

## PROTECTION OF NATIONALS ABROAD: THE MEXICAN STATE AND SEASONAL AGRICULTURAL WORKERS IN CANADA

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*ABSTRACT. Due to the adverse economic conditions in Mexico and the need for offshore labor in Canadian agriculture, Mexico entered the Seasonal Agricultural Worker Program (SAWP) in 1974 as a source country, becoming the country that exports the highest number of agricultural workers to Canada. While abroad, these workers have genuine needs that should be addressed by the Mexican government, but unfortunately the government has failed to provide adequate protection to its nationals. This note offers an overview of the operational aspects of the program and violations of the rules. It identifies workers' needs and the most important national and international documents that regulate the protection of nationals abroad. This research is a critique of the role of the Mexican government in the protection of the seasonal agricultural workers in Canada, identifying the limitations the State faces to provide its national with protection.*

**KEY WORDS:** *Labor migration, Mexican consulates, Seasonal Agricultural Worker Program, rural Mexico, protection of nationals abroad.*

*RESUMEN. Debido a las condiciones económicas en México y a las necesidades de los agricultores canadienses, México suscribió el Programa de Trabajadores Agrícolas Temporales (PTAT) en 1974, convirtiéndose en el mayor exportador de trabajadores agrícolas a Canadá. Durante su estancia en el extranjero, estos trabajadores tienen necesidades que deben ser atendidas por el gobierno mexicano, pero desafortunadamente éste no ha podido proporcionar la protección adecuada a sus connacionales. El presente ensayo ofrece un panorama de los aspectos operacionales del programa, así como las violaciones a éste; identifica las necesidades de los trabajadores y los marcos jurídicos internacionales y nacionales para la protección de los connacionales en el exterior. Esta investigación representa una crítica del papel que el gobierno mexicano desempeña en la protección de los trabajadores agrícolas temporales en Canadá, identificando las limitaciones que enfrenta el Estado para dicha tarea.*

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PALABRAS CLAVE: *Migración laboral, consulados mexicanos, Programa de Trabajadores Agrícolas Temporales, México rural, protección de connacionales en el exterior.*

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### I. INTRODUCTION

Unlike most Canadian immigration programs, the Seasonal Agricultural Workers Program (SAWP) is a temporary migrant labor program with no option for permanent residency, even though the average time most workers spend in Canada is between four and eight months a year. In addition to this long period of time, the nature of the employment contract restricts worker mobility, as it binds workers to a single employer. Due to farm workers' inability to negotiate the terms of their employment elsewhere, they are forced to endure all sorts of abuses committed by their employers, especially given the fact that workers can be easily repatriated. Furthermore, the temporary status of the workers makes them ineligible for many employment benefits,

social assistance programs, and severe disability benefits, even though they do contribute to Employment Insurance and the Canada Pension Plan.

The SAWP was implemented in 1964 and Mexico was included as a source country in 1974. This program was introduced as a result of constant demands from Canadian growers for a cheap, “unskilled”<sup>1</sup> agricultural workforce, which was unavailable in the national workforce. The rural population of developing countries (unable to find employment in their own countries) could meet the growers’ demands. In addition to filling employment gaps, the foreign workers are subject to exploitative conditions that increase the productivity of Canadian farms. Nowadays, offshore labor is not only more convenient for Canadian growers, but it has become a “structural necessity” for Canada’s agriculture<sup>2</sup> and I would also argue that this “structural necessity” has expanded to SAWP source countries, as temporary migrant labor is no longer the exception, but has now become the rule.

In spite of the exploitation workers are subjected to, both the workers themselves and the Mexican government benefit from the SAWP. On the one hand, the workers’ livelihood slightly improves with their enrollment in the program, although the SAWP represents a “poverty alleviation strategy as opposed to a development program.”<sup>3</sup> On the other hand, for the Mexican government, it represents a constant source of remittances, as well as the employment for the rural population that is not possible to create at a national level given current economic conditions and the state of rural poverty.

The Mexican government is both legally and morally compelled to assist and protect the workers enrolled in the SAWP: the State has the legal obligation to protect its nationals abroad, and since the government has been unwilling or unable to develop the necessary conditions for the workers to find employment within the country, then the State (by means of the appropriate institutions) is responsible for the well-being of its nationals abroad. Due to the inadequate and insufficient protection provided by the Mexican government, workers have engaged in grassroots NGO community-organizing activities that oftentimes offer workers the assistance they do not receive from the Mexican State.

This note argues that despite the responsibility of the Mexican State to assist its nationals abroad, seasonal agricultural workers have genuine needs that are not being addressed by the Mexican government. Due to the scarce sources of literature on the topic, I also conducted interviews to complement the secondary research. Literature on the SAWP and the protection of nationals abroad, along with the analysis of relevant international agreements

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<sup>1</sup> Although the labor performed by foreign farm workers in Canada is generally considered “unskilled,” certain types of skills are indeed required to work in agriculture.

<sup>2</sup> See TANYA BASOK, TORTILLAS AND TOMATOES. TRANSMIGRANT MEXICAN HARVESTERS IN CANADA 3 (2002).

<sup>3</sup> LEIGH BINFORD, THE SEASONAL AGRICULTURAL WORKER PROGRAM AND MEXICAN DEVELOPMENT 1 (Canadian Foundation for the Americas, 2006).

and Mexican laws, has allowed me to explore the following questions: What are the needs of workers in Canada that are not being addressed by the Mexican government, and why are these needs not being addressed?

While this note is a critique of the Mexican government with respect to the protection of farm workers in Canada, it also sheds light on the difficulties faced by Mexican officers, who are under pressure to protect the workers' rights without interfering in their competitiveness vis-à-vis workers from other source countries.

## II. LEGAL ASPECTS AND IMPLEMENTATION OF THE SEASONAL AGRICULTURAL WORKER PROGRAM

According to Human Resources and Skills Development Canada (HRSDC-RHDSC) the SAWP allows the organized entry of workers to meet the needs of Canadian agriculture in sectors like vegetables, tender fruits, tobacco, apples, apiary products, ginseng, nurseries, greenhouse vegetables and sod.<sup>4</sup> Ever since 1964, Canada has employed foreign nationals to work on farms. First, it admitted 264 seasonal migrant workers from Jamaica and in 1967 Trinidad and Tobago and Barbados joined the program. In 1974, Mexican workers were added to the foreign labor force on Canadian farms.<sup>5</sup> In that year, only 195 Mexicans were employed, but current statistics of the program indicate that up to May 2011, the Mexican states that have sent the most workers are the State of Mexico (1,977), Tlaxcala (1,333), Guanajuato (734), Veracruz (649), and Puebla (672), with a total number of workers sent standing at 10,290.<sup>6</sup>

The legal basis for the SAWP is Section 10 (c) of the 1978 Immigration Act and Immigration Regulations that deals with noncitizens who are authorized to work in Canada. This section allows the entrance of foreign workers provided that there is an agreement between Canada and the workers' country of origin.<sup>7</sup> The program is drafted by a specific bi-lateral agreement called a Memorandum of Understanding (MOU) along with a set of Operational Guidelines and an Agreement for the Employment of Mexican Workers, that

<sup>4</sup> HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA, TEMPORARY FOREIGN WORKER PROGRAM. LABOUR MARKET OPINION (LMO) STATISTICS. FOREWORD. SEASONAL AGRICULTURAL WORKER PROGRAM (2010) [hereinafter HRSDC 2010]. Para. 1. [http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/stats/annual/foreword\\_sawp.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats/annual/foreword_sawp.shtml).

<sup>5</sup> See BASOK, *supra* note 2, at 18.

<sup>6</sup> DIRECCIÓN DE MOVILIDAD LABORAL DE LA COORDINACIÓN GENERAL DEL SERVICIO NACIONAL DE EMPLEO. PROGRAMA DE TRABAJADORES AGRÍCOLAS TEMPORALES MÉXICO-CANADÁ. REPORTE DE ACCIONES DE VINCULACIÓN LABORAL, CIFRAS AL MES DE MAYO DE 2011 (2011), [www.stps.gob.mx/.../Prog%20de%20Trab%20Agric%20Migr%20Temp%20MC.xls](http://www.stps.gob.mx/.../Prog%20de%20Trab%20Agric%20Migr%20Temp%20MC.xls).

<sup>7</sup> COMMISSION FOR LABOUR COOPERATION, PROTECTION OF MIGRANT AGRICULTURAL WORKERS IN CANADA, MEXICO, AND THE UNITED STATES, WASHINGTON, SECRETARIAT OF THE COMMISSION FOR LABOR COOPERATION (2002), <http://www.naalc.org/english/pdf/study4.pdf>.

contain the guidelines and responsibilities of the Canadian and Mexican governments as well as those of the workers and employers.<sup>8</sup> According to the MOU, the Mexican government is responsible for assisting in the recruitment, selection, and documentation of bona fide agricultural workers; maintaining a pool of workers who are ready to depart to Canada when requests are received from Canadian employers; appointing agents at their embassies/consulates in Canada to assist Citizenship and Immigration Canada (CIC) and Human Resources and Skills Development Canada (HRSDC-RHDC) staff in the administration of the program; and to serve as a contact for workers (e.g. working conditions, employer complaints, etc.).<sup>9</sup>

Canada has designated HRSDC and CIC as the main operators of the SAWP. When Canadian growers are interested in employing foreign workers, they have to submit proof that they unsuccessfully tried to recruit Canadians for the vacant jobs through a Labour Market Opinion (LMO). HRSDC is in constant communication with CIC and the Canadian Embassy in Mexico to recruit and issue the appropriate documentation for workers.<sup>10</sup>

The Mexican institutions involved in the operation of the SAWP are the Ministry of Health, the Ministry of Foreign Affairs, and the Department of Labor and Social Welfare. The Health Ministry ensures that the workers are in the best possible condition to work abroad. The Ministry of Foreign Affairs is in charge of the political matters surrounding the program, issuing traveling documents and protecting workers' rights through consulates. Through its General Coordinating Employment Office (*Coordinación General de Empleo*), the Department of Labor is in charge of managing program and recruiting workers.<sup>11</sup>

Foreign Agricultural Resource Management Services (FARMS) and Fondation des Entreprises en Recrutement de Main-d'oeuvre Agricole Étrangère (FERME) (in Quebec, Prince Edward Island and New Brunswick) are private institutions responsible for SAWP operations in Canadian provinces.<sup>12</sup> The program currently operates in nine provinces, namely Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia.<sup>13</sup>

In order to have a better understanding of workers' needs and how the Mexican government addresses them, it is important to discuss the rights and responsibilities of employers and workers as defined by the Agreement for the Employment.

<sup>8</sup> *Id. See also* HRSDC, *supra* note 4.

<sup>9</sup> HRSDC 2010, *supra* note 4.

<sup>10</sup> *Id.*

<sup>11</sup> Alba Delgado-Bailón, *Funcionamiento del Programa de Trabajadores Agrícolas Temporales México-Canadá* (2008) (Unpublished dissertation, Universidad de las Américas, Puebla), [http://catarina.udlap.mx/u\\_dl\\_a/tales/documentos/lri/delgado\\_b\\_a/](http://catarina.udlap.mx/u_dl_a/tales/documentos/lri/delgado_b_a/).

<sup>12</sup> *See id.*

<sup>13</sup> HRSDC, *supra* note 4.

### 1. Employers' Rights and Responsibilities

Employers in Canada are responsible for providing adequate housing and meals;<sup>14</sup> cooking utensils, and fuel; partial roundtrip transportation;<sup>15</sup> at least two 10-minute rest periods, paid or unpaid, depending on provincial legislation; paying weekly wages equal to the minimum wage paid to Canadians for the same type of job; maintaining work records and statements of earnings; meeting and transporting the worker from the point of arrival in Canada to the place of employment, and transporting the worker to the place of departure from Canada when the contract has ended; getting the worker's consent and HRSDC approval before a worker's transfer to another employer; providing the worker with protective clothing and formal or informal training; paying a recognition fee of \$4 per week to a maximum of \$128 to workers with five or more consecutive years of employment; taking the worker to obtain health coverage when applicable and arranging his or her transportation to a hospital or clinic; and cooperating with the Consulate to ensure proper medical attention.<sup>16</sup>

### 2. Workers' Rights and Responsibilities

Depending on the province, workers are subject to different labor rights, as these vary from province to province. According to the Provincial Employment Standards Act of Ontario, workers have the right to vacation and public holiday pay if they have been employed for at least 13 weeks and are registered members of the Ontario Health Insurance Plan. Since workers make contributions to Employment Insurance (EI) and Canada Pension Plan through regular deductions from their salaries, they are entitled certain benefits from said pension plan.<sup>17</sup> However, given their temporary status and the fact that they are bound to one employer, they are ineligible for regular EI benefits (which include unemployment benefits) and are only entitled to receive maternity/parental benefits, compassionate care benefits, and, in certain circumstances, sickness benefits.<sup>18</sup>

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<sup>14</sup> The employer may deduct a sum that should not exceed \$6.50 per day from workers' wages to partially cover the cost of the meals. See Human Resources and Skills Development Canada, *Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico-2011*, 2011, available at [http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/sawp\\_contracts.shtml#c01](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/sawp_contracts.shtml#c01).

<sup>15</sup> The transportation is initially paid by the employer and then periodically deducted from the workers' paycheck up to the amount of \$632 CAD. *See id.*

<sup>16</sup> *Id.*

<sup>17</sup> Tanya Basok, *Post-national Citizenship, Social Exclusion and Migrants' Rights: Mexican Seasonal Workers in Canada*, 8 CITIZENSHIP STUDIES 47, 53-4 (2004).

<sup>18</sup> Justicia 4 Migrant Workers & Center for Spanish-Speaking People (CFSSP), *Migrant*

The Employment Agreement states that the work schedule shall not exceed 240 hours in a period of 6 weeks or less, nor shall the term exceed the 8 months. The agreement establishes the normal working day as consisting of 8 hours, but the hours can be extended up to a maximum of 12 hours a day. The contract grants workers one day of rest for every 7 days of work, but it also allows this day to be deferred.

The agreement also states that other deductions include non-occupational health insurance, which the employer shall recover through regular payroll deductions at a rate of \$0.60 per day in Ontario, Quebec, and Saskatchewan and \$1.28 in all other provinces. The worker must also obey all the employer's rules regarding safety, discipline and care of property. Furthermore, growers may deduct the cost of keeping quarters clean from the worker's wages. Under certain circumstances, the worker is responsible for covering the expenses of premature repatriation. Workers are also required to return to Mexico at the end of the labor contract and are bound to one employer per season.<sup>19</sup>

According to my personal communication with a public servant, the workers also have authorization for re-entry (*permiso de doble retorno*), which grants them the right to travel to Mexico and return to Canada during the working season if there are conditions in the home country they consider require their presence. These conditions may range from family emergencies to local holidays or celebrations. The cost of the transportation is negotiated between the employer and the worker.

Having examined the rights and responsibilities of employers and workers, workers are clearly at a disadvantage, and that their legal rights (such as days of rest and cleaning and maintenance of their living spaces) can easily be removed, since they are subject to farm productivity and employers' whims. Furthermore, workers may have to pay unexpected expenses due to situations that are out of their control, such as premature repatriation and re-entry authorizations. We can clearly observe that preserving the competitiveness of Canadian farms has priority over workers' human rights and the rights granted them through the Agreement for the Employment.

### *3. Violations to the Agreement for Employment with Mexico*

Working in agriculture is considered one of the most dangerous jobs in Canada. There is a high risk of occupational accidents and illnesses due to pesticides and other chemical products, as well as handling machinery. Even though the Agreement stipulates that the employer must provide the worker with appropriate clothing, and "formal or informal training and supervision

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*Workers and Employment Insurance. What You Should Know*, Ontario, The Law Foundation of Ontario (on file with author).

<sup>19</sup> HRSDC 2011, *supra* note 14.

where required by law,”<sup>20</sup> a high percentage of workers do not receive either appropriate training or the required equipment, which puts them at even more at risk. Furthermore, since the clause specifies that the training can be “formal” or “informal,” employers can easily say that informal training was given, and thus justify their compliance with the Agreement while saving the expense of providing formal training.

According to the Agreement, the normal working day should be 8 hours long, but can be extended to 12 hours in urgent harvest conditions.<sup>21</sup> However, a study conducted by Verduzco-Igartúa found that workers were self-reporting working days that averaged 9.3 hours, and some even 17 hours. Again, the flexibility of the working hours permitted by the agreement makes workers legally exploitable. Since the employer is supposed to pay for extra hours, workers do not mind exceeding the permitted limit, and employers benefit from the economic vulnerability of farm workers.<sup>22</sup> Moreover, the isolated locations of most farms may have a certain influence on workers’ decision to work overtime since there are no places for entertainment or leisure activities available nearby.

In terms of housing, there have been complaints of overcrowding, air conditioning or heating system malfunctions, unsanitary conditions, and lack of appliances.<sup>23</sup> This unsuitable accommodation violates Clause II-1 of the Agreement that stipulates the employer’s obligation to provide workers with suitable accommodation that meets the approval of the authority responsible for health and living conditions or the corresponding government agent. The fact that workers are housed near their employers also represents a disadvantage: the short distance between them makes it easier for employers to ask workers for “favors,” such as working on weekends or late in the evenings.<sup>24</sup>

With regard to salary, a survey conducted between 2001 and 2003 in Ontario revealed that Canadian citizens were paid between 9% and 14% more than migrant workers,<sup>25</sup> a fact that contradicts Clause III-3 of the Agreement that states that Mexican workers should be paid the same amount as Canadian workers for the same type of work. As mentioned before, the workers

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<sup>20</sup> *Id.* Clause VIII-3.

<sup>21</sup> *Id.* Clause I-2.

<sup>22</sup> Gustavo Verduzco-Igartúa, *Lessons from the Mexican Seasonal Agricultural Worker Program in Canada. An Opportunity at Risk*, in MEXICO-U.S. MIGRATION MANAGEMENT (Agustín Escobar-Latapí & Susan F. Martin eds., 2008).

<sup>23</sup> Basok, *supra* note 17; Kerry Preibisch & Luz María Hermoso-Santamaría, *Engendering Labour Migration: The Case of Foreign Workers in Canadian Agriculture*, in WOMEN, MIGRATION AND CITIZENSHIP: MAKING LOCAL, NATIONAL, AND TRANSNATIONAL CONNECTIONS 119-25 (Evangelia Tatsoglou & Alejandra Dobrowolsky eds., 2006).

<sup>24</sup> Personal and private communication with an activist, June 25<sup>th</sup> 2011; Vic Satzewich, *Business or Bureaucratic Dominance in Immigration Policy Making in Canada: Why Was Mexico Included in the Caribbean Seasonal Agricultural Workers Program in 1974?*, 8 INTERNATIONAL MIGRATION AND INTEGRATION 255, 261 (2007).

<sup>25</sup> Satzewich, *supra* note 24.

also have the right to paid holidays and vacations. However, since there is a misunderstanding in the application of the Employment Standards Act between “harvest” and “farm” workers,<sup>26</sup> some growers pay for vacations only as a reward.<sup>27</sup> Another violation to the Agreement is the right to one day off for every six consecutive days of work. Since the Agreement also allows the employer to defer the day off “until a mutually agreeable date,”<sup>28</sup> many workers are asked to work the full week, including half day on Sunday, during the harvest season.

Although workers have the right to receive EI benefits, they are considered ineligible for some of these benefits. Since one requirement is to be “ready, willing, and able to work” and agricultural workers are bound to one employer, once they stop working for this particular employer they are considered unavailable to work and are therefore ineligible. Moreover, most benefits require the worker to remain in Canada, so for those who have left the country or have been deported, receiving these benefits is even more difficult.<sup>29</sup>

Even though worker mobility is restricted due to the conditions of the MOU and the Agreement for the Employment, which bind them to one employer, Canadian farmers further restrict the workers’ mobility and control their activities by withholding their passports and forbidding them to go out at night, even on their days off.

### III. “PROTECTION” OF NATIONALS ABROAD AND THE SEASONAL AGRICULTURAL WORKER PROGRAM

As a principle of international law, every individual has the right to be protected while in a foreign State. Nowadays, the protection of nationals abroad is considered a right to which all humans are entitled as a means for safeguarding their liberty, life, personal security, property, and so on.<sup>30</sup> Accordingly, Mexican seasonal agricultural workers in Canada have the right to be protected by the Mexican State, and the Mexican State has the responsibility to provide them with adequate protection. This section analyzes the diverse national and international mechanisms that regulate the protection of nationals abroad and that are pertinent to the SAWP. It then discusses the

<sup>26</sup> According to Basok, *supra* note 17, at 62, paid public holiday and vacation benefits are only available to harvest workers who have been employed as harvesters for 13 weeks. Even though most Mexicans work over 13 weeks, they perform diverse tasks and not all of them are related to harvesting.

<sup>27</sup> *See id.*

<sup>28</sup> *Id.*

<sup>29</sup> *See* CFSSP, *supra* note 18, at 12.

<sup>30</sup> *See* Victor M. Uribe, *Consuls at Work: Universal Instruments of Human Rights and Consular Protection in the Context of Criminal Justice*, 19 HOUSTON JOURNAL OF INTERNATIONAL LAW (1997), [http://findarticles.com/p/articles/mi\\_hb3094/is\\_n2\\_19/ai\\_n28684112/](http://findarticles.com/p/articles/mi_hb3094/is_n2_19/ai_n28684112/).

limitations that the Mexican State faces when protecting seasonal workers and the assistance provided to them by grassroots organizations.

### *1. International Framework for the Protection of Nationals Abroad*

The Charter of the United Nations is an important instrument that outlines an individual's fundamental rights and thus serves as a tool for States to protect their nationals abroad. Article 55 of the Charter states that the UN "...shall promote ...universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion." Article 56 reiterates the commitment of all member States to cooperate with the UN to achieve respect for human rights. These articles shed light on the universality of human rights, which are inalienable to the person, regardless of the State jurisdiction he or she may be subject to.

There are also several international conventions and agreements that regulate the relationship between the States with regard to the protection of their co-nationals on foreign soil and of migrant workers specifically. In the context of the SAWP, I consider the most relevant documents are the Vienna Convention on Consular Relations (VCCR) of 1963 and the North American Agreement on Labour Cooperation (NAALC) of 1994.<sup>31</sup>

### *2. 1963 Vienna Convention on Consular Relations*

An important way in which a State provides protection to its co-nationals abroad is by means of their consular posts. The right to consular protection is initially based on the State's sovereignty and is a way in which individuals ensure the respect of their rights through the support of their State of nationality when abroad. In 1949, the UN declared that consular relations should be universally and uniformly regulated by a multilateral treaty and on April 24, 1963 the VCCR came into force.<sup>32</sup>

The duties of the consul are not expressly mentioned in the Convention and vary according to the circumstances of each case. However, Article 5 enumerates some of the most common functions of consular officers relevant to this topic:

...the protection and assistance of co-nationals in the sending State; the protection of the interests of the sending State and of its nationals, both individuals

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<sup>31</sup> Other important conventions are the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on Migration for Employment, the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. However, since Canada is not a signatory State to any of them, and Mexico has only ratified the first one, they are not applicable to the SAWP.

<sup>32</sup> See JOHN QUIGLEY ET AL., THE LAW OF CONSULAR ACCESS. A DOCUMENTARY GUIDE 7 (2009).

and bodies corporate, in accordance with the laws of the receiving State; the representation or arrangement of appropriate representation for co-nationals before local tribunals and other authorities insofar as the laws of the receiving State permit...<sup>33</sup>

This list is not exhaustive and consuls can perform any activity that does not contravene the laws of the receiving State.

The provision of consular protection may vary. The consular assistance provided to nationals who find themselves in difficult situations is referred to as “protection activity,” and the consulate employee in charge of assisting nationals is the designated “protection officer.”<sup>34</sup> Assistance is provided in the form of advice and information on local proceedings; representation before local authorities; contacting interpreters, translators and law firms during judicial procedures; visiting and interviewing nationals that are imprisoned about the treatment and conditions in the facilities; objecting to and trying to amend any harm against a national; providing special assistance to people with disabilities, minors, the elderly, or people with limited legal capacity.<sup>35</sup>

There are two main approaches that States can take regarding the right to consular protection. The first one is that it is the *obligation* of consular officers to provide protection to their nationals. The second approach is that consular protection is a *discretionary decision* of the State of nationality. Uribe believes that the Mexican State has taken the first approach, since its consular officers must provide assistance for Mexicans dealing with local authorities, and assist co-nationals in detention centers, prisons, hospitals or any other problematical circumstance.<sup>36</sup> However, this statement is only true in theory, as in practice, the Mexican consulates have shown huge failures in the protection services they offer.

### *3. The 1994 North American Agreement on Labor Cooperation*

In 1994, the governments of Canada, Mexico and the United States signed the North American Agreement on Labor Cooperation (NAALC), which entered into force on January 1, 1994. Under this agreement, the obligations for each State are the improvement and enforcement of their labor laws, the working conditions and the living standards in their territory and access to impartial courts.<sup>37</sup> This is the first agreement that provides a mechanism for governments to ensure workers’ rights and improve workers’ living and working conditions without any interference in the sovereignty of the parties

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<sup>33</sup> U.N., Vienna Convention on Consular Relations, Article 5 (1963).

<sup>34</sup> QUIGLEY ET AL., *supra* note 32, at 6.

<sup>35</sup> See Uribe, *supra* note 30.

<sup>36</sup> *Id.*

<sup>37</sup> COMMISSION FOR LABOUR COOPERATION, *supra* note 7.

involved. The agreement provides for the establishment of working groups, intergovernmental consultations, independent evaluations and dispute settlement related to national labor law enforcement.<sup>38</sup>

Each country may implement a National Advisory Committee and Governmental Committees to issue recommendations on the improvement and implementation of the Agreement. The parties can also establish consultations with regard to another party's labor law, its enforcement, or the conditions of the labor market. If a matter is still unsolved after its evaluation by the Committee, then any of the parties can request the establishment of an Evaluation Committee of Experts (ECE). The agreement also discusses the resolution of disputes through an Arbitration Panel concerning the enforcement of "occupational safety and health, [and]... minimum wage technical labor standards" (Article 27). The Panel acts as a mediator so that the parties commit to an Action Plan.<sup>39</sup>

One of the principles of the NAALC is the protection of migrant workers. The first addendum of the agreement states that the parties are committed to grant equal legal protection to migrant workers and nationals and that the Council will promote cooperation agreements in the area of migrant workers. As stated above and with the objective to protect its farm workers, Mexico has the option to implement an Evaluation Committee of Experts to assess Canada's compliance with these regulations and its refusal to allow the unionization of agricultural workers. Unfortunately, this measure has not been taken yet, despite the clear violations to the NAALC committed by Canadian authorities.

A possible explanation for Mexico's unresponsiveness with regard to requesting the creation of a Committee to evaluate the conditions of seasonal agricultural workers may be the lack of enforcing labor laws in Mexico itself. If Mexico decides to demand that Canada enforce certain NAALC regulations, it would imply that Mexico has to comply with labor standards as well, and it is unlikely that Mexico would be willing to accept this commitment. Moreover, the Mexican government is aware of the cheap labor pool that other developing countries represent for Canada. Mexican representatives are afraid that the more complaints there are about unfair treatment to Mexican workers and protection to its co-nationals, the more likely it is that Canadian farmers will cease to employ Mexicans, turning instead to workers from other nations.

#### *4. Mexican Framework for the Protection of Nationals Abroad*

The most important Mexican law for the protection of nationals abroad is the Law on the Mexican Foreign Service and its regulations. The 1829

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<sup>38</sup> COMMISSION FOR LABOUR COOPERATION, *The North American Agreement on Labor Cooperation*, (1994).

<sup>39</sup> *Id.*

legislation on the Mexican Foreign Service was the first legal document that referred to Mexican consuls and protection of foreign nationals. The subsequent legislations of 1910 and 1923 stated that the primary responsibility of the consular officers was “...the protection of the rights and interests of Mexican nationals.”<sup>40</sup>

The Ministry of Foreign Affairs regulates the Mexican Foreign Service. Article 1 of the Law of the Mexican Foreign Service (*Ley Orgánica del Servicio Exterior Mexicano*, 1994) defines the Foreign Service as the permanent body of public servants in charge of representing the country abroad and of executing foreign policy according to the Mexican Constitution. Article 44 of the Law of the Mexican Foreign Service authorizes direct intervention by Mexican consular officers, in accordance with international laws and the laws of the receiving country, to protect the rights of Mexican nationals under international law. Moreover, Article 65 of the “*Reglamento*” (regulations corresponding to this legislation) establishes the “primary importance” of protecting the rights of Mexicans abroad. Mexican consular officers are required to assist Mexican nationals in their relations with local authorities, visit Mexicans who are detained in prisons, and represent those who cannot personally defend their interests.<sup>41</sup>

In 1981, the Mexican Ministry of Foreign Affairs created the “consular protection officer,” who is a special employee of the consulate whose sole responsibility is the protection of Mexicans abroad. By 1983, all consulates in the USA had at least one consular protection officer. The Mexican consulates in Canada also have one or more consular protection officers.<sup>42</sup>

##### 5. *The Mexican State “Protecting” SAWP Workers*

The Ministry of Foreign Affairs is the main actor responsible for the protection of all Mexicans living abroad, and thus of seasonal agricultural workers. The General Office of Protection to Mexicans Abroad (*Dirección General de Protección a Mexicanos en el Exterior*) is part of the Under-Secretary for North American Affairs. The latter is responsible for policy issues regarding protection, and the duty of the former is more pragmatic and consists of implementing protection measures for Mexicans, their interests and human rights

<sup>40</sup> Mark Warren, *Mexican Consular Protection* (2008), <http://www.stratongina.net/glp/node/23>.

<sup>41</sup> *Id. See also* Ley del Servicio Exterior Mexicano, 1994 (Mex.).

<sup>42</sup> See Alma Arámbula-Reyes, *Protección consular a los mexicanos en el exterior* (2008), [www.diputados.gob.mx/cedia/sia/spe/SPE-ISS-15-08.pdf](http://www.diputados.gob.mx/cedia/sia/spe/SPE-ISS-15-08.pdf); EMBASSY OF MEXICO IN OTTAWA, PROGRAMA DE TRABAJADORES AGRÍCOLAS TEMPORALES MÉXICO-CANADÁ Y LA ASISTENCIA BRINDADA POR LOS CONSULADOS A LOS TRABAJADORES MEXICANOS EN EL EXTERIOR. TALLER “TRABAJADORES MIGRANTES: PROTECCIÓN DE SUS DERECHOS LABORALES Y PROGRAMAS DEL MERCADO DE TRABAJO” (2006), [www.sedi.oas.org/ddse/migrantes/contenidos/...%20Nov.../Mexico\\_ESP.ppt](http://www.sedi.oas.org/ddse/migrantes/contenidos/...%20Nov.../Mexico_ESP.ppt).

through accredited consular posts in different countries.<sup>43</sup> In fact, one of the most important purposes of consular posts is the protection of nationals, which could be considered the underlying goal of all other consulate tasks.<sup>44</sup>

According to the Mexican public servant interviewed and the literature reviewed, the most frequent cases in which Mexican seasonal workers need consulate protection are derived from accidents in and outside the workplace, salary deductions, access to benefits, income tax paperwork, illnesses and insurance, and definite repatriations. In response to these needs, consulates perform the following tasks: regularly visiting farms; supervising workers' living and nutritional conditions; acting as an intermediary between the worker and the employer in any dispute that may arise between them; meeting workers at the airport upon their arrival; assisting workers in cases of occupational accidents; ensuring proper working conditions for the workers; taking workers' calls; providing them with all the necessary legal information; acting on behalf of workers' rights in case of their absence; assisting workers with insurance paperwork and their relationship with the provincial and federal government.<sup>45</sup>

Mexico has five consular offices in Canada located in Calgary, Leamington, Montreal, Toronto and Vancouver. The consulates in Calgary and Leamington are career consulates, and the rest are consulate-generals. Career consulates are usually smaller and depend on a consulate-general. In terms of consular districts (which outline the jurisdiction of consular posts), the consulate-general in Montreal has jurisdiction in Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, and Nunavut. The consulate-general in Toronto has jurisdiction in Ontario and Manitoba, and the career consulate in Leamington reports to it. The consulate-general in Vancouver has jurisdiction in British Columbia, Alberta, Saskatchewan, Northwestern Territories and Yukon, and the career consulate in Calgary reports to it. As for protection officers, all consulates have at least one, except for Calgary.<sup>46</sup> In addition to the services provided at consular posts, the Mexican Ministry of Foreign Affairs has implemented a program called *Consulados Móviles* (Mobile Consulates). This program already existed in the United States, and its main objective is for consular officers to visit places with large Mexican communities and that are located far from consular posts.

Despite the aforementioned arguments, the general belief in Mexico (and in Canada) is that the program is beneficial for both workers and employers. This position is also upheld at an institutional level. During a workshop given at the Mexican Embassy in Ottawa in 2006 by representatives of the Ministry

<sup>43</sup> See Reyes, *supra* note 42; personal communication with a public servant, June 7, 2011.

<sup>44</sup> See Uribe, *supra* note 30.

<sup>45</sup> EMBASSY OF MEXICO IN OTTAWA, *supra* note 42.

<sup>46</sup> SECRETARÍA DE RELACIONES EXTERIORES, CONSULADOS DE MÉXICO EN EL EXTERIOR (2011), <http://sre.gob.mx/index.php/representaciones/consulados-de-mexico-en-el-exterior>.

of Foreign Affairs and the Department of Labor, the speakers said that the program was a successful measure for international cooperation and management of migrant workers' flows in a "regulated, dignifying and organized" way. As mentioned, when the public servant provided me with statistics on the number of Mexican workers in the program, he argued that the high numbers of the Mexican workers indicated that their protection was adequate. The public servant's interpretation of the rising numbers of Mexicans in the program has little to do with the protection services offered to them. Actually, these numbers reflect the deteriorated condition of the country's rural areas and the workers' vulnerability. Moreover, it is improbable that one of the factors that encourage workers to apply to the program is the protection offered by the Mexican State.

It is also important to acknowledge the existence of measures that Mexican authorities have implemented to improve the protection of SAWP workers. Since 2010, workers can also evaluate their employers, the living and working conditions, transportation, payments and deductions. Workers in British Columbia were given a booklet that contained security measures to reduce and avoid risks at the workplace when using chemicals and pesticides.<sup>47</sup> Furthermore, the consulate-general in Toronto has an 800 number for workers to contact the office.<sup>48</sup>

#### *6. Limitations to the Protection of Mexican Agricultural Workers in the SAWP*

There are several limitations that hinder the capacity of the Mexican State to protect workers, some of which are inherent in the legal structure of the program itself and others related to the lack of training and insufficient human resources and budget appointed to the Mexican consulates in Canada, in addition to the unwillingness of the Mexican government to act on behalf of workers. After reviewing the literature and conducting the interviews, it is my opinion that the biggest obstacle to the protection of Mexican farm workers is the Mexican State's fear that the protection offered would compromise the competitiveness of Mexican workers vis-à-vis other workers from developing countries.

As to the limitations that derive from the program's legal structure, we have seen in earlier sections that the MOU, its Operational Guidelines, and the Agreement for the Employment provide excessive freedom to employers in decision-making over aspects such as working hours, days of rest, living quarter maintenance and premature repatriations. Due to the obligatory and binding nature of these documents, the consulate's capacity is limited. None-

<sup>47</sup> PODER EJECUTIVO FEDERAL, CUARTO INFORME DE EJECUCIÓN DEL PLAN NACIONAL DE DESARROLLO 2007-2012 (2011), [www.indaabin.gob.mx/leyinfo/informes/informes.pdf](http://www.indaabin.gob.mx/leyinfo/informes/informes.pdf).

<sup>48</sup> See Verduzco-Igartúa, *supra* note 22.

theless, the public servant denied any legal limitations and mentioned that the *Consultoría Jurídica* (Department of Legal Affairs) of the Ministry of Foreign Affairs believes there are no legal limits imposed by the MOU or any other documents regarding the operation of the SAWP.

However, the public servant in Mexico did mention two other factors that restrict the performance of the Mexican State: provincial labor laws and the Canadian Privacy Law. In terms of the limits posed by provincial labor laws on working conditions and wage deductions, the public servant argued that Mexico has always been very respectful of domestic laws and has acted within the legal limits of the receiving State.

According to the public servant, the Canadian Privacy Law forbids the authorities to disclose any kind of information concerning an individual without prior consent. He mentioned this with respect to workers that are in hospitals and do not give consent for the consulates to learn of their situation.

Concerning the limitations derived from the deficiencies of the Ministry of Foreign Affairs, in spite of the five Mexican consulates and the *Consulados Móviles* program, consulates fail to reach some of the workers due to the large regions over which the consulate has jurisdiction, the scattered locations of the farms, and the limitations in human and monetary resources. Furthermore, consulates do not employ enough staff to visit the farms and do not provide workers with the help they need to claim their rights and benefits. The public servant interviewed commented that the Ministry of Foreign Affairs annually approves a budget for the protection of Mexicans living abroad, and that there is a special allocation for SAWP workers, but he refused to give concrete numbers.

Unfortunately, the capacity and budget of the consulates are insufficient to support the migrant workers who need their services. The field research conducted by Verduzco-Igartúa shows that nearly 3,000 workers per season need consular assistance, and that the massive numbers of seasonal workers has surpassed the human capacity and space of the Mexican consulates. This is supported by his statistics that show that less than one quarter of the workers interviewed considered that the services received by the consulate were adequate, 44.4% think that the Consulate does not represent them properly, and 21% did not reply because they had not used any consular services.<sup>49</sup>

Even in Mexico, there are misconceptions and discriminatory attitudes against the rural population that are unfortunately reflected in institutional responses to the protection of agricultural workers. For instance, the public servant thinks farmers prefer Mexican workers because they are very “adaptable.” The public servant did not seem to be aware of the vulnerability of Mexicans due to discriminatory stereotypes, economic conditions and a lack of fluency in English, which are actually important assets that employers take into account when choosing the source country of the workers. By

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<sup>49</sup> See *id.*

using the word “adaptable,” the public servant perpetuated the misconception that Mexicans are more suitable for agriculture (and “low-skilled” jobs in general) as an inherent part of their ethnicity, corroborating the idea of “Mexicanness.”<sup>50</sup>

Despite the flow of Mexican workers to Canada and the fact that the program is now 37 years old, Mexico still regards the United States as the main arena in which protection to co-nationals takes place, and has made little effort to implement protection programs designed specifically for farm workers in the SAWP. Most consular protection activities in Canada do not differ from the programs implemented in the United States (which are also inefficient), disregarding the difference between the migration experiences of the Mexican rural population in Canada under the SAWP and those in the United States.

As to the dilemma the Mexican State faces regarding the protection of workers and their competitiveness, Binford puts this situation into perspective arguing that

...consular representatives are under pressure to maintain good relationships with... growers, who have the right to choose the source countries from which they draw their workers. The more vigorously the consulate advocates on behalf of Mexican migrant workers, the greater the likelihood that growers will opt for Caribbeans rather than Mexicans in the future.<sup>51</sup>

Lowe supports this argument by commenting on one case in which a Mexican consulate blacklisted a particular farm that mistreated the workers, and thus the Mexicans working on that farm lost their jobs. Instead of forbidding that particular grower to hire any workers at all, the farm stopped hiring Mexicans for the following season and hired Guatemalans instead under the Temporary Foreign Worker Program, which is less regulated.<sup>52</sup>

The pressure for Mexican consulates to preserve seasonal jobs has led consulates to be unresponsive to workers’ needs. Binford’s research shows that less than half of Mexican workers that reported mistreatment by their employers sought help from the consulate, and 15 out of 34 workers that used consular services claimed that they did not receive adequate attention or were ignored, and that “the consulate does not resolve anything.”<sup>53</sup> He also con-

<sup>50</sup> According to Hermoso-Santamaría and Prebisch, *supra* note 24, and Satzewich, *supra* note 25, this term refers to the social construction of the Mexican, which confers Mexicans characteristics deemed to be natural or intrinsic to their ethnicity.

<sup>51</sup> Leigh Binford, *From Fields of Power to Fields of Sweat: The Dual Process of Constructing Temporary Migrant Labour in Mexico and Canada*, 30 THIRD WORLD QUARTERLY 503, 510 (2009).

<sup>52</sup> See Sophia J. Lowe, *Plus ça change? - A comparative Analysis of the Seasonal Agricultural Workers Program and the Pilot Foreign Worker Program for Farm Workers in Quebec* 42 (2007) (Unpublished dissertation, Ryerson University). Retrieved from: <http://bit.ly/uviKxM>.

<sup>53</sup> Binford, *supra* note 51.

siders that the Consulate chose a “negotiation strategy” over an “advocacy strategy,” which has led the workers to believe that they have no support from the consulate to be able to claim their rights.<sup>54</sup>

In personal communication, the activist corroborated the inefficiency of the consular services arguing that consulates do not provide workers with effective assistance. She brought to my attention the case of a female Mexican worker in Ontario who was harassed by a consular officer who wanted her to sign forms in which she gave up the right to treatment and benefits in Canada after having had an accident at the workplace. The officer also wanted her immediate repatriation to Puebla, Mexico. More recently, on May 2011, the Mexican consulate in Vancouver was accused of blacklisting two workers who were union sympathizers and had successfully unionized. The consulate did not want them to return to Canada the following season and warned other Mexican workers to stop visiting union support centers. The United Food and Commercial Workers (UFCW) filed charges against the consulate.

Nonetheless, the public servant argues that “protection” does not interfere with the hiring of Mexican workers, and that employers are generally satisfied with the program. The public servant believes employers’ satisfaction is related to the adequate intervention of the Consulate. I would differ with the public servant’s opinion, as the more exploitable and unprotected the workers are, the more profitable it is to hire them, and thus the more satisfied some farmers are. Employer satisfaction is also due to the fact that consular officers often side with them instead of the workers in order to save workers’ jobs.<sup>55</sup>

The fact that farmers are comfortable with Mexican workers could actually reflect the poor intervention of the consular officers who, due to the demands of the Ministry of Foreign Affairs and the Department of Labor, feel compelled to maintain high hiring rates, even at the expense of violations to workers’ rights.

The public servant interviewed also mentioned that there are labor unions demanding that the Mexican government intensify its activities for the protection of seasonal workers. However, the public servant believes that the protection framework is adequate, since the farmers are content and labor migration takes place legally and in an organized manner. However, at the end of the conversation, the public servant admitted that “there is still a lot to be done” with regard to the program and the protection of the workers, but he reiterated that the SAWP was a good opportunity for Mexican farmers to obtain a better income, acknowledging that the current situation in rural Mexico did not leave the farmers with any other options.

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<sup>54</sup> See *id.*

<sup>55</sup> EL CONTRATO (DOCUMENTARY) (KAREN KING-CHIGBO & SILVA BASMAJIAN, PRODUCERS; M. SOOK LEE, DIRECTOR, MONTREAL: NATIONAL FILM BOARD OF CANADA 2003).

### *7. Grassroots Organizations and Unions as an Alternative for the Protection of Mexican Agricultural Workers*

Migrant workers have found enormous support in community centers, grassroots organizations and unions such as Justicia 4 Migrant Workers, Dignidad Obrera Agrícola Migrante (DOAM), UFCW, etc. Due to the community-based nature of these organizations and the fact that some were founded by migrant workers themselves (such as DOAM), they know the workers' real needs and have a better understanding of the obstacles they experience while in Canada. Since these organizations do not pursue any political aims or commitments, they are better able to support the workers than institutional channels such as consulates and government offices (both from Mexico and Canada).

Another advantage of these associations is that they are in constant communication with the workers, either through the centers they have established in locations where there is a considerable number of migrant workers<sup>56</sup> or by visiting the farms. Furthermore, they have the ability to organize resistance movements with workers, such as the "Pilgrimage to Freedom."<sup>57</sup> According to the activist I interviewed, they do not impose their own ideologies on the workers and neither do they tell them how they should organize. On the contrary, they support workers' ideas and help them build their own resistance movements based on what the workers want. Grassroots organizations have also been able to constitute a social network of allies that can assist workers with particular needs, such as referrals for legal firms and hospitals that offer pro bono services.

The public servant I interviewed did not seem to know much about grassroots organizations. However, he suggested that a survey should be conducted on the farms, asking Mexican workers their opinion concerning the services offered by the consulates, and that the latter should foster and improve relationships with pro-immigrant NGOs. I agree with the public servant, as grassroots organizations can be powerful allies for the consulates in terms of helping them gather workers, facilitating informative workshops, lending facilities for meetings, and informing consular officers of the real living and working conditions of Mexican workers. However, grassroots organizations are very critical of the performance of the Mexican consulates, and thus establishing a working relationship with them is an enormous challenge that

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<sup>56</sup> The UFCW has established Migrant Agricultural Worker Support Centres in places such as Leamington, Bradford, Simcoe, Virgil, Saint-Rémi, Abbotsford, Portage la Prairie, and Kelowna.

<sup>57</sup> The "Pilgrimage to Freedom" was coordinated by Justicia 4 Migrant Workers. It was a march carried out by migrant workers, allies and activists from Leamington to Windsor on Thanksgiving Day in 2010. The objective was to shed light on the reality of food processing in Ontario and the working conditions of migrant workers.

implies a shift in consular officer's attitude toward workers, changing from a "negotiation strategy" to an "advocacy strategy."

#### IV. DISCUSSION

The inclusion of Mexico in the SAWP has represented enormous disadvantages for the workers; it has affected their personal and family lives and exposed them to dangerous and exploitative working conditions and discrimination, while slightly improving their livelihood. The large pool of cheap labor available to Canada represents a reduction in bargaining power not only for Mexicans, but also for all the other developing countries involved in this "race to the bottom." Due to the number of foreign workers willing to participate in Canadian agriculture, the Memorandum of Understanding and the Agreement for the Employment between Canada and Mexico are becoming less favorable for Mexicans every year. In addition, employers often violate the regulations, but receive no real sanctions.

With regard to the first research question which concerns the workers' needs that are not addressed by the consulate, I argue that these needs mainly derive from the violations to the Agreement for the Employment and provincial laws that regulate compensations; accidents in and outside the workplace; illnesses; definite repatriations; insurance and tax return paperwork, and the rights and benefits that workers are unable to claim due to their lack of status or knowledge of the official languages.

Not only does the Agreement for the Employment institutionalize exploitation, but the growers also commit violations to the already exploitative conditions. Furthermore, the Agreement contains several stipulations left intentionally "unspecified," so that employers can interpret them at their convenience. Therefore, Mexican workers are in need of institutions that can give them the protection they need when working abroad under such vulnerable conditions. In spite of national and international regulations providing for the protection of co-nationals abroad, the Mexican State has not made use of the legal resources provided by the NAALC, such as requesting the implementation of Advisory and Evaluation Committees to assess Canada's compliance with the objectives of the agreement. Mexico has also failed to comply with the regulation stated in the VCCR with regard to "the protection of the interest of the sending State and of its nationals..."<sup>58</sup> Furthermore, the State has also disregarded some of the stipulations contained in the Law of the Mexican Foreign Service, which authorize direct intervention of the Foreign Service members to protect the rights and interests of Mexicans abroad under international laws.

Regarding the research question concerning why the workers' needs in Canada are not being addressed, the Mexican State is unable to address the

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<sup>58</sup> U. N., *supra* note 33.

workers' needs due to various limitations that, in my opinion, derive from three main factors:

1. *Legal and policy limitations*: The MOU, the Operational Guidelines, and the Agreement for the Employment leave little space for Mexican public servants to file a complaint for non-compliance with SAWP regulations. These documents institutionalize unfree labor and grant the employer enormous control over the workers.
2. *Inadequate protection measures*: Consular posts are the most important instrument that States have for protecting their nationals abroad. In spite of the fact that there are five Mexican consular posts in Canada, the large number of agricultural workers surpasses their budget and human capacity. The personnel does not receive adequate training to deal with the specific needs of the workers, and the Ministry of Foreign Affairs has not developed any special programs to address the specific needs of seasonal agricultural workers, other than visits to farms, which are not carried out as often as needed.

The public servant I interviewed corroborated the general belief that the program is a success, and perpetuated the idea of Mexicans being "adaptable" to agricultural work. However, he did acknowledge that as long as the conditions in rural Mexico remain unfavorable, this program represents perhaps the best job opportunity many Mexican farmers have. Bureaucrats in the Ministry of Foreign Affairs, whether in the central headquarters or at consular posts, must realize that, albeit needed, neither the program nor worker protection is a "success" and the SAWP is not a sustainable option. Since the Ministry's sole responsibility under the SAWP is the protection of Mexican workers and it has no control over Mexico's participation in the program, it must try to improve the services delivered to the workers. But this is not an easy matter, as Mexican workers are in a race to the bottom against other developing countries and the more protection the workers have, the less competitive they are.

3. *Competitiveness vs. protection*: I consider this the most important and biggest limitation the Mexican State faces in protecting its nationals. The Ministry of Foreign Affairs must find a balance between the "protection" it offers workers and how it may affect workers' jobs. In extending the Foreign Worker Program to include agriculture, every country with a surplus of "low-skilled" workers can join the program and work for Canadian farms, and since employers can choose the source country of their workers, the bargaining power of all source countries involved decreases. The rationale of the consulates to protect workers' rights and keep employers interested in hiring Mexicans has been to negotiate rather than to advocate the workers' well-being, incurring in practices that leave the workers in even more vulnerable situations.

The Vienna Convention and the Law of the Mexican Foreign Service stipulate that consular posts and members of the Foreign Service must protect the interests of both the State they are representing and their citizens abroad. However, the adequate protection of SAWP workers can sometimes compromise the State's interests. Since the SAWP represents constant remittances for the Mexican government as well as a source of employment, the Ministry of Foreign Affairs is under pressure to keep as many Mexicans as possible in the program, even if it means ignoring abuses, exploitation, discrimination and violations to workers' human rights.

As I have argued, consular protection is not a factor that workers even take into consideration when applying for the SAWP. In fact, even though a considerable number of workers think consulates do not represent them properly, they still sign up for the program. Therefore, the Ministry has given priority to the protection of State interests over worker protection. For this situation to revert itself, there needs to be a change in rural Mexico and the national agriculture needs to be developed, which is no simple matter.

The last topic discussed in the paper is the role of grassroots organizations in the protection of Mexican migrant workers. Indeed, these organizations are able to assist and somehow make up for some of the State's deficiencies in assisting workers. Their community-based nature, the fact that they do not pursue any political interest and that they are not constrained by any protocols allow them to organize resistance movements and help workers more humanely and more appropriately. Although members of these organizations could potentially be very good allies of Mexican consulates, their role as activists and their relationships with workers would be compromised if they were to partner with institutions that do not have a good reputation among the workers. Therefore, unless the Mexican State implements more effective protection activities, it is unlikely that pro-immigrant NGOs will side with the State in the fight for migrant rights.

To conclude, the Mexican State is not complying with its responsibility to protect the seasonal agricultural workers in Canada. There are legal boundaries, as well as deficiencies in the protection activities carried out by public servants at the Ministry of Foreign Affairs, that hamper the proper protection of Mexican workers. Nonetheless, the most important limitation is the limited bargaining power the Mexican State has to negotiate the living and working conditions of its workers in Canada, given the priority it places on remittances and the need to find employment for its rural population. The Mexican government must improve the conditions of the country's rural areas in order to be in a position to demand better treatment for its workers and offer them adequate protection. Slight developments in Mexican agriculture will lead to small but significant changes in the conditions of the Agreement for the Employment with Mexico, which would drastically improve in favor of the workers. Only then would the program really be an *alternative* to employment, rather than a *necessity*.