

INTERNATIONAL LABOUR ORGANIZATION

LABOUR GOVERNANCE AND MIGRATION PROJECT

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MID-TERM REVIEW

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TERMINOLOGY

Decent Work: ILO's core work: the non-discriminatory provision of fairly remunerated employment in safe and healthy working conditions and with recourse to fair dispute resolution, based on sound laws to international standards and dialogue between workers employers and governments.

Constituent Partners: The three ILO partners of workers, employers and governments.

Social Partners: The two civil society ILO partners: representative bodies of workers and employers.

Article 22 Report: A report under Article 22 of the ILO Constitution. It requires ILO Members to report on a regular basis to the International Labour Office on the measures which it has taken to give effect to the provisions of conventions to which it is a party.

Core convention: The eight ILO "core conventions" are: Forced Labour Convention (No.29), Freedom of Association and Protection of the Right to Organise Convention (No. 87), Right to Organise and Collective Bargaining Convention (No. 98), Equal Remuneration Convention (No.100), Abolition of Forced Labour Convention (No.105), Discrimination (Employment and Occupation Convention) (No. 111), Minimum Age Convention (No.138), Worst Forms of Child Labour Convention (No.182).

Governance convention: The four ILO "governance conventions" are: Labour Inspection Convention (No.81), Labour Inspection (Agriculture) Convention (No.129), Tripartite Consultation (International Labour Standards) Convention (No. 144), Employment Policy Convention (No.122

ABBREVIATIONS

ACCI: Australian Chamber of Commerce and Industry

ACTU: Australian Council of Trade Unions

AusAID: Australian Agency for International Development

DEEWR: Department of Education Employment and Workplace Relations

DWCP: Decent Work Country Programme

LGMP: Labour Governance and Migration Project

OSH: Occupational Safety and Health

NZCTU: New Zealand Council of Trade Unions

PICs: Pacific Island Countries

PNG: Papua New Guinea

ROAP: ILO Regional office for Asia and the Pacific (based in Bangkok)

TREE: Training for Rural Economic Empowerment

UNDAF: United Nations Development Assistance Framework

EXECUTIVE SUMMARY

Project Summary

The Immediate Objectives of the Labour Governance and Migration Project (LGMP) are to:

1. Strengthen the capacity of governments to ratify and implement the ILO's core and governance conventions and to fulfil their reporting obligations (Kiribati, Papua New Guinea (PNG), and Samoa Vanuatu)
2. Revise labour laws give effect to core and ratified International Labour Standards (Kiribati, PNG, Samoa and Vanuatu)
3. Build the capacity of tripartite constituents to enable effective participatory labour law making (Kiribati, PNG, Samoa and Vanuatu)
4. Improve the capacity of governments, unions, businesses and local communities to provide returned migrant workers with effective re-integration services, based on identified needs (Kiribati, PNG, Samoa, Tuvalu and Vanuatu).

Relevance and Strategic fit

- The intent of the LGMP clearly meets a number of objectives shared by the PIC national governments, the Australian Government (together, in many instances, with the New Zealand Government) and the ILO, namely the improvement of income levels for the peoples of the Pacific and the skills and institutions to support that improvement.
- The project is consistent with law reform objectives identified in each participating country's Decent Work Country Programme (DWCP), although over time, labour law reform objectives have been changing and growing. The project also contributes to wider goals in the Pacific region under the United Nations Development Assistance Framework (UNDAF) and the specific UNDAF for PNG.
- The continued economic development of the PICs, the increased participation of multinational companies and the greater harvesting of marine resources, have created a need for greater clarity of workers' rights to what ILO defines as Decent Work, which includes fair wage levels in safe and appropriately inclusive working conditions. An essential component of this is the development of viable organizations to represent both employers and workers in effective tripartite dialogue with the labour administrations of national governments.
- The ILO is committed to assisting the PICs both to commit, through ratification, to the international labour conventions, and to develop sustainable national capacity to meet those commitments. This project has brought together resources and a shared resolve to begin to address the challenges in a realistic way.

Validity of Design

- The unique characteristics of the PICs presented particular challenges to this project.
- While the core direction of the project design is valid, there were several weaknesses in its detail, which created significant stresses on the project:
 1. A set of objectives which envisaged developing capacity in four countries to ratify, implement and report on all of the ILO's core and governance conventions as a package. This assumed incorrectly a state of sufficient readiness and motivation (and "capacity to receive capacity") on the part of the project countries. This relates specifically to readiness to ratify the ILO's governance conventions.¹ However, there is general readiness with respect to *implementing* the principles described in governance conventions relating to labour inspection and tripartite consultation through labour law reform. With respect to Convention 122 on Employment Policy, while improved application of this standard is critically necessary in all project countries, the capacity and time resources necessary for such reforms were not available in countries other than PNG at the commencement of the Project. At project commencement, PNG had already ratified Convention 122 and was ready for technical assistance to improve its application.
 2. The downsizing of another project concept note relating to migration that was subsequently incorporated (at a late stage) into the concept note for the LGMP (with needs for very different staff skill-sets and partnerships). This had implications for the resourcing of the package of work as a whole.
 3. The limited testing of the project design before commencement of the project. While it was reasonable to rely on the priorities outlined in each country's DWCP (further affirmed in the Pacific Action Plan for Decent Work), more testing was needed to identify any changed priorities and particularly the level of emphasis in each project country.
 4. More preparation of the national partners before commencing the project was needed.
 5. The underlying design weakness has been a lack in aligning the dynamic of the project to the felt and developing needs and priorities of the project countries and their labour market constituents. These are very small countries dealing with some very large issues including: finding the right mix of traditional cultures and contemporary work and life skills to deal with poverty, as well as global warming, and their own effective governance structures. There is only so much attention span and motivation to achieve changes and it is therefore more important to start with what local people see as concerns rather than reaching the ideal state of full compliance with international conventions².

¹ All project countries have ratified the eight ILO core conventions, with the exception of Vanuatu (which has ratified seven of the eight conventions). No countries have ratified the ILO's governance conventions (i.e. labour inspection conventions, Tripartite Consultation Convention and Employment Policy Convention). This is with the exception of Papua New Guinea which has ratified the Employment Policy Convention.

² These underpin the modern human rights of effective workplaces and economies, but did not appear all at once; evolving as particular problems were confronted and international best practice was developed.

6. Rather than a project design implementing a “one-size-fits-all” approach to ratification of governance conventions and other reform activities, the project needed to, and in future should, tailor itself to start “where constituents are at”. Despite this design limitation, the project did in fact modify its activities in each country to reflect what consultations with the tripartite partners showed were the specific priorities for labour market governance in each country.

The project is consistent with law reform objectives identified in each participating country’s DWCP, although over time, labour law reform objectives have been changing and growing. Growth in labour law reform priorities appears to have been a positive result of increased government capacity with respect to awareness of labour and employment policy issues and increased trust and confidence in project staff. While there is a commitment to labour law reform in each project country, new issues are emerging. Issues that currently appear to be most on people’s minds are those relating to employment in the fishing industry, participation in the migrant labour programmes of Australia and New Zealand, occupational safety and health (OSH) and ensuring the rights of workers to fair working conditions in industries where multinational companies are engaged in the Pacific: marine exploitation, forestry and minerals.

Gender Responsiveness

- Labour law assessments carried out by the project included specific gender analysis which was discussed in detail with tripartite constituents in each project country, including issues such as maternity protection, discrimination, sexual harassment as well as equal remuneration principles.
- A number of labour law issues affecting women (e.g. their colonial “protection” from some kinds of employment, and payment for maternity leave) were identified from the outset but touched on areas of national policy and local culture that needed a longer local process of information, awareness and discussion which the project staff successfully initiated.

Project Progress and Effectiveness

- The project has achieved significant milestones delivering reform and practice changes in project countries as set out in the box below.

1. Gender responsive legislative assessments have been completed in each project country identifying gaps in application of fundamental, governance and Pacific-relevant Conventions.
2. Expert mentoring has been provided by Australian and New Zealand employers and unions building the capacity of social partners to be active in participatory labour law reform and effectively advocate their positions.
3. Technical assistance has been provided to establish tripartite consultation institutions by law. This has included new legislation passed in Vanuatu to establish a Tripartite Labour Advisory Council and proposed legislation to be considered by Cabinet in Kiribati. It has also resulted in the establishment of a competent working committee with tripartite and wider stakeholder representation to drive labour law reform process in PNG.

4. In Vanuatu, final policy proposals to ratify Conventions 138 and 144 are currently before the Minister for Internal Affairs awaiting final approval.

5. A study tour of Australian industrial institutions by a PNG tripartite delegation was co-ordinated by the ILO in order to build capacity to prepare the technical documentation needed to support enactment of the Industrial Relations Bill.

6. All eight of Samoa's first Article 22 reports and Vanuatu's first two Article 22 reports were delivered to Geneva.

7. A review of seasonal migration literature, and engagement meetings and reports in five project countries identified country priorities with respect to piloting reintegration services.

8. Considerable print, radio and television coverage of project activities with clear acknowledgement of Australian government support raised the visibility of the ILO-Australia Agreement and its decent work objectives.

- The project has done particularly well in the circumstances to achieve progress in its core direction to update labour law and build social dialogue. However some indicators will not be reached and some outputs not fully achieved mainly because of the limited time scale, compounded by complex political processes particularly national elections in three of the project countries³.
- The project has been cognizant of these changes and their implications and work has been done to encourage succession planning for example in Vanuatu, (though longer term rather than ad hoc strategies need to be put in place). In Vanuatu particularly, the presence of a trusted ILO national officer maintained a wide range of contacts and therefore assisted the project to maintain its momentum; this underscores the need for a national officer in each country to maximize ILO's effectiveness in this and other projects.
- The project has been particularly successfully in appraising the gaps in existing legislation, producing intelligible presentations and facilitating useful discussions among constituents. These served the purposes of: 1) bringing key stakeholders up to speed and in some cases introducing them, effectively for the first time, to the policy issues behind comprehensive labour law and labour market governance, 2) giving them handbooks, summaries and power point presentations as reference material for further work on development of policy and law, and 3) allowing the constituents to have practical experience of tripartite dialogue including having the constituent groups meet separately to clarify their respective interests and agendas before engaging in larger dialogue meetings.
- The project has been reasonably successful in advancing its migration, including the important preliminary step of a review of current literature and engagement visits and reports in five countries to identify target interventions needed for effective re-integration services for migrants returning home under Australia's Pacific Seasonal Worker Pilot Scheme and New Zealand's Recognised Seasonal Employer Scheme.

³ This latter is a recurring problem in countries where governments change frequently and where successful social partner leaders are likely to seek political careers.

- It is also uncertain that all intended legislation is likely to be in place by project completion date (which is not a responsibility of the project but of the national governments). However the draft legislation is well advanced in some countries (notably Vanuatu and to a lesser extent Samoa) and work to develop capacity to meet convention reporting requirements is reasonably well advanced from the very different starting points of each country. It is likely that Conventions 144 and 138 will be ratified in Vanuatu.
- One feature of the programme has been the publicity and communications strategy for the project. This combines the needs of both the Australian Government and the ILO that their inputs to local development are identified with the respective donor and implementation agencies by those who benefit from them. ILO refers to this as “visibility” and AusAID as “advocacy”. The project has undertaken a range of visibility activities that are described on page 22 of this report, in addition to ensuring AusAID counterparts in each project country continue to be well informed about the project. The co-operation between the ILO communications officer in Bangkok and his counterparts in Canberra is reported as excellent: the focus has been to ensure that interested experts and agencies in the development field, as well as ILO and AusAID personnel, have access to the lessons learned from this project.

Resource Efficiency and Use

- The human resource strengths of the project were at the higher end of quality but of insufficient quantity for the tasks in hand. The three persons who formed the team the manager, the legal expert and (until October 2011) the Vanuatu national officer backed up by the administration staff in Suva and working with leadership in the constituent partners, combined the necessary range of management, legal, and communication skills, though not the migration skill set, to advance the project within its ambitious time frame. They had backstopping support from ILO Bangkok and Geneva, and developed good working relationships with AusAID personnel in each country.
- A mentoring programme that has drawn on expertise from Australia (Trade Unions) and New Zealand (Employers and Trade Unions) is a valuable component of the project. Manuals and power point presentations can only go so far particularly in countries, which have a predominantly oral culture; local people can be helped to respond to the challenges of their economic and political environments by discussing strategy and tactics with experienced and sympathetic fellow unionists or businessmen and women. A further appropriate medium, which should be given greater use is locally produced and enacted videos building on local cultural traditions of story-telling.
- Administration of finances was carried out according to ILO standards. It is recognized that travel costs are expensive in the Pacific because of irregular flight connections and the need for further days of accommodation. The project’s financial management was efficient and within budget.

Management Arrangements

- The project can be judged as managed to a high degree of effectiveness. In particular, the project team under the leadership of the project manager brought international standards of administration but was flexible to respond to local cultural priorities and needs. The project also benefited significantly from the technical expertise of the Decent Work Specialist in the Suva Office and the particular experience of the Director of the Suva Country Office who has an extensive background in Technical Co-operation projects as well as considerable project oversight capabilities.
- There were clearly management capacity and delivery limitations on the side of the local partners caused by political events, staffing and capacity issues, the structuring of labour responsibilities within some government departments and the institutionally underdeveloped state of the social partners, particularly the trade unions. These were matters that the project and other interventions were there to help address.
- There were some management limitations in the preparation of the local stakeholders and direct beneficiaries to receive and co-operate with the project. This seems to have followed from staffing difficulties at the Suva office of the ILO where the Director's position had been vacant for two years being filled by acting officers, and not unimportantly an absence of over five years of having a legal expert on ILO staff (reliance having been made on a series of visiting consultants whose stop-start inputs had sometimes eroded credibility in the ILO).
- In the case of this project, considerable reliance was placed on the fact that because the individual PICs had signed up to the Port Vila Declaration, itself based on previous DCWP processes a clear invitation for and readiness to work with the ILO on this project was in place. (Also, while labour law reform had progressed in each country, the degree of acceptance of the ILO's role in this process through the project needed to be better tested with constituents in one of the countries.) In retrospect, and despite definite progress in labour law reform, this was an over optimistic assumption and the ILO Suva Office should have taken more preparatory steps to maintain awareness and commitment to the project.
- The essentials of the ILO management system served the project well. The project staff combined management and legal technical expertise to a high order and showed both the value of the ILO's recruitment process and the commitment and work ethic of the staff themselves. In budgeting for both the legal expert and the Vanuatu national officer the ILO showed resourcefulness and flexibility although intensive work was required, even if as in the case of the Vanuatu national officer it led to an overload of expectation. The backstopping provided by the regional and HQ experts means that one or two project staff can have access to a unique international human capital and global experience in all matters of labour law and policy and adapt it to local circumstances. This demonstrates that added value of having a project of this nature located in the ILO.

As this is a component project of the Australia-ILO Partnership co-operation with local offices of AusAID is important. The project management took the initiative to brief Australian government staff in advance of, and during each mission, and this was appreciated. AusAID Canberra noted that field posts had indicated a lack of communication though this did not cross check generally with the feedback to the Review from AusAID field personnel.

Impact orientation and sustainability

- The project is likely to succeed in delivering labour law reform outcomes and pilot activities relating to migration. However, an 18-month timeframe for meeting all of the project's labour law reform objectives is unrealistic for this type of work in PICs.
- In the Pacific there is growing interest from both non-ILO member States and existing ILO member States that are not currently covered by the project, for assistance with labour law reform. There have been specific requests for assistance from Palau, Tonga and Cook Islands (all non-member countries) as well as the Solomon Islands (an existing member).
- There is significant interest in the ratification and implementation of Maritime Labour Convention across project countries and other PIC member countries, as well as a growing interest in it among non-member countries.
- Capacity to report on ratified Conventions has been built in all project countries. Due, however, to the high number of outstanding reports for certain project countries at the commencement of the project, support beyond June 2012 will be required to clear the backlog and establish efficient reporting systems.
- There is also increasing interest in the ILO taking a wider role with respect to migration activities relating to the Pacific Seasonal Worker Pilot Scheme beyond the current project scope, to include further activities working closely with AusAID.
- As the project has progressed, other requests for assistance have been received by the Suva Office, particularly with respect to OSH and labour inspection. Kiribati has sought assistance to finalize draft OSH legislation. PNG has sought assistance with practice and organisational issues in the efficient implementation of OSH and labour inspection. Samoa has sought assistance to review existing OSH legislation against ILO standards and reviewing other draft regulations. Vanuatu has prioritised new OSH and workers' compensation legislation as its next labour law reform.
- Tripartite constituents in each project country have varying levels of capacity to continue labour law reform activities should the project finish at the end of June. Overall, there is some risk that labour law reform would not be completed without technical input from the ILO. Certainly this has been the case in the past in project countries where technical support to labour law reform has only been provided on a short term basis.
- While now established in all project countries, tripartite institutions will require support well beyond June 2012 in order to ensure their sustainability. The process of participatory labour law reform has provided momentum to new tripartite bodies but further institutional development and training are needed to ensure effective and on-going social dialogue.

RECOMMENDATIONS

- The LGMP should be extended to a more realistic time span in terms of the tasks in hand, preferably to the end of the current Australia – ILO Partnership Programme 2010-2015.
- In particular the project should continue to focus on assisting each of the constituent partners to progress labour law reforms, to implement labour legislation after it is passed, and to consolidate understanding and reporting on the conventions after they are ratified.
- The sequencing of the project's support strategies should be based on the felt priorities of the project countries, such as Occupational Health and Safety, the Maritime Convention, dispute resolution and employment termination in local businesses and collective bargaining with multi-national companies. Capacity building for the constituent partners should therefore be around the issues that most motivate them to build long term capacity.
- To this end, the monitoring programme between the employers' and workers' organizations in Australia and New Zealand should be consolidated and extended.
- In addition to continuing current project activities over the longer term, there is clearly significant momentum to broaden the project to respond to increasing requests for technical assistance from other PICs in the region for labour law reform assistance and project concept notes should be developed accordingly.
- The migration project should be a discrete project, with separate responsible staff and budget but managed in close connection with the LGMP to achieve economies of scale and synergy. A migration concept note should be discussed with all stakeholders and should aim to build on what has been learnt and address gaps in existing services in areas which the ILO has the specific experience to address.
- The advocacy component should be extended to include support for advocacy in the proper sense: namely assisting the government and the civil society partners (trade unions and employers) to enhance their role in public education of the needs and rights of business and labour, promotion of appropriate public policy and internal communication to their own members. The advocacy component should include background education and issue packages for journalists and media outlets in the PICs.
- Since many of the Pacific Island societies have a high preponderance of oral over literate communication resources for education about labour and employment issues using locally made video presentations and local cultural patterns of storytelling.
- The ILO should review its approach to "demand-driven" project design: building capacity in convention ratification in a sequenced way around the priorities of recipient countries.
- Because of the unique challenges of the Pacific countries including the high costs in time and expenses for travel, regional ILO specialist staff faces greater challenges to visit, understand and support ILO member countries in the region. This underlines the importance of adequate local staffing by ILO particularly with the need for in-country officers that should not be funded on a project basis but from the regular budget and its supplements.

1. THE PROJECT

1.1 BACKGROUND

The Labour Governance and Migration Project (LGMP) is a group of projects under the *Australia-ILO Partnership Agreement (2010-2015)*, which gives expression to the commitment of the Australian Government and the International Labour Organization to the ILO Decent Work Agenda, whose rationale is: “productive employment at fair wages is the most effective means of lifting the poor out of poverty”.

This agenda was applied to the context of PICs in the Port Vila Statement on Decent Work and the Pacific Action Plan for Decent Work and is expressed under this project in five countries: Kiribati, PNG, Samoa, Tuvalu⁴ and Vanuatu, combining the Australian Government’s experience and commitment to economic development of the PICs with the ILO’s expertise in the international standards of labour market governance and the provision of decent work.

The project is currently staffed by two Labour Law Experts and an Administrator based in the ILO’s Suva Office.⁵ The project operates on a total budget of approximate \$1 million AUD. The bulk of project outputs are the responsibility of the two labour lawyers and administrator (with additional inputs and expertise from the Decent Work Specialist and technical back-stoppers and other experts in the ILO in discrete areas of the project) with oversight from the Director of the Suva Office.

The Immediate Objectives of the Project are:

- 1. Strengthened Capacity of governments to ratify and implement core and governance conventions and to fulfil their reporting obligations** (Kiribati, PNG, and Samoa Vanuatu)
- 2. Revised labour laws give effect to core and ratified International Labour Standards** (Kiribati, PNG, Samoa and Vanuatu)
- 3. Capacity of tripartite constituents and mechanisms is built to enable effective participatory labour law making** (Kiribati, PNG, Samoa and Vanuatu)
- 4. Improved capacity of governments, unions, businesses and local communities is built to provide returned migrant workers with needs-based reintegration services** (Kiribati, PNG, Samoa, Tuvalu and Vanuatu)⁶.

The relationship between the LGMP and the priorities outlined in each country’s DWCPs is outlined in more detail in appendix 3

⁴ Only one component, that of migration, applies to Tuvalu

⁵ The project has a vacancy for a National Officer that will not be filled at this stage due to the limited time remaining for the project through to June. The project team was fully resourced with all of these staff for 8 months from March to October 2011.

⁶ Immediate Objective 4 was reduced in scope since the original concept note to avoid duplication of other migration work in the region. It is restricted to migrants returning from the Australian Pacific Season Workers Pilot Scheme and the New Zealand Recognized Seasonal Employer Scheme with respect to the provision of reintegration services. It is the only objective in which Tuvalu is involved. Progress in these activities has been slower and the review was limited here to design and planning issues, and not to implementation.

1.2 LABOUR GOVERNANCE COMPONENT

1.2.1 Objectives

The first three immediate objectives of the labour governance component of this project relate to Samoa, Vanuatu, Kiribati and PNG and focus specifically on:

- Building capacity in the four project countries to ratify and implement the ILO's eight core⁷ and four governance conventions⁸ and fulfil their reporting obligations;
- International Labour Standards will be given effect through the revision of existing labour laws
- Capacity building of the tripartite constituents to enable effective participatory labour law making.

The circumstances of each country are different (different existing laws, priorities in conventions to be ratified, labour governance capacity in governments and levels of development in employer and worker organizations) but the priority of all project countries has been the reform of core labour legislation as set out in their DWCPs.

At the commencement of the project, Vanuatu and Samoa had draft labour Bills that both had been stalled for some time. PNG had one labour bill ready for introduction into Parliament but lacking necessary technical documentation to support this. PNG also sought a review of existing companion legislation (the Employment Act) to be undertaken. Together this legislation would become a package of reform. Kiribati had no labour Bills, but sought ILO technical expertise to review a range of existing labour legislation, some dating back to colonial times.

At the outset of this project, Samoa, Kiribati and PNG had ratified all eight of the ILO's core Conventions, and Vanuatu had ratified seven of these conventions (with Convention 138 outstanding). No project countries had ratified any of the governance conventions (i.e. the conventions relating to Employment Policy, Labour Inspection and Tripartite Consultation) except PNG (which had ratified ILO Convention 122 on Employment Policy).

1.2.2 Strategy

While responding to each country's individual situation, the project's strategic approach across the project was a sequence of activities focussed on promoting the principles of tripartite dialogue as the centrepiece of labour law making. The project team's view was that strong tripartite labour law reform processes are more likely to secure genuine participation and engagement across government, workers and employers and deliver high quality and fully tested legislation and this was carried out through the following stages:

⁷ The eight ILO "core conventions" are: Forced Labour Convention (No.29), Freedom of Association and Protection of the Right to Organise Convention (No. 87), Right to Organise and Collective Bargaining Convention (No. 98), Equal Remuneration Convention (No.100), Abolition of Forced Labour Convention (No.105), Discrimination (Employment and Occupation Convention) (No. 111), Minimum Age Convention (No.138), Worst Forms of Child Labour Convention (No.182).

⁸ The four ILO "governance conventions" are: Labour Inspection Convention (No.81), Labour Inspection (Agriculture) Convention (No.129), Tripartite Consultation (International Labour Standards) Convention (No. 144), Employment Policy Convention (No.122).

- A series of detailed gap analyses, including a gender analysis, of existing and draft laws in that country, as against the requirements of ratified ILO Conventions, other key Conventions and contemporary developments in labour law.
- Presentation of these analyses in each country to workshops of all three constituents. This incorporated break-out sessions of individual worker and employer representatives to meet with mentors from Australian and New Zealand trade unions and employer organisations⁹. These sessions provided practical support for the workers and employers to develop their respective policy positions on labour law reform, prepare position papers and share these with the wider group and provided a forum for workers and employers to learn and practice a more participatory approach to labour law making.
- Development of plans, through these workshops, to move forward each country's priorities in ratification of conventions, labour law reform and labour policy. The aim was where possible the plans should be carried forward by each country's tripartite labour council with ILO. At each step, endorsement was sought from the government and responsible tripartite body.
- Preparation of technical notes for drafting the required labour legislation, and working with the relevant officers in the labour ministries (and any other ministry with responsibility for drafting the law). This has generally involved providing technical inputs into Cabinet papers on law reform issues prepared for consideration by Ministers. In Vanuatu it has also involved drafting significant revisions to the existing Employment Relations Bill, in accordance with the agreed outcomes of tripartite consultations. In addition, and as appropriate the project is required to refer final legislative assessments (i.e. draft legislation) to experts in Geneva for final technical review, which provides an important final review process and ultimate link to ILO global resources for the final legislative product.
- Delivery of training to government officials on their country's responsibilities under ratified conventions. Where this reporting had not taken place or it was clear that there was lack of capacity in how to report adequately, the training was supported by practical working sessions with staff and "help desk" follow-up.

1.3 MIGRATION COMPONENT

This component was originally a separate project expressed in a separate concept note. The donor reduced the priority and funding for this issue and requested it be added as a fourth component to the LGMP concept note at a late stage. One reason recorded by the project at the time was that it would duplicate existing preparatory work done for migrants to Australia and New Zealand under the seasonal migrant labour schemes that have been developed in the last four years. Subsequently the objective was refocused on one dimension: seasonal migration.

The immediate objective under this component of the project is to "build the capacity of governments, unions, businesses and local communities to provide returned migrant workers with needs-based reintegration services in Kiribati, PNG, Samoa, Tuvalu and Vanuatu". The focus of this work specifically relates to Australia's Pacific Seasonal Worker Pilot Scheme and New Zealand's Recognised Seasonal Employer Scheme. The focus of this component is on reintegration services

⁹ The mentors were provided by Business New Zealand, the Australian Council of Trade Unions (ACTU) and the New Zealand Council of Trade Unions (NZCTU). The Australian Chamber of Commerce and Industry (ACCI) expressed its commitment to the mentoring programme but through difficulties beyond its control their nominated mentors could not visit PNG at the relevant time.

that support building economic livelihoods, income generation, skills and employment prospects. The primary deliverable is to identify and develop a targeted reintegration service (based on identified needs) in one or more project countries – that can be carried forward by constituents in the project country concerned.

At the commencement of the project, the project team identified that little was known about reintegration services in the region (although it was known to be a gap). The project strategy was to one of action research, namely to focus on information gathering and needs identification with each project country before any further interventions were identified. Therefore work focused on:

- A literature review of existing information about reintegration services in PICs, completed in August 2011.
- Five country engagements with officials in Kiribati, Samoa, Vanuatu, PNG and Tuvalu. This comprised the development of five country engagement papers and sharing the outcomes of the literature review with officials at meetings during missions as a starter for initial discussions. Further information gathering about the extent of reintegration services in each country and future scope of reintegration services was explored in country discussions.
- As a result of this preparatory work, targeted interventions would be undertaken based on identified needs. It is clear that ILO has resources it can make available, notably Start and Improve Your Business training (favoured by Kiribati and PNG) and the Training for Rural Economic Empowerment (TREE) programme (favoured by Vanuatu). Tuvalu has not made reintegration services a priority. However because this component has been given a lower priority than labour law reform and a lower priority in resource provision no further activities are planned to start before June 2012 with the exception of Vanuatu where the TREE methodology is likely to be trialled.

2. THE REVIEW

2.1 PURPOSE

The terms of reference for the review are set out in Appendix 4. The aim of the review was to:

- A. Assess the project's strategy and implementation against the likelihood of it achieving its results
- B. Recommend:
 - B. 1. Whether changes are needed to the project's strategy, outputs and activities;
 - B. 2. Whether the project should be scaled up and /or extended beyond June 2012.

2.2 SCOPE

The Review is a mid-term review. The Project itself has a limited time span (of 18 months instead of 24 months), started later than the originally intended starting date (July 2010), and has already (with agreement from the donor) made adjustments notably replacing the sub-regional workshop (to report on initial assessments of law changes needed) by individual country workshops. The review therefore does not discuss issues of impact and sustainability (properly the scope of a final review but rather focussed on areas that will help determine if the project is on track to being effective in its objectives and, if not, what steps should be taken to improve the project's ability to achieve those objectives. The review has therefore assessed the project in four areas.

2.3 AREAS

A) Project design, strategy and resources: whether these are still valid (in terms of alignment with national development plans, the Pacific Action Plan and the DWCPs) and if there are new factors at play which will require adjustments?

B) Law and policy accomplishment: to what extent, given current progress of the project, it is likely to contribute to the needed changes in laws and policies.

C) Managing for results: a) whether the project had an adequate M&E system and capacity to monitor progress towards the project outcomes, and b) to what extent the project was able to adapt to challenges, opportunities and risks, and c) what the contributing factors were?

D) Constituent and partner capacity: to what extent has the project's work to address labour governance issues increased capacity in the tripartite constituents and partner organisations to participate in labour law reform processes?

2.4 METHODOLOGY

With limited time and funds for the review (in recognition that it is a mid-term not a final review), face to face interviews were carried out only with ILO staff present in Suva. At-distance interviews were carried out with Government, Trade Union and Employer representatives in the five project countries, contributing partners among the Employers and Workers Organizations in New Zealand and Australia and ILO experts (at ILO HQ Geneva and the ILO Regional Office for Asia and the Pacific in Bangkok). These were done by Skype, phone, and email; several from Suva and the rest from the consultant's home base in Sydney. While information and views were gathered on a few core issues in all interviews such as the interviewees' perceptions of the benefits of the project so far and suggestions for improvement, the process was largely unstructured to allow interviewees to raise issues of significance to them. The review was evidence-based, as far as possible cross-checking different sources of data, while ensuring that interviewees were offered confidentiality to encourage frank expression of opinion.

2.5 LIMITATIONS

The limitation of funds required interviews outside of Suva to be carried out at distance. All key stakeholders were invited to contribute to the review, most of them several times and by email and phone. However telephone connections in some cases were too not strong for an intelligible interview; some of the key staff in project countries were unavailable for interview through lack of time, or by a decision not to participate. Some trade union and employer representatives were involved in political processes in their own countries. Other factors that may have acted as disincentives to participate included: lack of language skills, unfamiliarity with the evaluation process and greater familiarity in the Pacific with person-to-person direct meetings to build trust and the basis for frank discussion. The Project office went to some lengths to set up appointments using its programme administrator and sending out a briefing note. In retrospect, understanding of the role and independence of the Review by potential interviewees would have been enhanced by a letter on ILO letterhead over the signature of the Director or Deputy Director addressed to the most senior level of the national constituents. Guidance in such matters is the responsibility of the regional office

and support for such reviews should be reviewed at that level, especially where a sub-regional or country office goes through a period of reduced staffing.

Greater contact with trade unions¹⁰ and Ministry officials in some countries would have been desirable to assess better their perception of project benefits. Considerable thanks are due to the interviewees and to ILO and project staff for facilitating contact with them in difficult circumstances.

3. FINDINGS

3.1 RELEVANCE AND STRATEGIC FIT

The project is predicated on the need to help the Pacific region to achieve “balanced economic social and political development through protecting labour rights and developing a favourable environment for private sector development, employment generation and income-earning opportunities particularly for youth”¹¹. This need is to be met through:

- a. Modernizing the legal infrastructure around employment in the Pacific Countries by assisting countries to complete ratification of, implement, and build capacity to report accurately on: the eight core Conventions on freedom of association, collective bargaining, forced/compulsory labour, child labour and non-discrimination¹².
- b. Building social dialogue capacity in the tripartite partners (government, employers and unions) to contribute to the new legislation and then to operate under it. A key element here was mentoring from New Zealand and Australian unions and employers.

It was clear that all project countries saw the relevance of addressing labour law reform and it directly addressed the priorities of the DWCPs of Kiribati (December 2009), PNG (November 2008), Samoa (April 2009) and Vanuatu (February 2010) .

The project envisaged developing capacity in four countries to ratify, implement and report on all of the ILO’s core and governance conventions as a package. This assumed incorrectly a state of sufficient readiness and motivation (and “capacity to receive capacity”) on the part of the project countries. While all countries have ratified the eight core ILO Conventions (with the exception of Vanuatu with respect to Convention 138), this is not the case with respect to the governance conventions. No project country has ratified any of the ILO’s governance conventions other than PNG which has ratified Convention 122 on Employment Policy.

The readiness of project countries to ratify governance conventions is mixed. Not all saw the relevance of ratifying these conventions or did not see they had the capacity to address all of them as priorities¹³. There is potentially also some reluctance to undertake further ratifications given the already heavy reporting burden perceived by some countries. Kiribati and Samoa currently do not prioritize the ratification of governance conventions. PNG and Vanuatu have prioritized C122 (PNG) C144 (Vanuatu) as well as a core convention 138.

¹⁰ Feedback from Australian and New Zealand mentors was that there was a high level of perceived benefit on the part of PIC unions.

¹¹ Project Concept Note p3

¹² C87, C98, C29, C105, C138, C182, C100, C111.

¹³ Refer Kiribati’s prioritization of the Maritime Convention and C.188 over others 2nd Technical Cooperation Progress Report p3 para2

However, when it came to undertaking labour law reform activities to *better implement* governance conventions particularly with respect to labour inspection and tripartite consultation; there is a clearer commitment from project countries. This is evident in the priorities for labour law reform that are being identified in project countries, which all seek to improve labour inspection regimes and tripartite mechanisms, as set out in the relevant governance conventions on these issues.

Because of the very limited structures and capacity in place in the target countries, the project realized it needed to prioritise both labour law reform and tripartite structures to create the machinery needed to effect the discussion on labour law reform, ratification and implementation of the conventions. The project team strategy was to build strong tripartite labour law reform processes as more likely to secure genuine, sustainable participation and engagement across government, workers and employers and deliver high quality and fully tested legislation.

At an early stage it was realized that the migration component had not been sufficiently analysed: the connection with the labour governance agenda was too tenuous and there were other programmes in place for pre-migration services the gap being predominantly in post migration services. The project design was amended accordingly.

The overarching Australia-ILO Partnership Programme (2010-2015), of which this project is an important component, expresses the alignment of both ILO and Australian Government Agendas in meeting at once the needs of sound employment policy, law, and tripartite structures to advance income-earning and national governance capacity for the peoples of the South Pacific¹⁴. It is also relevant to other AusAID country plans¹⁵.

Australian and New Zealand tripartite partners also see the importance of improving labour governance in the Pacific to increase worker's productivity, to remove barriers to business and to make capacity development inputs for collective bargaining, to protect workers as, among other factors, multinational companies move in to recruit Island labour¹⁶.

3.2 DESIGN

There were four main problems with the design: 1) lack of pre-project assessment, 2) lack of a project document, 3) reduction of the time frame without sufficient corresponding adjustment to the outputs, particularly in the development of labour law, and 4) despite the opposite intentions, following a provider-driven rather than a beneficiary-driven model.

Approval for the Project was based on a project concept note. While this is standard practice for a project under one million dollars where the donor does not request a project document, the project staff began a complex work programme without a project document, log-frame, output-based work plan or budget. These were worked on in the early stages and retrofitted into the concept note. This meant there was lack of early validation of the design against the realities on the ground and, as these became apparent, adjustments were needed, for example the sub-regional conference to

¹⁴ Refer Shared Object 1 To work together to advance the decent work agenda and Objective 2 To work together to assist developing countries in the Asia Pacific region achieve full and productive employment decent work and gender equity to advance the Millennium Development Goals; and in particular Project Theme 2 Labour Market Governance and 6 Labour Migration Governance (PARDEV Minute sheet 13 July 2010 p 4, 5 8 11-120).

¹⁵ E.g.: Kiribati workforce programmes bringing technical training in Kiribati up to Australian standards to assist migration mobility

¹⁶ Review interviews

present gap analyses was replaced (with the approval of the donor) by individual country conferences, a more economical and effective step.

The approach of working to ratify all the remaining governance conventions (and in the case of Vanuatu a core convention) was unrealistic, given the underlying capacity levels of the individual countries, particularly Kiribati, and the reduction of the timeframe from 24 to 18 months. This latter appears to have been due to delays in provision of resources from the donor and the felt need by the ILO to fit the project into the timeframes of the pre-existing DWCPs.

According to ILO policy, the approach of ratification should follow a demand-driven model, the need for which, the project staff also saw at an early stage. But they were constrained by the need to reform labour law without the time to develop a proper policy process -- which in any event is needed to build ownership of law reform, but particularly so in the Pacific where “the Pacific Way” can require quite lengthy times for debate and understanding.

Since 2008 ILO has been aiming to have the “eight plus four” covenants ratified in all member countries by 2015 but, in the South Pacific project countries, the capacity of constituent partners to create the legal, policy and tripartite framework to underpin the implementation of the conventions was severely constrained. The Pacific Islands Countries have to go through a process of building the basics and pacing law reform to their own perceptions of need and priority¹⁷: otherwise ownership and motivation to implement will be lacking. Somehow a bottom-up demand-driven development model had become, when it reached the Pacific, more of a top-down provider-driven model.

There are a number of possible explanations for this: one is insufficient advocacy for the project on the part of the ILO Suva Office prior to mid-2011 which had seen a period of nearly two years without a permanent director. (Before the project staff arrived, there had also not been law specialists at the office for a number of years). A number of tasks properly the responsibility of the Suva Office – particularly those relating to being the broker of expectations and co-operation between the project and the national constituents – seemed to have fallen on the project itself. The ILO system where a regional office supplements a lower level office in times of capacity deficit did not appear to have worked adequately.

Once the project staff were aware of the dimensions of the tasks to be completed in 75% of the original time-frame, the Suva Office could have represented to the Regional Office to a greater degree the need to adjust the outputs and indicators. This was eventually done to a limited extent by the sensible cancellation of the sub-regional conference and the down-sizing of the migration component but other outputs remained in place. The project was fortunate to have committed and competent staff but their workload could have been better calibrated and it important for ILO to hold a frank internal review on lessons learned from the design and establishment of this project.

This assessment also needs to be moderated by some context:

- A. Firstly the project’s task is restricted to *building capacity* to ratify conventions and enact good law. Ratification and enactment themselves, are the tasks of the governments and legislatures of the individual countries: ratification is an indicator of the success of the project but it is not an output. However it is confusing to express the immediate objectives of the project where three of those objectives are achievable by the project and one is not.

¹⁷ The international conventions after all were not all conceived and agreed to in one hit: they arose over time from the experience of nations as they built upon more fundamental employment market governance laws and structures

- B. Secondly there was a belief that because the objectives of the project had been included in the DWCPs of each country and in the Pacific Action Plan for Decent Work signed at the High Level Meeting in Port Vila in February 2010, this equated to an invitation to (and preparedness for) the project to start work in each country¹⁸. Such declarations are not always signed off by the people who will later implement them and while participants from North countries may see immediately the practical implications of such declarations, and have institutions and processes at work in their own systems to turn policy into action, this is not necessarily true in PICs whose governance systems are still settling down after only a few decades of independence. Their personnel therefore can often give only a limited attention span to new issues and tasks. [Nevertheless, it is relevant to note that labour law reform has progressed in each project country as set out in the DWCPs – although the level of commitment to ILO technical assistance to these processes varies between countries.]

The project management did the work they could in introducing the project in each country through consultations and meetings in Samoa November 2010, Vanuatu September 2011 (probably the most successful), and Kiribati February 2011, and PNG in November 2011. But the project had been allowed to go cold from early 2010 to early/midway 2011.

It is clear finally here, that, as it approaches the end of the present project period, the project has done an important job in creating awareness of the implications of the Port Vila Declaration even if for most constituents some issues (such as payment for maternity leave, and the kinds of work suitable for women) constitute very new information requiring a longer time frame to discuss and digest.

- C. Thirdly there is the difficulty for all international agencies working in the “Asia-Pacific Region”. In this “the Pacific” can be bolted onto “Asia” for reasons of administrative but not cultural geography. International and regional support personnel regard the Pacific as very distant, very expensive to visit, and where systems employed elsewhere in the world are not easy to apply. The Pacific is in fact a vastly different system of microstates each representing distinct national cultures with centuries of different history (including colonial history) and very different racial, social and economic profiles¹⁹.

The Project quickly learned that it’s work would only be effective if, despite the need for certain core fundamentals of labour law to be in place in each country, each PIC is very different, and it needed to move away from delivery methods based on a one-size-fits-all approach (e.g. generic sub-regional workshops) to a framework tailored to the unique characteristics of each country. This should have been better explored in the project design and not left to the project staff to discover. In the circumstances of the Pacific, extra funding is required for proper pre-project assessment.

3.3 GENDER RESPONSIVENESS

This project is a good example of the mainstreaming of gender in a practical contest and in a field of high importance: namely improvement in family incomes. Raising the issue of gender in isolation can sometimes be perceived as unnecessarily confronting to traditional values and practices. From the beginning of the review of existing legislation and Bills in each project country, a specific gender analysis was included, presented and discussed with constituents. The impact of existing law on

¹⁸ Reliance was also made on the project’s official “launch” by the project expert to tripartite partners attending a ratification workshop on the Maritime Labour Convention in Fiji, in October 2010. But this was on a different subject, and the presentation was over breakfast.

¹⁹ Many Pacific countries have characteristics of African or Caribbean countries as was recognized by the EU Union in its ACP programme..

women was discussed as one among many elements including the colonial-era approach of protecting women from certain work opportunity rather than equipping them to meet opportunities. Not unsurprisingly this still appeared as challenging to traditional approaches and, as noted, a number of issues need more time for thought and discussion: a) payment for maternity leave (seen by some governments e.g. Samoa and Vanuatu, as the responsibility of the employers, a position inconsistent with ILO Convention 183²⁰) b) prohibition on women working at certain times and in certain work, c) requirements for pregnancy testing or other medical examinations that may be used for discriminatory purposes.

The leadership of two women in the management and technical expertise of the project itself went some distance in offering role models for local women. In many cases, competent women nationals were already in positions of influence, though not necessarily of authority, in the constituent partners of the project countries but the role of women in managing the project and being seen to negotiate with male government officials was a useful experience.

While approaches to gender in development strategies are theoretically inclusive of both men and women, in practice they focus on women (based on the international understanding that when given assistance women are more likely to use it to support the health, education and welfare of the family). While the project should continue to help remove barriers to women's participation in the workforce, it should also ensure that new economic roles for women are not at the expense of a decline in men's economic and other significant roles outside the family. Retention of traditional fishing and navigation skills for those who will not end up on factory ships, and building successful entrepreneurship and money management as economic roles earning community respect, can support both inherited and contemporary male economic roles

Finally it should be noted that the project introduced into draft bills prohibitions on sexual harassment and discrimination on grounds among others of HIV-AIDS status, sex, disability and race

3.4 PROJECT PROGRESS AND EFFECTIVENESS

The project has achieved a series of milestones since its inception, including:

- Gender-responsive labour law reviews of existing Bills in Vanuatu and Samoa as well as a review of specific existing labour laws in PNG and Kiribati. These reviews have taken the form of one or more comprehensive legislative as well as summary assessment reports for each country. In Vanuatu a significantly revised draft Bill was presented to tripartite constituents and is now about to undergo final technical review by ILO experts in Geneva.
- In all countries, a process of tripartite engagement continues to take place with mentoring assistance (from New Zealand and Australian trade union and New Zealand employer mentors²¹) to progress labour law reform. Legislative assessment reports and draft Bills have been thoroughly explained during tripartite consultations to build capacity of constituents in the broader labour law and policy, and what options exist for reform. Social

²⁰ In Vanuatu, the project introduced the idea of a levy based system via the existing National Provident Fund

²¹ The Australian Chamber of Commerce and Industry (ACCI) was a key mover behind the inception of this programme and arranged for an associated organization to provide mentoring input for trade unions --in PNG in the first instance. However the organization did not proceed because of political instability in PNG at the scheduled time.

partners have benefited from the support of mentors in developing and presenting position papers to fellow tripartite constituents on each of the reports and draft Bills prepared.

- While the full benefits of these reforms are obviously still not yet seen, a number of constituents recorded the value of the participatory process and the general feeling of momentum and confidence particularly in areas of labour law that they knew needed to be addressed. They had lacked know-how, but now saw them being developed in a process based on the issues that they themselves had identified.
- Following extensive ILO technical assistance to advise, facilitate consultations and draft legislation and binding agreements, legislation was enacted in Vanuatu in early 2011 to formally establish the Tripartite Labour Advisory Council, which applied the principles of Convention 144.
- In Vanuatu, following ILO capacity building on the benefits and obligations of ILO Conventions 138 and 144 and endorsement by the Tripartite Labour Advisory Council, draft Cabinet submissions have been prepared for formal consideration by Ministers.
- In PNG a new tripartite committee has been established with broad and balanced tripartite coverage to review options for reform of the Employment Act with inputs from the ILO.
- As a result of an ILO-coordinated study tour of Australian industrial institutions for a PNG tripartite delegation, the capacity of the government has been built to prepare necessary technical documentation to support the enactment of the draft Industrial Relations Bill²².
- Written and verbal advice on the benefits and obligations for Kiribati of ratification of ILO Convention 144, as well as model provisions to implement the standard, have been provided by the ILO. A Cabinet paper has also been prepared with assistance from the ILO, to formally establish in legislation the tripartite Decent Work Advisory Board, whose mandate would include minimum wage reviews.
- Vanuatu has for the first time completed two ILO Article 22 reports on ratified conventions in 2011, as required under the ILO's supervisory system.
- Samoa has completed for the first time eight ILO Article 22 reports on the eight core ILO conventions in 2011, as required under the ILO's supervisory system.
- Following completion of a comprehensive literature review, engagement papers were completed for each project country focussed on reintegration services to identify needs and interventions for returning participants in the seasonal migration schemes.

The partnership agreement between the ILO and the Government of Australia provides for advocacy activities as an additional objective of the project. A detailed Advocacy Plan was developed. Raising the profile of the partnership between the ILO and the Government of Australia to address these issues in the Pacific region is a central part of the advocacy activities of this project. Key outputs in this regard are set out as follows:

²² There were some concerns at the diligence and discipline of some (mainly male) delegates in participating sufficiently in the study visit.

- A video showcasing the LGMPs work in Vanuatu working with constituents to take forward the Employment Relations Bill was released at the ILO Asia Pacific Regional Meeting. In the video Government, employers and unions discuss the value and importance of reforming labour laws in Vanuatu.
- Updates about the project are included the ILO Suva country office electronic newsletters that are circulated to constituents and stakeholders every two months.
- In 2010 television coverage took place in Samoa of the tripartite workshop to launch the project and raise awareness of the governance conventions.
- An ILO press release about mentoring work undertaken by New Zealand unions and employers to support Samoan social partners develop positions on the Labour and Employment Relations Bill was released in June 2011.
- Mentoring work was also covered in the May newsletter of the South Pacific and Oceanic Council of Trade Unions.
- The AusAID Counsellor for Development Co-operation based in Samoa at the Australian High Commission was briefed about the project in detail during an ILO mission in June 2011. Further following information outlining progress with the project was provided in January 2012.
- The ILO received television and print coverage of the signing of an agreement to establish a new Tripartite Labour Advisory Council in Vanuatu in September 2010.
- In January 2011, Vanuatu's Daily Post newspaper ran a story covering the launch of the LGMP.
- In May 2011, an ILO press release covering the launch of Vanuatu's new Tripartite Labour Advisory Council was released. A leaflet on the benefits of social dialogue and its relevance to the new Council was also produced with support from the ILO, in English and Bislama and distributed to attendees at the Council's Labour Day launch celebrations.
- A media release was prepared and sent to key media as well as AusAID covering the outcomes of a tripartite workshop on labour law reform to progress legislation in August 2011. The workshop was covered in an extensive article in Vanuatu's Daily Post newspaper on 11 August 2011.
- The Australian High Commission in Vanuatu has been regularly briefed about project activities, with meetings taking place in April, June, August and December 2011.
- In April 2011, an ILO press release was distributed to the media in Kiribati covering the launch of the LGMP
- During the ILO's mission in September 2011, the ILO met with AusAID in Kiribati and discussed the objectives of the project. A media release was also subsequently prepared and provided to AusAID and is on the ILO's website.
- The AusAID First Secretary based in the Australian High Commission in Kiribati was briefed about the project during ILO missions to Kiribati that took place in April 2011 and September 2011. A further follow up progress report was provided in January 2012.
- In March 2011 an ILO press release was provided to the media in PNG outlining the launch of the LGMP.

- In April 2011 the ILO released a press release to Australian and PNG media covering the ILO facilitated study tour by a PNG tripartite delegation to Australia to discuss the establishment of new employment institutions under the draft Industrial Relations Bill.
- In April 2011 Radio Australia 'Pacific Beat' broadcast a news segment about the ILO facilitated PNG study tour in Australia, which included excerpts of an interview with the Industrial Registrar and Head of the National Tripartite Consultative Council in PNG.
- Both the AusAID Capacity Development Agreement with the PNG Department of Labour and Industrial Relations and the ILO's mission to PNG on labour law reform received media coverage in November 2011. A story ran in the National newspaper covering work by the Australian Government to assist with strengthening the Department of Labour and Industrial Relations, as well as work by the ILO to assist with the review of the Employment Act. A further story ran in The National newspaper the following day covering the key areas of discussions that took place during the ILO workshop on labour law reform.

The advocacy component currently focuses on external visibility. It should, in the future, be extended to include advocacy in the wider sense: namely assisting the government and the civil society partners (trade unions and employers) to enhance their role in public education of the needs and rights of business and labour, promotion of appropriate public policy and internal communication to their own members. The advocacy component should include background education and issue packages for journalists and media outlets in the PICs.

Overall, a significant number of planned activities have taken place and, in the project's view, somewhere between 60-80% of scheduled outputs have been achieved. This is despite the size of the outputs growing as the project matured. More detailed work on analysing gaps in the legislation and policy frameworks (as well as the capacity deficits of constituent partners in the respective PICs) was needed than had seemed necessary at the outset of the project and perhaps having an effect on the timeliness of activities. This has been in the context of varying levels of capacity, commitment and co-operation available in the respective constituent partner countries.

Understandably the progress so far has been in the areas of analysing deficits, establishing processes for tripartite engagement on deficits or gap analyses and producing country analyses of either draft legislation that has already been prepared by earlier consultancies (in Vanuatu and Samoa) or of existing legislation that constituents intend to reform (in PNG and Kiribati) and identifying priorities for reform.

The project identified that gender assumptions underlying past legislation that protected the interests of women workers need updating to avoid unintended discriminatory implications and gender awareness on such issues as equal pay for equal work and responsibility for paid parental leave need updating in some areas and better expression in law in others.

The connection between these governance improvements and the wider objectives of jobs growth particularly for the young, while clear for the designers of the project needs to be verified in the minds of other actors who influence local priorities.

The sustainable capacity to implement the various project outputs (legislation, ratification and dialogue structures) needs to be examined.

The project has successfully understood and met -- or begun to meet -- the various risk factors in building capacity in this area of PIC governance, bearing in mind the project's task is to build capacity not to pass laws, ratify conventions or submit convention reports. In fact, the first ever Article 22 reports were submitted by Vanuatu and Samoa in 2011. The project focussed on these countries as they had not submitted any reports (whereas PNG and Kiribati had done so). The project will have more success than expected if Vanuatu ratifies Convention 144 and Convention 138.

The project has also had to take an approach to labour law reform that recognizes that everything cannot happen at once and it is not possible to pass legislation that is fully compliant with ratified international labour standards in a single step. A step-by-step process is needed. There are several examples where these issues have needed to be tackled:

- In Vanuatu, constituents were uncomfortable with the draft Bill (developed prior to the project) where it related to equal pay for work of equal value. They felt that the provisions were too onerous for them as it required the implementation of detailed action plans in workplaces. The project responded by working on provisions that retain the principle in law, but make them less onerous in terms of compliance. While this is not fully consistent with Convention 100 (which Vanuatu has ratified) it was a more achievable step and one which can be built on later.
- In PNG the project identified issues that could be considered over time, such as a progressive approach to maternity leave, starting simply with a basic extension to the duration of leave -- initially as part of the current law reform process -- and leave payment options to a later stage.
- In Kiribati there is minimal capacity in place such that they are unlikely to be able to fully apply the conventions they ratify for some time. So whatever is put in place as part of this law reform process will be very basic based on what constituents can comfortably deal with. There is a large gap between law and practice in Kiribati - so even if something is in legislation - it doesn't mean it is applied.

3.5 RESOURCE EFFICIENCY AND USE

The project benefited from the existing financial administration and accountability system of the ILO and the experience of the ILO Suva Office in costing activities in the unique circumstances²³ of the Pacific. It also learned quickly to allow margins of error in booking venue, food and accommodation for training events (estimating from the numbers of people promising to come, the likely actual number on the day)²⁴. The training and consultation events were organized with a focus on efficient outcomes and building trust and communication among local stakeholders²⁵. Under and overspends were within small reasonable variations and were evaluated as budgeting was rephrased annually.

The principal efficiency has been in the provision of expertise to the project. In addition to the Decent Work Specialist and others in the Suva Office the project leveraged heavily -- via frequent

²³ For example: irregular and expensive airline connections including cancellations and delays, expensive accommodation, at times slow or disrupted telecommunications.

²⁴ The issue of attendance and punctuality is a familiar frustration for any non-Pacific personnel working in the Pacific. The slower pace of life and the flexible nature of commitments to meeting appointments and deadlines is a charming feature of the "Pacific Way" but one which incurs real time expenses. As a practical manifestation of wider problems in governance efficiency in the Pacific some attention should be given to making Pacific Island partners aware of the actual costs to donor taxpayers and ultimately to the levels of support to their own countries caused by continuation of old traditions of timeliness in modern economic realities.

²⁵ For example in Kiribati a budget of USD 1946.00 for 71 people (USD27.40 a head) covering venue hire, meals, bus fares and stationery.

distance communication and occasional reciprocal missions --- off the technical expertise in the Bangkok regional office and ILO Headquarters (labour law, employment policy, migration, labour inspection, gender and child labour expertise). Project officers and specialists visiting PICs could also advance the LGMP on their missions.

Efficiency in the sense of reliable business-like communications, organization, accessibility and well planned and delivered consultation and briefing events organized by the project staff was commented on favourably both inside and outside the ILO.

A further significant input was the mentoring programme with officials from unions and employers in New Zealand and Australia. For an outlay on accommodation and travel (not included in the original budget and achieved by savings in other areas) the Australian Council of Trade Unions and the New Zealand Council of Trade Unions and Business New Zealand provided high quality and empathetic experience at no cost. A budget line item on staff training could arguably have produced greater efficiency in the project staff (who did not have prior experience of ILO project management) in relevant ILO experience and procedures both in the general management of projects and specific peer experience in labour law reform. Additionally the costs of pre-project design research should be included in the budget costings prepared for the donor.

3.6 MANAGEMENT ARRANGEMENTS

3.6.1 Human Resources

Key to a successful development intervention is the right staffing where technical and management competency is married to good communication skills and astute sensitivity to local social, cultural and political realities with sufficient local knowledge or the ability to acquire it. This needs to be combined with preparedness to do hard work, be innovative in unfamiliar circumstances and retain a strong commitment to the objectives of the project. While all these strengths may not be found in one individual, they are needed across the whole team. In this case ILO management achieved just such a balance of skills in the project team. The expertise was enhanced by the significant competitive advantage of the ILO in the experience of its regional and headquarters staff that backstopped the project team. ILO could also call on its trade union and employer partners in Australia and New Zealand for expertise in mentoring the PIC workers' and employers' groups.

The extent of significant project progress in Vanuatu is attributable to tripartite commitment but also by some measure to the presence of an ILO official working in Vanuatu on the project who had won the trust and confidence of constituents from his previous ILO role in Vanuatu (which related principally to another project). He was perceived in Vanuatu as the ILO national officer though under the project he was meant to deliver approximately 85% of his time to the project and 15% to other areas of responsibility in acknowledgement of office facilities provided by the government. Both the officer and the project manager reported that at times less than 85% of time was provided to the project because there was no way of regulating ni-Vanuatu demands from a number of sources (based on his earlier availability). Experiencing overload it seems the national officer resigned amicably but earlier than he might otherwise have done. The Review found no failures in professionalism on the part of either party, rather that they are both caught in the difficulties of funding for key ILO roles within the Pacific

It is clear from this that a major constraint on ILO's work including this project is the lack of national field officers. There is a need to fund them as part of a regular budget supplement -- or a separately funded component under something like the ILO- Australia Partnership -- rather than from a series of project budgets.

The major problem in this project however was the inappropriate amalgamation of labour governance with migration and the lack of resources²⁶ to pursue the migration objectives to any satisfactory level of achievement. From a management point of view different skill sets were required. Quite apart from the lack of budget and focus the migration component drained time and energy away from the labour governance priorities.

More resourcing is needed for both the legal and tripartite capacity sides of the governance project. A junior level lawyer could do much of the practical work that is now needed and innovative solutions should be explored such as internships from the University of the South Pacific Law School in Vanuatu available to the Vanuatu social partners in further implementation stages.

3.6.2 Monitoring and Evaluation

To assist the project to manage accurately for results, there were -- based on the overarching tool of the project document -- two key Monitoring and Evaluation (M&E) tools available: the ILO Technical Co-operation Report (TCPR) and the project's M&E Plan. The TCPR is made via the sub regional ILO Suva office director (who noted the reports as "detailed and useful") to the regional and Geneva-based experts, and facilitates accountability to ILO's own management-for-results procedures. The TCPR is also provided to the donor for its consideration. There were two TCPRs during the eighteen months of the project. This tool has the advantage of regular assessment of risks, and strategies to minimize them, which in turn is a valuable basis for mid-term reviews and final evaluations. The M&E Plan works as a self-management tool for the project itself. However it was not developed until six months after the beginning of the project, (another result of insufficient prior testing of the project design). It was however well designed and achieved its purpose of a detailed "to do" list keeping in view the linkages between activities and the timetable of outputs required. Country work plans and a work plan specifically focussed on migration were also developed.

One of the difficulties of project design -- and therefore implementation -- can be over-reliance on the log frame model which is essentially linear in approach. One of the lessons of this project is that in the particular circumstances of the PICs, linear progress may be possible in only short bursts and within a cyclical process involving skill development, institution building, policy development, output delivery, implementation (where possible), gap analysis and back to skill development etc. The further strength of the TCPR is that its narrative section allows more light-and-shade analysis particularly of the environment in which the project is working.

However a particular problem for this project was that in the case of Immediate Objective Two, its achievement was outside the scope of the project. The existence of revised laws was something only the legislatures of the different countries could achieve. The outputs were correctly expressed as draft bills and legislative assessments, and under ILO technical co-operation design, outcomes are

²⁶ Two concept notes, each costed at USD 1 million, were reduced to one concept note and USD 1 million.

mainly achieved by the partners not the project. However this is a fluid process as partners increase in capacity. Immediate Objectives Two and Three were defined in terms of capacity (and its progress was measured in the TCPR in percentage terms). As noted, this is a lack of consistency resulting in three of the immediate objectives being attainable by the project and one not.

The real issue in this project is what is meant by “capacity” a notoriously generalized expression which may require more rigorous description in this project than perceiving gaps in legislation and drafting bills to fill those gaps. The underlying governance capacity that can be presumed in many countries cannot be assumed in the PICs, so the running of workshops and provision of papers may not automatically lead to the desired outputs if there are capacity deficits in the governance system, including what this review describes as the “capacity to absorb capacity”. The project management was alive to these difficulties and reflected them in their risk analyses and narrative reports in the TCPRs but the percentage gains of capacity are loosely estimated and still focus on the preparation of the outputs which are mainly documents, not actual legislation.

What may be needed here is an exit strategy to try to define the “tipping point” when external motivation, skills, and inputs are replaced by motivation, skills, and inputs self-generated in-country. At the moment the time frame of the Project seems to be designed to fit the funding available rather than the development trajectory of the beneficiaries. The particular strength of the project has been to give partners working practice of processes that will however need to become sustainable in their hands over the longer term to ensure that partners can monitor legislation. The acquisition of skills to run these processes and the associated development of “capacity to absorb capacity” in each of the partners are as equally significant as the draft bills themselves. It could be useful if these achievements can be better reflected in M&E design otherwise progress in “capacity development” can fall back to being measured (which this project does not try to do) in terms of numbers of training programmes run and people attending or else does not reflect the actual measure of its achievements in building a culture of dialogue.

3.7 IMPACT ORIENTATION AND SUSTAINABILITY

The project is likely to succeed in delivering labour law reform outcomes and pilot activities relating to migration. However, an eighteen month timeframe for meeting the project’s labour law reform objectives is unrealistic for this type of work in PICs.

This project’s initial scoping uncovered a number of earlier attempts to deal with labour law issues by a range of organisations with some of them -- through lack of resources and sustained commitment -- ending up as brief consultancy reports or draft bills that had languished in limbo for anything up to 10 years or more. This project needs to be assessed to ensure the same does not happen with its outputs. There are both dangers and signs of promise.

An important feature has been emphasis on the participative process of labour law reform which has allowed social partners (that have in some cases in the past been semi-dormant organizations) to gain practice of analysing the issues affecting their own membership and learn how these can be expressed in technical memoranda and thence into draft legislation. They have now had experience of a consumer-friendly process of awareness building and a sustained involvement in how concerns are advocated into policy and law via a consultative process with government and other social partners. This has meant the beginnings of that elusive quality of “ownership” of the reform by local stakeholders. Although in their infancy, the mentoring programmes are building links with the

advanced trade union and employer bodies of the Pacific metropolitan powers of New Zealand and Australia which may be mutually useful in the future. However there are still impact-related challenges, instanced by a number of factors:

- A lack of stability in social partner leadership especially if the leadership shows an inclination to move into parliament²⁷.
- The outputs of the project expressed largely in draft bills and policies but not the implementation of those laws or policies – which should be the subject of future support if the project rolls out further into operationalizing legislation when it is passed into law.
- As with many countries the carriage of labour responsibilities in government is often not in a high profile ministry or else sits in a sub-division of a broader ministry²⁸. There is often little or no community pressure on parliament or ministers to progress employment issues and hence insufficient priority mandate to the public servants to move further. A fully developed policy cycle on labour issues needs to become a way of life within government. As with tripartite dialogue social partner advocacy needs to be strengthened over a longer period than the life of this project has allowed.
- Greater use of local media (often radio in the Pacific) and greater support to local and regional journalists to cover these issues in a newsworthy way will be important, and use of video and story-telling should be part of community education and awareness.
- The sponsors of the mentoring programmes appear ready to make a long-term commitment to this work but it will be important that the necessary funding for mentors' travel and accommodation is available beyond the life of this project.
- The expectation by some social partners that the ILO should lobby their governments on their behalf is ill founded but understandable. This is largely a matter of the very inchoate form in which some of the social partners find themselves and a lack of advocacy "wins" in their history. The project urgently needs continued and enhanced capacity building for the constituent partners.

These factors indicate that the investment already made in this project needs to be protected by extension of the governance project and separation and resourcing of the migration project.

4. CONCLUSIONS

Stakeholders in the Australia – ILO Partnership (of which this project addresses one of 5 themes) that were interviewed agree that the partnership itself is a new and important step. Some problems initially may have resulted from lack of awareness by all relevant staff in both sides of the partnership of what each partner was bringing to the relationship. One of the valuable side-effects of the work so far is an increased involvement by the ILO in assisting the Australian Government achieve its development objectives for the PICs.

²⁷ In Vanuatu and PNG effort in succession planning has been made.

²⁸ Also the nature of some of the ILO interventions and the small structures of government requires involvement from other ministries such as Treasury, Foreign Affairs and others involved in drafting laws.

The ILO besides being the oldest of the UN agencies is also one of the smallest relative to its global reach and decentralized system and it is built in its objectives and its own structure and process on negotiation and compromise. Other countries such as South Africa have benefited in early practice of democratic governance skills in the nursery of industrial relations and social dialogue. Because of these factors, the ILO has learned to be very flexible. Given the current UN Reform agenda which is aiming to unify much of the management, budget and communications, even location, of UN agencies it would be a mistake to reduce the ILO's flexibility; indeed in the case of the Pacific it may need to increase it. The Pacific needs to be seen as a region in its own right and the support system of the ILO redefined in consultation with the metropolitan donors. Of particular importance is adequate resourcing for national officers or focal points in each Pacific State.

There is some divergence of view on the Migration Component. It was reduced from a project to a component on grounds of 1) limited funding, 2) the desire to have five themes rather than six for the Partnership Agreement, and 3) the perception that the ILO's work would duplicate work already being done in Australia and New Zealand migrant labour preparatory services (including as part of those countries temporary migrant labour schemes). The compromise was to reduce ILO's involvement to a pilot for reintegration services to returning migrant. Clearly, however, even this required a different skill set and different partners from those required for the Labour Governance component, and the two do not fit together as presently conceived.

The role of the ILO's social partners in Australia and New Zealand has been significant. ACCI, ACTU, Business New Zealand and NZCTU supported the project from the outset. While still in its early stages, the mentoring programme contributed the services of experienced officers from these partner organizations to work with their counterparts in the project countries during the consultative labour law reform process and in a cost effective way (the mentors' time is donated and the project covers travel and accommodation).

In the final analysis, much has been achieved towards the outputs under all four of the project's immediate objectives, particularly when set against the external constraints in the immediate environment of each target country and the internal constraints of the project design and funding. All stakeholders should take credit for providing a comprehensive sustained initiative in an area that is vital to economic development and social stability in PICs but had only been dealt with in a piecemeal fashion up till now. This success is largely the result of greater understanding and co-operation between the Australian Government and the ILO and the involvement of the Australian and New Zealand constituent partners with their PIC counterparts.

However these achievements are still very fragile in terms of the project actually reaching its objectives: the tripartite structures are still largely unformed to meet the needs for implementation of labour laws and will need further mentoring support, the climate for advocacy of the needs and rights of businesses and workers is insufficiently developed, all actors already involved need sustained practice of the skills they have acquired and further actors drawn in, the migration component is barely at a pilot stage in one country. To protect and develop the investment already made of human and economic capital, more investment is needed.

5. RECOMMENDATIONS

5.1 ILO and the Australian Government (DEEWR and AusAID)

1. The LGMP should be extended to a second phase with more realistic time frame in terms of the tasks in hand, probably to the full extent of the current Australia – ILO Partnership Programme 2010-2015.
2. Greater awareness of the agendas and expertise of both partners in the Australia ILO partnership is still needed. Key managers in Department of Education Employment and Workplace Relations (DEEWR) should work with the Director ILO Suva to create opportunities both for regular exchange of information and to assess opportunities and needs for background briefing targeted to assist the work of the AusAID Pacific Team in Canberra and the individual Country Posts in the Pacific.
3. DEEWR and AusAID should consult on establishing simple systems of communication within and between relevant ILO and Australian Government staff that will aid the success of the project (following the successful work done by the communications personnel) but also ensuring that AusAID field offices are appraised of the implications of agreements concluded at higher levels.
4. The ILO should estimate -- and the Australian Government should consider -- costs for project design in a preliminary stage before the commencement of the project to allow for better appraisal of the reality of capacity deficits and delivery obstacles in the PICs.
5. Because of the unique challenges of the Pacific countries including high costs in time and expenses for travel, regional ILO specialist staff face greater challenges to visit, understand and support ILO member countries in the region. This underlines the importance of adequate local staffing by ILO, particularly with the need for in-country officers that should not be funded on a project basis but from the regular budget, its supplements or other funding not tied to a specific project.

5.2 ILO

6. The ILO should address the deficits and obstacles unique to the Pacific and consider whether its development strategies and tools should be re-thought in their application from other parts of the world to the unusual conditions of the Pacific. In particular this will demand of the ROAP that its Pacific support strategies are appropriately distinct from those needed for its Asian constituents.

5.3 ILO and Project Management

7. Both the achievements of co-operation between the partners and the gaps shown up by the working of the LGMP should be used as a basis for a more robust and detailed consultation in the preparation of concept notes for a second phase of the project

8. The ILO should give priority to consolidating the project's work in the present target countries but should assess the interest already being shown by other PICs in joining the project, and develop a longer term plan to facilitate this. It may be both efficient and effective at some point to create peer group events in which more advanced constituent partners share their experience in labour law reform, perhaps in partnership with the USP Law School on the principle that the best way to consolidate learning is to teach it. A competitive motivation could be introduced that a new country is involved in the project once it has met certain preparatory benchmarks (which are designed to test the commitment as well as the need of the constituent partners and would need to be tailored to the realities of each country); by the same token, support for further stages of project for existing project countries could be made conditional on achieving specified benchmarks.
9. A feature of the advocacy programme could also be the targeting of information on worker or employer specific developments in each PIC to the other PICs (project and non-project) by existing or innovative internal means (newsletters etc.) or by external media through sharing this information to relevant media outlets in each country.
10. The migration project should either be a discrete project, with separate responsible personnel and budget (but managed in close connection with the LGMP to achieve economies of scale and synergy), or abandoned altogether. However to safeguard investment of work already done, a migration concept note should be discussed with all relevant stakeholders.
11. With regard to the Migration Project, building on the project's literature review, what needs to be tested (with inputs from employers and unions in both the source and receiving countries) is: Whether the existing preparatory services are sufficient for both temporary labour and more permanent labour migration: a) Whether returning migrant services are distinct from preparatory services or part of a continuum. b) How general and technical skills acquired by temporary migrants affect their employability on return home and whether they threaten or reinforce the traditional subsistence and related skills needed for those who will remain in their Island environments. c) Whether sufficient work is being done to address – such as impact on health, gender, family and community relationships (and families and communities need to be consulted here too). d) Where ILO would duplicate these services or its unique experience would fill identified gaps and harmonize with existing.
12. The sequencing of the project's support strategies should be based on the felt priorities of the project countries, such as Occupational Health and Safety, the Maritime Labour Convention, dispute resolution and employment termination in local businesses and collective bargaining with multi-national companies. Capacity building for the constituent partners should therefore be around the issues that most motivate them to build long term capacity.
13. The project should encourage and facilitate the expanded involvement of the New Zealand and Australia employers and workers representative organizations in building capacity in the counterpart organizations in the project counties, in particular: 1) in implementing the new labour legislation, 2) developing activities and reporting on the ratified conventions, 3)

carrying out effective advocacy activities on behalf of their members through direct lobbying and media awareness and 4) mobilizing their members to support their representative organizations through volunteer personnel and funds.

14. In addition to continuing current project activities over the longer term, there is clearly significant momentum to broaden the project to respond to increasing requests for technical assistance from other PICs in the region for labour law reform assistance and project concept notes should be developed accordingly.
15. The advocacy component should be extended to include support for advocacy in the proper sense: namely assisting the government and the civil society partners (trade unions and employers) to enhance their role in public education of the needs and rights of business and labour, promotion of appropriate public policy and internal communication to their own members. The advocacy component should include background education and issue packages for journalists and media outlets in the PICs.
16. Resources should be made available to encourage education in these societies, which have a high preponderance of oral over literate communication, about labour and employment issues using locally made video presentations linked to local cultural patterns of storytelling.

5.4 Social Partners

17. With the value of the mentoring programmes provided by Australian and New Zealand social partners established by this phase of the Project, these should be expanded with the inclusion this time of the Australian Chamber of Commerce and Industry. These Australian and New Zealand resources should be considered for all project countries according to mutually useful commercial and social advantages between the countries and partners.

APPENDIX ONE: DOCUMENTATION CONSULTED

The review had access to the documentary files and common drive cache relevant to the project at the ILO Suva Office: in particular:

Partnership Agreement between the Australian Government and the International Labour Organization (2010-2015) PARDEV Minute sheet 13 July 2010;

The ILO Project Concept Note: **Global Jobs Pact Framework for Labour Governance and Migration** (undated but project initiation date indicated as July 2010);

The **Global Jobs Pact Governance Project Country Plans** for Kiribati, PNG, Samoa, and Vanuatu;

Project Update (December 2011);

Labour Governance and Migration Advocacy Plan (Revised January 2012);

ILO Technical Co-operation Project Progress Report

APPENDIX TWO: PERSONS CONSULTED

Name:	Designation	Country	Comments
Ms Anne Boyd	Project Manager – LGMP	Fiji	Interview conducted 15.02.12 further email input 12-15.03.12
Ms Caroline Scott	Labour Law Expert - LGMP	Fiji	Interview conducted 13-17.02
Mr Bimlesh Raj	Administration and Communications Assistant – LGMP	Fiji	Interview conducted 14.02.12
Ms Sereana Cerelala	Former Finance and Administration Assistant – LGMP	Fiji	Interview conducted 13.02.12
Mr David Lamotte	Director ILO Suva	Fiji	Interview conducted 25.02.12
Ms Laila Harre	Strategies for Decent Work Specialist - Suva	Fiji	Interview conducted 13-17.02
Mr George Vaso	Secretary - Department of Labour and Industrial Relations	PNG	Emails sent & phone calls made but no reply as yet. Email sent TD 28.02.12 No reply. No Interview
Mr John Paska	National Secretary - Papua New Guinea Trade Union Congress	PNG	No response to request for interview.
Mr Michael Malabag	President - Papua New Guinea Trade Union Congress	PNG	No response to request for interview.
Ms Florence Willie	Chief Executive Officer - Employers' Federation of Papua New Guinea	PNG	Interview conducted 17.02.12
Mr Andrew Elborn	First Secretary- Economic & Public Sector Governance Unit - AusAID	PNG	Interview conducted 13.02.12
Mr Auelua	Chief Executive Officer, Ministry of Commerce,	Samoa	Not available for interview.

Samuelu Enari	Industry and Labour		
Ms Taupisi Faamau	ACEO Apprenticeship and LMI Ministry of Commerce Industry and Labour /Samoa Public Service Association Representative	Samoa	Not available for interview
Mr Funefeai Oliva Vaa	Representative - Samoa Chamber of Commerce and Industry	Samoa	He was part of a previous workshop email TD 28.02.12 Interview conducted 01.03.12
Mr Illi Isaia Lameko	International Labour Standards and Labour Law Reform Officer, Ministry of Commerce Industry and Labour	Samoa	Emails sent and calls made but he said he was not available for Interview. Further email request TD 13.03.12 No reply.
Mr Mateo Ah Tong	President - Samoa Public Service Association	Samoa	Interview Conducted 17.02.12
Mr Anthony Stannard	Counsellor – Development Co-operation, AusAID - Australian High Commission Samoa	Samoa	Interview declined.
Mr Lionel Kaluat	Commissioner of Labour	Vanuatu	Interview conducted 16.02.12
Mr Ephraim Kalsakau	Secretary - Vanuatu Council of Trade Unions	Vanuatu	He asked questions but did not confirm interview. Further email request TD 29.02.12 No response.
Mr Robert Bohn	Executive Councillor - Vanuatu Chamber of Commerce and Industry	Vanuatu	Interview conducted 14.02.12
Mr Simon Cramp	Director, AusAID Governance for Growth Programme	Vanuatu	Interview conducted 16.02.12
Ms Amie Milligan	Development Program Specialist, Australian High Commission, Tarawa	Kiribati	Interview started interrupted bad line 14.02.12 No Interview

Ms Lydia Bezeruk	First Secretary - Australian High Commission, Tarawa	Kiribati	Referred us to Amie Milligan. Further email TD 28.02.12. Interview conducted 01.03.12
Mr Urubatu Kaumai	President – Kiribati Trade Union Congress	Kiribati	Emails sent. Calls did not get through. No Interview
Mr Martin Tofinga	President - Kiribati Chamber of Commerce and Industry	Kiribati	Emails sent, calls did not get through. Email TD 28.02.12.No reply. No interview
Mrs Kanata Tebebeku	Secretary - Kiribati Trade Union Congress	Kiribati	Emails sent; calls did not get through. No Interview
Ms Batetaake Tatoa	Senior Labour Officer, Ministry of Labour and Human Resource Development	Kiribati	12.03.12 Interview conducted
Ms Corrine Vargha	Senior Labour Relations and Labour Law Specialist	Geneva	Email TD 28.02.12.Interview conducted 02.03.12
Ms Erlie Wubs	PARDEV	Geneva	Email TD 05.03.12 Interview conducted 13.03.12
Mr Paul MacKay	Employers Mentor (Business New Zealand)	New Zealand	Interview Conducted 14.02.12
Mr Ross Wilson	Workers Mentor (New Zealand Council of Trade Unions)	New Zealand	Out of the country, returns 18 February. Email TD 28.02.1 Interview conducted 29.02.12
Mr Martin Braithwaite	Workers Mentor (New Zealand Council of Trade Unions)	New Zealand	Email TD 28.02.12 Interview conducted 29.02.12
Mr Nick Blake	Workers Mentor (Australian Council of Trade Unions)	Australia	Interview Conducted 14.02.12
Mr David Gregory	Australian Chamber of Commerce and Industry	Australia	Phone TD 15.03.12 office of Peter Anderson arranged interview, held 27.03.12
DEEWR Ms Louise	Special Projects, Workplace	Australia	Email sent 07.02.12 Further email TD 28.02.12. Response

McDonough	Relations Policy Group (WRPG), Department of Education, Employment and Workplace Relations (DEEWR)		received Shannon Madden Sophie Ismail 06.03.12 but asked to wait for return of Asha Sharma who then coordinated her colleagues. Her response received 19.03.12 Interview scheduled 21.03.12 re-scheduled and conducted 27.03.12
Mr Jamie Milton	Assistant Director, International Labour Standards Section, WRPG, DEEWR		
Ms Asha Sharma	Senior Policy Officer, International Labour Policy Section, WRPG, DEEWR		
Ms Rachel Thomas	Senior Policy Officer, International Labour Policy Section, WRPG, DEEWR		
AUSAID	Policy Manager, United Nations and Commonwealth Section AusAID		
Ms Maylee Thavat			
Mr Tapugao Falefou	Permanent Secretary for Foreign Affairs and Labour	Tuvalu	Interview Conducted 15.02.12
Mr Petaia Meauma	Assistant Permanent Secretary - Ministry of Foreign Affairs & Labour	Tuvalu	Unable to be contacted. No interview.
Mr Saufatu Soponga	Executive Committee Member – Tuvalu Chamber of Commerce	Tuvalu	Interview Conducted 17.02.12
Ms Trinny Uluao	Labour Officer, Foreign Affairs and Labour	Tuvalu	On Maternity Leave. No interview
Mr Allan Dow	Communications and Advocacy Officer - ROAP	ILO Bangkok Interview Conducted 13.02.12	
Mr Jajoon Coue	Specialist on International Labour Standards and Labour Law - ROAP	ILO Bangkok Interview Conducted 13.02.12	
Mr Nilim Baruah	Migration Specialist - ROAP Technical Back Stopper to Migration component	ILO Bangkok Away on mission. Email TD 28.02.12. Interview conducted 14.03.12	

Ms Miaw Tian Tang	Employer's Specialist	ILO Bangkok Email TD 05.03.12 Interview conducted 12.03.12
Shigeru Wada	Workers Specialist	ILO Bangkok Email TD 05.03.12 No Reply No Interview

APPENDIX THREE: DECENT WORK COUNTRY PROGRAMMES

The DWCP Priorities for each country and their linkages with the project are outlined in the following table (sourced from the LGMP project team)

DWCP outcome(s)	Summary
<p>Kiribati:</p> <p>KIR125 - Application of the ILS and Kiribati's labour laws</p> <p>KIR126 - Significant progress in the application in law of the Fundamental Conventions and the ILS.</p> <p>KIR803 - Increased capacities of employers' and workers' organizations to participate effectively in the development of social and labour policy</p> <p>KIR825 - Ratification and application of international labour standards</p> <p>KIR826 - Strengthened capacity of member States to ratify and apply international labour standards and to fulfil their reporting obligations</p> <p>KIR102 - Implementation of a comprehensive labour migration strategy re: more migrant workers have access to productive employment and decent work</p>	<p>This technical cooperation programme directly addresses the following priorities in the i-Kiribati Decent Work Country Programme, signed by constituents in December 2009:</p> <p>Priority 2. Application of the ILS and Kiribati's labour laws;</p> <p>Priority 3. Capacity building of tripartite partners and through activities in the migration component:</p> <p>Priority 1. Promotion of decent employment opportunities, including for young women and men.</p> <p>In addition to the national DWCP, at the High Level Meeting held in Port Vila, Vanuatu in Feb 2010, improvement of labour market governance, capacity building of tripartite partners and employment and growth were agreed as regional priorities as articulated in the Pacific Action Plan for Decent Work.</p>
<p>Samoa:</p> <p>WSM100 - Modernization of labour laws</p> <p>WSM101 - International Labour Standards are broadly ratified and significant progress is made in their application.</p> <p>WSM803 - Tripartite partners are strengthened and an effective tripartite social dialogue mechanism is established to make tangible progress in promoting decent work</p> <p>WSM825 - Ratification and application of international</p>	<p>This technical cooperation programme directly addresses the following priorities in the Samoa's Decent Work Country Programme, signed by constituents in April 2009:</p> <p>Priority 1. Modernisation of labour law;</p> <p>Priority 3. Capacity building of tripartite partners and improvement of social dialogue and through activities in the migration component:</p> <p>Priority 2. Promotion of decent employment opportunities, particularly for young women and men, and inclusive of persons with disabilities.</p> <p>In addition to the national DWCP, at the High Level Meeting held in Port Vila, Vanuatu in Feb 2010, improvement of labour market governance, capacity building of tripartite partners and employment and growth were agreed as regional priorities as articulated in the Pacific Action Plan for Decent Work.</p>

<p>labour standards WSM826 - Strengthened capacity of member States to ratify and apply international labour standards and to fulfil their reporting obligations WSM102 - Improved protection of the rights of migrant workers in Samoa including increase in awareness about their rights RE: re: more migrant workers have access to productive employment and decent work</p>	
<p>Papua New Guinea: PNG100 - Completion and implementation of labour law reform, related legislation and labour administration. PNG101 - The revised labour law are fully in compliance with the International Labour Standards PNG102 - The new industrial Relations Act (including Employment provisions) is effectively implemented PNG104 - The enforcement of international and national labour standards is improved through strengthened labour administration PNG803 - Effective tripartite and bipartite social dialogue mechanism is institutionalised to make tangible progress in promoting Decent Work PNG825 - Ratification and application of international labour standards PNG826 - Strengthened capacity of member States to ratify and apply international labour standards and to fulfil their reporting obligations</p>	<p>This technical cooperation programme directly addresses the following priorities in the PNGs Decent Work Country Programme, signed by constituents in November 2008: Priority 1. Capacity building of tripartite partners; Priority 2. Completion and implementation of labour law reform and related legislation; and through activities in the migration component: Priority 3. Promotion of productive and decent employment, particularly for young men and women. In addition to the national DWCP, at the High Level Meeting held in Port Vila, Vanuatu in Feb 2010, improvement of labour market governance, capacity building of tripartite partners and employment and growth were agreed as regional priorities as articulated in the Pacific Action Plan for Decent Work.</p>
<p>Tuvalu: TUV151 - Increase in the</p>	<p>This technical cooperation programme directly addresses the following priorities in the Tuvalu's Decent Work Country</p>

<p>number and quality of migrant workers re: more migrant workers have access to productive employment and decent work</p>	<p>Programme, signed by constituents in May 2010:</p> <p>Priority 1. Capacity building of tripartite partners; and through activities in the migration component:</p> <p>Priority 2. Improvement of the labour market information and analysis system;</p> <p>Priority 3. Improving overseas employment opportunities.</p> <p>In addition to the national DWCP, at the High Level Meeting held in Port Vila, Vanuatu in Feb 2010, improvement of labour market governance, capacity building of tripartite partners and employment and growth were agreed as regional priorities as articulated in the Pacific Action Plan for Decent Work.</p>
<p>Vanuatu:</p> <p>VUT101 - Labour Administration and Labour Law: labour administrations apply up to date labour legislation and provide effective services</p> <p>VUT102 - International Labour Standards are broadly ratified and significant progress is made in their application in line with fundamental principles and rights at work.</p> <p>VUT103 - the enforcement of international labour standards is improved through strengthened labour administration</p> <p>CP outcome VUT179 - Workers under overseas work schemes are supported</p> <p>VUT803 - tripartite partners are strengthened and an effective tripartite social dialogue mechanism is established to make tangible progress in promoting decent work</p> <p>VUT826 - strengthened capacity of member States to ratify and apply international labour standards and to fulfil their reporting obligations</p>	<p>This technical cooperation programme directly addresses the following priorities in the Vanuatu Decent Work Country Programme, signed by constituents in April 2009:</p> <p>Priority 1. Labour legislation reform and application of International Labour Standards</p> <p>Priority 3. Capacity building of tripartite partners and improvement of social dialogue and through activities in the migration component:</p> <p>Priority 2. Promotion of decent employment opportunities, particularly for young women and men, and inclusive of persons with disabilities.</p> <p>In addition to the national DWCP, at the High Level Meeting held in Port Vila, Vanuatu in Feb 2010, improvement of labour market governance, capacity building of tripartite partners and employment and growth were agreed as regional priorities as articulated in the Pacific Action Plan for Decent Work.</p>

APPENDIX FOUR: TERMS OF REFERENCE

Introduction

An external mid-term review is required for a technical cooperation project about *Labour Governance and Migration* led by the ILO Office for South Pacific Island Countries based in Suva, Fiji. The review will be conducted by external consultant(s) who has no prior involvement in the project. The review is planned to be conducted from January to 30 March 2012.

This project is funded by AusAID under a Partnership Agreement between the ILO and the Australian Government. A review is required to deliver on the ILO's external accountabilities to the project donor as well as meeting its internal accountabilities to ensure sound 'results based' project management. Insights from the review will contribute to identifying whether any changes are needed to the project strategy, outputs and activities, and assist in identifying whether the project should continue beyond June 2012.

The review report will also contribute to the ILO-Australia partnership review planned to be undertaken in the second quarter of 2012. The internal review will also inform the Partnerships M&E matrix, in particular on commitment 2 and 3.

The review will comply with UN norms and standards and ethical safeguards will be followed.

Project Background

At the 2009 International Labour Conference, government, employers' and workers' representatives adopted a resolution *Recovering from the Crisis: A Global Jobs Pact*. The Pact calls for urgent action at a national, regional and global level and recalls that respecting fundamental principles and rights at work, promoting gender equality and encouraging voice, participation and social dialogue are critical to recovery and development.

In 2010, Ministers of Labour and the most senior representatives of employers' and workers' organisations from ILO Pacific Member States met and unanimously adopted the *Port Vila Statement on Decent Work* and the *Pacific Action Plan for Decent Work*. Implementation of the Action Plan relevantly applies the Global Jobs Pact to the Pacific region in two priority areas:

- Improvement of labour market governance, through labour law reform and capacity building to support implementation of international labour standards.
- Stimulating employment and growth in the Pacific, through improvements in labour migration practices.

The Labour Governance and Migration Project's establishment procedures did not follow a standard process for a technical cooperation project of this nature. The process was truncated under the Partnership Agreement with the Australian Government and did not have a full Prodoc. The final concept note amalgamated two separate concept notes on migration and labour law reform late in the process. Full budgets were not prepared during the scoping stage, and key documents including a performance plan, log frame and monitoring and evaluation plan were developed at a later date. Since the project's implementation, the project team developed some outstanding establishment

documents. The project commenced in October 2010 and is due to be completed on 30 June 2012. The total donor funding is AUD: \$1,050,000.

The project has four key objectives which are set out below. The first three objectives relate to four project countries – Vanuatu, Kiribati, Samoa and Papua New Guinea. The fourth objective covers these countries in addition to Tuvalu.

1. Strengthen the capacity of governments to ratify and implement core and governance conventions and to fulfil their reporting obligations.
2. Revise labour laws to give effect to core, governance and ratified international labour standards.
3. Build the capacity of tripartite constituents and mechanisms to enable effective participatory labour law making.
4. Build the capacity of governments, unions, businesses and local communities to provide returned seasonal migrant workers with effective reintegration services, based on identified needs.

Vanuatu, Kiribati, Samoa and Papua New Guinea have all identified labour law reform as part of their Decent Work Country Programmes (DWCP). In addition, good governance is central to the Pacific region's development framework. The contribution of the project to broader national and regional plans is outlined in more detail in Appendix 2.

Purpose, Scope and Clients of the Review

Purpose:

The purpose is to review the project strategy and implementation of *the Labour Governance and Migration Project* against the likelihood of achieving project results and make recommendations about:

- whether any changes to the project strategy, outputs and activities are needed; and
- whether the project should be scaled up and/or extended beyond June 2012.

Scope:

The review will focus primarily on the first three objectives of the project relating to labour law reform. It will focus on migration only to the extent that it relates to the project's relevance and strategic fit, validity of design, resource efficiency and management arrangements as it is too early to conduct additional assessments under the analytical framework.

Therefore the scope will cover countries covered by the labour law components of the project - i.e. Kiribati, Samoa, Vanuatu and Papua New Guinea.

The review should also take into account the ILO-Australia partnership indicators matrix as the review will feed information to some indicators of the matrix. The review should thus consider the project framework, its monitoring plan and the value of indicators against the baseline to date. The following specific aspects should also be addressed:-

Project design and strategy and allocation of resources – whether they are still valid (alignment with national development plan, Pacific Action Plan and DWCPs) and whether there are any new

opportunities/challenges which may require some adjustments, including among and between allocation to HR and other inputs.

Law and policy accomplishment – to what extent the project is likely to contribute to changes in laws and policies given the current trajectory of the project in selected countries.

Managing for results: a) whether the project has in place an adequate M&E system (taking into account establishment issues) and capacity in order to monitor its progress towards achieving the project impact and outcome b) to what extent the project has adapted to challenges and changing circumstances (both opportunities and risks) and what are the contributing factors.

Constituents and partners capacity: To what extent has the project worked with tripartite constituents and partner organisations to address labour governance issues in selected countries. The extent to which tripartite constituents in project countries demonstrate increased capacity and enhanced engagement to participate in labour law reform process.

The key clients for this review are:

- The project donors
- Labour Governance and Migration technical staff (Project Manager, Labour Law Expert, Finance and Administration Assistant, Strategies for Decent Work Specialist, and the Director of the Office for South Pacific Island Countries based in Suva).
- Experts from Australia and New Zealand who have provided mentoring assistance to workers and employers to assist them to effectively engage in labour law reform processes (including representatives from the Australian Council of Trade Unions, New Zealand Council of Trade Unions and Business New Zealand)
- Tripartite constituents in Kiribati, Samoa, Vanuatu and Papua New Guinea (i.e. representative organisations of unions and employers as well as government).
- Wider government stakeholders in project countries who have a strategic interest in this project. This includes Ministries of Foreign Affairs (from an ILS reporting perspective), Attorney General's Offices (from a legislative drafting perspective), and Ministries of Justice (from a dispute resolution perspective) and Ministries of Finance as appropriate.
- ILO officials in CO-Suva ROAP and Geneva [specify] NORMES, DIALOGUE, ACTRAV, ACT-EMP, MIGRANT, GENDER.
- AusAID focal points in, Samoa, Vanuatu, Kiribati and Papua New Guinea

Analytical Framework

ILO's Evaluation Handbook provides the basic framework, the review will be carried out in accordance with ILO standard policies and procedures.

The key areas covered by the review are set out below along with the main questions. The review will focus on the project's relevance and strategic fit, validity of design, project progress and effectiveness, resource efficiency and resource use, management arrangements, and impact orientation and sustainability.

Relevance and strategic fit

These questions cover project objectives 1 to 4.

- Does the project address a relevant need and decent work deficit?
- How does the project align with regional and national development plans?
- How does the project align with DWCPs and the ILO's thematic programming?
- Have the project stakeholders taken ownership of the project concept and approach since the design phase?
- Are the needs of stakeholders at the beginning of the project still relevant?
- Have new or more relevant needs emerged that the project should address?

Validity of design

These questions cover project objectives 1 to 4.

- How was the original scope of the project conceived, including the selection of project countries?
- What was the baseline condition at the beginning of the project. How was it established? Was a gender analysis carried out?
- Are the planned project objectives and outcomes relevant and realistic to the situation on the ground? Do they need to be adapted to specific (local and sectoral) needs?
- Is the intervention logically coherent and realistic? What needs to be adjusted?
 - Do the planned outputs causally link to the broader outcome objective?
 - What are the main strategic components of the project? How do they contribute and logically link to the planned objectives?
 - Who are the project partners of the project? Do they have the mandate, influence, capacities and commitment?
 - What are the main means of action? Are they appropriate and effective in achieving the planned objectives? What are the risks and assumptions that the project logic is built on? How crucial are they for the success of the project? How realistic are they? How far can the project control them?
- How appropriate are the indicators described in the project document for assessing the project's progress? Do they need to be amended?

Project progress and effectiveness (and gender equality and promotion)

These questions relate to project objectives 1 to 3.

- Is the project making sufficient progress towards its planned objectives? Is the project likely to achieve its planned objectives by project completion?
- Is the project effectively implementing a gender responsive approach to labour law reform?
- Are the project partners using the outputs? Are the outputs, likely to be transformed by project partners into outcomes?
- How effective is the strategic use of technical expertise for the delivery of project objectives (i.e. mentoring from workers and employers in the region)?
- How effective has the project been at publicising its work consistent with the visibility strategy as agreed by the ILO and Australian Government?
- Has the project been responsive to any changes in the political operating environment at a country level?

- In which areas is the project likely to, or has, demonstrated success? Why is this, and what are the likely (or actual) success factors?
- In which areas is the project less likely, or has not, demonstrated success? Why is this, and what are the likely (or actual) impediments?

Resource efficiency and resource use

These questions relate to project objectives 1 to 4.

- Have project resources (funds, human resources, time, expertise and other resources) been used efficiently and cost effectively?
- Is the existing allocation of human resources sufficient to deliver project objectives?
- Does the project have access (directly or indirectly) to the right competencies and capabilities to deliver the objectives?
- Have the project activities been delivered in a timely manner to date?

Management arrangements

These questions relate to project objectives 1 to 4.

- Are management capacities adequate?
- Does the project governance facilitate good results and efficient delivery?
- Does the project receive adequate political, technical and administrative support from the Regional Office, technical specialists and the responsible technical specialists in headquarters?
- How effective is the communication between the project team, the Regional Office, responsible technical department at headquarters, PARDEV and the project donor?
- How effectively does the project monitor its performance and results? Is there an M&E plan in place and how effective is it?

Impact orientation and sustainability

These questions relate to project objectives 1 – 3.

- How likely is it that the project will make an impact? Is the project strategy and implementation on the right path towards achieving impacts?
- Is the project timeframe appropriate to a project of this type, magnitude and design? Should it be longer or shorter?
- Should the project be extended, either in one or more of the following areas:
 - being replicated elsewhere in the Pacific region?
 - scaled up among existing project countries (e.g. extended to other law reform priorities among existing constituents)?
 - move into a new phase focusing on operational implementation following labour law reform (as part of a fully policy cycle approach)?
- What is the capacity of stakeholders in project countries to continue with the project if it finishes at the current project closure date?