

Policy Brief

The Unrealized Promise of a Better Life: Exploitative and Forced Labour in the Seasonal Agricultural Workers Program (SAWP)



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Executive Summary

Mexican migrant workers participating in the SAWP are labouring under the constant threat of removal from Canada due to termination and subsequent repatriation (deportation) or from the entirety of the program due to a negative employee evaluation (blacklisting). This threat, whether overt or subtle, enhances precarity and fosters the exploitative and forced conditions under which they labour with restrictions on their movement within the labour market. These workers suffer breaches of their labour and human rights, including but not limited to lack of access to adequate healthcare and public funds, unhealthy/unsafe working conditions, and substandard living conditions (GSI, 2018).

To mitigate the conditions of forced labour (re)produced by the program, the Mexican government should seek to revise the intergovernmental agreement to include an arbitration process for terminated workers prior to repatriation, unions and NGO's should replace the responsibilities and roles held by Mexican liaison/consular officials within the program, and the Canadian government should replace employer specific work permits with multiple entry open work permits for Mexicans labouring under the SAWP.

AN EXAMINATION OF HOW THE SEASONAL AGRICULTURAL WORKERS PROGRAM (RE)PRODUCES EXPLOITATIVE AND FORCED LABOUR CONDITIONS FOR MEXICAN TEMPORARY MIGRANT WORKERS LABOURING TRANSNATIONALLY IN CANADA

Introduction

Temporary migrant programs exist in various forms in countries such as Canada, The United Kingdom, and The United States. The Seasonal Agricultural Workers Program, hereafter: SAWP, is touted in global migration discourses as the benchmark for best practices in migration management despite the program's defects. Program defects that migrant advocacy groups have long identified (while largely being ignored) have now been thrust into the spotlight as a result of the Covid-19 pandemic. This brief is meant to examine those flaws and their effects on the Mexican migrant workers involved.

Seasonal agricultural workers have no path to permanent residency in Canada, and this temporariness creates the precarity that is the crux of their exploitation for they labour with the ever-present fear of removal. This brief will pay particular attention to this ever-present threat and subsequent fear of removal and how it functions within the SAWP as a facilitator for forced labour conditions.

The forced and exploitative conditions facilitated by the SAWP as a migration management tool is an important issue to investigate because the program is being showcased as the global example for other Temporary Foreign Worker Programs to follow. If other programs are to be designed based on this example, it is imperative that we address and mitigate (or expel) its shortcomings. Policy briefs that exist within this space

tend to preoccupy themselves with only rectifying flaws under the control of the host state, but this brief includes remedies for the sending state as well, which is a rarely charted path.

This brief suggests that the Mexican government should assert some of its power and initiate the revision of the intergovernmental agreement between Canada and Mexico to include provisions for an arbitration process in which both governments will investigate terminations of migrant SAWP workers prior to repatriation to ensure its justified. Additionally, unions and NGO's should be put in charge of key aspects of the program such as, managing the worker database, dispatching and assigning workers, and documenting and investigating on-farm grievances to mitigate possibilities of blacklisting. Such responsibilities should be removed from the purview of Mexican officials and consular officers that are currently in place. Also, this brief recommends the federal government of Canada should discontinue the use of tied or employer specific visas and instead implement the use of multiple entry open work permits for migrant SAWP workers to reduce opportunities for forced labour to exist within the program.

These recommendations are made for the consideration of legislators and policy makers in both the sending (Mexico) and host (Canada) states involved in the SAWP. In addition to those noted above, this brief will also be valuable to migrant and labour activists, workers' rights groups, persons studying migrant and forced labour, migration management policymakers, and political science students.

What is the SAWP

The SAWP is a Canadian federal government program that began in 1966 in response to Ontario growers petitioning the government to be allowed to import "foreign" labour in response to labour shortages that existed within the industry at that time. The Canadian government decided to allow the importation of unfree migrant labour on a temporary basis and it entered into a series of bilateral agreements with sending countries. The first SAWP workers were brought in from Jamaica to harvest field crops in Essex County, Ontario (Basok, 2007). In its first year, the program allowed for 264 Jamaican agricultural workers to come to Canada temporarily to harvest tobacco

KEY TERMS

Unfree labour – workers who are politically and legally compelled to provide labour and unable to circulate in a labour market. It also denotes restricted access to rights and obligations of citizenship (Verma, 2003).

(Verma, 2003). The program has expanded in the years since to include migrant workers from other Caribbean countries and introduced Mexico in 1974 (Basok, 2007).

Between 1968 to 1986, the program capped the number of participants at 4,117 each year; however, after years of contention, in 1987 it was decided by the Canadian government to let the laws of supply and demand dictate the number of participants (Verma, 2003). Today, program participants can work in nine Canadian provinces (Basok, 2007) and the number of program participants has grown exponentially. According to the federal government, in 2019 it approved 46,707 positions under the Seasonal Agricultural Worker Program (Pazzano, 2020). "About 40 per cent of the farm workers are located on farms in Ontario, 32 per cent in Quebec, 18 per cent in B.C., and about three per cent in Nova Scotia, according to numbers released in July by Employment and Social Development Canada" (Pazzano, 2020).

A Memorandum of Understanding signed by both Canada and Mexico established the SAWP (Marsden, 2019). "The Memoranda of Understanding and the annexed Operational Guidelines and Employment Agreements between the employer and the worker are the primary documents in facilitating the movement of Caribbean and Mexican workers to Canada under the SAWP" (Verma, 2003). Based on these agreements, Mexican participants are to receive "treatment equal to that received by Canadian workers performing the same type of agricultural work, in accordance with Canadian laws" (Marsden, 2019). Additionally, employers are to "provide suitable accommodation to the worker, without cost and such accommodation must meet with the annual approval of the appropriate government authority responsible for health and living conditions in the province/territory where the worker is employed" (Government of Canada, 2013). As such, SAWP workers live in bunkhouses on their respective farms that are provided by the farm owners and inspected by Liaison/Consular officials (Verma, 2003).

The primary Canadian government agency in the administration of the program is Human Resources Development Canada (HRDC), while government agents from Mexico act as liaison/consular officials in Canada whose role includes program administration, policy inputs, and dispute resolution (Verma, 2003). Mexican officials are responsible for the initial worker selection and dispatching to farms (Vosko, 2019). The Canadian government privatized the administration of the SAWP by delegating certain duties to

KEY TERMS

Memorandum of Understanding (MOU or MoU) – an agreement between two or more parties outlined in a formal document that is not legally binding but signals the willingness of the parties to move forward with a contract (Kenton, 2020).

the Foreign Agricultural Resource Management Services (FARMS) in Ontario, which is a non-profit organization charged with transmitting and processing employment orders accepted by Human Resource Centers (Verma, 2003). Canadian law offers statutory minimum standards of employment in every province and territory (Marsden, 2019). Many vary from province to province and some leave SAWP participants vulnerable to abuses. For example, in British Columbia, farm workers (including both citizens and migrants) are excluded from overtime pay provisions, meal break requirements, minimum hours free from work, and statutory holiday pay (Marsden, 2019).

Features of the SAWP

Circularity

A key component of the SAWP is it is a circular migration scheme, but it is this very component from which many of its issues are borne. As a circular migration management program, the SAWP is hailed by policymakers for its ability to provide continued access to employment – insofar as a need exists in the host state (Canada). Participants in the SAWP are permitted to work in Canada for a maximum of 8 months in a year and have the possibility to return season after season (UFCW and The Agriculture Workers Alliance, 2020). A study found, “57% of Mexican workers returned for 6 years or more, and 22% returned for more than ten years” (Marsden, 2019, p. 156). As a part of the circularity permissible within the SAWP, employers fill out employee evaluations on the migrant workers at the end of each season, which is largely held as the deciding factor in whether or not that worker will be allowed to continue within the program (Canada’s Seasonal Workers Program (SAWP), 2019).

Employer Specific Work Permits

Mexican migrant workers in the program are issued tied/employer specific work permits by the Canadian federal government. Employer specific work permits are bonded to a specific job and/or employer (Marsden, 2019, p. 157). These employer-specific work permits tie migrant workers labouring under the SAWP to their employers

CIRCULAR MIGRATION

The European Commission defines circular migration as multiple migrations between a country of origin and an admitting country, normally within the context of the temporary recruitment and employment of workers (Task Force on Measuring Circular Migration, 2016). Circular migration management programs are considered to produce “triple wins,” a win for the migrant workers (reduces abuses faced by legal migrant workers and provides them with employment opportunities), a win for the host country (reduces the occurrence of illegal (im)migration and provides workers to fill labour shortages), and a win for the sending country (creates opportunities for remittances to be received and develops transferable skills in citizens) (Goos, 2016).

and restricts them from changing employers without the express permission of the program facilitators (which involves a great degree of difficulty).

Termination “The repatriation provisions in the Employment Agreements allow the grower to [summarily terminate and subsequently] repatriate a worker for “non-compliance, refusal to work, or any other sufficient reason”. There are no guidelines or definitions of what these terms mean” (Verma, 2003, p. 35). This provision allows employers to arbitrarily terminate SAWP participants and have them removed for unjustified reasons and leaves the workers with little to no recourse. The vagueness of the language means that employers have very little responsibility to show/prove why a migrant worker is being terminated. This provision establishes the deportability the program facilitates.

Importance of the SAWP

The SAWP plays a pivotal role in agriculture in Canada by providing food security. The importance of this sector varies by province; however, a 2015 report published by the Canadian Agricultural Human Resource Council (CAHRC) states, “the SAWP is a lynchpin for Ontario horticulture, supporting an economic impact of \$5.4 billion” (UFCW and The Agriculture Workers Alliance, 2020). In testament to the importance of SAWP workers to Canadian food security, “many of the farms where these migrant workers spend their days tending to crops and keeping Canadians fed were declared essential when the COVID-19 outbreak began” (Gilmore, 2020). Amid the pandemic, Mexico hit pause on the SAWP (preventing Mexican participants from traveling to Canada) in response to health and safety concerns for their citizens and the Canadian government immediately responded with a plan to alleviate their concerns because the program is vital to the Canadian economy (Gilmore, 2020).

For migrant workers that participate in SAWP, the remittances and the increasing financial stability that they represent are the

“The remittances that migrant workers send back are vital to sustaining the survival of their family members.”

Ferguson & McNally 2015

KEY TERMS

- ◆ Remittances – a sum of money remitted; transmittal of money (as to a distant place) (Merriam-Webster, n.d.)
- ◆ Deportability – the state of being liable to deportation (Merriam-Webster, n.d.)

primary reason for travelling to Canada (Budworth, Rose, & Mann, 2017). Remittances are important to the families of Mexican SAWP participants that depend on the income to pay bills, buy food, and educate children.

The Mexican government also depends on remittances from Mexicans labouring under the SAWP because it constitutes a significant portion of the country's GDP. According to a macroeconomics analysis published in 2018, Mexico is the fourth largest remittance recipient in the world, bested only by India, China, and the Philippines (Li Ng, 2018). In 2017 alone Mexico reported US\$156 million in remittances from Mexicans in Canada according to Pew Research Center (2019). Mexican SAWP workers perform a substantial service for the Mexican government in the remittances they provide that bolster the Mexican economy's GDP performance.

Issues/Problems with the Program

Termination without just cause resulting in Mexican migrant workers labouring transnationally under the SAWP being summarily repatriated.

The SAWP is a restrictive migration system that gives rise to forced labour conditions by granting undue controlling power to employers. The termination provision in the employment agreement gives employers excessive control over their employees, thus creating an

uneven power dynamic that (re)produces conditions of exploitative and forced labour and builds an atmosphere of fear. Such abuses of power have been documented in interviews with Mexican migrant workers, for example, one migrant labourer reported working more than 23 hours nonstop (Mojtehedzadeh, 2019).

KEY TERMS

- ◆ Forced labour – situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities (ILO, 2014). For the purposes of this brief, we shall focus on the subtle intimidation or threats of denunciation to authorities portion of the ILO definition.
- ◆ Repatriation – the act or process of restoring or returning someone or something to the country of origin, allegiance, or citizenship (Merriam-Webster, n.d.)

Termination without just cause is used as a mode of control by employers to discipline the migrant workers into becoming more amenable to exploitations such as working beyond contracted hours without pay, working without scheduled breaks, and meeting unimaginable quotas. Mexican migrant workers labouring transnationally in Canada typically suffer economic precarity in their home state and depend on the income provided by Canadian employers to support their families in the form of remittances. Therefore, these migrant workers will endure abuses of power on the part of farm owners (employers) in an effort to avoid termination and maintain their income. The reality of their economic situation at home makes it unlikely that they will assert their human and workers' rights, which employers exploit.

The Covid-19 pandemic has increased the visibility of deportability and the issues created by the termination provision of the employment agreement governing the SAWP. Mexican workers on some farms have been ordered to stay in their bunkhouses upon arrival in Canada for quarantine periods and threatened with termination and subsequent repatriation for failure to do so (Hennebry, Caxaj, McLaughlin, & Mayell, 2020). Employers are leveraging the threat of termination and subsequent repatriation to compel migrant workers on their farms to ignore health and safety concerns related to the pandemic and continue working. A recent report by The Migrant Rights Network documents worsening conditions that SAWP workers are facing due to the pandemic which includes increasing labour exploitation, longer hours of work, and unpaid wages (CBS News, 2020). Workers who speak out against the conditions they are forced to labour under in the pandemic face reprisals. Luis Gabriel Flores Flores, a Mexican migrant in the SAWP, was fired along with three other workers after they spoke to the media about conditions on the farm where they worked (Jones, 2020). Some migrant workers have been *asked* by their employers to sign away their right to leave the farms where they are employed and have the employer source their food and necessities – the cost of which will be deducted from their wages, and refusal to sign will result in dismissal and deportation (Thomas & Gilmore, 2020).

Mexican migrant workers in the SAWP labour under the constant threat of blacklisting as a condition of possibility.

Blacklisting is an ever-present threat to economically precarious Mexican migrant workers that depend on being recalled for employment within

KEY TERMS

Blacklisting – results from negative evaluations or interference by actors that obstructs migrant workers return as employees within the SAWP (Vosko, 2019).

the SAWP. These workers depend on the income earned from employment in the program to take care of their families at home, so many of them look forward to returning for many years. Blacklisting removes the workers prospects for future employment and unlimited seasonal return within the SAWP, thus divorcing them from much needed income. For those workers that remain, the threat of blacklisting functions as a mode of control to ensure they are compliant. "The controlled nature of their recruitment, their fear of losing an opportunity to participate in the employment program, makes workers acquiescent" (Bailey, 2018). The employer evaluations that function within the SAWP puts the fate of future employment within the program in the hands of employers and ensures that the migrant workers comply with employers' demands even if they violate workers' and human rights, thus creating forced labour conditions.

Mexico, the sending state, facilitates blacklisting as a mode of control by acting in concert with the Canadian farm owners in removing workers from the program and prohibiting their reentry if they have been labelled *troublesome*. In one such instance, a Canadian court found Mexican government officials guilty of keeping a blacklist to prevent migrant workers in the program from returning to Canada because they were labelled as *pro-union* (Berggold, 2014). Consular officials manipulated SIMOL (Mexican SAWP employee database) logs to purposefully bar certain workers from returning because employers labeled them pro-union (Vosko, 2019). In an interview, a female participant in the SAWP said, "Mexico's Secretariat of Labor and Social Welfare verbally warns SAWP workers each season before they leave Mexico: "'You're coming to Canada to work, not to cause problems.' If you complain about something, they kick you out of the program'" (Dark Harvest, 2018).

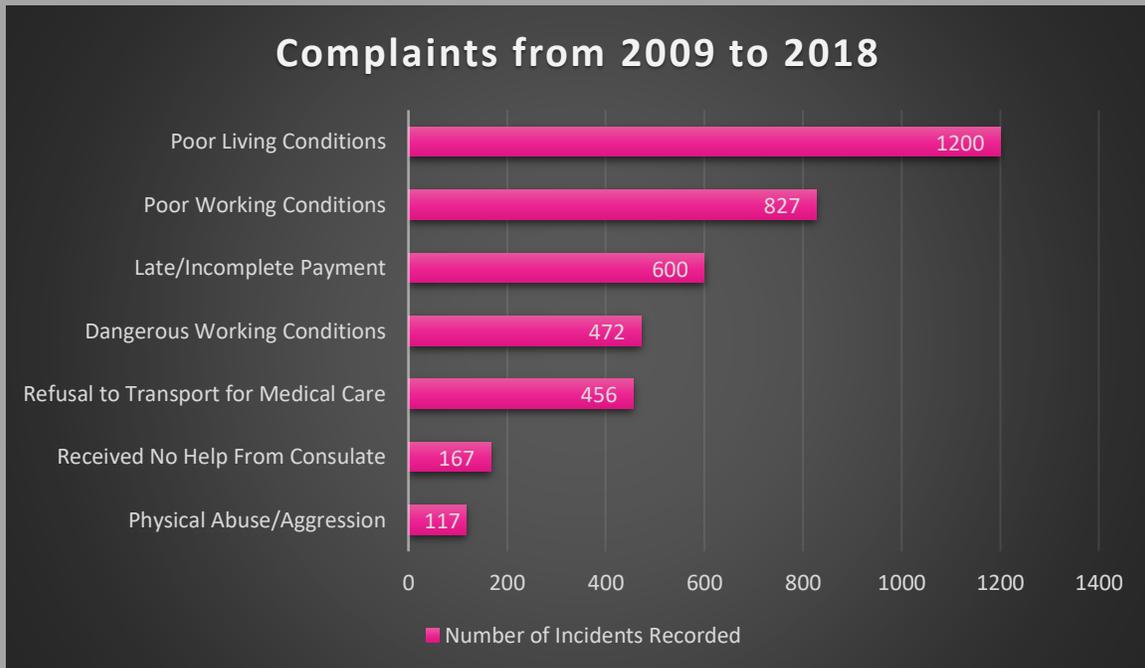
Exploitative working conditions perpetuated by unfreedom, precarity, and temporariness related to tied or employer specific work permits.

Mexican migrant workers in the SAWP suffer greatly from limited employment mobility because they are unable to change employers without the express permission of the program facilitators (which involves a great degree of difficulty). The Canadian federal government

(re)produces this labour unfreedom by issuing Mexican workers labouring under the SAWP tied (closed) or employer specific work permits (visas). Employer specific work permits enhance the power imbalance between the Mexican migrant workers in the SAWP and their employers creating opportunities for forced labour and other abuses to occur. If a worker within the program finds himself/herself employed by an abusive

farm owner or subjected to forced labour, the worker will face great difficulty escaping due to their limited employment mobility. According to the Migrant Workers Alliance for Change, “these closed work permits facilitate employer control and exploitation of workers including working excessive hours without payment for overtime, unpaid hours of work and often less than minimum wage pay, illegal deductions and predatory recruitment fees” (Mojtehedzadeh & Renwick, 2019). This deepens the precarity that the Mexican migrant workers labour under and further tips the power scale in favor of employers.

Employer specific work permits act, much like termination without just cause and blacklisting, as a mode of control enshrined by the Canadian federal government, and is built into the design and operation of the SAWP. Such permits condition the Mexican migrant workers to suffer egregious abuses in silence out of fears of angering farm owners and prompting reprisal. A compilation of 3100 concerns and complaints made by Mexican migrant SAWP workers (from 2009 to 2018) to the Mexican Ministry of Labour gives a glimpse of the abuses these workers endure largely because their employer specific work permits limit their ability to change employer. According to the compilation, “on 827 occasions, workers reported poor working conditions and punishing hours of work, and in more than 600 others, complained of late, erratic or incomplete payment. In another 117 cases, workers also reported physical abuse or aggression - like a 2015 complaint about an Alberta employer threatening a worker with a rifle” (Mojtehedzadeh, 2019).



(Mojtehedzadeh, 2019)

Remarkably, some 167 of these instances were reported to Mexican consulate workers in Canada but nothing was done. “The hundreds of annual complaints made by Mexican workers to their own Ministry of Labour aren't shared directly with Canadian authorities” (Mojtehedzadeh, 2019).

The precarity (re)produced by the SAWP’s design and operation leaves female migrant workers especially vulnerable to sexual violence. In one instance, a female SAWP worker at a farm in British Columbia was sexually assaulted by her boss, but refused to report the incident to police out of fear of deportation (Dark Harvest, 2018). Fear of reprisal is a systemic problem within the SAWP, which is heightened by the use of employer specific work permits. Because SAWP workers status in Canada is directly tied to their employer, being fired results in almost certain repatriation to their home state because they are not free to be unemployed or work for any other employer. Employer specific work permits effectively work to make female migrants within the program susceptible to sexual assault and subsequently deters them from reporting incidents of violence that they incur.

“The vulnerability of migrant workers, and therefore their propensity to experience abuse is built into Canada’s temporary migration model. SAWP workers are dependent on their employers for housing, food, and employment, and they are isolated on farms in rural areas” (Canadian Council for Refugees, 2016, p. 11). Employer specific work permits also exacerbate SAWP workers’ precarious living arrangements because they are afraid to complain about their conditions. Reliance on an employer not only for work, but also for accommodation, transportation, and food creates multiple dependencies that lead to the inability to leave exploitative employers (FLEX, 2019). Unfortunately, the accommodations provided by the farm owners are often subpar and the workers are reluctant to report this occurrence out of fear rooted in the precarity and deportability that are built into the structure of the SAWP. Workers speak of the overcrowded and substandard conditions that they are forced to live in being far from suitable. They tell stories of bunkhouses wherein up to forty workers may share a single shower (Lay, 2020). There are also reports of bunkhouses with open latrines, no running water, insufficient beds, and rat and snake infestations (Mojtehedzadeh, 2019).

Conclusion and Policy Recommendations

Canada’s Seasonal Agricultural Worker Program is a flawed migration management system despite its proponents claims to the contrary. It enables the use of various modes of control such as unjust termination, blacklisting, and employer specific work permits, that (re)produce exploitative and forced labour conditions. Mexican migrant

workers in the SAWP suffer precarity borne of their restricted mobility, temporariness, and disproportionate power dynamic with employers. Deportability, which is built into the design and operation of the SAWP, is an ever present threat that disciplines these workers into silence. Blacklisting, as a mode of deportability, is leveraged by employers to coerce workers into compliancy because they depend on the circularity permitted by the SAWP due to economic precarity in their home state. Instances of employer abuses have increased in response to the Covid-19 pandemic, making it even more important now that we examine the program. For the SAWP to be an acceptable model of migration management, its flaws need to be addressed. The following policy recommendations are proposed to mitigate the aforementioned issues in the SAWP.

“Neoliberal migration and border regimes instantiate a de facto forced labour regime.”

(Ferguson & McNally, 2015)



The Mexican government should assert some of its power and seek that revisions be made to the intergovernmental agreement between itself and Canada. It should be revised to include provisions for the institution of an arbitration process in which both governments – Canada and Mexico – investigate terminations of migrant worker in the SAWP. This arbitration process should take place prior to the repatriation of the worker and require the employer to provide supporting evidence of the reason(s) why the worker has been terminated. This would eliminate some of the retaliatory terminations of migrant workers in response to them asserting their rights as workers, speaking out against abuses, and refusing work outside of what is legally required. It would go a long way to reassure migrant workers in the program that their rights will be protected by providing them with some form of recourse in the face of unjust termination.



Unions and NGO’s should be put in charge of key aspects of the SAWP, replacing the current Mexican officials and consular officers. Unions and NGO’s should be made responsible for managing the Mexican SAWP worker database (SIMOL), dispatching and assigning workers, as well as documenting and investigating on-farm grievances. This would mitigate possibilities for blacklisting instigated by Canadian employers and cosigned by Mexican officials by placing the responsibility in the care of neutral parties. It would also give the workers in the program a *safe space* to report abuses and exploitation they may be suffering without fear of reprisal and the expectation that reports will be investigated. Mexican migrant workers within the program would be more apt to report abuses in this

instance because the fear of speaking out resulting in their inability to remain in the program would be lessened. As a result, bad apple employers that continually reoffend can be dealt with by the Canadian Ministry of Labour or Provincial governments in accordance with Canadian labour laws.



The Canadian federal government should discontinue the use of tied (closed) or employer specific work permits (visas) and instead implement the use of multiple entry open work permits. There should be reasonable terms such as a period of time allowed for migrant workers to be unemployed while they are between employers and maintain their legal status in Canada. This would reduce the opportunity for forced labour to exist within the program by minimizing the imbalance of power between employers and SAWP workers. Open work permits would remove the unfreedom SAWP workers suffer as a result of their limited mobility. Because migrant SAWP workers would be free to change employers, they would no longer feel trapped with exploitative employers and employers would no longer have excessive control of the workers. They would also be more apt to protect and assert their workers' and human rights because their vulnerability due to unfreedom related to labour mobility would be alleviated.

Currently, one of the most powerful actors in the SAWP is the employers, and this needs to be remedied. Migrant SAWP workers need to be protected against unscrupulous employers and empowered. If these policy recommendations are implemented in the design and operation of the SAWP, they would immediately reduce many opportunities for exploitative and forced labour that are currently (re)produced by the program. The fear that Mexican migrant workers labour under within the SAWP is real and needs to be addressed by policymakers and program administrators.

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