

2-14-2023

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Publication:

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Repository Citation



Basok, Tanya; Tucker, Eric; Vosko, Leah F.; Caxaj, C. Susana; Hennebry, Jenna L.; Mayell, Stephanie; McLaughlin, Janet; and Weiler, Anelyse M., "The 'contract' and its discontents: Can it address protection gaps for migrant agricultural workers in Canada?" (2023). *Articles & Book Chapters*. 2996.
https://digitalcommons.osgoode.yorku.ca/scholarly_works/2996

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The 'contract' and its discontents: Can it address protection gaps for migrant agricultural workers in Canada?

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Abstract

Canada's Seasonal Agricultural Worker Program has often been portrayed as a model for temporary migration programmes. It is largely governed by the Contracts negotiated between Canada and Mexico and Commonwealth Caribbean countries respectively. This article provides a critical analysis of the Contract by examining its structural context and considers the possibilities and limitations for ameliorating it. It outlines formal recommendations that the article co-authors presented during the annual Contract negotiations between Canada and sending states in 2020. The article then explains why these recommendations were not accepted, situating the negotiation process within the structural context that produces migrant workers' vulnerability, on the one hand, and limits the capacity of representatives of sending and receiving states to expand rights and offer stronger protections to migrant farmworkers, on the other hand. We argue that fundamental changes are required to address the vulnerability of migrant agricultural workers. In the absence of structural changes, it is nevertheless important to seek improvements in the regulation of the

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programme through any means possible, including strengthening the Contract.

INTRODUCTION

For decades, Canada's Seasonal Agricultural Worker Program (SAWP) has been widely portrayed as a 'model for balancing the flow of temporary foreign workers with the needs of Canadian employers' (Abella, 2006: 45). The SAWP involves multilateral cooperation between the Canadian government, governments of origin countries and employers, as elaborated in Memoranda of Understanding (MOU) between the Government of Canada and governments of sending countries, such as Mexico (Employment and Immigration Canada, 1995). As such, it is seen as a safe, orderly, and stable guest worker programme to be emulated by other countries. However, as many researchers have documented (see Hennebray & Preibisch, 2012), the regulation of this programme is fundamentally flawed, and the COVID-19 pandemic has laid bare many of its failings.

Commencing in 1966 with the arrival of a few hundred Jamaican workers, the SAWP is now the largest temporary agricultural labour importation programme in Canada, which peaked in 2018 when it brought fifty thousand workers into the country.¹ The programme was created through bilateral agreements or MOUs between the Government of Canada and sending countries, as mentioned earlier, that include an employment contract, renegotiated annually. Technically, although we speak of the Contract in the singular, there are two similar contracts, one negotiated with Mexico and the other with the participating Commonwealth Caribbean countries.² State parties renegotiate both contracts annually,³ and employers are represented at the negotiations by the Canadian Horticultural Councils (CHC). Employer service-delivery groups in three regions⁴ are members of the CHC and are identified in the Contract as facilitators or agents of the grower.⁵ It is noteworthy—and highly problematic—that neither SAWP workers nor their representatives are party to these negotiations. The Contract outlines the responsibilities of Canadian employers as well as workers employed on Canadian farms. Although the Contract must be signed by each worker, their employer and a government agent from the sending country, the role of the Canadian and sending country governments in overseeing these parties' contractual responsibilities and offering other forms of protections and/or benefits for SAWP workers are left largely unspecified or unenforced.⁶ Lacking appropriate enforcement mechanisms the Contract does not adequately protect migrant farmworkers in Canada. Furthermore, the contract fails to recognize the specific vulnerabilities of migrant farmworkers (captured in our discussion of the three 'layers of vulnerability' discussed below) and as a result, many migrants face employment insecurity, deplorable housing conditions, obstacles to accessing health care, occupational hazards and abusive work environments.

Although problems with the SAWP are not new, the COVID-19 pandemic certainly exacerbated many longstanding issues. The well-documented outbreaks at several farms, and three confirmed COVID-19-related deaths of migrant agricultural workers in Ontario during the first wave alone, reveal how severely the pandemic affected this population (Detsky & Bogoch, 2020). In 2021, even more migrant agricultural workers died from both COVID-19 and non-COVID-19-related causes, although the underlying factors contributing to these deaths have been recently documented (Caxaj et al., 2022). In Ontario, Canada's most populous province, 2400 migrant agricultural workers had contracted the virus by mid-2021 (Mojtehdzadeh, 2021). As acknowledged by Canadian federal government interventions, and documented by social justice organizations, the cause of these outbreaks can be traced both to housing and working conditions (ESDC, 2020; MWAC, 2020), reflecting the inadequate protections rooted in the architecture of the SAWP, and its main regulatory instrument (i.e. the Contract).

The impact of COVID-19 on migrant agricultural workers shone a light on structural problems inherent to the SAWP that the governments of Canada and the sending countries could not ignore. During the first wave of the COVID-19 pandemic, the authors of this article, each of whom is a member of the Migrant Worker Health Expert Working Group (MWH-EWH), engaged in action research aimed at documenting migrant farmworkers' working and living conditions and the new risks to their lives that emerged during the COVID-19 pandemic (see, for

instance, Caxaj et al., 2022; Vosko et al., 2023) and supporting SAWP workers, including dialoguing with the receiving and sending state parties to both versions of the Contract.⁷ As a result, we were invited by the consular representatives of the Government of Mexico to attend, and make formal recommendations to, the annual Contract negotiations between Canada and Mexico on 17 November 2020, marking the first-ever appearance of civil society actors and academics at this forum. The context for the invitation was that in the months leading up to these meetings, Mexico, under criticism from its nationals abroad, took the unprecedented step of putting a temporary hold on sending workers to Canada,⁸ and called for the Canadian federal government's assurance that it would put in place greater protective measures for Mexican nationals labouring on farms. We were approached by Mexican officials to support its efforts by, among other things, making a presentation at the annual negotiations. As engaged academics, and given the deleterious effects of the COVID-19 pandemic, we agreed to participate despite our profound criticisms of the Contract and calls for permanent residency upon arrival, based on the view that struggles for change must be manifold and, in this situation, incremental shifts could save lives. While not surprised, we were disappointed that our recommendations for changes to the Contract were largely ignored. In what follows, we explain this outcome through an analysis of *tensions* within sending and receiving migration states between commitments to facilitating the flow and smoothly managing labour migration on the one hand, and the protection of migrant rights, on the other (both principles are articulated in the 2018 Global Compact for Safe, Orderly and Regular Migration), as well as misaligned interests between the state parties.

Furthermore, as we demonstrate in this article, the underlying structural vulnerabilities simultaneously shape the Contract and limit the extent of its ameliorative effects. Thus, while our focus is the Contract and we advocate for its reform, we recognize limits to what this and other regulatory mechanisms can achieve and contend that more fundamental changes are needed. However, we do not accept that these structures preclude the possibility for amelioration and, indeed, believe that the space for amelioration can be expanded. Thus, we conclude that simultaneous with the pursuit of structural reforms, it is still necessary and worthwhile to pressure government representatives responsible for the SAWP to strengthen the Contract and its enforcement to provide stronger protections for these workers.

In Part I, we outline major problems experienced by migrant farmworkers in Canada and relate them to the three interconnected structural layers of vulnerability that shape working and living conditions of SAWP workers in Canada: namely, racialized global capitalism; immigration policies that render SAWP workers temporary and deportable; and weak protections for agricultural workers in general. In Part II, we list the recommendations for the amelioration of the Contract we presented formally at the Contract negotiation meeting in November of 2020 at the invitation of the state parties. Acknowledging that these recommendations were both solicited and ignored, in Part III, we describe and analyse tensions that arise between the administration of managed labour migration programmes and rights protection, building on scholarly literature on the politics of migration states. Partly on this basis, we further suggest that the negotiation process is deeply embedded within the three structural layers of vulnerability outlined in Part I. Accordingly, we underscore that the manner in which Contract negotiations are conducted, especially the unbalanced representation at the negotiations, inhibits change. We reflect on alternative strategies for making the lives and working conditions of SAWP workers more dignified and secure and conclude that while structural reforms are necessary, it is nevertheless important to continue to seek improvements in the regulation of the programme through any means possible, including strengthening the Contract.

PART I. LAYERS OF VULNERABILITY: SITUATING SAWP WORKERS' PRECARIOUS STATUS AND EMPLOYMENT

As widely documented, migrant farmworkers in Canada face numerous problems, including unsafe working environments (Basok, 2002; Basok & Belanger, 2016; Binford, 2013; Caxaj & Cohen, 2019; Hennebry et al., 2016; Mayell & McLaughlin, 2016; Preibisch & Otero, 2014), non-enforcement of labour standards (Marsden et al., 2020; Vosko et al., 2019), wrongful dismissals contributing to repatriations (Basok et al., 2014; Orkin et al., 2014; Preibisch, 2010; Vosko, 2013, 2019); an inadequate access to health care (Hanley et al., 2020; Hennebry et al., 2016; Mayell

& McLaughlin, 2016). Many of these problems were amplified during the pandemic (Blaze & Grant, 2020; Caxaj et al., 2022; Colindres et al., 2021; Vosko & Spring, 2022; Wright Allen, 2020).

The global health pandemic exposed migrant workers to the risks of COVID-19 transmission in workplaces and in employer-provided compound dwellings where it was impossible to maintain physical distancing due to overcrowding and the absence of other COVID-related prophylactic measures. The pandemic magnified job insecurity due to heightened fear of employer reprisal and repatriation, as well as concern about losing income. Moreover, it amplified the sense of isolation, particularly among those workers confined to employer-provided housing in unprecedented ways due to stay-at-home orders, eradicating separation between work and leisure that allowed workers to socialize more widely and heightening pre-existing tensions among co-workers forced to spend most of their non-working time together in overcrowded accommodations. At the same time, being away from their families and friends, and lacking local and transnational community support, many migrant farmworkers endured deteriorating mental and physical health conditions (Vosko et al., 2023).

In the face of COVID-19 outbreaks, Employment and Social Development Canada (ESDC), Canada's federal labour ministry, acknowledged such problematic conditions with the introduction of new guidelines for employers of so-named temporary foreign workers (TFWs). These guidelines include recommendations that employer-provided shared accommodations allow for physical distancing such that beds 'be at least two metres meters apart' and that common spaces be cleaned and disinfected on a regular basis. However, during the 2020 season, not only was there uncertainty about what some of these guidelines required, non-compliance was documented to be widespread (MWAC, 2020).

Yet, despite these longstanding problems, the Contract has not been amended to address these and other regulatory shortfalls. We argue that three layers of vulnerability, namely the global system of racialized capitalism, precarious immigration status and weak regulatory protections and exclusions of agricultural workers in Canada, are at the root of these conditions.⁹

The first layer of vulnerability reflects factors that arise out of the global political economic system within which labour migration occurs. Specifically, wide-ranging inequalities arising from a global system of racialized capitalism that David Harvey (2003) has labelled 'accumulation by dispossession', whose forms have varied from direct colonial confiscations to more recent expropriation through debt and discipline (McNally, 2011). Historically and to the present, these processes have been accompanied by the racialized subjugation of expropriated populations that marked them as less worthy and less equal (Fraser, 2018). One result is the creation of a pool of expropriated and racialized workers, many of whom find their origins in the Global South, keen to secure employment in Canada and other countries of the Global Borth, even on exploitative terms and conditions that workers in those countries are loath to accept. Rather than addressing unemployment at home, sending states support policies that export labour on a temporary basis and generate a constant supply of foreign remittances. Moreover, this globalized system produces a workforce with low levels of education and limited English-language skills, which can reduce workers' ability to understand their rights and communicate with local activists or government officials though whom they might be able to secure their rights (Cohl & Thomson, 2008). Many SAWP workers also face social exclusion, physical segregation, and xenophobic attitudes in the local community (Basok & George, 2020; Horgan & Liinamaa, 2016; Smith, 2015).

The incorporation of dispossessed and impoverished workers from the global south into Canada as temporary, rather than permanent, residents with restricted rights (Choudry & Smith, 2016; Hennebry, 2012; Satzewich, 1991; Thomas, 2016;) constitutes the second layer of vulnerability. Within this immigration system, migrant agricultural workers enter Canada as unfree labour. SAWP workers receive a work permit for a maximum 8-month stay, but it is tied to an employer who may repatriate them without reason, thus heightening their deportability (Vosko, 2019). Although the SAWP makes provision for the transfer of participants from one farm to another, transfer cannot be undertaken at the worker's insistence, although the worker must consent. As a result, SAWP workers lack meaningful opportunities to change employers.

Their lack of freedom to circulate in the labour market in conjunction with their precarious status in Canada is the most fundamental difference between SAWP participants and Canadian citizens and permanent residents because it

severely limits their ability to enforce their rights under the Contract or Canadian law by making SAWP participants subject to the coercive authority of growers out of fear that loss of employment effectively eliminates their access to legal paid employment and makes them vulnerable to repatriation (Sharma, 1997; Smith, 2013; Vosko, 2013). Although labour laws across Canada prohibit reprisal against workers for seeking to enforce their rights, the threat of prompt repatriation means that SAWP participations are typically unable to access these protections. Moreover, the Contract does not explicitly protect workers against retaliation by employers (e.g. Basok, 2002; Basok et al., 2014; Vosko, 2013, 2019).

Employers participating in the SAWP can also name the employees they wish to rehire, which gives them additional power over workers who, in consideration of the opportunities otherwise available to them, generally value the opportunity to work in Canada (Preibisch, 2010). As a result, SAWP workers are motivated to maximize their earnings while in Canada and loath to risk repatriation or debarment from future employment in the country (Faraday, 2014; Vosko, 2019). The resulting insecurity of presence in Canada is a key source of vulnerability for SAWP workers (Fudge, 2012; Rajkumar et al., 2012). Furthermore, selecting a workforce with limited literacy skills and formal education (e.g. Basok, 2002) also inhibits SAWP workers' practical access to information about their rights.

The third layer of vulnerability addresses conditions in receiving countries. Most notably, migrant workers are incorporated into the agricultural labour force, which is itself highly vulnerable. Agricultural workers in Canada have long been excluded from legal protections enjoyed by most other workers. For example, in Ontario, until recently, agricultural worker exceptionalism applied to occupational health and safety (OHS) laws, and it still operates to deprive agricultural workers of meaningful access to a statutory collective bargaining scheme through which they can become unionized and bargain collectively (Faraday, 2012; Tucker, 2006, 2012).¹⁰ Finally, agricultural workers are exempt from many of the protections of provincial Employment Standards (ES) Acts (on Ontario and British Columbia, see Fairey, 2007; Thomas et al., 2019; Vosko et al., 2019). These features, in addition to the rural location of most of this work, make agricultural jobs unattractive to the mass of Canadian workers. But, rather than trying to meet labour market shortages by ending farm worker exceptionalism, Canadian governments have opted to create a managed segmented labour market by sourcing temporary migrant worker programmes with workers from the global south for whom unattractive jobs in Canada are better than their options at home.

In addition to formal exclusion from regulatory protections, SAWP workers' access to the protections to which they are entitled is limited by other factors, not all of which are unique to migrant farmworkers. For example, gaps in the enforcement of provincially regulated employment standards affect all workers in Canada (in Ontario, see Vosko, 2020). The magnitude of the enforcement gap, however, is particularly great for migrants in agriculture because of their location in an industry in which precarious employment predominates (Vosko et al., 2019) and because of the precarious immigration status discussed above.

These three structural layers of vulnerability interact to produce a workforce that is among the most unprotected, devoid of rights and/or access to rights in Canada. To strengthen rights and protections for these workers, each of these three layers of vulnerability needs to be addressed: landless rural producers in the global south need access to resources and opportunities in their home countries to reduce the compulsion to emigrate; the Canadian immigration system needs to provide secure status to migrant farmworkers on arrival and regulatory protections for all agricultural workers in Canada need to be strengthened. However, it is unlikely that these structural reforms to reduce the underlying layers of vulnerability will be achieved in the near future. In their absence, ameliorative measures can provide qualitative improvements to the working environments, health and livelihoods of migrant farmworkers, including through changes to the Contract outlined below.

PART II. AMELIORATING THE CONTRACT

To strengthen protections for SAWP workers, on the basis of decades of extensive policy and field research with migrant farmworkers conducted by scholars, medical practitioners and activists involved in the MWH-EWG, and high-level consultations with NGOs and trade unions representing migrant workers (who wish to remain anonymous)

yet long excluded from the SAWP negotiations, an exclusion which we wholly reject, we presented recommendations, strategically designed to reflect longstanding calls by migrant farmworkers' rights' support groups and trade unions as well as health and work researchers, to the Canadian government and sending-state representatives involved in the negotiations towards the 2021 Contract. These recommendations are summarized here.¹¹ With respect to housing, we recommended that the Contract specifically outline housing standards and the right of SAWP workers to report non-compliance and seek redress. To ensure that these standards are meaningful, we suggested that they should be proactively enforced through regular, unannounced, onsite inspections coupled with announced blitzes as a measure of deterrence. To strengthen the enforcement of workplace standards, we suggested that the responsibilities of ESDC/Service Canada to inspect worksites be clearly outlined in the Contract. We outlined what was needed to protect SAWP workers from wrongful dismissal and repatriation, namely, that the Contract should be revised to include the following principles: (1) no discipline or discharge without just cause; (2) burden of proof of just cause rests on the employer and (3) the employer cannot unilaterally terminate employment. In addition, the Contract should specify that an independent tribunal is to be established to adjudicate employers' requests for dismissal (alternatively, the Canada Industrial Relations Board or the applicable provincial labour relations board could be given jurisdiction to adjudicate employer requests to dismiss). This tribunal may only authorize a dismissal where the employer can establish just cause on a balance of probabilities.

We also proposed that to protect SAWP workers from occupational health hazards, the Contract should address the shortfalls in current OHS laws by strengthening SAWP workers' rights to protection and to participation. With regard to the former, the Contract should require participating employers to have plans that address agricultural-specific hazards such as heat stress, working in confined spaces and operating heavy farm equipment (UFCW, 2020).

We recommended that the Contract also require employers to establish joint health and safety committees that accord with generally applicable local standards, including a commitment from employers to build a supportive OHS workplace culture, with a clear anti-reprisal commitment. As well, the Contract should specify that employers have an OHS communication plan that stipulates how they will provide training and OHS information to all workers, including non-English speaking workers and workers with low literacy skills. The Contracts should specify that federal and provincial governments will develop a standard to assess OHS communication plans and assess these plans during government OHS workplace inspections.

To improve SAWP workers' access to health care, we advised that the Contract should guarantee to workers independent third-party transportation and translation, access to communication technologies, confidentiality regarding their health conditions, guaranteed protocols for compensation and treatment for injured workers, culturally appropriate health care, and public health cards upon arrival. Workers who become injured or ill should be guaranteed a minimum of 2 years of continued participation in the SAWP following their recovery, barring any significant breach of Contract.

Finally, to enable SAWP workers to report workplace abuse, wrongful dismissal, substandard housing conditions, occupational health hazards, and problems related to access to health care, we felt it was imperative that a national, integrated complaints hotline be accessible to workers in multiple languages and via multiple applications (e.g. WhatsApp). This hotline would deal with issues where federal authorities are required to connect with provincial authorities in a timely manner (e.g. habitability, facilities etc.). Once it is set up, the Contract would, in turn, inform workers of its existence. Finally, we supported the idea that workers should have the right, building on the principles outlined in the Contract, to request transfers to other employers, and ideally, open work permits, to provide them protection when facing adverse conditions that cannot be ameliorated.

Even though we were invited by the state parties to formally present our recommendations on improving the SAWP Contract at annual negotiations, none were included in the 2021 Contracts approved by Mexico, Caribbean countries and Canada. To understand this outcome, we situate our analysis in the research literature on the conflicting roles of sending and receiving 'migration states' (e.g., see Adamson and Tsourapas 2020) in facilitating migration and protecting the rights of migrant workers participating in managed labour migration programmes.

PART III. THE POLITICS OF MIGRATION STATES AND THE PROTECTION OF MIGRANT FARMWORKERS' RIGHTS IN THE SAWP NEGOTIATIONS

Encouraged by the former UN Secretary-General Kofi Annan, in 2003 a core group of sending and receiving countries formed the Global Commission on International Migration to 'provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration' (GCIM, 2005: vii). GCIM called for a 'migration management' approach based on 'win-win' principles. It was argued that a liberalized managed labour migration regime would be of enormous value to sending countries in the form of increased remittances and skills and knowledge acquisition and transfer. At the same time, as GCIM maintained, it would help receiving states to address labour shortages in certain sectors (GCIM, 2005: 16). It was also expected that migrants would benefit from this system of managed migration (thus, the infamous 'triple win', Ghosh, 2012) by improvements to their own and their families' standards of living. The Global Compact for Safe, Orderly and Regular Migration Drawing on earlier discussions at such fora as the United Nations High-level Dialogues on International Migration and Development in 2006 and 2013 and the Global Forum on Migration and Development, the Global Compact for Safe, Orderly and Regular Migration further entrenches the emphasis on managed migration and a commitment by sending and receiving states to protect the fundamental human rights and freedoms of migrants and refugees (UN, 2018).

This vision, however, is premised on a naïve view that the interests of sending and receiving states are perfectly aligned as well as on an assumption that internally sending and receiving states were driven by a single set of interests. This misreading of the politics of migration states was based on a failure to take into account the structure of globalized racial capitalism that drives global labour migration and produces asymmetrical relations between sending and receiving states, as well on a limited understanding of the space for political conflict within sending and receiving states over the terms of their participation in it.

Beginning with sending states, there is unresolved tension between the commitment to promoting and managing labour migration to maximize remittances and skills transfer, on the one hand, and fulfilling the assurance that the nationals are treated well on the foreign soil, on the other. Regarding the latter, sending state governments, including those participating in the SAWP, extend an array of services to cater to the needs of their nationals abroad. Examples include providing consular identity cards, assisting in the resolution of transnational custody claims, and establishing channels for smoother transmission of remittances (Adamson & Tsourapas, 2020; Délano, 2009; Délano & Gamlen, 2014; Fitzgerald, 2009; Gamlen et al., 2019; Østergaard-Nielsen, 2003; Waldinger, 2014). Some sending states, such as Philippines, Indonesia, and Sri Lanka, also attempt to protect labour and social rights of migrant workers in receiving countries (e.g. Baltz, 2015; Ireland, 2018; Rodríguez, 2010; Valenzuela-Moreno, 2018), including some that have endeavoured to include protection of workers in bilateral labour agreements (Østergaard-Nielsen, 2003; Rodríguez, 2010). The Philippines, for instance, reviews and certifies contracts and oversees their implementation (Rodríguez, 2010). In the case of SAWP, Mexican consular officials are responsible for visiting farms employing SAWP workers across Canada, inspecting housing, intervening in conflicts between workers and employers, assisting injured workers and helping them to obtain benefits and respond to other emergencies (Valenzuela-Moreno, 2018).

However, research illustrates the asymmetrical power relationships between sending and receiving countries within this unbalanced migration system impede the capacity of sending countries to intervene to protect and improve the treatment of migrant workers by employers in receiving states (Délano, 2009: 766; Rodríguez, 2010; Valenzuela-Moreno, 2018). There are, moreover, institutional impediments to sending state officials' protective role. Direction given to consular officials under the *Vienna Convention on Consular Relations (VCCR) (1963)*, which the foremost sending states party to Canada's SAWP have ratified, is a notable example. The VCCR characterizes consular officials' functions as 'protecting in the receiving State the interest of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law' VCCR 1963, schedule 2, art. 5 (a) In this way, it supports the problematic assumption of congruent interests of sending states (as corporate bodies) and their nationals—in this case, migrant farmworkers compelled to migrate for employment in the struggle against extreme poverty who confront workplace and migration challenges within and between sending and host states. In practice,

however, the preservation of migrant remittances is no doubt a priority of the former, one potentially undermining sending state officials' formal roles of protecting nationals abroad and, in particular, giving migrant workers a direct voice in negotiating the terms of their participation in the SAWP (Vosko, 2013). More broadly, sending state officials often prioritize diplomatic relationships with receiving states over the protection of the workers (Délano, 2009: 766; Rodríguez, 2010: 117). They also fear that by demanding respect for the rights of the workers they are required to represent, they would endanger their country's participation in labour migration programmes, undermining the promotion objective (see, Basok, 2002; Basok et al., 2014; Binford, 2013; Valenzuela-Moreno, 2018).

This fear is particularly salient for sending countries participating in the SAWP, which has shrunk slightly since its peak in 2018, and admits an average of around 42,000 workers per year. At the same time, there has been accelerated growth of its sister programme, the highly deregulated Agricultural Stream (AS). Rooted in 'The Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D) (2002)', extended to agricultural workers in 2011, the number of workers admitted since its inception has more than tripled, reaching little over 31,000 workers in 2021.¹² Unlike the SAWP the AS does not involve bilateral agreements or negotiations between Canada and sending governments. In the absence of such mediation, including in the recruitment of migrant labour, private recruiters are thereby central (Gabriel & Macdonald, 2017; Gesualdi-Fecteau et al., 2017). Also, the AS provides work permits for a maximum of 24 months, and although participants may apply for a new permit if they wish to continue working in Canada and secure a job offer, circularity—a feature of the SAWP critical to the ongoing continued flow of remittances—is not built into the programme. Further perpetuating a race to the bottom, in contrast to the SAWP, the AS provides permits to workers from any country—not surprisingly, therefore, over half of AS participants in 2020 were citizens of Guatemala (IRCC, 2021). AS exemplifies a liberalized approach to managing temporary labour migration and as such, poses a threat to more regulated migration programmes such as the SAWP. Given apparent advantages of this liberalized programme for employers (and to a certain extent, to the Canadian state), Mexican negotiators adopt a cautious approach in demanding improvements for SAWP workers.

On account of such dynamics, instead of providing adequate protection to overseas workers, some sending states have downloaded the responsibility for protection from abuses and exploitation onto the migrants themselves by training them to become 'self-advocating subjects' (Alcid, 2003; Parreñas, 2021) while, at the same time, remaining docile, industrious and respectful of norms and traditions of receiving states (Basok et al., 2014; Parreñas, 2021; Rodríguez, 2010: 117).

Receiving states are similarly conflicted, in the Canadian case by a trilemma of competing policy vectors that interact over time to shape and reshape its migrant worker regimes (on these vectors, see Marsden et al., 2021). The dominant vector is employers' demands for access to a reliable stream of migrant labour at what employers believe is an acceptable cost in the face of claimed labour shortages. Canadian producers, like all private sector employers, seek to minimize their production costs to remain competitive in the global market, and thus they are disinclined to acquiesce to contract improvements that might necessitate additional expenditures. The Canadian state is also concerned about cost of production, for a variety of domestic reasons, not least of which is support for Canadian food security and exports, which are linked to maintaining competitive production costs (Weiler et al., 2017).¹³ It was this commitment that both gave birth to the SAWP in the first place (Basok, 2002; see also Satzewich, 1991) and later justified the exemption for migrant agricultural workers from travel restrictions under COVID-19 (Government of Canada, 2020).

However, two other vectors operate in tandem, and at times in conflict, with the access vector. The first is the protection of work opportunities for Canadian citizens and permanent residents, as well as concern about wage depression resulting from competition from migrant workers. This explains why employers must satisfy a labour market test—the Labour Market Information Assessment (LMIA)—to be permitted to hire migrant workers and why regulations and the Contract require that migrant workers only perform work within the scope of the approval be paid same rate as Canadians for the work they perform.

The last vector is the protection of migrant worker rights, which is driven by the decades of work by labour and grassroots organizations and academics documenting abusive and exploitive working and living conditions of SAWP

workers that have embarrassed the Canadian government. The Canadian government has responded to this vector by shifting away from disclaiming responsibility for rights shortfalls to adopting standards and an enforcement system to investigate and sanction employers found to be in violation of their responsibilities (Marsden et al., 2020).

While we have argued that the interests of sending and receiving states are not well aligned and that their internal politics are subject to competing demands, we do not operate from a pluralist perspective that assumes the politics of migration states operate on a level playing field. Again, we return to the overriding context of global racialized capitalism, which produces structural dependencies that leave states of the Global South at a disadvantage in their dealings with states of the Global North. Among these dependencies is a reliance on migrant worker remittances (Wells et al., 2014). Moreover, many countries promote labour migration schemes such as the SAWP, and as evidence-based research demonstrates, they are understandably reluctant to press for terms that would disadvantage their nationals compared to other workers, whether from other countries participating in the SAWP (e.g. Binford, 2013; Preibisch & Binford, 2007) or, more importantly, from other countries whose citizens are employed through the Agricultural Stream, which has been growing more rapidly than the SAWP in recent years (as discussed earlier). As a result, state representatives are hesitant to press demands for improved contract terms that might encourage employers to meet their labour requirements through other programmes.¹⁴ As well, not only do sending states' internal priorities fail to garner equal weight, but they must also be adjusted in response to what is possible given Canada's priorities that to a great extent are shaped by the interests of the corporate agri-business sector.

The SAWP contract negotiations represent the stage on which tensions in migration state politics play out formally and annually when the sending states and Canada (with employer representatives present) sit down to revise its terms. It is here where the rubber meets the road, so to speak, and each state must determine which of its competing objectives will be given priority and consider their ability to secure their preferred outcome in the Contract. In other words, the Contract itself is the outcome of a political negotiation that both occurs internally for each party as well as between the parties. It is this context that explains both why we were invited to present recommendations for improving the Contract and why none of those recommendations were adopted.

While we can only surmise the motivations of the state parties that allowed us to present recommendations for the Contract, a safe assumption is that the invitation reflected the protective dimension of migrant state politics for both the sending and receiving states. Sending states are genuinely concerned about the welfare and treatment of their citizens abroad, just as the Canadian state is concerned that migrant workers are not abused by their employers. Our invitation allowed the state parties to signal to themselves and to each other that they were truly concerned about migrant worker welfare.

However, the fact that none of our recommendations were adopted reflects the greater weight given to facilitating employer access to migrant workers by sending and especially receiving states. Indeed, the political priority of access is institutionalized in and reproduced by the unbalanced representation at the negotiations. While we were invited to make a presentation, we neither represented migrant workers nor participated in the negotiation itself. In fact, migrant farmworkers do not have independent representation at the negotiations that determine the terms and conditions of their employment in Canada. Rather, they depend entirely on their governments to represent their interests, notwithstanding that these governments must be trading the pursuit of contract improvements against their concern about maintaining access. By contrast, agricultural employers' associations participate directly in the negotiations, along with representatives of the Canadian government. While the Canadian government needs to balance conflicting interests, employer associations do not, and their presence at the negotiations presumably enables them to press their concerns directly.

That said, direct farmworker representation at the negotiations should not be expected to counterbalance the participation of employer associations. The class structure of capitalism produces the economic subordination of workers to capital based on the dull compulsion of economic necessity that requires workers to sell their labour in order to survive. Nowhere do workers sit across the table from their employers as equals (Chibber, 2022) but the inequality is exacerbated by the context of globalized racial capitalism that produces expropriated workers with poor labour market opportunities in their own countries who are desperate to find better paying work abroad even if they

face ill-treatment and are required to be away from their families for extended periods of time. Thus, not only are migrant agricultural workers in a markedly unequal position compared to their Canadian employers, but they must also be aware that their demands must be moderated especially in a context where their employers are able to secure migrant workers from other parts of the Global South through the Agricultural Stream, discussed above. As a result, migrant worker interests are also conflicted between access and protection in ways that are analogous but not identical to those of their governments. This conflict strongly contrasts with the unitary interest of Canadian employers in profit maximization.

CONCLUSION

Although none of our recommendations for strengthening protections for migrant farmworkers were accepted in the 2020 negotiation this outcome should not be read as representing a decisive defeat for the protective dimension of migration state politics. More recently, consultations with migrant workers, including those in agriculture, support organizations, as well as consulate and liaison officers continued, and on 10 July 2021, the Department of Citizenship and Immigration proposed further amendments to enhance the protection of migrant workers by setting new employer requirements and conditions and improving the ability to hold employers accountable for non-compliance (Government of Canada, 2021). While these proposals do not go far enough to ensure that employers comply with their obligations or that workers are adequately informed about their rights and empowered to claim and protect them, and they certainly do not challenge the structures of vulnerability that are generative of the problems the regulations address, we remain convinced that there are spaces for amelioration. Moreover, these spaces have been and can be expanded by the actions of civil society groups, engaged academics and SAWP workers acting strategically on their own behalf to publicize poor conditions and advocate for change, particularly in a context in which the sending state is publicly championing improvements in the working conditions and health of migrant workers, including in the case of Mexico, by being the first country to sign the Global Compact on Migration (Government of Mexico, 2019).

That said, we fully recognize that as long as the structures of vulnerability remain, including their precarious immigration status that subjects SAWP workers to the threat of deportation and programme disbarment and precludes them from being admitted as permanent residents, SAWP workers will remain at high risk of exploitation, the only issue being how high. Still, recognizing that structural changes take time, we remain convinced that sustained engagement by civil society organizations and allied academics can open up more political space for meaningful improvement in SAWP workers' working and living conditions while they are in Canada.

ACKNOWLEDGEMENTS

The authors acknowledge personnel at Employment and Social Development Canada, Mexican Consular Officials, and various Liaisons from the Commonwealth Caribbean for making our interventions in the 2020 SAWP negotiations possible.

CONFLICT OF INTEREST STATEMENT

The authors of this manuscript have no conflicts of interest to declare.

DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available from the corresponding author upon reasonable request.

SUBMISSION DECLARATION STATEMENT

This manuscript is not under consideration elsewhere nor has it previously been published, nor will it be submitted elsewhere without the agreement of the Managing Editor.

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ENDNOTES

- ¹ http://www.edsc-esdc.gc.ca/ouvert-open/bca-seb/imt-lmi/TFWP2020_Annual_Table_9_e.csv
- ² For a copy of the 2022 Contract for the Employment in Canada of Seasonal Agricultural Workers from Mexico – 2022, see https://www.canada.ca/content/dam/canada/employment-socialdevelopment/migration/documents/assets/portfolio/docs/en/foreign_workers/hire/seasonal_agricultural/documents/2022-contract-sawp-mexico-en.pdf
- ³ Employment and Social Development Canada (ESDC), a federal government department, negotiates contract on behalf of Canada and administers the program in Canada.
- ⁴ The three groups are: FERME (Fondation des entreprise en recrutement de main-d'oeuvre agricole étrangère) in Quebec; FARMS (Foreign Agricultural Resource Management Services) in Ontario and WALI (Western Agriculture Labour Initiative) for British Columbia.
- ⁵ WALI, Annual SAWP Review Process (2018) online <https://walicanada.ca/wp-content/uploads/2018/10/Annual-SAWP-Review-Process.pdf>.
- ⁶ The MOU provides for a limited role for consular officials to monitor the implementation of the SAWP but, as will be discussed in Part III, their willingness and ability to act is limited.
- ⁷ The first three authors are shared first authors of this article, which also benefited from input from the remaining second authors, each of whom participated in the interventions into the 2021 Contract Negotiations. In addition to our engagement with these negotiations, members of our group also made proposals to governments at different levels and participated in a coroner's inquiry into migrant worker deaths in Ontario and a national consultation on housing.
- ⁸ At the time, Mexico expressed confidence in the formal protections in place in Canada, but its ambassador to the country, Juan José Gómez Camacho, underlined deficiencies in enforcement as a significant problem. Speaking to the disproportionate death toll among migrant farmworkers compared to the rest of Canada's population, he noted that "the reason why there have been infections and sadly three deaths now is because on some farms these rules are not being followed," an arguably unprecedented reproach given Mexico's reliance on remittances (CTV News 2020 as cited by Caxaj et al., 2022; Vosko et al., 2023).
- ⁹ The concept of layered vulnerability was developed by Sargeant and Tucker (2009) and later modified, enlarged and applied to the case of migrant agricultural workers in Canada (Vosko et al., 2019).
- ¹⁰ Even where farm workers are covered, SAWP workers' deportability severely limits their ability to unionize and bargain collectively. See Vosko (2018).
- ¹¹ The full list of recommendations can be found on <https://www.migrantworker.ca/expert-working-group/>
- ¹² See table at fn. 1 and https://open.canada.ca/data/dataset/e8745429-21e7-4a73-b3f5-90a779b78d1e/resource/f4eb46fa-5923-47cc-a988-56ef27abcc40/download/tfwp2022_q2_table_09_e.csv.
- ¹³ For a discussion of cheap food policies and migrant labour on a global scale, (see Gerbeau & Avallone, 2016).
- ¹⁴ This asymmetrical dependence also makes consular officials or liaison officers in Canada who are responsible overseeing Contract compliance unwilling to put in jeopardy the opportunities their citizens gain through this program and thus they tend to support employers, and not migrant workers, when conflicts between them arise (Basok et al., 2014; Preibisch & Binford, 2007).

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How to cite this article: Basok, T., Tucker, E.M., Vosko, L.F., Caxaj, C.S., Hennebry, J.L., Mayell, S., McLaughlin, J. & Weiler, A.M. (2023) The 'contract' and its discontents: Can it address protection gaps for migrant agricultural workers in Canada? *International Migration*, 00, 1–14. Available from: <https://doi.org/10.1111/imig.13121>