ New Zealand Council of Trade Unions *Submission on the Immigration Act Review Discussion Paper* (June 2006), p 16.

¹³⁵ Ibid.

¹³⁶ International Labour Organisation C143 Migrant Workers (Supplementary Provisions) Convention, (1975).

The ILO Convention promotes cooperation and partnership with employers, and educational programmes on the observance of correct practice in Article 12.¹³⁷ This emphasis on involvement by employers may help reduce the occurrence of rogue employers and strengthen enforcement of appropriate working conditions, which is an issue in New Zealand at present. The ILO Committee of Experts has commended New Zealand's compliance efforts with the ILO Convention in some respects. Legislation such as the Employment Relations Act 2000 has extended the prohibited grounds of discrimination.¹³⁸ However, the ILO Committee of Experts has been critical of a number of issues New Zealand has not taken any action in regard to. For example, there have been no special provisions to ensure the rights of migrant women as a vulnerable category.¹³⁹ Another area of concern is the lack of recognition of foreign qualifications, resulting in skilled workers migrating to New Zealand, unable to practice their profession.¹⁴⁰ The recommendations of the ILO Committee of Experts need to be taken seriously by the Government, with every effort directed at compliance.

The combination of both the United Nation's ICPRMW, and the ILO Convention 143, if incorporated into New Zealand domestic law, would significantly strengthen the rights of temporary migrant workers. Further, it would allow regulation at an international jurisdiction that could be enforced at international law, whatever the country of origin of the migrant worker.

G. Development of a Seasonal Labour Strategy

1. New Zealand's Short-term Solution

A short-term solution in the form of a pilot scheme has been initiated in the horticulture and viticulture industries to run until September 2006. The industries have been very receptive to this pilot scheme, as it

¹³⁷ *Ibid.*

¹³⁸ CEACR Individual Direct Request concerning Convention No. 97, Migration for Employment Convention (2002) International Labour Organisation <http://www.ilo.org/ilolex/english/newcountryframeE.htm> (at 6 August 2007).

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

has meant that their labour requirements for the season have been met.

The main purpose of the pilot is to provide a short-term solution to the labour shortages in these industries during the peak in the season. Immigration policy states the purpose of the scheme is to:

“allow for the grant of permits for employment of workers to plant, maintain, harvest, and pack crops in the horticulture and viticulture industries, in regions where an absolute shortage of labour in these industries has been identified by the Ministry of Social Development [immigration policy manual].”¹⁴¹

The pilot has facilitated the employment of over two thousand overseas workers on seasonal labour contracts to pick and pack crops in regions of declared labour shortages.¹⁴² In terms of specifics, as at 26 May 2006, 2,253 people had been approved under the pilot scheme. The top five nationalities are Brazil (553); Malaysia (317); Czech Republic (259); Israel (205) and Great Britain (107).¹⁴³ These figures show that the Pacific Islands did not largely feature in the scheme.

Under the pilot, the Department of Labour allocated four thousand permits, of which eight hundred were issued for the Hawkes Bay region. Peter MacKay, the national seasonal worker co-ordinator for Horticulture New Zealand gave the pilot scheme rave reviews.¹⁴⁴ He stated “For the first time in four years we have not had significant labour shortages which put our crops at risk”.¹⁴⁵ MacKay noted that the

¹⁴¹ Immigration New Zealand Operations Manual <http://www.immigration.govt.nz/migrant/general/generalinformation/operationsmanual/> (at 10 August 2006).

¹⁴² Angela Gregory “Transient Worker Scheme gets the Thumbs-up from Growers” *The New Zealand Herald* (New Zealand, 1 July 2006) http://www.nzherald.co.nz/author/print.cfm?a_id=61&objectid=10389227 (at 25 July 2006).

¹⁴³ Mark Williams “Unskilled Labour and Seasonal Work Permit Category” Paper presented to Lexis Nexis Professional Development Immigration Law, Auckland, New Zealand, 2006. p 4.

¹⁴⁴ Angela Gregory “Transient Worker Scheme gets the Thumbs-up from Growers” *The New Zealand Herald* (New Zealand, 1 July 2006) http://www.nzherald.co.nz/author/print.cfm?a_id=61&objectid=10389227 (at 25 July 2006).

¹⁴⁵ *Ibid.*

\$2.4 billion horticulture and viticulture industries had in the past suffered from lost production due to delayed picking or crop maintenance.¹⁴⁶ Further, David Cunliffe, the Immigration minister, says he has been pleased with the results, and stated that the pilot is “providing a responsive, fast and efficient process to help meet the immediate labour needs of one of our most vital industries”.¹⁴⁷ However, a problem experienced in the scheme was identifying exactly the areas that were short of labour, in terms of quantifying seasonal shortages. This was due to the fact that the unskilled positions were filled by both unlawful immigrants and “under the table labour”.¹⁴⁸

The Hawkes Bay horticulture and viticulture industries have been participating in the pilot, and have implemented some initiatives of their own. Hawkes Bay was seen to be one of the regions with the largest shortage of labour relative to demand, and the horticulture and viticulture industries there have been very receptive to the pilot scheme.¹⁴⁹ Hawkes Bay Fruitgrowers Association Executive officer Dianne Vesty said the ‘Pick NZ’ pilot initiated in Hawke’s Bay in 2005 was a huge success and it has provided a platform to make regular contact with workers.¹⁵⁰ An initiative taken by the Hawkes Bay Fruitgrowers Association is a website called Pick NZ which is used as a recruitment tool with a long term aim to create a New Zealand Harvest Trail of seasonal work where people can travel and work up to eight months of the year through New Zealand’s fruit and vegetable growing regions.¹⁵¹ The website links employees with employers, which hopefully results in long-term positions.¹⁵² A benefit of dealing directly with the employer is the opportunity to negotiate better employment

¹⁴⁶ Ibid.

¹⁴⁷ Hon David Cunliffe “Seasonal Work Permit Pilot extended to September” (Media Release, 24 March 2006) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=25268> (at 01 August 2006).

¹⁴⁸ Mark Williams “Unskilled Labour and Seasonal Work Permit Category” Paper presented to Lexis Nexis Professional Development Immigration Law, Auckland, New Zealand, 2006, p 4.

¹⁴⁹ Pick NZ “Pressure on to Find Seasonal Workers” (Media Release, 13 February 2006) <http://www.scoop.co.nz/stories/print.html?path=BU0602/S00124.html> (at 01 August 2006).

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

conditions and pay rates.¹⁵³

The pilot scheme appears to have been a quick fix to this season's labour shortages. While it may have been successful in alleviating gaps in the labour market, there has been no research into how the pilot has affected New Zealand's unemployed or how the risks of exploitation of migrant workers have been addressed. At the start of the pilot, the Associate Minister for Immigration, Clayton Cosgrove, stated that the aim of the seasonal labour strategy is to ensure that there is an emphasis on employing New Zealanders first and using immigration as a secondary option where there is a genuine shortage.¹⁵⁴ Indeed, David Cunliffe recently conveyed that the pilot had successfully ensured that "employment of New Zealanders has remained a top priority" throughout the scheme, but there is no evidence to show how this was done. The long-term needs of the horticulture industry need to be addressed, with the implementation of a medium-long-term seasonal labour strategy.¹⁵⁵ The concerns are about prioritising local labour, and using immigration as a backup, and the goal of a well managed and fully legal work force.¹⁵⁶ A group called the Horticulture and Viticulture Seasonal Labour Strategy Governance Group is developing a medium/long term strategy for seasonal labour and skill shortages.

2. Canada's Seasonal Agricultural Workers Program

Canada's Seasonal Agricultural Workers Program (CSAWP) has operated to bring temporary workers to Canada from the Caribbean since 1966 and from Mexico since 1974.¹⁵⁷ The scheme allows workers to enter Canada for seasonal labour for a period of up to eight months. Canada is dealing with migration on a much larger scale than New

¹⁵³ Ibid.

¹⁵⁴ (2005) 262 New Zealand Parliamentary Debates 17 November 2005 (Hon Clayton Cosgrove).

¹⁵⁵ Department of Labour "Horticulture/ Viticulture Seasonal Labour Strategy Launch" (Media Release, 8 December 2005) <http://www.dol.govt.nz/news/media/2005/horticulture-strategy.asp> (at 12 April 2006), p 5.

¹⁵⁶ Ibid.

¹⁵⁷ Nic Maclellan and Peter Mares "Labour Mobility in the Pacific: Creating Seasonal Work Programs in Australia" Paper presented to Globalisation, Governance and the Pacific Islands Conference, Australia National University, Canberra, 25-27 October 2005, p 4.

Zealand is considering for temporary labour schemes. For example, in 2002, the CSAWP brought nineteen thousand workers to into the country for an average of four months employment.¹⁵⁸

Similar to New Zealand's Approval in Principle Scheme, farmers using the CSAWP need approval from local employment centres to certify that no Canadian workers are available to fill the jobs they are offering to migrants. The reality of this practice is largely perfunctory when dealing with workers returning under the scheme, as workers are able to work for the same employer for subsequent years.¹⁵⁹ There are a number of safeguards under the CSAWP to regulate the treatment of migrant workers. The CSAWP allocates responsibility on the employer to provide migrant employees with free housing, and free meals or cooking facilities.¹⁶⁰ The working conditions are controlled by provisions guaranteeing workers forty hours of work per week over six weeks, at or above prevailing minimum wage rates.¹⁶¹ Additional to that, employers must take out workers' compensation insurance to cover the migrants in the case of industrial accidents, and must pay the costs of the migrants' international airfare, which can be partially recouped (to about 50 percent).¹⁶² Migrant workers are covered by Canada's universal health care system, which contribute towards through paying local taxes while they are working.¹⁶³

Research into the effectiveness of the CSAWP undertaken by the North South Institute in Canada found that the scheme has benefits on a number of levels.¹⁶⁴ One aspect where the Canadians have been successful is in the area of preventing overstaying. This seems to be a major concern for the New Zealand government in its consideration of a seasonal labour scheme. With the CSAWP, there have been very low rates of overstaying, due to the fact that workers are able to return to their homeland with the expectation that they will be re-engaged to

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*, p 15.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

work in Canada under CSAWP the following year.¹⁶⁵

The research by the North South Institute has also uncovered flaws in the CSAWP. There have been protests and strikes by workers, cases of abuse, exploitation, examples of sub-standard or overcrowded accommodation and industrial accidents, despite the safeguards provided under the scheme.¹⁶⁶ In fact, the United Food and Commercial Workers union in Canada describes the exploitation of migrant workers under CSAWP as “Canada’s shameful little secret”.¹⁶⁷

This shows the reality of any seasonal labour scheme, that there will always be cases where people exploit the situation. Perhaps if New Zealand were to implement a similar scheme to the CSAWP, substantial regulation and supervision would be required to ensure employers were fulfilling their obligations to the migrant employees. A recent report by the World Bank recommends that New Zealand set up a pilot programme for temporary workers akin to the CSAWP.¹⁶⁸ The successful aspects of this policy are worth consideration by New Zealand.

3. *Agricultores Solidarios* (Farmers for Solidarity)

The approach taken to seasonal labour in Spain is a development-based, reciprocal arrangement. The seasonal labour scheme is called *Agricultores Solidarios*, or the Farmers for Solidarity. This scheme was set up by The Farmers Union of Catalonia, the Livestock and Produce Farmers of Valencia and Farmers Union of Majorca.¹⁶⁹ The programme is designed to meet Spain’s need for additional seasonal labour while also encouraging “human, economic and social development in less

¹⁶⁵ *Ibid*, p 19.

¹⁶⁶ *Ibid*, p 15.

¹⁶⁷ *Ibid*.

¹⁶⁸ The World Bank *At Home and Away- Expanding Job Opportunities for Pacific Islanders Through Labour Mobility* (World Bank, 2006) <http://siteresources.worldbank.org/INTPACIFICISLANDS/Resources/Executive-Summary-Labour-Mobility-Report.pdf> (at 24 August 2006).

¹⁶⁹ Nic Maclellan and Peter Mares “Labour Mobility in the Pacific: Creating Seasonal Work Programs in Australia” Paper presented to Globalisation, Governance and the Pacific Islands Conference, Australia National University, Canberra, 25-27 October 2005, p 28.

favoured agrarian societies”.¹⁷⁰ Under the programme, seasonal migrant workers are recruited from Colombia, Morocco and Romania. There is a strong emphasis on training and on encouraging positive interaction between migrant workers and their host communities in Spain. Programme coordinator Maria Peix describes it as “a two way exchange that involves civil society”, with the temporary workers becoming “development agents that boost new processes led by themselves in their countries of origin.”¹⁷¹ In the New Zealand context, this relates back to the discussion on benefits for the Pacific Island countries from temporary migration. Pacific seasonal workers can be provided with training and a development of skills in New Zealand which can be passed on when they return. An agreement with an emphasis on development and a concern for the source country is vital to ensure everyone’s interests are best met. The Council of Trade Unions has recommended that some aspects of *Agricultores Solidarios* be considered in the New Zealand context as a useful example of good seasonal labour practice.¹⁷²

Conclusion

New Zealand needs a seasonal labour strategy. The Pacific Islands are eager to source temporary workers to New Zealand, and New Zealand has development and aid obligations to the Pacific. A temporary labour policy should be developed with the consultation and agreement of the Pacific Island Countries. In developing a seasonal labour policy, New Zealand must recognise the social implications to the Pacific Island Communities. Part of the policy should address these social impacts and work towards reducing them. Development should be a focus of the temporary migrant labour policy, including provisions for enterprise and business education to allow for long-term economic stability in the Pacific Islands. The risks of worker exploitation need to be addressed. Working conditions need to be improved, and more information provided to migrant workers notifying them of their rights. There needs to be increased accountability for rogue employers, and the agents

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² New Zealand Council of Trade Unions *Submission on the Immigration Act Review Discussion Paper* (June 2006), p 1.

responsible for illegal permit scams. New Zealand needs to comply with international law, through incorporating the United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, and the International Labour Organisation's Migrant Workers Convention into domestic law. A migrant labour scheme would be beneficial to both New Zealand and the source countries and is a progressive step towards the globalised future.