



KAZAKHSTAN

“Hellish Work”

Exploitation of Migrant Tobacco Workers in Kazakhstan

HUMAN
RIGHTS
WATCH



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Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: +1 212 290 4700, Fax: +1 212 736 1300
hrwnyc@hrw.org

Poststraße 4-5
10178 Berlin, Germany
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629
berlin@hrw.org

Avenue des Gaulois, 7
1040 Brussels, Belgium
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471
hrwbe@hrw.org

64-66 Rue de Lausanne
1202 Geneva, Switzerland
Tel: +41 22 738 0481, Fax: +41 22 738 1791
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor
London N1 9HF, UK
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800
hrwuk@hrw.org

27 Rue de Lisbonne
75008 Paris, France
Tel: +33 (1)43 59 55 35, Fax: +33 (1) 43 59 55 22
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009 USA
Tel: +1 202 612 4321, Fax: +1 202 612 4333
hrwdc@hrw.org

Web Site Address: <http://www.hrw.org>




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SUMMARY AND KEY RECOMMENDATIONS



PHOTOGRAPHS BY MOISES SAMAN

Taken on assignment for Human Rights Watch in October 2009.

A child from Kyrgyzstan whose family has traveled to take up work on a tobacco farm near the village of Dostyk, Kazakhstan.



SUMMARY

Every year, tens of thousands of migrant workers from Kyrgyzstan travel to the Central Asian economic powerhouse of Kazakhstan in search of employment. Thousands of these migrant workers, often together with their children, find work in tobacco farming. Human Rights Watch research in 2009 documented abuse and exploitation of many migrant workers by tobacco farm owners who employ them for seasonal work. Tobacco farm owners in Kazakhstan contract with and supply tobacco to Philip Morris Kazakhstan (PMK), a subsidiary of Philip Morris International (PMI), one of the world's largest tobacco companies.

Human Rights Watch interviewed 68 migrant tobacco workers in 2009 and early 2010 who were working or who had recently worked on tobacco farms in Kazakhstan. They variously told Human Rights Watch how some employers confiscated their passports, failed to provide them with written employment contracts, did not pay regular wages, cheated them of earnings, and forced them to work excessively long hours. Some employers also failed to provide migrant workers with potable water, adequate hand-washing and other sanitary facilities, or adequate living conditions.

In the worst cases, workers were subjected to forced labor, or situations analogous to forced labor, in which employers confiscated migrant workers' passports and in some cases required them to perform other work without pay or compensation in addition to tobacco farming. Work extracted under menace of penalty and for which a person has not offered him or herself voluntarily is forced labor and is banned under both international and Kazakhstani law.

Human Rights Watch documented 72 cases of children working in tobacco farming in 2009, the youngest of whom was 10. At that time, the structure of tobacco farming, whereby workers were paid only once at the end of a season based on the volume of tobacco produced, contributes to parents relying on children to participate

in the work. International and Kazakhstani law prohibits the employment of children under the age of eighteen in harmful or hazardous work; Kazakhstani law explicitly prohibits employment of children in tobacco farming. Owing to the difficulty of the work and the risks associated with the handling of tobacco leaves and exposure to pesticides, experts agree that tobacco farming is one of the worst forms of child labor, or labor from which children under 18 are categorically prohibited.

Children who worked with their families on tobacco farms typically missed several months of school each year, or even entire academic years. Although very often parents expected their children to work with them, in some cases this was because migrant children faced obstacles in accessing local schools in Kazakhstan. International law guarantees the right to primary education, including for migrant workers.

Although Kazakhstani workers employed in tobacco may face many of the same abuses documented here, Human Rights Watch is focusing on migrant workers in this report because they are particularly vulnerable to abuse. In the absence of legal residency and employment status, they are less able or willing to seek redress through government agencies or the courts. Migrant workers are also typically very poor, mostly do not speak Kazakh, and are living in remote areas, far from governmental or non-governmental services.

Under international human rights law, Kazakhstan has the obligation to protect all individuals in its territory, regardless of migration or employment status, from abuses, including by private actors. But in most cases the government of Kazakhstan has not fulfilled its obligations in its treatment of migrant workers: it has neither provided sufficient legal protections nor made existing protections effective.

International human rights treaties and other instruments pay particular attention to the duty of states to uphold equal and inalienable rights. However, the basic principle that companies also have a responsibility to respect human rights, including workers' rights, has achieved wide international recognition, as evidenced by numerous instruments, initiatives, guidelines and declarations, as well as in case law.

In line with these principles, companies are expected to have policies and procedures in place to ensure human rights are respected and not abused, to undertake adequate due diligence to identify and effectively mitigate human rights problems, and to adequately respond in cases where problems arise.

PMK is the sole purchaser of tobacco in the Enbekshikazakh district of Almaty province, the main tobacco farming area of Kazakhstan. As a subsidiary of PMI, both PMK and PMI have responsibilities under international human rights principles and obligations under Kazakhstani law to ensure the protection of those producing tobacco to be used in PMK and PMI products.

PMI has developed a Good Agricultural Practices (GAP) policy related to various aspects of tobacco farming, including the prohibition on child and forced labor, workplace safety, and safe use of pesticides. However, on the basis of its research Human Rights Watch believes that the GAP program has not proved adequate to address the range of abuses and exploitative practices in tobacco farming in Kazakhstan documented in this report. In the course of research for this report Philip Morris International and Human Rights Watch maintained a dialogue through meetings and letters, and PMI and PMK committed to taking measures to address the abuses and exploitative practices documented by Human Rights Watch. These are outlined more fully in the relevant chapters of this report.



A family of migrant workers from Kyrgyzstan hang tobacco leaves to dry on a tobacco farm near Dostyk, Kazakhstan.



The children of migrant workers from Kyrgyzstan inside their makeshift house in Malybai, Kazakhstan.

MIGRANT WORKERS AND TOBACCO FARMING IN KAZAKHSTAN

Experts estimate that Kazakhstan hosts from 300,000 to one million migrant workers each year, the vast majority of whom are employed informally, due to a strict quota system and stringent and complex legal requirements for employers to hire migrant workers. Many migrants work seasonally in cotton, vegetable and tobacco farming.

Tobacco cultivation in Kazakhstan takes place almost exclusively in the agricultural Enbekshikazakh district, approximately 120 kilometers (75 miles) east of Kazakhstan's largest city, Almaty. Each year, Kazakhstani landowners sign contracts directly with PMK for tobacco to be produced. Some landowners farm tobacco themselves but many hire workers, most often from Kyrgyzstan, to do some or all of the tobacco farming. Tobacco farming in Kazakhstan involves an eight to nine-month season of difficult, labor-intensive manual work. Tasks include growing tobacco plant seedlings, transplanting seedlings to fields, watering, weeding, fertilizing and applying pesticides, then harvesting the leaves by hand, stringing and hanging the leaves for curing, steaming the leaves to prepare them for packing and packing them in bales to be sold to PMK. Human Rights Watch's research in 2009 found that these tasks were performed by both adults and children.

The landowner, sometimes accompanied by the migrant worker, delivers the bales to the PMK factory near Almaty, where a tobacco leaf expert determines the grade, or quality, of the tobacco. PMK sets a



A migrant worker from Kyrgyzstan sits inside her makeshift house in the village of Koram, Kazakhstan.

price per grade of tobacco each season and pays the Kazakhstani landowner based on the amount of tobacco of each grade. The landowner, in turn, pays the head of the migrant worker family.

WAGE VIOLATIONS AND INDUCED INDEBTEDNESS

Migrant tobacco workers interviewed by Human Rights Watch in 2009 did not receive any regular wages during eight to nine months of employment, in violation of Kazakhstani law. Instead, the landowner paid the head of the migrant worker family, often the male head of household, one lump sum payment at the end of the tobacco harvest. Other family members, including both children and other adults, most often women, simply “worked for the family,” and did not earn any direct payment for their work.

The single-end-of-season payment structure made migrant workers heavily dependent on the landowners. Very often, because migrant workers possessed little or no cash at the beginning of the season, the landowner provided them small advance payments or purchased directly basic necessities, such as food and medicine. The landowner deducted these expenses, as well as travel and the costs of informal intermediaries who recruit migrant workers from the final end-of-season payment. The failure to pay regular wages put workers at risk of induced indebtedness. In the event of a poor harvest, deductions for food, travel, intermediaries’ fees, and other expenses paid by the landowner may have totaled more than the total earnings received for the tobacco produced.



A migrant tobacco worker's car is parked outside his temporary accommodation near Koram, Kazakhstan.

ULKAN U.'S STORY

Human Rights Watch met Ulkan U., in 2009 in Malybai, Kazakhstan, while she was working with three of her children, ages 12, 14, and 17. When the family first came in April 2007, the landowner paid an exorbitant fee to the intermediary who brought Ulkan U. and her children from Kyrgyzstan and expected her to repay this and other expenses, such as food costs, at the end of the season. After a modest harvest, Ulkan U. found herself in debt, and the employer demanded she remain another season in order to repay him. Although she repaid her debt at end of 2008, she still did not have sufficient funds to return home and worked with her children during the 2009 tobacco season as well. Her children have not attended school since 2007.

UMUT U.'S STORY

In one case, 34-year-old Umut U. worked on a tobacco farm in Malybai, Kazakhstan in 2009 with her four children, ages 10, 11, 13, and 14. She told Human Rights Watch that her employer confiscated her passport and her children's birth certificates at the start of the tobacco farming season and returned them only after the family had completed the harvest. When Umut U. and her children weren't farming tobacco, the employer demanded that they help him with his house cleaning, farming and weeding and harvesting of onions, without pay. In the absence of her passport and fearing forfeiture of the family's earnings, Umut U. felt she had no choice but to comply.



A child migrant worker from Kyrgyzstan picks tobacco leaves near the village of Koram, Kazakhstan.



FORCED LABOR

In six cases documented by Human Rights Watch in 2009, migrant tobacco workers were trapped in situations which Human Rights Watch determined to be forced labor or situations analogous to forced labor, arising from the convergence of several particularly abusive practices—the payment structure, deductions from payments, and employers’ holding of passports. The end-of-season payment structure created a significant penalty for migrant workers who sought to leave an abusive situation, since leaving their employment at any time prior to the harvest would have meant forfeiting any earnings for work performed to date. In some cases of forced labor, landowners required workers to do additional work at the landowners’ farm, such as farming other crops, house cleaning, or renovation work, all without pay.

CHILD LABOR

The single end-of-season payment structure in place in 2009 and in previous seasons contributed to the use of child labor and to excessively long working hours for both children and adult workers. Migrant workers felt compelled to dedicate as much effort and as many hands as possible each day to the tobacco farming in hopes of producing the expected volume of tobacco and receiving decent earnings.

Child labor in Kazakhstan is a longstanding problem. Human Rights Watch documented 72 cases of children, ages 10-17, working, or who had previously worked, in tobacco farming in 2009. Both parents and children interviewed by Human Rights Watch stated that children perform the some or all of the same labor-intensive, difficult farming work as adults.

Tobacco farming is hazardous work due to a number of factors, such as the physical difficulty of the work and repetitive motions, long working hours, exposure to high heat and sun during the summer months, and exposure to pesticides and health risks associated with the handling of tobacco plants. For children, exposure to pesticides and other health hazards are particularly acute, as immature and still-growing bodies are more vulnerable than adults’ to systemic damage. Children may work excessively long hours, have little rest, and have poor access to water, nutrition, sanitation, and hygiene.

A child migrant worker picks tobacco leaves near the village of Koram, Kazakhstan.



Human Rights Watch found that children working on tobacco farms typically missed between two to six months of the academic school year in Kyrgyzstan and did not attend school in Kazakhstan. Parents take their children out of school in March or April to travel to Kazakhstan to begin the tobacco season. Although some children returned to Kyrgyzstan in August to begin the school year, most remained with their parents until November or December to assist with the harvesting and curing of tobacco. In a few cases documented by Human Rights Watch, children missed whole school years when their families did not return to Kyrgyzstan for the winter.

Although most migrant workers expected their children to work together with them in order to fulfill the required volume of tobacco, some parents stated a desire for their children to attend local schools in Kazakhstan. However, information provided by migrant workers and the government of Kazakhstan indicates that most schools in the Enbekshikazakh district are reluctant to accept migrant children, due to parents' lack of residency registration.



A child migrant worker's hands are covered in tobacco residue after picking leaves on a tobacco farm near Koram, Kazakhstan.

EXCESSIVELY LONG HOURS

Migrant workers told Human Rights Watch that both adults and children worked up to 18 hours a day during the high season of tobacco farming, usually in July or August, when temperatures are also hottest in Kazakhstan. Workers had no regular weekend day or days off and very few other days off.

As an example of long hours and little rest for migrant worker children and adults in tobacco farming, Sharapat Sh., 41, who worked in Malybai with her adult son and 15-year-old daughter, told Human Rights Watch that they typically worked 11 to 13 hours a day, performing a variety of labor-intensive, manual farming tasks. For the nine months that they were working on the tobacco farm they took a total of 14 days off, including weekends. By contrast, an employee working a standard work week for nine months, or approximately 36 weeks, would get at a minimum of 72 weekend days off.

PESTICIDES, FERTILIZERS, AND LIVING CONDITIONS

Some migrant workers applied pesticides and fertilizers to tobacco plants. Exposure to pesticides may pose both acute and chronic health risks to those who handle and apply them and to those working on crops which have recently been treated with pesticides. Migrant tobacco workers in Kazakhstan interviewed by Human Rights Watch did not always know the names of the pesticides



Kyrgyz migrant workers have breakfast at their makeshift home before heading out to work in tobacco fields near Malybai, Kazakhstan.

or fertilizers they were using or the health risks associated with them, and only one worker interviewed had received safe-handling instructions from PMK regarding pesticide and fertilizer use. These instructions, however, were not consistent with the handling, first aid, and restricted entry requirements provided on the label of one of the pesticides being used on farms producing tobacco for PMK in 2009.

Migrant workers interviewed by Human Rights Watch also had not received any information or training about other health risks associated with tobacco farming, including green tobacco sickness (GTS), which is caused by absorption of nicotine through the skin from contact with tobacco leaves, especially wet tobacco leaves, and is characterized by nausea, vomiting, headache, muscle weakness, and dizziness. Other health complications can include respiratory ailments, exposure to extreme temperatures, musculoskeletal disorders as a result of carrying of excessive and/or awkward loads, repetitive and often forceful actions, bending, stooping, and the adoption of awkward and uncomfortable postures.

Migrant workers interviewed by Human Rights Watch stated that their employer provided free accommodation. In the absence of regular wages, this is the most viable option for migrant workers. Some migrant workers interviewed by Human Rights Watch, including whole families with small children, lived in makeshift housing of their own construction on the edge of the tobacco fields for at least five of the peak months of the tobacco farming season. These makeshift structures have little protection from the elements, and have no electricity, running water, or heat.



Kyrgyz migrant workers live in makeshift housing near tobacco fields in Malybai, Kazakhstan.

On all farms which Human Rights Watch visited there was no potable water available for migrant workers or other workers on the tobacco fields. Workers retrieved water from nearby streams, rivers, canals, and springs, which are often also used to irrigate the tobacco fields. Drinking dirty or contaminated water may expose workers to dangerous chemicals, including pesticides, organic wastes, and parasites. Ready access to plentiful, clean drinking water is also crucial for migrant tobacco workers, who work in full sun and high heat for many months of the year, to prevent dehydration and heat-induced illness.

Many workers reported that they did not have access to proper bathing facilities, particularly those who lived near the tobacco fields. Hand-washing and bathing facilities are important both for basic hygiene of workers and their families as well as for mitigating the effects of exposure to pesticides and nicotine in tobacco leaves.

The Kazakhstani government, Philip Morris International, and Philip Morris Kazakhstan can and should immediately implement measures to fully protect migrant tobacco workers from abuse and exploitation and prevent child labor in tobacco farming.



Children of migrant workers from Kyrgyzstan on a tobacco farm near Koram, Kazakhstan.

KEY RECOMMENDATIONS

GOVERNMENT OF KAZAKHSTAN POLICY AND KEY RECOMMENDATIONS

Changes in government policy in 2009 rendered migrant tobacco workers especially vulnerable to abuse because it became impossible for them to secure regular employment status. Kazakhstan's current migration policy prioritizes temporary labor migration, particularly of skilled workers. The government allocates an annual quota for foreign workers, including agricultural workers from Kyrgyzstan, based on a specific agreement between the two governments. Kazakhstan maintains a strict, complex, and costly permit system for employers to hire migrant workers, although the procedure is somewhat simplified for the hiring of agricultural workers from Kyrgyzstan.

In 2009, the government did not allocate any permits for employers in Almaty province to hire agricultural workers from Kyrgyzstan, citing rising unemployment in the country. This move rendered all migrant workers working in the region in 2009, including almost all migrant workers interviewed by Human Rights Watch for this report, into irregular employment situations. Migrant workers who are in an irregular residency or informal employment situation are more vulnerable to exploitation by employers and are more reluctant to seek redress through official channels because they fear possible fines or expulsion from Kazakhstan.

The government of Kazakhstan has not taken sufficient steps to protect migrant tobacco workers from abuse. This is in part due to a belief by some Kazakhstani authorities, as stated to Human Rights Watch during official meetings, that workers with irregular status have no rights.

In response to the problem of child labor, the government has established a number of inter-agency coordinating groups tasked with addressing various issues relevant to child labor. These mechanisms have not proven sufficient to comprehensively address child labor among migrant tobacco workers.

The government of Kazakhstan should establish accessible, effective complaint mechanisms and rigorously investigate complaints of abuse made by migrant workers, irrespective of a migrant workers' contractual status or migration status. The labor inspectorate should also rigorously enforce laws prohibiting forced labor and passport confiscation as well as those guaranteeing basic labor protections. The relevant ministries and local authorities, including the Ministry of Labor and Social Protection should ensure children of migrant workers have access to local schools and other social services and increase training for parents, children, employers, and others regarding the hazards of child labor in tobacco. The labor inspectorate should rigorously enforce laws prohibiting child labor in tobacco farming.

More detailed recommendations are set forth at the end of this report.

PHILIP MORRIS INTERNATIONAL, PHILIP MORRIS KAZAKHSTAN AND KEY RECOMMENDATIONS

Human Rights Watch first brought to Philip Morris International (PMI) its concerns about the treatment of migrant workers on tobacco farms producing tobacco for PMK in October 2009. Since that time, PMI has met with Human Rights Watch twice to discuss concerns about the protection of migrant workers and recommendations for addressing these concerns. PMI has also responded in writing four times to Human Rights Watch's requests for information. The correspondence between Human Rights Watch and Philip Morris International can be found in appendices to this report.

As detailed below, in response to communications with Human Rights Watch, PMI and PMK have committed to taking measures to address the abuses and exploitative practices documented in this report.

At the time of the research for this report, Philip Morris Kazakhstan's system for preventing forced labor and child labor involved PMK agronomists, specialists who advise farmers and workers on tobacco crop production, conducting regular inspections of farms. They are responsible for implementing a number of PMI policies, including those related to crop management, pesticide use, and the prohibition on child labor and forced labor. Philip Morris Kazakhstan agronomists have not been responsible for monitoring and reporting of any labor or other violations such as those documented by Human Rights Watch. In addition, at the time of Human Rights Watch's research, there were only four agronomists responsible for monitoring the 519 farms producing tobacco for Philip Morris Kazakhstan in 2009.

In response to Human Rights Watch's October 2009 letter, PMI and PMK executives undertook a three-day investigation in the Enbekshikazakh district of Almaty province, where, according to PMI, they visited over 30 farms that employ or have employed migrant workers and conducted interviews with members of the PMK agronomy team, representatives of schools, local authorities, as well as NGOs with whom they had worked in the past. PMI and PMK presented the findings of this investigation to Human Rights Watch and relevant findings are reflected in this report.

PMI and PMK executives stated that they did not find evidence of some of the worst abuses documented by Human Rights Watch, such as forced labor or debt bondage. However, in response to concerns raised by Human Rights Watch, PMI has stated that it will implement a number of measures to expand and strengthen its labor and other rights protection for migrant workers. These measures include strengthening the contracts PMK signs with the tobacco farm owners as well as requiring landowners to conclude contracts with each of their workers guaranteeing minimum labor standards and other conditions, consistent with Kazakhstani law. PMI also committed to expanding the training of agronomists, farmers, and workers, to include topics such as forced labor, illegal passport retention, adequate living conditions, and education for migrant worker children. Other commitments include improving the safe-handling instructions and safety of application of pesticides and fertilizers. PMI and PMK have also stated that they will engage with the Kazakhstani government, local authorities and NGOs to address the ability of children of migrant workers to attend local schools. PMI also is working with a third-party organization to conduct monitoring of its implementation of these initiatives.

Human Rights Watch welcomes these commitments and calls on PMI to ensure swift implementation and rigorous monitoring of these and other measures including through internal compliance mechanisms and through third-party monitoring.

In addition, we recommend PMI revise their global policies to ensure full respect for labor and other rights of workers engaged in producing tobacco to be used in PMI products. We urge PMI and PMK to ensure that prevention of child labor in tobacco farming remains a priority and that additional mechanisms and policies are put in place to monitor and remedy child labor. PMI and PMK should also establish accessible complaint mechanisms that ensure workers employed on farms producing tobacco for PMI and its subsidiaries can safely report abuses and will have confidence that such allegations will be immediately investigated in a fair and transparent manner. Guarantees to protect migrant workers who speak up about abuses from reprisals or retaliation by landowners are essential.

More detailed recommendations are set forth at the end of this report.



Dried tobacco leaves lay on an open sack on a tobacco farm near the village of Koram, Kazakhstan.

Methodology

In March and April 2009, Human Rights Watch undertook preliminary research to examine human rights abuses against migrant workers in Kazakhstan. This research was part of an ongoing multi-year project looking at abuses against migrant workers in countries of the former Soviet Union. Human Rights Watch interviewed migrant workers who had worked in various sectors, including construction, services, and agriculture, as well as migration experts and representatives from NGOs. As a result of that preliminary research, Human Rights Watch determined that migrant tobacco workers were particularly vulnerable to abuse and focused further research on them.

Human Rights Watch interviewed a total of 115 people for this report. We conducted interviews with 68 migrant tobacco workers from Kyrgyzstan from 39 families, including adults, ages 19 to 50, and five child migrant tobacco workers, under 18. Human Rights Watch also saw and spoke with children who had traveled to Kazakhstan with their families, but who were not working.

The majority of interviews with migrant tobacco workers took place during research trips to the Enbekshikazakh district of Almaty province, the main tobacco-growing region of Kazakhstan, in June and September 2009. We interviewed migrant workers working in tobacco fields in and near seven villages: Chilik, Druzhba, Karaturyk, Koram, Lavar, Malybai, and Tabaksovkhoz. In addition, we conducted interviews with migrant tobacco workers who had worked in Kazakhstan in 2009 or in previous years at their homes in Kyrgyzstan in March, April, August, and December 2009 and January and February 2010. In addition to these interviews, Human Rights Watch also conducted a trip to several villages in Kazakhstan for photo documentation in October 2009. No interviews were conducted during this trip, but a Human Rights Watch researcher witnessed children working in tobacco.

In addition to migrant tobacco workers, Human Rights Watch interviewed 11 migrant workers and their families from Kyrgyzstan and Uzbekistan engaged in vegetable farming. These interviews provided valuable information about the situation for other types of agricultural migrant workers in the Enbekshikazakh district of Kazakhstan. This information is reflected in this report only where it is relevant, for example in comparing the employment and wage structures for tobacco farm workers to that of vegetable farm workers.

Interviews with migrant workers were conducted by three Human Rights Watch researchers, including one native Russian speaker and two fluent in Russian; a consultant to Human

Rights Watch fluent in Russian, Kyrgyz, and Uzbek; and a Human Rights Watch associate, a native Russian speaker. Some interviews with workers were conducted in Russian. However, because most migrant workers do not speak Russian, the majority of interviews by Human Rights Watch representatives who do not speak Uzbek or Kyrgyz were conducted with the assistance of a translator, translating from Kyrgyz or Uzbek into Russian.

In most cases migrant workers and other interviewees were interviewed individually, in private. In a few cases of interviews with migrant workers, other family members were present during the interview. Migrant workers were offered no incentives for speaking with us. Human Rights Watch made no promises of personal service or benefit to those whom we interviewed for this report and told all interviewees that the interviews were completely voluntary and confidential.

Most workers interviewed for this report said they were afraid that their employers might punish them for speaking about their problems. At their request, we have changed their names. Pseudonyms appear throughout as a first name and an initial.

We also interviewed farmers from Kazakhstan, three representatives of the Kazakhstan agricultural workers' union, a representative of the main private employment agency for migrant workers in the Enbekshikazakh district, one unofficial intermediary, village akims (or mayors), and representatives of the consulates of Kyrgyzstan and Tajikistan in Almaty. A request to the consulate of Uzbekistan in June 2009 went unanswered, as did repeated requests for a second meeting with the consulate of Kyrgyzstan in November 2009.

Human Rights Watch also met with representatives from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), the International Labour Organization (ILO), the International Labor Organization's International Programme on the Elimination of Child Labour (ILO-IPEC), the International Organization for Migration (IOM), United Nations Development Fund for Women (UNIFEM), the Organization for Security and Co-operation in Europe (OSCE), the Eurasia Foundation of Central Asia, as well as Kazakhstani human rights and other NGOs in Almaty, Kazakhstan.

In Kazakhstan, we met with representatives from Kazakhstan's Ministry of Internal Affairs, the Ministry of Labor and Social Protection, and the Ombudsman. In Kyrgyzstan we met with the chairperson of the Kyrgyzstan State Migration Committee and one unofficial intermediary.

In June 2009, Human Rights Watch requested a meeting with officials from Philip Morris Kazakhstan (PMK). In response by telephone, PMK officials stated that they would require at least four weeks' notice before being able to meet with our representatives.

On October 13, 2009, Human Rights Watch sent a letter to Philip Morris International (PMI) detailing the preliminary findings of our research and requesting that they facilitate a meeting with PMK. PMI responded in writing on November 10, 2009 and provided further information in subsequent letters dated January 14, 2010, February 19, 2010, and March 11, 2010.

Company officials from PMI and PMK met with Human Rights Watch in Almaty on November 13, 2009, and PMI executives met with Human Rights Watch at our offices in New York on March 2, 2010. The results of these meetings and correspondence are detailed below and copies of the correspondence can be found in Appendix A.

Part 1: Background

1.1 Migration to Kazakhstan

According to 2007 World Bank data, Kazakhstan is the ninth-largest migrant-receiving country in the world.¹ Many migrants from Central Asia and beyond come to Kazakhstan in search of employment because of the country's comparative economic strength in the region. Kazakhstan is the largest country in Central Asia and has the third largest economy in the Commonwealth of Independent States after Russia and Ukraine.² It is an attractive destination for migrant workers who face poverty and unemployment at home, particularly those from Uzbekistan, Kyrgyzstan, and Tajikistan, with which Kazakhstan maintains a visa-free regime.³

Migrant workers have been employed mostly in four sectors of the Kazakhstani economy:⁴ construction, trade, services and agriculture. Migrant agricultural workers are traditionally employed in seasonal tobacco and cotton farming, and increasingly in vegetable farming. Most migrant workers in tobacco farming are typically from Kyrgyzstan; workers in cotton are typically from Uzbekistan.

Consistent and reliable data on the total number of migrant workers is limited. The absence of a visa regime with Central Asian and other countries and a high level of informal employment in the sectors of the economy with high rates of migrant worker employment hinder accurate recording of the scope of irregular migration. Experts estimate that Kazakhstan may have anywhere from 300,000 to one million migrant workers,⁵ the vast

¹ Kazakhstan also has significant outward migration, primarily to Russia. World Bank, "Migration and Remittances in Kazakhstan," September 2007, <http://siteresources.worldbank.org/INTKAZAKHSTAN/Country%20Home/21490937/MigrationReportStoryforKZwebsiteEng.pdf> (accessed March 10, 2010).

² In terms of GDP. World Bank GDP figures for 2008 (not adjusted for inflation): Russia: US\$1.61 trillion; Ukraine: US\$180 billion; Kazakhstan US\$132 billion. <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf> (accessed March 10, 2010). World Bank Data Finder, GDP Growth (annual %), available at <http://datafinder.worldbank.org/world-bank-data-finder> (accessed December 30, 2009). Kazakhstan ranks second in the CIS in terms of Gross National Income (GNI). GNI in terms of purchasing power parity (adjusted for price level differences across countries) in 2008 was \$9,690 for Kazakhstan and \$7,210 in Ukraine. World Bank, Gross National Income per capita, 2008, Atlas Method and PPP, available at <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf> (accessed December 30, 2009).

³ Visa-free regimes are in place between Kazakhstan and the countries of the Commonwealth of Independent States (CIS) except for Turkmenistan. Ministry of Foreign Affairs of the Republic of Kazakhstan, <http://portal.mfa.kz/portal/page/portal/mfa/en/content/consular/regime> (accessed January 20, 2010).

⁴ The adjective "Kazakhstani" is used throughout this report to denote the government of Kazakhstan and individuals who are citizens of Kazakhstan. "Kazakh" is used to denote Kazakh ethnicity and language.

⁵ "Cross Border Migration Probe: Critical Study Aims to Protect Migrants' Rights," UNESCO, July 15, 2009, <http://www.unesco.kz/?sector=®ion=&lang=&newsid=2373&announce=> (accessed February 15, 2010).

majority of whom are employed informally, due to a strict quota system that prioritizes the hiring of skilled workers. For example, one expert indicated that Kazakhstan had approximately 500,000 migrant workers in 2008, only about 20 percent of whom were formally employed.⁶

Government data “on the hiring of foreign specialists in Kazakhstan” indicate that there were 54,204 migrant workers formally employed in 2008, and 28,008 in the first 11 months of 2009.⁷ Consistent with government policy prioritizing skilled migrant workers, those employed officially were primarily highly to medium-skilled workers,⁸ with only 1,704 regular migrant workers officially employed as seasonal agricultural workers in 2008 and just 22 officially employed in the first 11 months of 2009.⁹

According to government of Kazakhstan statistics, the vast majority of officially employed foreign workers are from countries outside of the CIS; in 2008, only 12 percent and in 2009, less than 10 percent of officially employed migrant workers were from CIS countries.¹⁰ This is consistent with scholarly indicators that an overwhelming majority of migrants working come from the three Central Asian republics of Kyrgyzstan, Tajikistan, and Uzbekistan, and are employed irregularly.¹¹

According to the consulate of Kyrgyzstan, in 2008, there were a total of 55,000 migrant workers from Kyrgyzstan in Kazakhstan, fewer than one-quarter of whom, or approximately 12,000 workers, were employed officially.¹² Government of Kazakhstan statistics give a much lower figure of 1,864 officially employed citizens of Kyrgyzstan in 2008.¹³ The consulate told Human Rights Watch that approximately 2,500 migrant workers from Kyrgyzstan were engaged in agriculture in 2009, a significant decrease from 5,000 in 2008. The vast majority was in the Enbekshikazakh district of Almaty province, employed in tobacco and vegetable

⁶ Human Rights Watch interview with Vadim Ni, independent legal expert, Almaty, June 11, 2009. See also Marlene Laruelle, “Kazakhstan: The New Country of Immigration for Central Asian Workers,” April 16, 2008, *The Central Asia-Caucasus Analyst* http://www.cctr.ust.hk/materials/library/Laruelle_Kazakhstan_and_immigration.pdf (accessed February 15, 2010).

⁷ “Data on the hiring of foreign workers in the Republic of Kazakhstan by country and industry,” Letter of the Ministry of Labor and Social Protection of the Republic of Kazakhstan to Human Rights Watch, January 25, 2010, see Appendix C.

⁸ 51.2 percent were highly-skilled workers; 32.1 percent were managers and specialists, and 13 percent were Chief Executive Officers (CEOs). Ibrahim Awad, International Labor Organization International Migration Programme, “The Global Economic Crisis and Migrant Workers: Impact and Response,” 2009, p. 49. http://www.ilo.org/public/libdoc/ilo/2009/109B09_130_engl.pdf (accessed December 30, 2009).

⁹ “Data on the hiring of foreign workers in the Republic of Kazakhstan by country and industry.”

¹⁰ *Ibid.*

¹¹ “Cross Border Migration Probe: Critical Study Aims to Protect Migrants’ Rights.”

¹² Human Rights Watch interview with Abdykapar Tuyaliev, representative of the State Committee on Migration and Employment, consulate of Kyrgyzstan, Almaty, June 10, 2009.

¹³ “Data on the hiring of foreign workers in the Republic of Kazakhstan by country and industry.”

farming.¹⁴ Philip Morris Kazakhstan, the sole buyer of tobacco in the Enbekshikazakh district, estimates that there were 3,500 migrant workers employed in tobacco farming in 2007 and approximately 1,300 in 2009.¹⁵

Kazakhstan's economy is by far the largest in Central Asia. It has demonstrated tremendous economic growth since 2000, supported by high prices for oil, natural gas, and metals, its primary exports. Gross Domestic Product (GDP) increased at an average rate of 10 percent per year, growing from US\$18.3 billion in 2000 to US\$132 billion in 2008.¹⁶ The economy grew just 3.2 percent in 2008, as a result of weakening oil prices and the onset of the global economic crisis.¹⁷ According to the World Bank, the country fell into recession in 2009, although government data indicate that the country averted a recession, by growing 1.2 percent, in 2009.¹⁸

Migration to Kazakhstan from Kyrgyzstan, Uzbekistan and Tajikistan is driven primarily by poverty, unemployment and poor infrastructure.¹⁹ These countries have relatively high birth rates, creating increased pressure on the labor market.²⁰ All three countries have significant income differentials with Kazakhstan,²¹ and rely heavily on remittances from migrant workers working primarily in Kazakhstan and Russia to bolster their economies.²² Remittances constitute a significant portion of their GDP; for example, remittances to Tajikistan constituted nearly 50 percent of its GDP in 2008.²³ Although there is no clear data on

¹⁴ Human Rights Watch interview with Abdykapar Tuyaliev, June 10, 2009.

¹⁵ Letter from Even Hurwitz, Senior Vice President for Corporate Affairs, Philip Morris International, to Human Rights Watch, November 10, 2009.

¹⁶ World Bank Data Finder, GDP Growth (annual %), Kazakhstan 2000-2008.

¹⁷ "World Bank Country Brief 2009: Kazakhstan," available at: <http://www.worldbank.org.kz/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/KAZAKHSTANEXTN/0,,contentMDK:20629270~menuPK:361877~pagePK:141137~piPK:141127~theSitePK:361869,00.html> (accessed December 30, 2009).

¹⁸ Ibid., and Kazakhstan's 2009 Economy slows to 1.2" Reuters, February 16, 2010. <http://www.forexyard.com/en/news/Kazakhstan-2009-economic-growth-slows-to-12-pct-2010-02-15To60941Z-UPDATE-1> (accessed March 10, 2010).

¹⁹ For more background information on Kyrgyzstan, Tajikistan, and Uzbekistan, see Human Rights Watch, "Are You Happy to Cheat Us? Exploitation of Migrant Construction Workers in Russia," <http://www.hrw.org/en/reports/2009/02/09/are-you-happy-cheat-us>

²⁰ See "Presentation of the Reports on Migration and Remittances," at World Bank, "Migration and Remittances in Kazakhstan," September 2007.

²¹ Kazakhstan has a GNI per capita (in terms of purchasing power parity) of \$9,690, which is more than three and a half times that of Uzbekistan (\$2,660); four and a half times that of Kyrgyzstan (\$2,130) and nearly five times that of Tajikistan (\$1,860). World Bank, Gross National Income per capita, 2008, Atlas Method and PPP.

²² Awad, "The Global Economic Crisis and Migrant Workers." p. 34.

²³ Remittances constituted 27.9 percent of Kyrgyzstan's GDP in 2008. World Bank, "Migration and Remittances Factbook 2008," Latest Remittances Data, November 2009, available at <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:21352016~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html> (accessed December 30, 2009). Remittances to Uzbekistan constitute 8-10 percent of GDP. World Bank, "Country Brief: Uzbekistan," April 2009, available at <http://www.worldbank.org.uz/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/UZBEKISTANEXTN/0,,contentMDK:20152186~menuPK:294195~pagePK:141137~piPK:141127~theSitePK:294188,00.html> (accessed December 30, 2009).

remittance trends from Kazakhstan, remittances in the region have slowed somewhat as a result of the 2008 global economic crisis, although not as sharply as expected by many economists or as in other regions.²⁴

1.2 Kazakhstani Law and Policy Relevant to Migrant Agricultural Workers

The quota system

Kazakhstan's current migration policy prioritizes temporary labor migration, particularly of skilled workers.²⁵ Employers may apply for permits to hire foreign workers on the basis of an annual quota set each year. This is based on local administrations' analysis of the labor market and employers' applications indicating the need for foreign workers,²⁶ and is set as a percentage of the economically active population. The Ministry of Labor and Social Protection distributes the quota among the administrative provinces of Kazakhstan.

The quota system identifies four categories of foreign workers: executive personnel; highly-qualified specialists; skilled workers; and workers employed in seasonal agricultural work.²⁷ Officially, seasonal agricultural workers may only be hired from countries with which Kazakhstan has a bilateral agreement on cooperation in labor migration and social protection of migrant workers.²⁸ Currently, Kazakhstan has such an agreement only with Kyrgyzstan.²⁹ There is no bilateral agreement with Uzbekistan, despite the large numbers of

²⁴ See World Bank, "Migration and Remittance Trends 2009," Migration and Development Brief 11, November 3, 2009, available at <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MigrationAndDevelopmentBrief11.pdf> (accessed January 18, 2010), and Awad, "The Global Economic Crisis and Migrant Workers."

²⁵ See Organization for Security and Cooperation in Europe Office of Democratic Institutions and Human Rights (OSCE-ODIHR), Preliminary Conclusions on Laws of the Republic of Kazakhstan Regulating Employment of Foreign Citizens on the Territory of the Republic of Kazakhstan, Warsaw, June 2007; ILO, "Rights of Migrant Workers in Kazakhstan: National Legislation, International Standards and Practices," May 2008. http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/right_migrant_kaz_en.pdf; and International Federation for Human Rights (FIDH), "Kazakhstan/Kyrgyzstan: Exploitation of Migrant Workers, Protection Denied to Asylum-Seekers and Refugees," no. 503a, October 2009.

²⁶ Law on Employment of the Republic of Kazakhstan, art. 11 and Government Resolution, no. 836, June 19, 2001.

²⁷ Migrant workers who are permanent residents of Kazakhstan are not subject to quotas for employment. A number of other types of foreign workers are not subject to quotas, including senior managers of foreign companies and certain other businesses; diplomats and representatives of international organizations; humanitarian workers, artists, athletes, refugees, and others. Notably, there is no category allotting quotas for unskilled non-agricultural workers, such as construction workers, despite the large number of these workers who seek employment in Kazakhstan. See Kazakhstan International Bureau for Human Rights and the Rule of Law (KBHR), "Analysis of the Laws of the Republic of Kazakhstan Regarding Employment of Foreign Workers on the Territory of Kazakhstan," Almaty, 2007, in Russian.

²⁸ For additional detail see KBHR, "Analysis of the Laws of the Republic of Kazakhstan Regarding Employment of Foreign Workers," and ILO, "Rights of Migrant Workers in Kazakhstan."

²⁹ Agreement between the government of the Republic of Kazakhstan and the Government of Kyrgyzstan concerning labor activity and social protection of migrant workers, employed in agricultural work in border regions, July 9, 2002, approved by Resolution of the Government of the Republic of Kazakhstan, January 16, 2003; and Agreement between the government of the Republic of Kazakhstan and the Government of Kyrgyzstan concerning labor activity and rights protection of migrant workers, who are citizens of Kazakhstan and temporarily working on the territory of the Republic of Kyrgyzstan and

migrant workers who come from Uzbekistan to southern Kazakhstan for the annual cotton harvest.

Quotas in 2009 and the absence of quotas for agricultural workers

The government reduced the quota for foreign workers in 2009 to 0.75 percent of the economically active population, or roughly 66,350 people, a 50 percent decrease from 2008. For the fourth category of workers (seasonal agricultural workers), the 2009 quotas were set at 0.05 percent of the economically active population, or approximately 4,146 people.³⁰

In 2009 the Ministry of Labor and Social Protection did not allocate permits for hiring foreign agricultural workers under the quota to Almaty province, even though in this region tobacco as well as other crops are in large part cultivated by migrant workers from Kyrgyzstan. In a March 2009 letter, the ministry informed the heads of the agricultural association (in Russian, *selkhozformirovani*) of Enbekshikazakh district that it would not grant permits to hire foreign workers because it expected some 10,000 workers to lose their jobs in Almaty province. The ministry anticipated that these unemployed workers would fill jobs in other sectors, including agriculture.³¹ Notably, however, the vice minister of labor and social protection of Kazakhstan and other experts interviewed by Human Rights Watch consistently stated that Kazakhstani workers typically do not seek employment in tobacco cultivation.³²

The result was that in 2009 all migrant workers working in the region, including all those interviewed by Human Rights Watch for this report, were in irregular. Migrant workers who are in an irregular residency or informal employment situation are even more vulnerable to exploitation by employers and are more reluctant to seek redress through official channels because they fear possible fines or expulsion from Kazakhstan.

Although international law does not specifically address quotas, experts concur that quotas should be founded on sound economic and employment data and should not impede legal employment of migrant workers. Experts from the International Labour Organization (ILO)

concerning the labor activity and rights protection of migrant workers, who are citizens of the Republic of Kyrgyzstan and temporarily working on the territory of the Republic of Kazakhstan, July 4, 2006.

³⁰ Resolution of the Government of Kazakhstan, no. 1197, December 22, 2008, On establishing of a quota for Foreign Labor Force Industrial Intake for the Labor Activity in the Republic of Kazakhstan for 2009 and Introduction of Amendments into Resolution of the Government of the Republic of Kazakhstan, no. 753, August 29, 2007. Figures for approximate number of people based on Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan data for 2008, as cited in ILO, "Rights of Migrant Workers in Kazakhstan."

³¹ Letter on file with Human Rights Watch.

³² Human Rights Watch interview with Birzhan Nurymbetov, vice minister of labor and social protection of Kazakhstan, Astana, November 11, 2009; Human Rights Watch interview with Viktoriya Tyuleneva, Kazakhstan International Bureau for Human Rights and Rule of Law, Almaty, November 10, 2009.

and the International Organization for Migration (IOM) have indicated that Kazakhstan's existing strict legal employment framework contributes to the growth of irregular migration in the country.³³

Permits for hiring foreign workers

Employers wishing to hire foreign workers must obtain a foreign workforce employment permit to do so. The procedures to obtain this permit are highly bureaucratic, time consuming, and costly. For the first three categories of workers (managers, specialists, and skilled workers), the process of hiring a migrant worker requires employers to undertake at least eight separate steps, including submitting at least 14 different documents to the local authorities in order to obtain a foreign workforce employment permit. The process may take up to eight months. The rules for the fourth category of workers, seasonal agricultural workers, are simplified, and require only an application to receive permission for hiring a foreign worker. In all cases, employers must sign a written contract with the employee in order for the employment to be lawful.³⁴ In the event that a migrant worker wants to change employment, he or she is legally limited to employers who have a foreign workforce employment permit.³⁵

A migrant worker who works for an employer who has not obtained a foreign workforce employment permit is subject to a fine and mandatory administrative expulsion from Kazakhstan. Employers hiring migrant workers without obtaining the necessary permit are also subject to fines.³⁶ Experts have criticized the work permit system as contributing to irregular migration, as few employers are willing to enter into the rigorous process and, with the exception of agricultural workers, the system does not envision the employment of low-skilled migrant workers.³⁷

Residency registration for foreigners entering under the non-visa regime

Most foreigners entering Kazakhstan under the non-visa regime are required to register their place of residence with the Ministry of Internal Affairs' Migration Police Department within

³³ It is not within the scope of this report to analyze in detail the development of Kazakhstani law and policy regarding migrant workers, and detailed analyses can be found in other recent publications. See: ILO, "Rights of Migrant Workers in Kazakhstan," and International Organization for Migration (IOM), "Kazakhstan: Facts and Figures," August 2007, available at <http://www.iom.int/jahia/Jahia/activities/asia-and-oceania/central-asia/kazakhstan> (accessed December 30, 2009).

³⁴ As set forth in the Law on Employment and Government Resolution, no. 836, June 19, 2001. See Regarding Employment of Foreign Workers, "Analysis of the Laws of the Republic of Kazakhstan," pp. 18-33, and ILO, "Rights of Migrant Workers in Kazakhstan," pp. 15-17.

³⁵ ILO, "Rights of Migrant Workers in Kazakhstan," p. 18.

³⁶ Code of Administrative Offences of the Republic of Kazakhstan, no. 155-2, January 30, 2001, art. 396.

³⁷ Human Rights Watch interview with Vadim Ni, Almaty, June 11, 2009.

five days of their arrival. Registration is free of charge.³⁸ Under a special agreement with Kyrgyzstan, citizens of Kyrgyzstan may stay in Kazakhstan for up to 90 days without temporary registration.³⁹ Registration can be issued for up to 90 days, and may be extended for another 90 days. Upon expiry of registration, a migrant must leave the country, unless he or she is formally employed. Registration for foreigners with official employment is done for the duration of the employment contract.⁴⁰ Violation of the registration regime results in a warning or fines.⁴¹

1.3 Philip Morris International and Philip Morris Kazakhstan

Philip Morris International

Philip Morris International, Inc. (PMI) is a United States-based tobacco company incorporated in Virginia and headquartered in New York.⁴² Its primary center of operations is in Lausanne, Switzerland.⁴³ PMI was originally a subsidiary of Altria Group, Inc., a conglomerate which also included Philip Morris USA, Inc. and John Middleton, Inc.⁴⁴ In January 2008, PMI spun off from Altria and became an independent company.⁴⁵

PMI describes itself as “the leading international tobacco company” and sells its products in over 160 countries.⁴⁶ In 2008, PMI held an estimated 15.6 percent share of the total cigarette market outside of the United States,⁴⁷ and its net revenues exceeded US\$25.7 billion.⁴⁸ PMI

³⁸ Government Decree No. 136 of 28 January 2000 on various questions of legal regulation for the stay of foreign citizens in the Republic of Kazakhstan, http://portal.mfa.kz/portal/page/portal/mfa/ru/content/consular_info/foreigners (accessed January 19, 2010).

³⁹ Human Rights Watch interview with Serik Sainov, head, migration police department, Ministry of Interior of the Republic of Kazakhstan, Almaty, November 11, 2009.

⁴⁰ Government Decree No. 136 of 28 January 2000 on various questions of legal regulation for the stay of foreign citizens in the Republic of Kazakhstan. In the event of the loss of a job due to labor market changes, the Law on Migration allows migrant workers to remain in the country for the duration of their valid residency registration. Law on Migration of the Republic of Kazakhstan, art. 5.

⁴¹ Code of Administrative Offences of the Republic of Kazakhstan, art. 394.

⁴² Philip Morris International, Inc. [PMI] “PMI @ a glance,” undated, http://www.philipmorrisinternational.com/PMINTL/pages/eng/ourbus/About_us.asp (accessed July 6, 2009).

⁴³ *Ibid.*

⁴⁴ PMI, “Philip Morris International spin-off information,” undated, http://www.philipmorrisinternational.com/PMINTL/pages/eng/press/pr_20080311.asp (accessed July 6, 2009). Middleton manufactures and markets pipe tobacco and large machine-made cigars. John Middleton, Inc., “Welcome to John Middleton,” undated, <http://johnmiddletonco.com/en/cms/Home/default.aspx> (accessed July 16, 2009).

⁴⁵ PMI, “Philip Morris International spin-off information,” undated, http://www.philipmorrisinternational.com/PMINTL/pages/eng/press/pr_20080311.asp (accessed July 6, 2009).

⁴⁶ PMI, “PMI @ a glance.”

⁴⁷ *Ibid.*

⁴⁸ Excluding excise taxes. Philip Morris International, Inc., “Financial highlights,” undated, http://www.philipmorrisinternational.com/PMINTL/pages/eng/ourbus/F_highlights.asp (accessed July 6, 2009).

is currently the market leader in 11 of the top 30 international tobacco markets⁴⁹ and owns seven of the world's top 15 cigarette brands, including Marlboro, the world's leading brand.⁵⁰

PMI does not own any tobacco farms. It purchases tobacco from leaf merchant companies and farmers in numerous countries, including Kazakhstan, as well as Brazil, Greece, Italy, Malawi, Poland, Thailand, Turkey and the United States. Leaf merchant companies and farmers are responsible for growing, harvesting, curing, and sorting the tobacco. At the end of the season, the growers pack the tobacco into bales and deliver them to an auction floor or receiving center where PMI leaf buyers judge the quality of the leaves to be purchased.⁵¹

Philip Morris Kazakhstan

Philip Morris Kazakhstan (PMK) is an indirect, wholly-owned subsidiary of PMI. In 1993, PMI purchased 99.5 percent of the Almaty Tobacco Company, marking the first privatization of a state-owned company in the consumer goods sector in Kazakhstan. In 2001, the company became known as Philip Morris Kazakhstan, LLP. PMK owns a production complex in the Otegen Batyr village on the outskirts of Almaty, has six regional offices, and employs approximately 1,000 people. PMK produces eight international brands and six local brands, which are distributed throughout Kazakhstan. The international brands are also exported to five other countries in Central Asia.⁵²

1.4 Structure of Tobacco Farming in Kazakhstan

Tobacco cultivation in Kazakhstan takes place overwhelmingly in the Enbekshikazakh district of Almaty province, approximately 120 kilometers (75 miles) east of the former capital, Almaty. PMK is the sole purchaser of tobacco produced in the district.⁵³ Each year Kazakhstani landowners sign contracts directly with PMK for tobacco to be produced. These landowners may farm tobacco themselves, but often hire workers, usually from Kyrgyzstan, to do some or all of the tobacco cultivation. Human Rights Watch could not identify independent estimates of the number of migrant tobacco workers in Kazakhstan in 2009 or

⁴⁹ PMI, "Our business," undated, http://www.philipmorrisinternational.com/PMINTL/pages/eng/ourbus/Our_business.asp (accessed July 6, 2009).

⁵⁰ Other leading brands include L&M, Chesterfield, Parliament, and Virginia Slims. Philip Morris International, Inc. PMI, "Our brands," undated, http://www.philipmorrisinternational.com/PMINTL/pages/eng/ourbus/Our_brands.asp (accessed July 6, 2009).

⁵¹ PMI, "Tobacco farming," undated, <http://www.philipmorrisinternational.com/PMINTL/pages/eng/community/Farming.asp> (accessed July 16, 2009).

⁵² Letter from Even Hurwitz, Senior Vice President for Corporate Affairs, Philip Morris International, to Human Rights Watch, February 19, 2010.

⁵³ Letter from Hurwitz, November 10, 2009.

previous years; PMK estimates that in 2009, there were approximately 1,300 migrant workers employed by tobacco farmers in 2009, a decrease from 3,500 in 2007.⁵⁴

Typically, migrant tobacco workers travel in families and work together. Families may consist of a husband and wife pair with their children, as well as with their brothers, sisters, or even multi-generational families. In almost all cases, one family member—typically the only or oldest man in the family, or, in the absence of an adult male, the oldest woman—agrees on the general terms of work with a Kazakhstani landowner and receives a single, lump-sum payment for the family’s work at the end of the tobacco season.

The tobacco season

Tobacco farming in Kazakhstan typically involves an approximately eight-month season of difficult, labor-intensive manual work. The season generally starts in March or April, when farmers and migrant workers begin to grow seedlings that are then planted in the ground in late May. For approximately five months, tobacco workers tend to the tobacco plants, watering, weeding, fertilizing and applying pesticides. Beginning in late July or early August, and continuing for four to six weeks, workers harvest the tobacco by pulling the leaves off of the plants by hand in four to five separate harvests. They then thread the leaves with large needles and hang the leaves to cure in the sun for two to three weeks. After the tobacco cures, it is placed in a “steam room,” typically a small, underground room in which water is heated to a high temperature, similar to a sauna. The tobacco is steamed for several days in order for the leaves to be supple enough to be packed into bales without cracking.

Payment structure

Migrant workers interviewed by Human Rights Watch generally farmed a few hectares of tobacco,⁵⁵ in a share-cropping structure with a Kazakhstani farmer, whereby the landowner typically received half or more of the final payment from PMK for the tobacco produced by the migrant workers. Notably, in contrast to this structure, migrant workers engaged in vegetable farming in Kazakhstan typically lease the land from Kazakhstani landowners and then sell vegetables directly to buyers and keep all profits from the sales.

Migrant workers described to Human Rights Watch two dominant models under which the tobacco cultivation and final payment were organized:

⁵⁴ Ibid.

⁵⁵ A hectare is 10,000 square meters or 2.47 acres.

- 1) “50/50”: the migrant worker (or a family of workers) and the landowner split equally the income from selling the tobacco produced on the landowner’s farm.
- 2) “Plan”: workers are expected to produce a specific volume of tobacco (generally approximately one metric ton of tobacco per hectare) for which the farmer receives full payment. The farmer then also gives the migrant workers an additional, smaller plot of land, typically approximately a half a hectare or less, to produce tobacco for which the family of workers will receive exclusive payment.

Typically in November, once the migrant workers have harvested, cured, and steamed the tobacco, they press it into bales for delivery to the PMK cigarette factory, where a tobacco leaf expert determines the grade of the tobacco. Each season, PMK determines a price for each grade. PMK pays the Kazakhstani landowner based on the amount of tobacco of each grade. The landowner, in turn, pays the head of the migrant worker family a single payment.

Migrant workers told Human Rights Watch that because they very often had little or no cash of their own at the beginning of the season and they did not receive regular wages, the landowner provided the head of the family with advance payments or directly purchased their basic necessities, including food, medications and medical treatment, as well as in some cases fertilizer and other materials necessary for farming. The farmer assessed these costs, often with a premium, and then deducted them from the final end-of-season payment to the worker(s). Some landowners also paid upfront travel costs or payments to intermediaries, if they were involved, and deducted these costs, which they considered debts incurred by the migrant workers, from the final payment.

1.5 Governmental and Corporate Responsibilities

Many of the abuses documented in this report are perpetrated directly by Kazakhstani landowners and by intermediaries. The Kazakhstani government has an obligation to implement international standards and to enforce Kazakhstani laws designed to protect workers from these abuses. Kazakhstan has ratified numerous international human rights treaties, which guarantee all people equal and inalienable rights by virtue of their inherent human dignity, and that place positive obligations on the government to protect the rights of individuals against abuses, including forced labor, committed both by private persons and state agents or entities. Kazakhstan also has the obligation to implement basic labor protections of persons in employment and to eliminate racial discrimination.⁵⁶ It is obligated

⁵⁶ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.

to take appropriate measures to prevent, punish, investigate, and redress the harm caused to individuals' rights and provide effective remedies to those so harmed.⁵⁷ The vast majority of the rights defined in these treaties apply equally to migrant workers and other persons within Kazakhstan.

The International Labour Organization (ILO) has developed a comprehensive body of conventions that address virtually every aspect of workers' rights. Kazakhstan has ratified 17 ILO conventions, including the eight core conventions, which concern forced labor, freedom of association and the right to collective bargaining, non-discrimination, and prohibition of child labor.⁵⁸ The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes “the right of everyone to the enjoyment of just and favourable conditions of work.”⁵⁹ Such conditions must ensure: remuneration, safe and healthy working conditions, equal opportunity for promotion, as well as rest, reasonable limitation of working hours and periodic holidays with pay, and remuneration for public holidays.⁶⁰ Regarding non-citizens' rights at work, the Committee on the Elimination of Racial Discrimination's General Recommendation No. 30 states that once an employment relationship has been initiated and until it is terminated, all individuals, even those without work permits, are entitled to the enjoyment of labor and employment rights.⁶¹ This recommendation is relevant for migrant

171, entered into force March 23, 1976. (ICCPR), ratified by Kazakhstan on January 24, 2006; Optional Protocol to the International Covenant on Civil and Political Rights, adopted December 16, 1966, entered into force March 23, 1976, ratified June 30, 2009; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, entered into force June 26, 1987, ratified by Kazakhstan on August 26, 1998; Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 18, 2002, entered into force June 22, 2006, ratified by Kazakhstan on October 22, 2008; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, entered into force January 3, 1976, ratified by Kazakhstan on January 24, 2006; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted March 7, 1966, entered into force January 4, 1969, ratified by Kazakhstan on August 26, 1998.

⁵⁷ Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Ass.13 (2004), para. 8.

⁵⁸ The eight core conventions are: ILO Convention No. 29 concerning Forced or Compulsory Labour, adopted June 28, 1930, entered into force, May 1, 1932; ILO Convention No. 105 concerning Abolition of Forced Labor, adopted June 25, 1957, entered into force, January 17, 1959; ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, adopted July 9, 1948, entered into force July 4, 1950; ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, adopted July 1, 1949, entered into force July 18, 1951; ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, adopted June 25, 1958, entered into force June 15, 1960; ILO Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted June 29, 1951, entered into force May 23, 1953; ILO Convention No. 138 concerning Minimum Age for Admission to Employment, adopted June 26, 1973, entered into force, June 19, 1976; and ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted June 17, 1999, entered into force November 19, 2000. See also ILO, List of Ratifications of International Labour Conventions, Kazakhstan, <http://www.ilo.org/ilolex/english/newratframeE.htm> (accessed January 19, 2010).

⁵⁹ ICESCR, art. 7.

⁶⁰ *Ibid.* The Universal Declaration of Human Rights (UDHR) also provides that everyone has the right to rest and leisure, including limitation of working and periodic holidays with pay, as well as the right to just and favorable remuneration, and the freedom to form and join trade unions. UDHR, arts. 23 and 24.

⁶¹ *Emphasis added.* UN Committee on the Elimination of Racial Discrimination, General Recommendation 30, Discrimination against Non-citizens (Sixty-fourth session, 2004), U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004), para. 35.

tobacco workers in Kazakhstan, insofar as many of them have worked without the employers having received the necessary employment authorization.

The Kazakhstani government must implement existing laws prohibiting forced labor and guaranteeing basic labor rights, including written contracts, regular wages, and worker safety, including through inspections and consistent and dissuasive sanctions.

Corporate responsibility

While international human rights instruments pay particular attention to the role of states as the primary duty holders under international law in upholding these rights,⁶² businesses and other actors also have responsibilities. The preambles to key human rights treaties recognize that ensuring respect for human rights is a shared responsibility that goes beyond that of states, and the preamble of the Universal Declaration of Human Rights (UDHR) explicitly states that the responsibility is one for “every organ of society.”⁶³ In addition, companies may be bound by international human rights standards, including labor standards, as a matter of national law, insofar as such standards have been incorporated into domestic legislation in the countries in whose jurisdictions the companies operate.

The basic principle that companies have a responsibility to respect human rights, including workers’ rights, has achieved wide international recognition. Although an international consensus has taken shape that companies have a responsibility to respect workers’ human rights, broad agreement does not yet extend to the important questions of how to ensure that companies uphold this responsibility in practice and that they do so everywhere they operate.⁶⁴ Instead, the UN, other international organizations, companies, governments, and nongovernmental organizations have developed various norms and guidelines, which draw from international human rights and labor laws, that are intended to guide businesses in their operations and projects. These norms reflect an expectation that corporations should have policies and procedures in place that ensure human rights abuses do not occur and to undertake adequate due diligence to identify and effectively mitigate human rights problems.

⁶² See Human Rights Watch and the Center for Human Rights and Global Justice, *On the Margins of Profit: Rights at Risk in the Global Economy*, February 2008.

⁶³ In addition to the UDHR, the preambles of both the ICCPR and ICESCR recognize that in addition to states, “individuals” have human rights responsibilities, a term that can incorporate juridical persons (including businesses) as well as natural persons. Moreover, there is a broad consensus that businesses are subject to direct responsibility for human rights abuses that amount to international crimes, including enslavement, genocide, war crimes, and crimes against humanity.

⁶⁴ There is as yet no shared understanding of the full scope of businesses’ human rights responsibilities (including under the special circumstances in which a company fulfils a public function and/or provides an essential service), whether these are or should be binding under international law, and if so how they can best be enforced. In the past, such issues have proven highly contentious.

This approach has been elaborated by John Ruggie, the United Nations Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises. Ruggie has developed a framework known as the “protect, respect, and remedy” approach to business-related human rights issues that in part outlines the basic steps that companies should take to respect human rights, avoid complicity in abuses, and adequately remedy them if they occur. The United Nations human rights body, the Human Rights Council, has welcomed this approach and specifically requested that Ruggie “elaborate further on the scope and content of the corporate responsibility to respect all human rights and ... provide concrete guidance to business and other stakeholders.”⁶⁵

Other standards developed to help guide businesses in their operations and projects include the UN Global Compact, a voluntary initiative which incorporates human rights commitments. Under the compact companies pledge their adherence to ten “universally accepted principles in the areas of human rights, labour, environment and anti-corruption” deriving from, among other texts, the UDHR and the ILO's Declaration of Fundamental Principles and Rights at Work,⁶⁶ and commit to “align their operations and strategies” with these principles.⁶⁷ The principles include:

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights;
- Principle 2: make sure that they are not complicit in human rights abuses.
- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4: the elimination of all forms of forced and compulsory labour;
- Principle 5: the effective abolition of child labour.

The ILO Tripartite Declaration of Principles further recommends standards of conduct for multinational corporations and others “in the fields of employment, training, conditions of

⁶⁵ See United Nations Human Rights Council, Resolution 8/7, “Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises,” June 18, 2008.

⁶⁶ “The ten principles of the UN Global Compact,” UN Global Compact website, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>, accessed February 16, 2009.

⁶⁷ See UN Global Compact Office, “Overview of the UN Global Compact,” updated November 6, 2008, <http://www.unglobalcompact.org/AboutTheGC/index.html> (accessed February 9, 2009). In addition, a participating company is “expected to publicly advocate the Global Compact and its principles via communications vehicles such as press releases, speeches, etc.” and is “required to communicate with their stakeholders on an annual basis about progress,” specifically regarding implementation of the ten principles and partnership projects that support broad UN goals. UN Global Compact Office, “Frequently Asked Questions,” updated November 7, 2008, <http://www.unglobalcompact.org/AboutTheGC/faq.html> (accessed February 9, 2009).

work and life and industrial relations” while operating in foreign countries.⁶⁸ The declaration calls on multinational corporations “to provide the best possible wages, benefits, and conditions of work,” “maintain the highest standards of safety and health,” and to guarantee freedom of association and collective bargaining, among other worker rights.⁶⁹

Another set of principles relevant to multinational companies is the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, which comprise “recommendations on responsible business conduct addressed by governments to multinational enterprises.”⁷⁰ They apply to companies in or from the 30 member countries of the OECD and 12 additional, non-OECD countries. The guidelines are addressed to all parent and local entities within multinational enterprises (MNEs), which are defined broadly as private or state “companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways.”⁷¹ Regarding workers’ rights, these guidelines state, *inter alia*:

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

- Contribute to the effective abolition of child labour.
- Contribute to the elimination of all forms of forced or compulsory labour.
- Take adequate steps to ensure occupational health and safety in their operations.⁷²

Philip Morris International and Philip Morris Kazakhstan also have the responsibility to ensure respect for human rights at all levels of the supply chain for their products.

As described in the summary and in more detail in part 3 of this report, PMI has developed a Good Agricultural Practices (GAP) policy related to various aspects of tobacco farming,

⁶⁸ See International Labour Office Governing Body, ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 204th Session, Geneva, November 1977, third edition, 2001, para. 7.

⁶⁹ *Ibid.*, paras. 34, 38, 42.

⁷⁰ Organisation for Economic Cooperation and Development, OECD Guidelines for Multinational Enterprises, OECD Doc. DAFFE/IME(2000)20 (2000). See <http://www.oecd.org/dataoecd/56/36/1922428.pdf> (accessed April 7, 2009.)

⁷¹ *Ibid.*, I.3. OECD's Investment Committee has stated that the Guidelines apply to international investment or other activities that have an "investment nexus," which it has not defined but that, experience shows, can encompass supply and contractor relationships. For further discussion, see OECD Watch, "The Model National Contact Point (MNCP): Proposals for improving and harmonizing the procedures of the National Contact Points for the OECD Guidelines for Multinational Enterprises," September 2007, p. 18.

⁷² OECD, OECD Guidelines for Multinational Enterprises.

including prohibition on child and forced labor, workplace safety, and safe use of pesticides. Human Rights Watch has determined that the policy has not been sufficient to prevent and remedy the abuses documented in this report. However, PMI and PMK have committed to taking important measures to address the abuses and exploitative practices documented by Human Rights Watch. These are outlined more fully below and in parts 3 and 4 of this report.

Part 2: Abuse and Exploitation of Migrant Tobacco Workers in Kazakhstan

2.1 Introduction

Human Rights Watch research in 2009 found that migrant workers employed in tobacco farming in Kazakhstan faced a range of human rights abuses and forms of exploitation. The most pervasive practices included landowners' failure to provide written contracts, failure to pay regular wages, underpayment of earnings, excessive deductions from earnings, retention of passports, long working hours, insufficient rest, and substandard living conditions. The failure to pay regular wages put workers at risk of induced indebtedness, because in the event of a poor harvest deductions for food, intermediaries' fees, and other expenses paid by the landowner during the season may have totaled more than the earnings migrant workers receive for the tobacco produced.

Human Rights Watch's research also documented six cases which it determined to be forced labor or situations which were akin to forced labor. In some cases, migrants were delivered into these situations by intermediaries who promised them good earnings working in tobacco. In some cases of forced labor, migrants reported that landowners expected them to perform additional work, such as home renovation or farming of other crops, all without pay. Migrant workers indicated to Human Rights Watch that they were not in a position to refuse such work. In all cases, landowners' retention of workers' passports served as the main means of coercion for workers to remain in abusive situations. The credible threat of forfeiting some or all of a season's earnings—as a result of the lack of regular wages and the single end-of-season payment structure—also served as a significant penalty for workers who wished to leave an abusive employment situation.

Kazakhstani workers may face many of the same abuses described here. However, migrant workers are particularly vulnerable to abuse. They are typically very poor, mostly do not speak Kazakh or Russian, and are living in remote areas, far from governmental or non-governmental services. They are generally unfamiliar with Kazakh labor protection laws and migration laws as well as about how to obtain help. Furthermore, in the absence of legal residency and employment status, migrant workers are also less able or willing to seek redress from official sources. These factors may serve as further obstacles for migrant workers in need of assistance.

Child labor in tobacco farming in Kazakhstan is discussed in detail in chapter 4.

2.2 Absence of Written Contracts

Under Kazakhstani law, every worker has the right to conclude an employment contract with his or her employer.⁷³ Labor relations are established by this employment contract.⁷⁴ The bilateral agreement between the government of Kazakhstan and the government of Kyrgyzstan on migrant workers also specifies that employment relations between workers and employers are based on employment contracts.⁷⁵

However, all migrant workers interviewed by Human Rights Watch except two stated that they had not signed a written contract with the Kazakhstani landowner employing them in 2009. The government's decision not to allocate permits to hire agricultural migrant workers to employers in Almaty province in 2009 meant that landowners could not obtain the required authorization to hire migrant workers and legally sign contracts with them during that year. It is illegal for an employer to sign a contract with foreign workers without receiving the necessary permission from the local authorities.⁷⁶ Only two migrant workers told Human Rights Watch that they had signed contracts with their employers in 2009. However, because the employment was not authorized, these contracts had no legal force.⁷⁷

In a letter to Human Rights Watch, PMI confirmed that a "written contract between a farmer and his seasonal workers, whether from Kazakhstan or abroad, is generally seen as very unusual."⁷⁸ In the absence of written contracts for each worker, the head of a migrant family, typically the oldest person, usually the oldest man, had an oral agreement with the landowner regarding the amount of land to be farmed, the structure of sharing the final payment for the tobacco produced, and other terms, as described below.

The absence of a written contract leaves workers vulnerable. The Labor Code of Kazakhstan narrowly defines labor relations, and specifies that labor relations arise in the presence of an employment contract.⁷⁹ The code defines the employment contract as a written agreement between the employee and the employer and defines an employee as "an

⁷³ Labor Code of the Republic of Kazakhstan, No. 251, May 15, 2007, art. 22.

⁷⁴ Labor relations arise between the employee and the employer on the basis of the employment contract concluded in accordance with this Code. Labor Code of the Republic of Kazakhstan, art. 20.

⁷⁵ Agreement between the government of the Republic of Kazakhstan and the Government of Kyrgyzstan concerning labor activity and social protection of migrant workers, employed in agricultural work in border regions, arts. 5 and 6 and agreement between the government of the Republic of Kazakhstan and the Government of Kyrgyzstan concerning labor activity and rights protection of migrant workers, of July 4, 2006, art. 6

⁷⁶ Labor Code of the Republic of Kazakhstan, art. 26.

⁷⁷ Human Rights Watch interviews with Bekbolot B., Koram, June 8, 2009 and with Ruslan R., Malybai, September 25, 2009.

⁷⁸ Letter to Human Rights Watch from Even Hurwitz, Senior Vice President for Corporate Affairs, Philip Morris International, to Human Rights Watch, January 14, 2010.

⁷⁹ Labor Code of the Republic of Kazakhstan, art. 20.

individual maintaining labor relations with the employer and directly performing work under an employment contract.”⁸⁰ According to labor law experts, even if labor relations might be established by other means, such as witness testimony, in practice, in a court of law only a written contract is accepted as evidence of the existence of labor relations.⁸¹ Any worker, including migrant workers who wished to challenge his employer’s actions in a court of law would have great difficulty proving that labor relations had existed without the presence of a written contract.

Contracts in previous years

Five migrant workers interviewed by Human Rights Watch stated that they had had contracts in previous years, when the government had issued permits for hiring foreign agricultural workers. However, even in these years employers only signed contracts with the head of the migrant worker family, rather than with each worker actually working. This is in violation of Kazakhstani law and is an important protection issue further discussed below. The contracts were written in Russian, a language that not all workers could understand.

In previous years, some landowners had used a private employment agency in Chilik, a village serving as a regional center, to help them secure the required work authorization for hiring migrant workers, and to draw up a written contract to be signed by the landowner and the head of a migrant worker family. For example, Aida A., who worked in Kazakhstan during the 2005-2007 tobacco seasons, told Human Rights Watch that each year she had a written contract with her employer, facilitated through the agency. She and her employer each had a copy of the contract.⁸² Kapar K., who worked with his sisters and brothers-in-law in Malybai in 2008 and 2009, also stated that he had a contract through the agency in 2008, which stated that the worker must “work honestly and not get drunk. And the employer must create good working conditions.” The landowner also officially registered Kapar K. on the migration registry.⁸³ Zhumabek Zh., who had worked in tobacco farming in Kazakhstan for nine years, said, “In past years, we had a written contract. We had to take it to the agency. ... This year there is only an oral agreement.”⁸⁴

Human Rights Watch obtained copies of sample contracts issued in 2007 and 2008 by the Chilik-based agency and signed between landowners and the head of a migrant worker family, defined in the contract as “the worker.” In most cases other workers, namely family

⁸⁰ Ibid., art. 1.

⁸¹ Human Rights Watch interview with Viktoria Tyuleneva, Almaty, November 10, 2009.

⁸² Human Rights Watch interview with Aida A., Karatash, Kyrgyzstan, April 7, 2009.

⁸³ Human Rights Watch interview with Kapar K., Malybai, June 11, 2009.

⁸⁴ Human Rights Watch interview with Zhumabek Zh., Malybai, June 11, 2009.

members, would also be working for this employer. However, they did not sign individual contracts. Contracts were always written in Russian.⁸⁵

Only one family interviewed by Human Rights Watch stated that each adult worker had received a written contract, in their case in 2008.⁸⁶

Migrant workers also told Human Rights Watch that employers did not always respect the terms of the contract. A 2008 sample contract used by the agency in Chilik indicated that the employer is obligated to pay the worker monthly and in full no later than the tenth day of each month (for work performed the previous month). The contract also established an eight-hour working day and work only on weekends or holidays with the workers' written permission.⁸⁷ No migrant tobacco workers with whom Human Rights Watch spoke who had worked in 2008 said that they had been paid monthly. Rather they were paid only once, at the end of the season. They also regularly worked more than eight hours, and without days off.

Other obligations were also not met. The sample contracts provided by the Chilik-based agency required both parties to have a copy. However, migrant workers who signed contracts with their employers told Human Rights Watch that they did not receive a copy of it. For example, Almazbek A., who has been traveling with wife and children seasonally to Kazakhstan to farm tobacco for eight years, told Human Rights Watch, "The landowner drew up the contract ... He never gave us a copy of the contract."⁸⁸

In other cases prior to 2009 workers simply did not have written contracts. For example, Gulnara G. said that she or her husband had been coming from Kyrgyzstan to Kazakhstan for eight years to farm tobacco with their children and never signed a written contract, only having an oral agreement with the employers.⁸⁹

2.3 Failure to Pay Regular Wages and Payments of Less than Minimum Wage

Under Kazakhstani labor law employers are required to pay each worker at least monthly and payment cannot be lower than the national minimum salary.⁹⁰ All migrant tobacco workers

⁸⁵ Employment contracts on file with Human Rights Watch. Human Rights Watch interview with Almazbek, Karatash, Kyrgyzstan, April 7, 2009.

⁸⁶ Human Rights Watch interview with Dinara D., Chilik, June 17, 2009.

⁸⁷ On file with Human Rights Watch.

⁸⁸ Human Rights Watch interview with Almazbek, Karatash, Kyrgyzstan, April 7, 2009.

⁸⁹ Human Rights Watch interview with Gulnara G., Malybai, September 25, 2009.

⁹⁰ Labor Code of the Republic of Kazakhstan, arts. 121, 122, and 134.

interviewed by Human Rights Watch stated that Kazakhstani landowners paid them no regular wages during the eight to nine months that the workers cultivated tobacco. Instead, the landowner paid the head of the migrant worker family one lump sum payment at the end of the tobacco harvest, after the tobacco has been delivered to Philip Morris Kazakhstan and PMK has paid the landowner based on the volume and grade of the tobacco.⁹¹ Philip Morris International confirmed this practice, stating in a letter to Human Rights Watch, that “workers, domestic and foreign alike, receive the bulk of their pay from the farmers at the end of the season (which is explained by the fact that the majority of their earnings—and the farmers’ payment from PMK—depends on the crop yield).”⁹²

Human Rights Watch research found that other members of migrant families who work on the farm, including both children and adults were often in a situation of simply “working for the family,” and did not earn any payment themselves, even after the end of the season. For example, Aisha A., 22, who was working in Malybai in 2009 with her mother-in-law and her 11-year-old brother-in-law, told Human Rights Watch, “We’re one family. I just help. They [the family] won’t pay me. At the end of the season maybe they’ll just give me a bit of money.”⁹³

In cases documented by Human Rights Watch in 2009, final payments to heads of household, prior to any deductions for expenses made by the employer, ranged from US\$1,432 to US\$3,363, or approximately US\$159 to US\$374 per month for a family typically cultivating tobacco between eight and 18 hours per day, with few days off, for nine months.⁹⁴ In some of these cases, wages fell below the minimum wage and well below the average wages for Kazakhstan, even for manual work. In 2009, the minimum monthly salary in Kazakhstan was 13,717 tenge (US\$91), and in 2010 it was raised to 14,952 tenge (US\$99).⁹⁵ Official data indicate the average monthly wage in Kazakhstan for December 2009 was approximately 82,180 tenge (\$560), and even workers in the lowest paid sector, fishing, earned approximately 31,258 tenge (\$213) per month.⁹⁶

⁹¹ Letter from Hurwitz, January 14, 2010. In Kazakhstan and other countries where Philip Morris International purchases tobacco, Philip Morris International leaf experts judge the quality of the leaves to be purchased and assign the leaves a grade. In 2008, tobacco in Kazakhstan was categorized into six grades, with prices in 2008 ranging from 70 tenge (US\$0.57) per kilogram for the lowest grade, to 275 tenge (US\$2.22) per kilogram for the highest grade. Exchange rates for December 1, 2008. Letter from Hurwitz, November 10, 2009.

⁹² Letter from Hurwitz, January 14, 2010.

⁹³ Human Rights Watch interview with Aisha A., Malybai, June 13, 2009.

⁹⁴ Human Rights Watch interviews with Aym A. and with Nurdin N., Karatash, December 12, 2009, and with Zhumartbek Zh., with Umur U., and with Sharapat Sh., Karatash, Kyrgyzstan, December 13, 2009. Unless otherwise noted, Kazakh tenge-US Dollar exchange rates as of December 1, 2009, as on Oanda.com.

⁹⁵ Law of the Republic of Kazakhstan, no. 96-4, December 4, 2008, On the Republican Budget for 2009-2011,” art. 8, and Law of the Republic of Kazakhstan, no. 219-4, December 7, 2009, On the Republican Budget for 2010-2011,” art. 9.

⁹⁶ “Average Monthly Salary Rose by 13.6 percent to \$560,” Central Asia News Kazakhstan, December 2, 2010, <http://src.auca.kg/reports/101/03.htm> (accessed February 18, 2010).

For example, Sharapat Sh., 41, who worked in Malybai for nine months in with her 15-year-old daughter and adult son, told Human Rights Watch that her family of three's gross salary, prior to the employer's deductions, totaled 321,000 tenge (US\$2,129), or 11,888 tenge (US\$79) per person per month.⁹⁷ Nurdin N., 43, who worked in Karaturyk in 2009 together with his wife and 13-year-old son for nine months, stated that he and his family earned a gross salary of just over 216,000 tenge (\$1,432), or approximately 8,000 tenge (US\$53) per person per month—well under the minimum wage.⁹⁸

The practice of paying the head of the family of workers only at the end of the season allows the landowners to exercise an unreasonable degree of control over the workers and can be a contributing factor in situations of forced labor, as described below (See Forced labor). Should workers want to leave their employer prior to the end of the season, due to abusive labor practices or for any other reason, they would forfeit any wages owed to them.

2.4 Deductions from Final Payments

Migrant workers interviewed by Human Rights Watch said that they often had little or no money of their own at the beginning of the tobacco season, and, in the absence of regular wages, had no other funds on which to subsist for the eight to nine months during which they were cultivating tobacco. Almost all migrant workers interviewed by Human Rights Watch stated that they relied on the landowner to provide the head of their family with food and other provisions, either directly or through small cash advances.

Food provided by landowners typically included cooking oil, rice, buckwheat, macaroni, canned vegetables, and similar items. Meat was sometimes provided, although it was typically more expensive.⁹⁹ Should the workers require medication and medical treatment, the employer usually paid for those expenses as well.¹⁰⁰ The employer may have also paid directly for the migrants' transportation by car from their home villages in Kyrgyzstan, as well as for intermediaries' costs, which can be exorbitant (see below, Induced indebtedness). In some cases the parties shared equally the cost of fertilizers and other farming materials,¹⁰¹ or the workers paid for these entirely.

⁹⁷ Human Rights Watch interview with Sharapat Sh., December 13, 2009.

⁹⁸ Human Rights Watch interview with Nurdin N., Karatash, Kyrgyzstan, December 12, 2009.

⁹⁹ For example, Human Rights Watch interview with Ruslan R., Malybai, September 25, 2009; Human Rights Watch interview with Chingiz Ch., Malybai, June 12, 2009.

¹⁰⁰ For example, Human Rights Watch interview with Chingiz Ch., Malybai, June 12, 2009.

¹⁰¹ For example, Human Rights Watch interview with Gulnara G., Malybai, September 25, 2009.

While accommodation was usually provided to workers free of charge, the landowner deducted the other living expenses—often as well as travel costs, payments to intermediaries, and sometimes the costs of farm supplies—from the final end-of-season payment to the migrant worker family. In cases documented by Human Rights Watch in 2009, the deductions in some cases reduced the final payment by a significant amount, ranging from 34 to 60 percent.¹⁰²

The practice of deductions from single season payments to a family of workers falls entirely outside the scope of Kazakhstani law. First, while Kazakhstani law allows for deductions from regular wages, single end-of-season payments are not regular wages. Second, Kazakhstani law tightly regulates deductions from wages by, for example, making them subject to approval by a court and limiting the amount to no more than fifty percent of the wage due to the employee.¹⁰³

A few migrant workers told Human Rights Watch that they were able to supplement their food supply by growing some of their own vegetables.¹⁰⁴ Some workers said that they were able to buy food and other living expenses by doing some additional odd-jobs for other employers (such as additional farming in tobacco or vegetables, house renovations, or similar work) who would pay cash.¹⁰⁵ By taking on additional employment, these workers were able to cover some or most of their expenses for the season. However, not all landowners allowed migrant workers employed on their farms to engage in such work with another employer, as described below.

2.5 Lack of Transparency and Deception in the Final Payment

Although some landowners and heads of migrant worker families each kept written records of expenses that will later be deducted from the workers' final payment,¹⁰⁶ Human Rights Watch research revealed that this practice was not universal, and in some cases landowners did not provide a transparent accounting. Eight heads of migrant worker families told Human

¹⁰² Human Rights Watch interviews with Alym A. and with Nyrdyn N., Karatash, December 12, 2009, and with Zhumartbek Zh., with Umut U., and with Sharapat Sh., Karatash, December 13, 2009.

¹⁰³ Article 137 of the Labor Code of the Republic of Kazakhstan states: 1) Withholdings from the wages of an employee shall be made by court ruling, as well as in cases envisaged by the laws of the Republic of Kazakhstan. 2) Withholdings from the wages of an employee for the purpose of redeeming his debt towards the organization for which he works may also be made on the basis of an act of the employer, with the written consent of the employee. 3) The total amount of monthly withholdings shall not exceed fifty per cent of the wage due the employee.

¹⁰⁴ Human Rights Watch interviews with Ruslan R. and with Gulnara G., Malybai, September 25, 2009.

¹⁰⁵ Human Rights Watch interviews with Gulnara G., September 25, 2009 and with Zhazira Zh., Malybai, June 13, 2009.

¹⁰⁶ For example, Sabir S., who worked in Malybai in 2009 with his wife and two children, ages 15 and 13, said that his employer provides him and his family food, and that both he and the landowner each keep a notebook recording the expenses. Human Rights Watch interview with Sabir S., Malybai, June 11, 2009. Also Human Rights Watch interview with Ruslan R., Malybai, September 25, 2009.

Rights Watch that they believed they had been cheated in the final payment paid by the landowner, as a result of excessive, arbitrary or unexpected deductions, or if the landowner was not honest about the total sum paid for the tobacco by PMK.¹⁰⁷ Disagreements about the final payment occurred even in cases when migrant workers participated in the delivery of tobacco to PMK at the end of the season where the tobacco leaf would be judged and thereby would more likely be able to know the sum paid to the landowner by Philip Morris Kazakhstan.

Migrant workers' participation in delivery and purchase of the tobacco

At the end of the season, the landowner delivers the tobacco to the PMK factory for purchase, where a tobacco leaf expert determines the grade of the tobacco. Each grade of tobacco is given a price per kilogram.¹⁰⁸ According to PMI officials, the prices are publicly displayed.¹⁰⁹ PMK pays the landowner directly, based on the amount of tobacco of each grade. The landowner then pays the head of the migrant worker family, after deducting expenses.

PMI told Human Rights Watch that the participation of the head of a migrant worker family in the tobacco delivery facilitates transparency in the payment process: “When tobacco is brought to the PMK buying point, both the farmer and a representative for the Kyrgyzstani worker family are usually present when PMK specialists determine the grade of the tobacco, weigh the tobacco, and determine the total amount payment for the tobacco. This practice allows workers to know what revenue the farmer will get for the crop and to accurately calculate their own share of the crop income.”¹¹⁰

Some migrant workers interviewed by Human Rights Watch confirmed that they went together with the landowner to deliver the tobacco to PMK at the end of the season. According to Bekbolot B., who in 2009 was farming tobacco for the second year in a row for a landowner in Koram, “We deliver the tobacco to Philip Morris [Kazakhstan]. Without us, they won’t take the tobacco from the landowner.”¹¹¹ Kapar K., who worked in Malybai in 2008 and

¹⁰⁷ To illustrate this problem, four of these cases are described in this section. See also the cases of Almira A. and her family and of Umut U. and her family, described in detail below in Forced Labor.

¹⁰⁸ According to migrant workers interviewed by Human Rights Watch and Philip Morris International, in 2009, the prices per kilo were: grade 1: 270-280 tenge (US\$1.79-1.86); grade 2: 250 tenge (US\$1.66); grade 3: 225 tenge (US\$1.49); grade 4: 190-200 tenge (US\$1.26-1.33). Letter from Hurwitz, November 10, 2009.

¹⁰⁹ Human Rights Watch interview with Even Hurwitz; Mila Medina, Director Contributions, and Tatiana Karpova, Manager Harm Reduction Policy, PMI, and Aibat Akhmadalimov, Managing Director, and Dmitry Belousov, Director Corporate Affairs, PMK, Almaty, November 13, 2009.

¹¹⁰ Letter from Hurwitz, January 14, 2010.

¹¹¹ Human Rights Watch interview with Bekbolot B., Koram, June 8, 2009.

2009 said that, “My employer has an agreement with Philip Morris [Kazakhstan]; we go with the employer to deliver the tobacco and receive the money at the end of the season.”¹¹²

Testimony from other migrant workers and one employer indicated the practice of both landowner and head of family delivering the tobacco for purchase is not universal. According to an employer in Malybai, who regularly hires migrant workers, “We take the tobacco to [the Philip Morris factory] ourselves. Philip Morris [Kazakhstan] does not require that the migrants come with us for the end-of-season accounting.”¹¹³ Sharapat Sh., 41, who worked from March 12 to December 5, 2009 in Malybai with her 15-year-old daughter and adult son, told Human Rights Watch that although she had been the head of her family and had negotiated with the landowner at the start of the season, “When they delivered the tobacco, I wasn’t at the Philip Morris [Kazakhstan] factory. Some men who worked near us on the fields went with the landowner. I don’t know how much Philip Morris [Kazakhstan] paid our landowner.”¹¹⁴

Vulnerability to being cheated

When a migrant worker family did not participate in delivering the tobacco to PMK there were fewer safeguards against being cheated. Sharapat Sh., for example, stated that her landowner took deductions from her payment, including for things that Sharapat Sh. did not understand, as well as for residency registration, despite the fact that no migrants were able to be officially registered, owing to the absence of official quotas. “He took the deductions...The transport [from Kyrgyzstan] cost me 55,000 tenge (US\$365), food was 60,000 tenge (US\$398), then 20,000 tenge (US\$133) for something else, and 6,000 tenge (US\$40) for residency registration,” said Sharapat Sh. “After the deductions, the landowner paid me 180,000 tenge (US\$1,194) ... for 2.5 tons of tobacco.”¹¹⁵

However, even when workers went to the PMK factory with the landowners, this did not guarantee that the system was transparent or that the worker did not face unexpected deductions or deception in the final payment. Nurdin N., 43, who worked in Karaturyk in 2009 together with his wife and 13-year-old son, told Human Rights Watch, “I went together with the landowner to deliver the tobacco to Philip Morris [Kazakhstan]. I don’t know how much they paid the landowner, but the landowner gave me 121,000 tenge (US\$803). That’s after the deductions. For our transportation [from Kyrgyzstan] he took 55,000 tenge (US\$365),

¹¹² Human Rights Watch interview with Kapar K., Malybai, June 11, 2009.

¹¹³ Human Rights Watch interview with farmer (name withheld), Malybai, June 11, 2009.

¹¹⁴ Human Rights Watch interview with Sharapat Sh., Karatash, Kyrgyzstan, December 13, 2009.

¹¹⁵ Human Rights Watch interview with Sharapat Sh., Karatash, Kyrgyzstan, December 13, 2009.

for food, 40,000 tenge (US\$265), and also something for our residency registration.”¹¹⁶ As noted above, in the absence of an official quota for hiring agricultural workers, in 2009 no migrants received residency registration.

Zhumartbek Zh., 29, who worked in tobacco farming for the first time in 2009 in Malybai together with his wife and two children, ages 14 and 16, told Human Rights Watch, “I was present at the delivery of the tobacco to Philip Morris Kazakhstan. My family and I produced and delivered 4.7 [metric] tons to Philip Morris [Kazakhstan]. Philip Morris [Kazakhstan] paid the landowner 1,200,000 tenge (US\$7,960) [for the 4.7 tons].”¹¹⁷ Under the “plan” agreement with the landowner, Zhumartbek Zh. and his family were to produce two metric tons for which the landowner would receive exclusive payment; Zhumartbek Zh. was to have been paid for the remaining 2.7 metric tons of tobacco. However, according to Zhumartbek Zh., after the landowner’s accounting and numerous deductions, Zhumartbek Zh. received 350,000 tenge (US\$2,321), less than 30 percent of the final payment to the landowner.¹¹⁸

Zhumartbek Zh. described the lack of transparency and the deductions from the final payment:

[The landowner] took some deductions from me [my final payment]. One deduction was for 12,000 tenge (US\$80). He said that Philip Morris [Kazakhstan] took this money from him. He called it ‘Services of Philip Morris [Kazakhstan].’ But then I learned that he didn’t take this deduction from anyone else. Only from me. I didn’t understand at all. What these ‘services’ are all about I don’t know.

He also deducted 70,000 tenge (US\$464) for the trip and 70,000 tenge for food. According to my accounting, the food costs were not more than 50,000 tenge (US\$332). He must have been giving us some very expensive foodstuffs.

And then, sometime after you had visited us [a Human Rights Watch researcher spoke with this family in early October in Kazakhstan] a group of about 10 foreigners came. Swiss and from some other places. They said they were from the United Nations. They saw how we were working, looked to see if children were working or

¹¹⁶ Human Rights Watch interview with Nurdin N., Karatash, Kyrgyzstan, December 12, 2009.

¹¹⁷ Human Rights Watch interview with Zhumartbek Zh., Karatash, Kyrgyzstan, December 13, 2009.

¹¹⁸ Ibid.

not. Then the landowner withheld from our final payment 5,000 tenge (US\$33). He said that it was a fine for talking to these people. He didn't say anything after you had visited."¹¹⁹

Another worker, 39-year-old Umut U., who, together with her four children ages 10, 11, 13, and 14, worked for this same landowner in 2009 confirmed that the employer levied this same "fine." "And he also withheld 5,000 tenge (\$US33) for speaking with 'the foreigners from the UN.' But I didn't even speak with them!" she stated.¹²⁰

Although he felt cheated, Zhumartbek Zh. did not feel he had any recourse. As described below, the landowner also forced Zhumartbek Zh. and his family to do additional work farming onions and gathering firewood without pay, a situation that amounted to forced labor. Zhumartbek Zh. felt his only option was to look for a different employer next year. "I'm not going back to work with him. I'll look for someone else."¹²¹ In the absence of written contracts and with no accessible, meaningful mechanisms for complaint provided by the Kazakhstani government or PMK, migrant workers had few viable options to seek redress for this kind of treatment.

2.6 Induced Indebtedness and Debt Bondage

As described above, the lack of regular wages and the system of single end-of-season payment and deductions for expenses made workers highly dependent on their employers. This system also put them at risk of induced indebtedness, particularly if the harvest has been poor and the total volume of tobacco sold is less than anticipated. In some cases the deductions for expenses totaled more than the final payment owed to the migrant worker, and the worker and his or her family became indebted to the landowner. In cases documented by Human Rights Watch, the high cost of intermediaries was a particular problem.

Once indebted to the employer, workers had no money to return home and were typically expected to work another season or seasons in order to pay off their debts. Workers were able to change employers only if the second landowner pays off the debts to the first. In the cases described below, Human Rights Watch determined that migrant workers became victims of debt bondage.

¹¹⁹ Human Rights Watch interview with Zhumartbek Zh., Karatash, Kyrgyzstan, December 13, 2009.

¹²⁰ Human Rights Watch interview with Umut U., Karatash, Kyrgyzstan, December 12, 2009.

¹²¹ Human Rights Watch interview with Zhumartbek Zh., Karatash, Kyrgyzstan, December 13, 2009 and February 28, 2010.

Ulkan U. and her children

In April 2007, Ulkan U. came to Malybai with her children, then ages 4, 10, 12, and 15, on the promise of an intermediary for work in tobacco farming earning 300,000 tenge (US\$2,335, at the time) for one tobacco season.¹²² A landowner, Shokan Sh., paid the intermediary 100,000 tenge (US\$779)—presumably for transportation and a recruiting fee—and expected Ulkan U. to repay this money at the end of the tobacco season. The intermediary took the family’s passports and was never seen again. Ulkan U. worked together with her three oldest children on one hectare of tobacco for the 2007 tobacco season. According to Ulkan U., “We produced one [metric] ton of tobacco, but after all the expenses, we still had 91,000 tenge (US\$708) in debt.”¹²³

As discussed further below, recruiting, transporting, transferring or receiving persons by force, fraud, deceit or other coercive tactics for the purpose of placing them into conditions of forced labor or practices similar to slavery or servitude constitutes trafficking, elements of which are clearly present in cases like that of this family.¹²⁴

In 2008, after an argument with Shokan Sh., Ulkan U. found another landowner who paid her debt to Shokan Sh. Working on 1.5 hectares in 2008, Ulkan U. and her children managed to earn 335,000 (US\$2,706), but after the deductions for expenses, including the remaining debt, Ulkan U. was left with just 84,000 tenge (US\$679).¹²⁵ She stayed in Kazakhstan to work again in 2009 for yet a different employer in order to try to earn enough money to travel home with her children and to justify the efforts of the previous two seasons. She told Human Rights Watch that the employer had been arguing with and beating her oldest son, apparently to make him work harder. During a second interview, she stated that the beatings stopped following Human Rights Watch’s first visit. She and her children are also doing additional work with another employer to help cover their expenses.¹²⁶

A family from Karasuu

A young couple, Mirgul M. and her husband Nurbol N. from Karasuu, Kazakhstan, came to Kazakhstan in 2006 with the help of an intermediary. According to Mirgul M. and Nurbol N., “[The intermediary] promised us work in vegetable farming, but then dumped us in this hellish work in tobacco.” The tobacco farm owner told the couple that he paid the

¹²² Kazakh Tenge- US Dollar exchange rate on April 2, 2007, as found on Oanda.com.

¹²³ Ibid. Human Rights Watch interviews with Ulkan U., Malybai, June 17 and September 24, 2009.

¹²⁴ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol), art. 3.

¹²⁵ Kazakh Tenge- US Dollar exchange rate on December 1, 2008, as found on Oanda.com.

¹²⁶ Human Rights Watch interviews with Ulkan U., Malybai, June 17 and September 24, 2009.

intermediary 5,000 tenge (US\$37) for each of them, although he did not expect them to pay him for these costs. The couple nevertheless entered into debt, as the intermediary demanded a 12,000 tenge (US \$89) fee. In these circumstances, the couple felt that they had no choice but to work for the tobacco farmer to whom they had been brought. Due to poor conditions and their own farming inexperience, by the end of the season, they only earned 25,000 tenge (US\$186) for the 2006 season and spent nearly half to pay the intermediary. The remainder was spent on their living expenses.¹²⁷

In early 2008, the same intermediary convinced Nurbol N.'s, mother, Zhazira Zh., that her son was in debt and that she needed to travel to Kazakhstan to assist him. Zhazira Zh. took her 12-year-old daughter, Raikan R., with her, and upon arrival in Malybai, the intermediary demanded 50,000 tenge (US \$409) from Nurbol N. to hand over his mother to him.¹²⁸ In order to pay the intermediary, Nurbol N. and his wife were forced to borrow money from another local tobacco farmer, for whom they then worked for in order to pay off their debt to him.¹²⁹ The intermediary's treatment of this family also included elements of trafficking.

The family of four, including the now 14-year-old girl, was still working in June 2009 in Malybai to pay off the debt to this landowner. In 2008, because of a poor harvest and deductions for food and other expenses totaling 110,000 tenge (US\$889), the family of four only earned a total of 30,000 tenge (US\$242). They used most of these earnings, 20,000 tenge (US\$163), to pay down their debt. Because they do not have enough money to travel home, they feel forced to remain for the next season in order to pay off the remaining debt and earn enough at least to cover their travel expenses.¹³⁰ "The work in tobacco is difficult, but we must pay off the debt, and there is no other option, except to farm tobacco," said Mirgul M.¹³¹

Damira D. and her children

Human Rights Watch also documented the case of 26-year-old Damira D., a single mother of two small children from Nookat, Kyrgyzstan, who had been working for more than a year in a debt bondage situation in the village Druzhba. Damira D. came to Kazakhstan late 2007 to work for a landowner, "Rakhim R.," who promised her that all her expenses would be covered. She spent several months growing seedlings and then planting them in April and

¹²⁷ Human Rights Watch interview with Mirgul M. and Nurbol N., Malybai, June 13, 2009. Kazakh tenge-US dollar exchange rates as of April 1, 2006, as found on Oanda.com.

¹²⁸ Kazakh tenge-US dollar exchange rate as of December 1, 2008, as found on Oanda.com.

¹²⁹ Human Rights Watch interview with Mirgul M. and Nurbol N., Malybai, June 13, 2009.

¹³⁰ Kazakh tenge-US dollar exchange rate as of December 1, 2008, as found on Oanda.com.

¹³¹ Human Rights Watch interview with Mirgul M., Malybai, June 13, 2009.

May 2008. In May 2008, the landowner announced that after seven months of work she owed him 50,000 tenge (about US\$400) for expenses including food and firewood which she used during the colder months.¹³² When Damira D. protested, Rakhim R. threatened her, getting angry and yelling and cursing at her. “This scared me and I didn’t like being around this,” Damira D. said. Damira D. told about her circumstances to a vegetable farmer in the same village. This farmer paid Damira D.’s “debt,” to the tobacco farmer, and Damira D. went to work for him.

When Human Rights Watch met Damira D. in June 2009, she had been working without pay for the vegetable farmer for over a year, doing both domestic work in the landowner’s house and, during the agricultural season, vegetable farming. She told Human Rights Watch, “I have not yet paid back the 50,000 tenge. For the last year I worked with [this farmer], during the fields in the summer, and then at his house. I haven’t earned any money.” Having no money and two small children to support, she felt trapped in the situation and felt hopeless as to earning any money for the tobacco farming she did for Rakhim R. “I know that Rakhim sold his tobacco to Philip Morris [Kazakhstan], but they do not know that that tobacco is actually mine. It is a result of my hard work,” she said.¹³³

A family from Karatash

In a December 2009 interview, Nabimukhamad N., from Karatash, told Human Rights Watch that his sister, 48, who had gone to Malybai and then Dostyk in 2009 with her husband and two sons, had fallen into a situation of debt bondage. The situation he described resembled strongly the cases of debt bondage described above. He told Human Rights Watch:

They are living in really difficult circumstances. This year, they weren’t able to earn enough and ended up in debt and were forced to stay with the employer. She told me over the phone that the tobacco grew poorly, especially because there was little water for irrigation. She also said that things with the employer were a bit difficult. They want to work for a different landowner, but don’t know how they can get out of the debts. The children aren’t going to school. Right now the family is trying to do some work on the side to earn money.¹³⁴

¹³² Kazakh tenge-US dollar exchange rate as of May 30, 2008, as found on Oanda.com.

¹³³ Human Rights Watch interview with Damira D., Druzhba, June 10, 2009.

¹³⁴ Human Rights Watch interview with Nabimukhamad N., Karatash, Kyrgyzstan, December 20, 2009.

2.7 Retention of Identity Documents and Confinement to Farms

In half of the families whose cases Human Rights Watch documented, Kazakhstani landowners retained migrant workers' passports and children's birth certificates. At a minimum this had the effect of making workers feel that they had no choice but to complete the season's work and pay off any expenses incurred by the landowner. In more extreme cases, passport retention was used as a means of forcing workers to remain in abusive employment situations. Some intermediaries also took workers' passports and handed them over to the landowners upon delivery of the workers. Passports and birth certificates were only returned at the end of the tobacco season, following the worker's successful completion of the harvest. Some workers indicated that the absence of their passport prevented them from leaving the farms where they worked.

In six cases, Human Rights Watch documented situations it deems to be forced labor, or situations analogous to forced labor, whereby retention of identity documents was the main reason given to Human Rights Watch as to why workers felt compelled to remain in abusive situations. These cases are described in a separate section below. In other cases, workers reported that they voluntarily asked the employer to keep their passports to prevent them from getting lost or stolen.

Involuntary retention of passports and birth certificates violates the right to freedom of movement and is prohibited by Kazakh law.¹³⁵ Retention of passports increases workers' vulnerability and dependence on the landowner, particularly as they are often living in very remote areas and would have to travel significant distances to access any assistance.

Alym A., who worked in Karaturyk in 2009 told Human Rights Watch, "As soon as we arrived, the landowner took our documents. Well, he paid for our transport and food, after all. After the work is done, when we settle up with him, then he will return my passport to me."¹³⁶ Similarly, Ainagul A. and Ikram I. who both worked in Malybai in 2009 for different landowners, each stated that at the beginning of the season the landowner had taken their passports.¹³⁷

Some workers described to Human Rights Watch the restrictions on their movement as a result of not having their passport in their possession. In some cases, described below, retention of a passport served as a primary factor in coercing workers to remain in situations

¹³⁵ Code of Administrative Violations of the Republic of Kazakhstan, no. 155-2, January 30, 2001, Art. 379.

¹³⁶ Human Rights Watch interview with Alym A., Karatash, Kyrgyzstan, December 12, 2009.

¹³⁷ Human Rights Watch interviews with Ainagul A., Malybai, June 9, 2009, and with Ikram I., Malybai, June 11, 2009.

of forced labor or analogous to forced labor. Nurdin N. told Human Rights Watch, “When we arrived in Malybai [from Kyrgyzstan] in 2009, our employer immediately took my passport. He paid for our transportation [by car from Kyrgyzstan] after all. In Malybai we could move around only near our fields. I didn’t have a passport! Where were we going to go? The landowner returned the passport after the payment.”¹³⁸ Sharapat Sh., who was also in Malybai from March to December 2009 with her two children, ages 15 and 18, told Human Rights Watch, “[The landowner] immediately took my passport after our arrival. He said I wouldn’t need it. He gave it back after the final payment. ... Without the passport we couldn’t really go anywhere. We could only go to the neighbors nearby to do a bit of extra work.”¹³⁹

Nadira N., from Karatash, who worked for several years in Kazakhstan, told Human Rights Watch that she traveled with an intermediary who charged 10,000 tenge (US\$66) for her services assisting with the trip and identifying an employer. As part of the agreement, each year the intermediary handed the workers’ passports over to the employer. “You give your passport to Chinara Ch. for the trip [to Kazakhstan] and then she gives it to the employer,” Nadira N. told Human Rights Watch. Nadira N. also gave her employer the birth certificates of her children, who worked with her in Kazakhstan while they were 11, 15, and 20 years old.¹⁴⁰ Human Rights Watch interviewed this intermediary, Chinara Ch., who confirmed the practice saying, “Passports stay with the landowner, so the workers don’t run away. They’ve paid for the workers’ transport and for the food, after all, haven’t they!”¹⁴¹

Other workers stated that they had their passports with them,¹⁴² or told Human Rights Watch that they had voluntarily given their passports to the landowners for safekeeping for the duration of the tobacco season. According to Sabir S. who was working with his wife and two children in Malybai in 2009 and had previously worked in Karaturyk, “We give our passports to him [the landowner]. We can’t be out in the fields with our passports. We’ll lose them. He [the landowner] gives them back at the end of the season.”¹⁴³ Ulkan U., who worked in Malybai with her three children, said, “I gave my passport to [the landowner]. I gave him our identity documents myself, so that they wouldn’t get lost.”¹⁴⁴

¹³⁸ Human Rights Watch interview with Nurdin N., Karatash, Kyrgyzstan, December 12, 2009.

¹³⁹ Human Rights Watch interview with Sharapat Sh., Karatash, Kyrgyzstan, December 13, 2009.

¹⁴⁰ Human Rights Watch interview with Nadira N., Karatash, Kyrgyzstan, April 6, 2009.

¹⁴¹ Human Rights Watch interview with Chinara Ch., Malybai, June 11, 2009.

¹⁴² Human Rights Watch interviews with Ruslan R. and with Gulnara G., Malybai, September 25, 2009; Human Rights Watch interview with Akbar A., Koram, June 9, 2009.

¹⁴³ Human Rights Watch interview with Sabir S., Malybai, June 11, 2009.

¹⁴⁴ Human Rights Watch interview with Ulkan U., Malybai, June 17, 2009.

2.8 Forced Labor

Human Rights Watch documented six cases that it considers constitute or are analogous to forced labor, arising from a particularly abusive convergence of all of the practices described above. In some cases of forced labor, workers were expected to do other work at the landowners' home, such as cleaning, renovation, and other farming for the landowner without pay in addition to farming tobacco. In some cases, intermediaries promised migrant workers good wages and working conditions in tobacco farming, but the actual employment circumstances proved to be exploitative. In all cases described in this section, the employment conditions in which the workers found themselves were far from those that they had been promised and to which they had consented voluntarily.

The involuntary retention of identity documents served as a means of coercion and of confinement for migrant workers who found themselves in situations of forced labor. Without a valid passport, a migrant stopped by the police will be detained in order to establish his or her identity and will typically be expelled from the country. Migrants without a passport are also very likely to have difficulty leaving Kazakhstan and reentering Kyrgyzstan and to be forced to pay large bribes to avoid detention and cross the border. Fearing detention by police and expulsion, or problems at the border, workers are afraid to leave the employer or intermediary and may be forced to endure abusive work and living conditions to which they did not initially consent.

Even if workers were able to access their passports, the credible threat of forfeiting some or all of a season's earnings, as a result of the lack of regular wages and the single end-of-season payment, also served as a significant penalty for those who may have wished to leave an abusive employment situation.

International and national legal standards

Human Rights Watch believes that the convergence of abuses described in this section meets the definition of forced labor, which is prohibited under international and Kazakhstani law. According to the ILO Convention on Forced Labor (No. 29) forced or compulsory labor "shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."¹⁴⁵ The ILO elaborates examples of "menace of penalty" to include: "physical violence against a worker or close associates, physical confinement, financial penalties, denunciation to authorities-

¹⁴⁵ Letter ILO Convention No. 29 concerning Forced or Compulsory Labour, adopted June 28, 1930, entered into force May 1, 1932, art. 2.

including police and immigration-and deportation, dismissal from current employment, exclusion from future employment, and the removal of rights and privileges.”¹⁴⁶ Examples provided by the ILO of the involuntary nature of work include: physical confinement in the work location, psychological compulsion (order to work backed up by a credible threat of a penalty), induced indebtedness (by falsification of accounts, excessive interest charges, etc.), deception about types and terms of work, withholding and non-payment of wages, and retention of identity documents or other valuable personal possessions.¹⁴⁷

Article 8 of the International Covenant on Civil and Political Rights (ICCPR) prohibits “forced or compulsory labour.” The constitution of the Republic of Kazakhstan guarantees the right to freedom of labor. The Kazakhstan labor code also guarantees the right to freedom of labor and prohibits forced labor.¹⁴⁸

In all of the cases documented in this section workers had entered the employment voluntarily, but this has no bearing on the nature of these situations as forced labor. The ILO states that workers have the right to revoke freely-given consent, noting “many victims enter forced labour situations initially of their own accord ... only to discover later that they are not free to withdraw their labour. They are subsequently unable to leave their work owing to legal, physical or psychological coercion.”¹⁴⁹

In four cases victims of forced labor Human Rights Watch interviewed were deceived by intermediaries who delivered them to employers who subjected the workers to forced labor. These cases can be considered trafficking or akin to trafficking, which the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol) defines to include act of recruitment, transport, transfer, receipt, sale, or purchase of human beings by force, fraud, deceit or other coercive tactics for the purpose of placing them into conditions of forced labor or practices similar to slavery or servitude.¹⁵⁰ Kazakhstan is a party to the United Nations Trafficking Protocol, which obligates state parties to take a range of

¹⁴⁶ ILO, *A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights of Work* (Geneva: ILO, 2005), p. 6.

¹⁴⁷ ILO, *A Global Alliance Against Forced Labour*, p. 6.

¹⁴⁸ Constitution of the Republic of Kazakhstan, August 30, 1995, with additions and amendments of May 21, 2007; Labor Code of the Republic of Kazakhstan, arts. 4, 6, and 8.

¹⁴⁹ ILO, *A Global Alliance Against Forced Labour*, p. 6.

¹⁵⁰ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol), art. 3.

legislative and policy measures to “prevent and combat trafficking in persons,” and “protect and assist the victims of such trafficking, with full respect for their human rights.”¹⁵¹

Almira A. and her family

Almira A., 45, traveled with her family to Malybai in May 2009. An intermediary, acting both as a taxi driver and as a recruiter, told her that they would earn a minimum of 350,000-400,000 tenge (US\$2,320-2,655) working in tobacco fields. However, Almira A. and her family found themselves working in very different employment conditions than those to which they had agreed with the driver and later with the landowner.

I went together with my husband, my son, 24, and my daughter, 16. ... For driving the four of us, the landowner paid the taxi driver 75,000 tenge (US\$498) and then immediately took our passports. ... For the whole season our passports were with him.

We cultivated tobacco. We didn't do any work on the side for another employer. The landowner didn't allow us to. He screamed and cursed at us, when we wanted to earn some money on the side. He said that he paid for us so that we will work for him. ...

Instead of working on the side, we worked for him in his other fields. We cultivated onions. For free. For this work he didn't pay us anything. Or we washed his laundry, or painted the walls of his house and barn. We were like slaves to him. He treated us really badly. It's true, he didn't beat us, but cursed at us. We couldn't defend ourselves, since we were on his land after all.

We worked for 11 to 13 hours a day. The work was really hard. Work, work, work. It was that way from morning to night.

We didn't have our passports, and so we couldn't go anywhere. We didn't even go to the neighboring fields. We were afraid of our landowner.

Of course there was desire to leave and throw it all away, but how!? Our passports were with the landowner, and we had no money. If we left, then all

¹⁵¹ Trafficking Protocol, art. 2.

of our work would be for nothing. And without money, how would we even get back home from there?¹⁵²

The landowner told Almira A. and her family that of the 1.5 hectares of land that they worked, he would keep the income from 1.3 hectares and they would be able to keep the profit from the remainder. This was a much smaller percentage of profits than is typical under the “plan” payment system, described in the background section above. After the deductions for travel and food, the Almira A. and her family received 120,000 tenge (US\$796). “Is this really proper payment for nearly a whole year of work? I will not go back to Kazakhstan next year. I will never go back.”¹⁵³

Zhumartbek Zh. and his family

As described above, Zhumartbek Zh., his wife and two children worked in tobacco farming for the first time in 2009 in Malybai for a landowner who deceived them in the final payment. When Zhumartbek Zh. was considering going from Kyrgyzstan to Kazakhstan in March 2009, an intermediary, Chinara Ch., who is described elsewhere in this report, promised him good work with good wages for the family in tobacco farming. However, Zhumartbek Zh. and his family found themselves in a situation where they were forced to do additional work for the landowner, without pay, and felt they could not leave because their passports had been confiscated. In the end, the landowner also cheated Zhumartbek Zh. of his earnings for the tobacco work, as described above. Zhumartbek Zh. described his experience with the intermediary and working for the employer:

[The intermediary] promises one thing, that everything will be great, and she takes you there, but it’s completely different. There’s no way out, and so people [like me] work. And besides the tobacco, we did additional work for the employer. As soon as we got there our passports were taken. ... After that you can’t go anywhere and can’t leave.

We even gathered firewood for his house. And even after that we were not good enough for him. [If we tried to refuse the additional work], that’s when the real trouble begins: insults and humiliation. ... He argued and cursed, fought with me. And we grew and gathered about 50-60 tons of onions for him. For free! And even gathered the firewood for him for free! But even after

¹⁵² Human Rights Watch interview with Almira A., December 20, 2009.

¹⁵³ Ibid.

that we were not good enough for him ... We almost didn't have any days off. We worked. We couldn't not work. ...

If he were a good person, I would go there again this year. But it's not even that I don't want to go there again, it's even just awful for me to speak about him and remember him.¹⁵⁴

Makhmud M. and his family

Makhmud M., 47, similarly stated that he had been deceived by an intermediary about the conditions in which he would be working in Kazakhstan, where he and his family ended up being forced to perform additional farming work for the landowner, without pay. In an interview with Human Rights Watch, Makhmud M., said that in February 2009 he went to the Nookat central market where he met an intermediary who referred to himself as a “taxi driver.” “The taxi driver said he would take me to a very good person for work on tobacco,” Makhmud M. told Human Rights Watch. “He promised good conditions. Like all taxi drivers he promised that we would earn between 500,000-1,000,000 tenge (US\$3,315-6,630). The taxi driver said that the landowner would pay him for the cost of the trip, and that the landowner would deduct this from our earnings. He didn't say anything about additional work that we would need to do for the landowner around his house or in the fields.”¹⁵⁵

Based on the promise of good work and conditions, Makhmud M. traveled together with his wife and adult daughter to work in Malybai. But from the very beginning, Makhmud M. found that the conditions promised by the intermediary were not those provided by the landowner. “The taxi driver said that it would be possible to have a written contract,” said Makhmud M. “But there was no contract! Only an oral agreement. And this oral agreement was not fulfilled!”¹⁵⁶

During the work season Makhmud M. and his family worked up to 14 hours a day and received only about seven days of rest, including weekend days, for the entire season from mid-March to mid-November. When not farming tobacco, Makhmud M. and his family were forced to do other work for the employer. They felt they could not leave this situation because the landowner had taken their passports at the beginning of the season. Makhmud M. told Human Rights Watch:

¹⁵⁴ Human Rights Watch interview with Zhumartbek Zh., Karatash, Kyrgyzstan, February 28, 2010.

¹⁵⁵ Human Rights Watch interview with Makhmud M., Karatash, Kyrgyzstan, January 30, 2010.

¹⁵⁶ Ibid.

During our free time [not farming tobacco] we worked for the landowner on his other fields, growing onions and potatoes. If we didn't work for him on these fields, he would become angry with us. But he didn't yell at us. This work was without pay.

Our passport was with the employer the whole time. He took them right away, as soon as he paid the taxi driver. ... He gave us the passports back only at the end of the tobacco season.

We could only walk around near the landowner's house. Without a passport, where could we go!? I wanted to go somewhere else, but my passport was with the landowner. Where could we go?¹⁵⁷

At the end of the tobacco season, Makhmud M. stated that he believed that the landowner had received more than 800,000 tenge (US\$5,300) for the tobacco delivered to PMK. However, Makhmud M. and his family received 39,000 tenge (US\$260) for eight months of work. The employer took deductions for the intermediary [80,000 tenge (US\$530)] and food [70,000 tenge (US\$460)]. "We worked for the landowner for nearly a year on the fields," Makhmud M. said. "This was very little, a miserly sum in fact, for all this work. ... I won't go back to Kazakhstan next year." In 2008, Makhmud M. and his family had earned 200,000 tenge (US\$1,616) producing tobacco on 1.3 hectares.¹⁵⁸

Umut U. and her children

Umut U., 34, who in 2009 worked in Malybai together with her four children, ages 10, 11, 13, and 14, told Human Rights Watch that an intermediary promised to find the family work in tobacco and that the employer would pay for half of the intermediary's fees. However, at the end of the season, the employer deducted the full cost of the intermediary (85,000 tenge \$US) from the final payment to Umut U.

In addition to farming tobacco, Umut U.'s employer also required her and her children to perform various household tasks for free, in addition to farming 2.2 hectares of tobacco. Because the employer had confiscated both her passport and her children's birth certificates, Umut U. felt she had no other possibility but to stay and work until the employer returned them at the end of the season. She told Human Rights Watch,

¹⁵⁷ Ibid.

¹⁵⁸ Ibid. Kazakh tenge-US Dollar exchange rate on December 1, 2008, as found on Oanda.com.

We worked from morning to evening on 2.2 hectares of land. We were expected to give 1.7 hectares worth of tobacco under the “plan” with the landowner. He immediately took my passport and my children’s birth certificates upon our arrival. He gave them back only after the final payment. There was no violence from his side. He treated us fine. ... But during the time when we weren’t farming tobacco, we had to help him with weeding and harvesting of onions. And we cleaned the yard outside his house. This was all without pay. He got rather angry if we didn’t help him.¹⁵⁹

Schakhlo S. and her family

Schakhlo S. cultivated tobacco in Malybai for three seasons together with her husband and 14-year-old daughter. She told Human Rights Watch that “Upon our arrival, the landowner paid the intermediary and took our passports. He took all of our documents.” Schakhlo S. also described additional work she and her family were required to perform for the employer without pay:

We worked from morning to night on tobacco. We lived in the landowner’s house. The conditions were decent, but there are no days off. We almost never rested. When we aren’t working in tobacco, then we worked for the landowner around the house. We cleaned up and took care of things around the house. We had to do all this work for the employer for free.¹⁶⁰

Almazbek A. and his family

Almazbek A., who worked with his wife and six children on tobacco farms in Kazakhstan for eight seasons, beginning in 2001, told Human Rights Watch that employers consistently retained his and his family’s passports. He said that he felt it impossible to leave the employer both because of the absence of his passport as well as the debts that had already been accumulated in the absence of regular wages. “[The landowners] force you to work. There is no other choice. They have our identity documents, they have paid for the transportation [from Kyrgyzstan] and for our food.”¹⁶¹

Almazbek A. described one instance when he left his employer’s farm to do work at another house in order to earn some additional money. “If we tried to do some work on the side [in

¹⁵⁹ Human Rights Watch interview with Umut U., Karatash, Kyrgyzstan, December 13, 2009.

¹⁶⁰ Human Rights Watch interview with Schakhlo S., Karatash, Kyrgyzstan, December 20, 2009.

¹⁶¹ Human Rights Watch interview with Almazbek A., Karatash, Kyrgyzstan, April 7, 2009.

Russian, *levachit*], the landowner wouldn't permit this. He said, 'I'm the one who paid for you.' ... The landowner himself would come find us in his car ... In 2007, my son and I had just a bit of plastering work left to do [at another house]. The landowner came and grabbed me, and the other employer didn't have a chance to pay me at all. It was impossible to stand up to the landowner."¹⁶² His wife confirmed that they felt particularly trapped with this employer, saying, "The landowner categorically refused to let us leave the farm."¹⁶³

2.9 Excessively Long Working Hours and Lack of Rest

In order to meet the expectations for tobacco production, on which eight to nine months of income depended, migrant tobacco workers worked long hours, from 5 a.m. to 10 p.m. or even later, particularly during the high season, which runs from approximately July through September. In one case documented by Human Rights Watch, an employer used physical force to coerce workers, including a child, to work long hours. Migrant workers also received few days off. Kazakhstani law limits working hours to 40 hours per week, with a maximum of eight hours per day. Workers are guaranteed at least one day off per week and paid annual vacation. Employees may work overtime, but only with their written consent and must be paid time and a half.¹⁶⁴

Sixty-year-old Akdana A. told Human Rights Watch that when she, her husband, and five of their adult children worked on a tobacco farm in 2007, "We worked every day, from sunrise to sunset, so depending on the season it would be nine hours in [September and October] and 16-18 hours in the summer [from June to September]. We could have a few hours rest occasionally, but we worked every day."¹⁶⁵ Bekbolot B., who in 2009 was working with his wife for the second year in a row on a tobacco farm in Koram similarly stated, "In the morning we start at 5:00 a.m. and work until 9:00 or 10:00 p.m. We work like that from the end of May through September. The work is really hard: it is always very hot, and the tobacco is harmful in the heat."¹⁶⁶ Ruslan R. reported that he and the other migrant workers worked on the field from 5:00 a.m. to 7:00 p.m., or even as late as 10:00 p.m., and had no weekend days off. When he and the other workers would take long rest breaks, the landowner would get upset and insist that they go back to work.¹⁶⁷

¹⁶² Human Rights Watch interview with Almazbek, Karatash, Kyrgyzstan, April 7, 2009.

¹⁶³ Human Rights Watch interview with Guliza G., Karatash, Kyrgyzstan, April 7, 2009.

¹⁶⁴ Labor Code of the Republic of Kazakhstan, arts. 77, 81, 82, 88, 96, 101, and 127.

¹⁶⁵ Human Rights Watch interview with Akdana A. and Iskender I., Nookat, Kyrgyzstan, August 5, 2009.

¹⁶⁶ Human Rights Watch interview with Bekbolot B., Koram, June 8, 2009.

¹⁶⁷ Human Rights Watch interview with Ruslan R., Malybai, September 25, 2009.

Other migrant workers also described long working hours, no regular weekend days, and little rest, including for children. Nadira N. described the long working hours and difficulty of the work while working with her three children, ages 12, 15, and 20 in Malybai:

The hardest work was done in July. We got up at 5 a.m. and worked until 12 a.m. We had to harvest [the tobacco leaves], string the tobacco leaves on a heavy needle and hang them up. ... Then we would begin harvesting the leaves. The landowner made us work like that. We got only five hours at night to rest. There were no days off. For lunch we only got a half hour. We were constantly in the fields. If the landowner himself couldn't be there, he would send someone over to keep an eye on us.¹⁶⁸

The landowner used physical force to coerce the workers, including Nadira N.'s children. "When someone wasn't doing their work, was being lazy, then the landowner would beat them. The landowner beat my children, [saying,] 'You can lie around at home if you want, but this is not Kyrgyzstan. You came here to work only.'¹⁶⁹

Sabir S. and his wife and two children, ages 13 and 15, whom Human Rights Watch interviewed in Malybai in 2009, would "work from 7:00 a.m. to 7:00 p.m. or 8:00 p.m. Sometimes we will come to the field at 4 a.m." For a whole season [of nine months] the family received about three weeks' worth of days off including weekend days.¹⁷⁰ By contrast, a person working a 40-hour work week for nine months, or 36 weeks, would get at a minimum of 72 weekend days (or approximately 10 weeks) off. Similarly Sharapat Sh., who worked in Malybai with her daughter, 15, and son, 18, said that her family worked 11 to 13 hours a day, and that for the nine months that they were in Kazakhstan (March 12 to December 5, 2009), they took a total of no more than 14 days off, including weekends.¹⁷¹

2.10 Exposure to and Inadequate Information about Pesticides and Fertilizers

Human Rights Watch was able to ask two-thirds of the migrant workers interviewed questions regarding pesticide and fertilizer use.¹⁷² While the majority reported using only fertilizers, six heads of families reported that their families used pesticides as well. Migrant workers who were specifically asked by Human Rights Watch about pesticides did not know

¹⁶⁸ Human Rights Watch interview with Nadira N., Karatash, Kyrgyzstan, April 6, 2009.

¹⁶⁹ Ibid.

¹⁷⁰ Human Rights Watch interview with Sabir S., Malybai, June 11, 2009.

¹⁷¹ Human Rights Watch interview with Sharapat Sh., Karatash, Kyrgyzstan, December 13, 2009.

¹⁷² Due to unavoidable time constraints while interviewing workers on tobacco fields during working hours, Human Rights Watch was not able to ask every worker about fertilizer and pesticide use.

of any health risks associated with the application of pesticides or fertilizers, or of health risks associated with harvesting and handling plants that had been treated with pesticides.

In correspondence and meetings with Human Rights Watch, Philip Morris International and Philip Morris Kazakhstan stated that they provide to farmers and workers safe-handling instructions and information about the risks associated with pesticides and fertilizers and conduct regular trainings regarding safe-handling of pesticides and fertilizers. They also stated that Philip Morris Kazakhstan agronomists supervise all pesticide applications and provide protective equipment to workers performing pesticide application.¹⁷³ PMK provided to Human Rights Watch copies of its standard instructions for safe-handling of pesticides and fertilizers.

Nonetheless, migrant workers interviewed by Human Rights Watch were not getting the information they need to fully protect themselves from harmful effects of pesticides and fertilizers. The standard PMK safe-handling instructions for pesticide and fertilizer use were not consistent with the first aid, protective equipment, and restricted entry requirements provided on the label of Decis, the primary insecticide used on tobacco fields producing tobacco for Philip Morris Kazakhstan in 2009. The standard PMK safe-handling materials were only in Russian, a language which most migrant workers from Kyrgyzstan do not speak. Of the migrant workers whom Human Rights Watch asked specifically about written pesticide and fertilizer safe-handling instructions, only one migrant worker had received any kind of written materials regarding pesticide and fertilizer use. None had attended any trainings by Philip Morris Kazakhstan agronomists or landowners.

In addition, for safe-handling of pesticides and fertilizers, one of the key instructions provided both in Philip Morris Kazakhstan's own materials and on pesticide labeling is for workers to wash with soap and water following application. However, as indicated below, migrant workers, particularly those living in make-shift housing on the edge of tobacco fields, may not have access to bathing facilities that would allow proper washing after they handle these substances.

PMI's response to these concerns and the measures it intends to take are described below, in chapter 3.

¹⁷³ Letter from Hurwitz, January 14, 2010. Human Rights Watch interview with PMI and PMK executives, Almaty, November 13, 2009.

Pesticides

According to PMI, in 2009, 86 out of 519 farms producing tobacco for PMK applied pesticides. During the year, PMK distributed 50.7 liters of Decis pesticide and 4.4 liters of Confidor pesticide.¹⁷⁴ Decis is an insecticide used on a variety of crops, including vegetables, fruits, cotton, and others.¹⁷⁵ Under United States law, Decis is classified as a Restricted Use Pesticide (RUP), indicating that its toxicity exceeds specific hazard criteria and requires additional regulation in an effort to limit “unreasonable adverse effects” of its use.¹⁷⁶ The RUP designation restricts a product to use by a certified pesticide applicator or under the direct supervision of such applicator.¹⁷⁷

The Decis label warns of “acute toxicity,” meaning it is capable of causing adverse effects within a short time from one or multiple exposures, and lists Decis’ hazards to humans as:

May be fatal if swallowed. Corrosive. Causes irreversible eye damage and skin burns. Do not get in eyes, on skin, or on clothing. Harmful if absorbed through the skin or inhaled...Wear protective clothing, gloves, eyewear... Prolonged or frequently repeated skin contact may cause allergic reactions in some individuals.¹⁷⁸

The label instructs workers handling Decis to “wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, or using tobacco.”¹⁷⁹ Workers may only enter treated areas after 12 hours. Workers coming into contact with treated plants should also wear protective clothing, including chemical-resistant gloves and shoes, coveralls, and protective eyewear.¹⁸⁰

Written instructions which Philip Morris Kazakhstan provided to landowners and workers in 2009 do not reflect the toxicity risk that resulted in Decis’ RUP classification and do not provide sufficient warning regarding the health hazards associated with Decis. A one-page PMK safe-handling instruction sheet provided to Human Rights Watch in November 2009 states: “Pesticides ... categorized as low-risk, not presenting serious threats to human

¹⁷⁴ Letter from Hurwitz, January 14, 2010.

¹⁷⁵ Decis 0.2 Insecticide label, http://www.bayercropscienceus.com/products_and_seeds/insecticides/decis.html (accessed February 9, 2010).

¹⁷⁶ United States Environmental Protection Agency, “Label Review Manual: Chapter 6: Use Classification,” August 2007, <http://www.epa.gov/oppfead1/labeling/lrm/chap-06.htm>

¹⁷⁷ Code of Federal Regulations of the Republic of Kazakhstan, Part 152, Subpart I—Classification of Pesticides, para. 152-160.

¹⁷⁸ Decis 0.2 Insecticide label.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

health during application, are used for fighting pests and diseases affecting tobacco.”¹⁸¹
(See Appendix B)

The first aid instructions on the PMK document were also not entirely consistent with the Decis label; the PMK document instructs that if the chemical is swallowed, the affected worker should “drink several glasses of warm water” and should induce vomiting. The Decis label first aid instructions state that if the material is swallowed: “Do not induce vomiting unless told to do so by a poison control center or doctor,” and “Do not give liquid to the person.”¹⁸² The PMK safe-handling document provided to Human Rights Watch states “Never work with pesticides barefoot or in open sandals; it is necessary to work in boots or closed shoes” and “it is necessary to protect hands with gloves ... without holes.” The Decis label specifies that gloves and footwear must be chemical-resistant and that workers should wear coveralls to protect their clothing.¹⁸³ According to PMI, PMK provides farmers and workers with gloves, masks, and rubber boots to be used during application of pesticides. This protective equipment is also then removed from the farms following the application. As noted above, PMI has indicated that protective suits would be provided in the future.¹⁸⁴

With regard to reentering an area treated by pesticides, the PMK safe-handling document states: “Do not enter an area that has been recently treated [with pesticides],” but does not specify a time interval. The Decis label indicates a restricted entry interval of 12 hours following application. The Decis label also indicates that workers entering an area recently treated by Decis should wear protective clothing, including coveralls and chemical-resistant gloves and footwear.¹⁸⁵

Confidor is also an agricultural insecticide used by Philip Morris Kazakhstan in 2009. The active chemical ingredient of Confidor, Imidacloprid, is considered by the United States Environmental Protection Agency to be a general use pesticide. Imidacloprid is a neonicotinoid, which are among the most widely used insecticides worldwide. According to a Material Safety Data Sheet for Confidor, the insecticide may be harmful if inhaled or swallowed and may irritate eyes and skin and cause allergies, in the event of repeated

¹⁸¹ Philip Morris Kazakhstan, “Instructions for Safe Handling of Pesticides and Mineral Fertilizers,” undated, in Russian. According to a photograph provided by PMK to Human Rights Watch, these materials are also displayed in poster form at the Philip Morris Kazakhstan tobacco factory, where landowners and some migrant workers visit when delivering tobacco at the end of the season.

¹⁸² Decis 0.2 Insecticide label.

¹⁸³ *Ibid.*

¹⁸⁴ Letter from Hurwitz, January 14, 2010 and letter from Even Hurwitz, Senior Vice President for Corporate Affairs, Philip Morris International, to Human Rights Watch, March 11, 2010.

¹⁸⁵ Philip Morris Kazakhstan, “Instructions for Safe Handling of Pesticides and Mineral Fertilizers,” undated, in Russian.

exposure.¹⁸⁶ Workers are instructed to wear elbow-length plastic gloves, a disposable mask, goggles, and coveralls, and to “wash gloves, goggles and contaminated clothing” after each day’s application.¹⁸⁷

According to a Philip Morris International letter dated January 14, 2010, no pesticides are stored “on site,” on farms in Kazakhstan. However, during its research in Kazakhstan in 2009, Human Rights Watch found one case in which pesticides and equipment used for pesticide application were stored on a farm employing migrant workers. Philip Morris International stated that these materials were not those which PMK had provided to the landowners with whom they contract.¹⁸⁸ Human Rights Watch did not find pesticides or pesticide application equipment being stored on any other tobacco farms which it visited.

In June 2009, Akbar A., from Uzgen, Kyrgyzstan, showed Human Rights Watch a used pesticide packet with a label in Chinese except for the words “Imidacloprid 10%.” The migrant workers also showed Human Rights Watch a backpack storage tank and sprayer which they stated was used for pesticide application. The equipment was stored against a make-shift structure which a family of migrant workers used for sleeping, in a location where the family regularly walked. The fertilizers were stored in the family’s living areas, where they ate and prepared food. Akbar A. told Human Rights Watch that he applies pesticides directly to the tobacco himself with one of his adult sons, without any assistance from the farmer or a PMK agronomist. “We have a tank that is worn like a backpack that has a hose for application. I don’t know the composition of the chemicals, but I know that it helps the plants.” Although Akbar A. has boots that he wears during application of the pesticides, he stated that he uses no other protective clothing. “We don’t have any special protective clothing. No one gave them to us. No one offered them,” he said.¹⁸⁹

Bazarkan B., who was living in Lavar in 2009 with his wife and six children, all of whom cultivate tobacco, described a similar method of pesticide application and a lack of knowledge about the pesticides themselves. He told Human Rights Watch, “For pesticides, we have to apply to the selkhozkhimia [the local agricultural cooperative], and we get pesticides. They are applied by hand. I don’t know the name but it comes in jars that look like yogurt containers. We use a backpack with a hand-held sprayer. My oldest son [an adult]

¹⁸⁶ Material Safety Data Sheet, Confidor 200 SC Insecticide, as published by Bayer CropScience, Victoria, Australia, November 19, 2007, http://www.bayercropscience.com.au/resources/products/msds/Confidor%20200SC_MSDS_1107.pdf

¹⁸⁷ Ibid.

¹⁸⁸ Letter from Hurwitz, March 11, 2010.

¹⁸⁹ Human Rights Watch interview with Akbar A., Koram, June 9, 2009.

and I apply it.”¹⁹⁰ Bazarkan B. didn’t know the composition of the pesticides and was dismissive of the potential risks. He said, “We’re used to working in tobacco. Nothing [bad] happens to us.”¹⁹¹

Akdana A. and her husband Iskender I. worked on a tobacco farm together with their adult children in the village Achusai in 2007. They told Human Rights Watch that they used pesticides during tobacco cultivation, but did not use protective clothing or have substantive information about any potential risks. “We used four types of pesticides, but I think nothing too harmful,” Iskender I. said. Akdana A. added, “We applied them ourselves, one at a time. ... They didn’t give us any protective clothing.”¹⁹²

Bekbolot B., who worked in Koram in 2008 and 2009, told Human Rights Watch that he believed he was applying a pesticide, although he was uncertain. He told Human Rights Watch: “Sometimes they give us these packets. We dissolve a powder in water. If there are some kinds of insects, then this is a chemical for that. I don’t remember what it’s called. We do this without any instruments; we simply pour it on [the plants] from a watering can.”¹⁹³

Fertilizers

All migrant workers asked specifically by Human Rights Watch about fertilizers and pesticides stated that they used fertilizers. Among migrant workers who knew which kinds of fertilizers they were applying, the chemical fertilizers commonly named were Azot, an ammonium nitrate fertilizer, Ammophos, an ammonium phosphate fertilizer, and Selitra, a potassium nitrate fertilizer. Migrant workers interviewed by Human Rights Watch typically applied fertilizers to the tobacco plants by using watering cans or, more often, two-liter plastic drink bottles with the tops cut off.¹⁹⁴ In some cases they applied fertilizer pellets with their bare hands.¹⁹⁵

Fertilizers are much less harmful to human health than pesticides but are not altogether without risks. An ILO training guide for the elimination of hazardous child labor in agriculture

¹⁹⁰ Human Rights Watch interview with Bazarkan B., Lavar, June 10, 2009.

¹⁹¹ Ibid.

¹⁹² Human Rights Watch interview with Akdana A. and Iskender I., Nookat, Kyrgyzstan, August 5, 2009.

¹⁹³ Human Rights Watch interview with Bekbolot B., Koram, June 8, 2009.

¹⁹⁴ For example, Human Rights Watch interview with Akbar A., Koram, June 9, 2009; Human Rights Watch interview with Ruslan R., Malybai, September 25, 2009; Human Rights Watch interviews with Makhmud M. and with Almira A., Karatash, Kyrgyzstan, December 20, 2009.

¹⁹⁵ For example, Human Rights Watch interviews with Dzhakhon D., and with Makmud M., Karatash, Kyrgyzstan, December 20, 2009.

notes certain risks during handling of chemical fertilizers, relevant for both children and adults. The guide indicates:

Dry, chemical fertiliser, which is hygroscopic and attracts moisture, can draw out moisture from the skin and cause burns....Dry fertilizer can also cause irritation of the mouth, nose and eyes. Liquid fertilisers also need careful handling as these are in a highly concentrated form.¹⁹⁶

In January 2010 PMI also pointed out to Human Rights Watch that fertilizers pose fewer health risks. Their application is done without supervision of PMK agronomists, although “as part of PMK’s regular training on good agricultural practices, PMK agronomists review with farmers and workers the general safe handling instructions that apply to fertilizers, which are also usually printed on the fertilizer bags.” PMI also said that materials distributed to farmers and workers contain safe handling instructions for fertilizers.¹⁹⁷

In two cases, Human Rights Watch saw bags of fertilizer stored in the regular living areas, including eating areas, of make-shift living structures which migrant workers had constructed at the edge of tobacco fields.¹⁹⁸ This practice is contrary to the instructions provided in the PMK instructions for safe-handling of fertilizers and pesticides, which indicates that fertilizers should be transported and stored separately from food. Fertilizer bags seen by Human Rights Watch had safe-handling instructions written in English and Russian, languages unlikely to be accessible to Kyrgyz migrants.

Migrant workers asked questions about safe-handling instructions for fertilizers by Human Rights Watch stated that they had not received information or instructions about fertilizers. Umut U., who told Human Rights Watch that she and her four children used “Azot” and “another kind of chemical that was clear in color,” which they applied with bare hands or with plastic drink bottles to the base of the tobacco plant. “I don’t know the names [of these chemicals],” Umut U. told Human Rights Watch. “The landowner said that Philip Morris [Kazakhstan] gave him the chemicals and that’s it. The Philip Morris [Kazakhstan] agronomist didn’t help us. Neither did the landowner. No one explained to us how to use the chemicals. There was no protective clothing or shoes. ... There were no instructions.”¹⁹⁹

¹⁹⁶ ILO, “Training Resource Pack on the Elimination of Hazardous Child Labor in Agriculture, Book 3: Additional Resources for Trainers,” September 2005, http://www.ilo.org/global/What_we_do/Publications/ILOBookstore/Orderonline/Books/lang-en/docName--WCMS_091344/index.htm (accessed February 10, 2010).

¹⁹⁷ Letter from Hurwitz, January 14, 2010.

¹⁹⁹ Human Rights Watch interview with Umut U., Karatash, Kyrgyzstan, December 12, 2009.

¹⁹⁹ Human Rights Watch interview with Umut U., Karatash, Kyrgyzstan, December 12, 2009.

Alym A., 42, told a Human Rights Watch about his experience working with fertilizers:

I didn't know, is "Ammofos" a pesticide or fertilizer? We poured it under the tobacco plants and at the roots we poured Azot. We poured Ammofos and Azot from plastic Coca-Cola bottles. We didn't use any other kinds of chemicals. The landowner brought us these fertilizers in two bags... no one instructed us. We ourselves know how to use them. We used our bare hands. There is no special clothing or shoes.²⁰⁰

Gulumkan G., whom Human Rights Watch interviewed on a farm in Koram in 2009, stated that she had received a brochure from the Philip Morris Kazakhstan agronomist about fertilizers and pesticides and that workers were required to sign that they had read the document. Even with this brochure, she did not have a clear understanding of what she was using or what the health risks might be.²⁰¹ She said that they received a green granulate, which she called "Nitromafus" and a white granulate called "Azanol." Gulumkan G. and her family do not use gloves when they scatter the granulates in the tobacco fields in the spring. "Where would Kyrgyz get gloves from? We rinse our hands twice afterwards and drink a cup of tea," she said. Gulumkan G. said that she knows the granulates are dangerous because of a warning written on the package.²⁰²

2.11 Other Health Risks in Tobacco Farming

One of the primary risks associated with tobacco farming is green tobacco sickness (GTS), which is caused by the absorption of nicotine through the skin from contact with tobacco leaves, especially wet tobacco leaves. GTS is characterized largely by nausea, vomiting, headache, muscle weakness, and dizziness. Children are especially vulnerable due to their small body size in relation to the dose of nicotine they absorb.²⁰³ Public health research has found that "non-smoking tobacco harvesters show similar cotinine and nicotine levels compared to active smokers in the general population."²⁰⁴ According to one study, "on a humid day, especially after a recent rain, the average field worker may be exposed to as much as 600 [milliliters] of dew," which would contain roughly the nicotine of 36 average cigarettes.²⁰⁵ Other health risks for child and adult tobacco workers include respiratory

²⁰⁰ Human Rights Watch interview with Alym A., Karatash, Kyrgyzstan, December 12, 2009.

²⁰¹ Human Rights Watch interview with Gulumkan G., Koram, September 23, 2009.

²⁰² *Ibid.*

²⁰³ There is extensive public health and occupational health literature on GTS. See for example, Robert H. McKnight and Henry A. Spiller, "Green Tobacco Sickness in Children and Adolescents," *Public Health Report*, no. 120(6), Nov-Dec. 2005, pp. 602-606, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1497768/?tool=pubmed> (accessed January 26, 2010).

²⁰⁴ Natalie M. Schmitt, Jochen Schmitt, Dimitris J. Kouimintzis, and Wilhelm Kirch, "Health Risks in Tobacco Farm Workers—A Review of the Literature," *Journal of Public Health* (2007), 15:255-264.

²⁰⁵ Robert H. McKnight and Henry A. Spiller, "Green Tobacco Sickness in Children and Adolescents."

ailments, exposure to extreme temperatures, musculoskeletal disorders as a result of carrying of excessive and/or awkward loads, repetitive and often forceful actions, bending, stooping, and the adoption of awkward and uncomfortable postures, and other injuries.²⁰⁶

Some workers interviewed by Human Rights Watch spoke of health concerns, including lung ailments and skin ailments particularly during the harvest of tobacco. Others did not practice basic worker safety, such as wearing closed shoes. For example, Nadira N. who worked for three tobacco seasons in Malybai, from 2004 to 2007, told Human Rights Watch that working in tobacco “is very difficult. I am not going back to work anymore. Both me and my children, we all got nauseous working with the tobacco.”²⁰⁷ Zhanyl Zh., 47, who was working in Malybai in 2009, told Human Rights Watch, “In July and August when we are harvesting the tobacco, the weather is very hot, and there is a strong vapor, a strong smell from the tobacco. This hurts the upper respiratory system. The only thing we can do is cover our mouths and nose with handkerchiefs.”²⁰⁸ This may be caused by exogenous allergic alveolitis (or hypersensitivity pneumonitis) which is a type of lung disease frequently referred to as “tobacco worker’s lung” and may be caused by inhalation of tobacco molds.²⁰⁹ Human Rights Watch could not verify the actual medical condition of Zhanyl Zh. or any other interviewee. In June 2009, Human Rights Watch observed workers, including child workers, wearing sandals or, in some cases, no shoes at all, despite working with sharp hoes and in tobacco fields, including in fields possibly treated with pesticides. (For other cases involving health concerns, see Child labor.)

As part of the Good Agricultural Practices program (described in more detail below), PMI has developed materials about GTS for distribution to leaf growers and suppliers which include information about GTS symptoms, risk factors, preventive measures, and treatment,²¹⁰ and PMI and PMK officials stated that they conduct GTS awareness-raising with farmers in Kazakhstan, including through training sessions.²¹¹ However, none of the migrant workers whom Human Rights Watch specifically asked about information or training regarding health risks in tobacco farming said that they had received it from PMK, their employers, or anyone else.

²⁰⁶ Ibid.; ILO, “Training Resource Pack on the Elimination of Hazardous Child Labor in Agriculture, Book 3: Additional Resources for Trainers,” pp. 10-34; and Gerald F. Peedin, “Tobacco Cultivation,” ILO Safework publication, http://www.ilo.org/safework_bookshelf/english?content&nd=857170790 (accessed March 31, 2010).

²⁰⁷ Human Rights Watch interview with Nadira N., Karatash, Kyrgyzstan, April 6, 2009.

²⁰⁸ Human Rights Watch interview with Zhanyl Zh., Malybai, June 12, 2009.

²⁰⁹ Natalie M. Schmitt, et al, “Health Risks in Tobacco Farm Workers—A Review of the Literature,” p. 263.

²¹⁰ PMI provided copies of these materials to Human Rights Watch during a meeting on November 13, 2009.

²¹¹ Letter from Hurwitz, November 10, 2009.

Most workers interviewed by Human Rights Watch lacked any kind of protective clothing to use during the tobacco harvest. Although some had gloves, many workers, including children, did not. “We don’t have special protective clothing [in Russian, *spetzodezhda*],” stated Aym A. who worked in Karaturyk in 2009.²¹² Public health research has found that “protective equipment has been shown to decrease the magnitude of GTS significantly.”²¹³ The ILO has also noted that tobacco workers should minimize exposure during harvesting or other tasks requiring prolonged contact with green tobacco by delaying work until the leaves are dry or by wearing lightweight rain gear and waterproof gloves when the leaves are wet. Precautions for working in dry tobacco include wearing long trousers, long-sleeve shirts and possibly gloves.²¹⁴

2.12 Lack of Potable Water

On all farms which Human Rights Watch visited there was no potable water available for migrant workers or other workers on the tobacco fields. Migrant workers who lived in tents and makeshift houses next to the tobacco fields retrieved water for drinking, cooking, and bathing from nearby streams, rivers, canals, and springs. Often, they also used this one water source to irrigate the tobacco fields. This water may contain unknown amounts of pesticides and fertilizers used in the fields. Drinking dirty or contaminated water may expose workers to dangerous chemicals, organic wastes, and parasites. Ready access to plentiful, clean drinking water is also crucial for migrant tobacco workers, who work in full sun and high heat for many months of the year, to prevent dehydration and heat-induced illness.

Workers who live in or near villages may have access to public outdoor taps, a typical feature of rural villages in Kazakhstan, where homes do not have running water. These workers may bring water with them to work in the fields.

Human Rights Watch interviewed Aisha A. in June 2009 as she carried a large empty container for collecting water. She said that her family, including three children, usually gets water from a tap in the village where they live, but because on that day the water was turned off, they were on their way to a nearby river to get drinking water.²¹⁵ Bazarkan B., who had been working with his wife and six children in Lavar, from 2006-2009, told Human Rights Watch, “We get water from the irrigation channels running nearby. We use this water to

²¹² Human Rights Watch interview with Aym A., Karatash, Kyrgyzstan, December 12, 2009.

²¹³ Natalie M. Schmitt, et al, “Health Risks in Tobacco Farm Workers—A Review of the Literature,” p. 263.

²¹⁴ Peedin, “Tobacco Cultivation.”

²¹⁵ Human Rights Watch interview with Aisha A., Malybai, June 13, 2009.

irrigate the fields. We also drink and wash from the same water,” he said.²¹⁶ Bekbolot B. said that he and his wife get their water from an artisanal spring, near the field.²¹⁷

2.13 Poor Sanitary Conditions

Hand washing and bathing facilities are important both for basic hygiene of workers and their families as well as for mitigating the effects of exposure to pesticides and nicotine in tobacco leaves.²¹⁸ Materials produced by PMI regarding GTS indicate three steps to preventing the illness, including for workers to wear protective clothing to reduce body contact with the plant and for workers to their wash hands and bodies with warm water and soap after working with green tobacco.²¹⁹

Workers, particularly those who live next to the tobacco fields, may lack proper hygiene facilities. In such cases hand washing is done in streams or using bottled water brought from a nearby village. For those who live near the tobacco fields, bathing is also done in streams or irrigation canals. The outhouses migrant workers use, which they often have built themselves, are located at the edges of the tobacco fields, frequently near their living structures and near their sole water source. In 2009, Human Rights Watch researchers saw outhouses constructed within a few feet of canals used for irrigation and drinking water on three separate farms.

In one example, Akdana A., 60, who worked in Achisai in 2007 and lived at the edge of the tobacco field, told Human Rights Watch that when she or her husband needed to wash, they would go to a makeshift shack on the edge of the tobacco field that served as a bathing area for workers on those fields.²²⁰

Migrant workers who lived in houses or other structures near the landowner’s home or the village were often able to access *banyas* or saunas. Ruslan R. and Gulnara G., who both worked in Malybai in 2009 for different employers, told Human Rights Watch that the landowners allowed the workers to use a *banya* for bathing.²²¹ Public *banyas* are also available in some villages.

²¹⁶ Human Rights Watch interview with Bazarkan B., Lavar, June 10, 2009.

²¹⁷ Human Rights Watch interview with Bekbolot B., Koram, June 8, 2009.

²¹⁸ Natalie M. Schmitt, et al, “Health Risks in Tobacco Farm Workers—A Review of the Literature,” p 261.

²¹⁹ In Russian. Given to Human Rights Watch by Philip Morris International on November 13, 2009. On file with Human Rights Watch.

²²⁰ Human Rights Watch interview with Akdana A. and Iskender I., Nookat, Kyrgyzstan, August 5, 2009.

²²¹ Human Rights Watch interviews with Ruslan R., and with Gulnara G., Malybai, September 25, 2009.

2.14 Substandard Employer-provided Living Conditions

All migrant workers interviewed by Human Rights Watch stated that their employers provided free accommodation. In the absence of regular wages, this was the most viable option for migrant workers. While living in employer-provided accommodation may be an advantage to many migrant workers, it was also another aspect of the workers' dependence on the landowner.

The quality of accommodation varied. Many migrant workers interviewed by Human Rights Watch, including whole families with small children, live in makeshift housing of their own construction on the edge of the tobacco fields for at least five of the peak months of the tobacco farming season. Living near the tobacco fields maximizes the amount of time that a worker spends at work and contributes to workers' long hours. These makeshift structures have little protection from the elements, and have no electricity, running water, or heat. This type of accommodation has been described by the ILO as substandard, and contributing to overall poor health of workers. The ILO has noted that "there is a close link between housing, worker well-being and productivity."²²²

Other migrant workers interviewed by Human Rights Watch lived in permanent structures, such as a room in the landowner's house or in the landowner's barn or shed. Even in some more substantial structures, however, workers may have had poor or limited access to proper sanitary conditions and may not have had heat or electricity.

On five farms, Human Rights Watch saw structures constructed with branches for frames, and covered with plastic tarps, burlap tarps, fiberglass panels (of the type used for greenhouses), large cardboard boxes, and similar materials. Outhouses were constructed in a similar manner. Some migrant workers had constructed more substantial structures using mud, but these were rarer. Migrant workers use thin mattresses, blankets, and tarps to sleep on. Some have constructed wooden tables and chairs, but most migrant workers sat on the ground or on bedding materials.

Migrant workers may also live in one room of the landowner's home, or in a barn, shed or other building owned by the landowner. Human Rights Watch visited one such structure, which apparently used to serve as a barn. The structure was divided into several rooms, each with its own window and small door. Some windows were broken. The structure appeared to have electricity. In each room, there were a few mattresses on the floor and

²²² ILO, "Training Resource Pack on the Elimination of Hazardous Child Labor in Agriculture, Book 3, p.31.

some limited cooking instruments, such as hotplates and electric teapots. The structure did not appear to be heated in any way.

Other workers reported having appropriate housing provided by their employers. While working in Malybai in 2009, Gulnara G. told Human Rights Watch that she lived in a small house provided by the landowner with her three daughters and a two-year-old grandchild. The house consists of one room of about 20 square meters and had two beds, numerous mattresses, and a gas stove.²²³ Ruslan R. stated that he lived with three other migrant workers in a three-room house with a wood stove for heating.²²⁴ Some migrant workers who live near the tobacco fields for five to six of the warmer months may live in a more regular dwelling, such as the landowner's home, barn, or other building for a few months at the beginning and end of the season, when the temperatures are too cold to live outdoors.

²²³ Human Rights Watch interview with Gulnara G., Malybai, September 25, 2009.

²²⁴ Human Rights Watch interview with Ruslan R., Malybai, September 25, 2009.

Part 3: Protection and Redress

3.1 Lack of Effective Government Oversight and Complaint Mechanisms

Kazakhstan's human rights obligations require the government to take positive measures to protect migrant workers from abuse and exploitation. Effective monitoring of employers and making available accessible mechanisms for timely redress for abuses are crucial dimensions of rights protection. But the Kazakhstani government has not put in place effective monitoring or redress mechanisms that would end abuse and exploitation in tobacco farming.

Government officials consistently stated to Human Rights Watch that migrant workers did not appeal to official agencies in case of abuse. However, Human Rights Watch research in 2009 indicates that this is because avenues of redress are not accessible for migrant workers in the tobacco sector, not a lack of abuse. Even if migrant tobacco workers were to turn to government agencies, officials consistently told Human Rights Watch that the authorities would typically deport any migrant found to be working unofficially or with irregular migration status, and would not seek to investigate any complaints of abuse made by that worker.

Monitoring by the Labor Inspectorate and Ministry of Interior

A labor inspectorate exists under the Ministry of Labor and Social Protection of the Population and is responsible for monitoring employers' adherence to labor laws, including laws prohibiting child labor, and observing and protecting the rights and freedoms of workers. This includes reviewing applications and complaints made by workers and employers.²²⁵ Both the labor inspectorate and the migration department of the Ministry of Interior are responsible for monitoring employers' compliance with laws regarding the employment of foreign workers.

According to statistical information provided by the Ministry of Labor and Social Protection, the labor inspectorates conducted 22,116 inspections in 2009 and identified over 100,000 violations of labor laws. The ministry did not specify how many of these inspections and violations took place in agriculture, although Human Rights Watch requested it to do so. The only information regarding the labor inspectorate's activities in 2009 specific to agriculture

²²⁵ Labor Code of the Republic of Kazakhstan, arts. 328 and 329.

indicated that 5.9 percent of workers who suffered accidents were employed in agriculture.²²⁶

In interviews with Human Rights Watch, migrant workers, local officials and landowners in the Enbekshikazakh district tobacco growing region stated that they had yet to encounter labor inspectors conducting inspections in the tobacco fields. According to one tobacco farmer in Malybai who regularly hires migrant workers, “There are never any inspections.”²²⁷ An akim in one village in the Enbekshikazakh district told Human Rights Watch that for nearly a year there had been no official inspections, “There have not been any labor inspections or investigations by the prosecutor’s office in this village since September 2008,” he said.²²⁸ One migrant worker told Human Rights Watch, “In ten years of working here, I have never seen the labor inspectorate.”²²⁹

Under Kazakhstani law, labor inspectors are required to inspect employers’ compliance with laws regulating the use of child labor, including the worst forms of child labor. The Committee of Experts of the ILO (CEACR), the legal body responsible for the examination of compliance with ILO conventions and recommendations, issued a report in 2009 concerning Kazakhstan’s implementation of the Worst Forms of Child Labor convention, including the requirement to establish mechanisms to monitor the implementation of the convention. The report found that “state labour inspectors periodically submit information on the use of child labour in Kazakhstan to the Ministry of Labor and Social Protection of the Population,” yet noted that there is “a lack of child labour monitoring systems and a need to consolidate efforts of state institutes, non-governmental organizations, social partners, and international organizations in the area of detecting children engaged in the worst forms of child labor.” CEACR recommended the establishment of monitoring mechanisms to monitor the worst forms of child labor other than the labor inspectorate.²³⁰

Government complaint mechanisms

In Kazakhstan, a number of a number of official agencies and mechanisms could potentially provide redress for abuses against migrant workers. Article 314 of the Labor Code of Kazakhstan guarantees the right of workers “to appeal to the state labor authority and its

²²⁶ Letter from the Ministry of Labor and Social Protection of the Republic of Kazakhstan to Human Rights Watch, received January 25, 2010.

²²⁷ Human Rights Watch interview with landowner, June 2009, name, location, and exact date withheld.

²²⁸ Human Rights Watch interview with Akim, June 2010.

²²⁹ Human Rights Watch interview with Chainara Ch., Malybai, June 11, 2009.

²³⁰ ILO Committee of Experts on the Application of Conventions and Recommendations, CEACR: Individual Direct Request concerning Worst Forms of Child Labor Convention, 1999 (No. 182), Kazakhstan (ratified 2003) Submitted 2009.

territorial subdivisions to inspect the working conditions and labor safety at his place of work.²³¹ As noted above, however, for a worker to be considered an employee, he or she must have a written employment contract. Individuals may also appeal to the prosecutor's office, which is charged with ensuring respect for the laws of Kazakhstan, to the police or migration police, or directly to the courts for certain issues.²³² Experts indicated that there is limited judicial practice, however, on many of the legal violations relevant to migrant workers, including forced labor, and non-payment of wages in the absence of a written contract or other labor issues.²³³ Individuals may also appeal to the human rights ombudsman in the event they believe that their rights have been violated by a government official, with certain exceptions, or a commercial organization.²³⁴

Government officials, migration experts, and migrant workers interviewed by Human Rights Watch for this report consistently stated that migrant workers rarely appeal to government agencies in the event of a violation of their rights. Vice Minister of Labor and Social Protection of Kazakhstan Birzhan Nurymbetov stated, "We receive no complaints from migrant workers. We do receive complaints from citizens of Kazakhstan against migrant workers who are working unofficially and against employers who have hired migrant workers without official permission."²³⁵

The Head of the Migration Police Department at the Ministry of Internal Affairs, Serik Sainov, echoed this, stating that his department does not receive complaints from migrant workers, but that Kazakhstani employees complain to the police when their employer or companies have hired migrant workers unofficially.²³⁶ Vyacheslav Kalyuzhnii, head of the National Human Rights Center of the Ombudsman's Office, stated that the office received only between 10 and 20 complaints from migrant workers in 2008 and even fewer in 2009 and that very few complaints come from citizens of Kyrgyzstan and Uzbekistan. Kalyuzhnii believes that many workers are afraid to approach government agencies out of fear of retribution by the government or their employers or both.²³⁷

²³¹ Labor Code of the Republic of Kazakhstan, art. 314.

²³² Human Rights Watch interviews with Viktoria Tyuleneva, Almaty, November 10, 2009 and with Vadim Ni, Almaty, June 11, 2009.

²³³ *Ibid.*

²³⁴ See: "Rules for Appeals," Website of the Human Rights Ombudsman of the Republic of Kazakhstan, <http://www.ombudsman.kz/sityzens/poryadok.php> (accessed January 29, 2010).

²³⁵ Human Rights Watch interview with Birzhan Nurymbetov, Astana, November 11, 2009.

²³⁶ Human Rights Watch interview with Serik Sainov, Astana, November 11, 2009.

²³⁷ Human Rights Watch interview with Vyacheslav Kalyuzhnii, Astana, November 11, 2009.

These fears appear to be well-founded. State officials uniformly stated that migrant workers found to be working unofficially or to have irregular migration status, due to expiration of their residency registration, would be deported, irrespective of any allegations of abuse by employers or state agents. Kalyuzhnii stated, “It is unfortunate, but migrants who perform work illegally, basically have no rights in Kazakhstan. No one will investigate violations against illegal [irregular] migrants. Migrants don’t want to go to the police to report violations because they fear that they will be deported. Illegal [irregular] migrants will be obliged to pay a fine and administratively deported.”²³⁸ Vice Minister Nurymbetov also said, after several questions from Human Rights Watch about how the government would respond to a complaint of abuse made by a migrant worker, whose employment or residency was irregular, “We deport violators of migration laws immediately. And we will issue a ban prohibiting the employer from hiring migrant workers for one year.”²³⁹

No workers interviewed by Human Rights Watch in 2009 had filed a complaint to any official body in Kazakhstan, nor had they considered doing so. Migrant workers either did not know to whom to complain or believed any attempt at redress would be futile. Jakhon J., who worked in Malybai for most of the 2009 season, before leaving an abusive employer in the middle of the season without receiving any pay, “There is nowhere to file a complaint. No one ever files a complaint. And even if there is a place to complain, what kind of result will there be?”²⁴⁰ “There’s no time to complain. Anyway, there’s nowhere to complain to!” Bakir B., who also worked in Malybai in 2009 told Human Rights Watch.²⁴¹

3.2 Non-governmental Avenues for Redress

Non-governmental organizations

Kazakhstan has an established human rights community, and a number of non-governmental organizations (NGOs) provide direct legal and other services to individuals in need of assistance in defending their rights. The majority of these larger organizations are in larger cities. Migrant workers rarely approach these organizations because they are unaware of them, unable to travel to the towns or cities where organizations are located, or are unfamiliar with what services these organizations can provide.

The Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR), the largest human rights organization in Kazakhstan assists migrants, including migrant workers, but,

²³⁸ Ibid.

²³⁹ Human Rights Watch interview with Birzhan Nurymbetov, Astana, November 11, 2009.

²⁴⁰ Human Rights Watch interview with Dzhakhon D., Karatash, Kyrgyzstan, December 20, 2009.

²⁴¹ Human Rights Watch interview with Bakir B., Malybai, June 11, 2009.

according to a lawyer at the organization, few migrant workers approach them, despite the organization's efforts to reach out to migrant populations. KIBHR can assist migrants in filing complaints with the courts or government agencies, but as the lawyer explained, "People are afraid of interacting with official government agencies. They also may not also have the time, since judicial processes typically take a long time."²⁴² She added that in some cases migrant workers may be reluctant to turn to organizations offering legal assistance because migrants feel it is easier and faster for them to solve their problems informally, such as by offering a bribe.²⁴³

The lawyer was pessimistic about the concrete assistance that organizations like KIBHR can provide to most migrant workers, including those in tobacco farming, who seek redress for violations of labor law or other violations. Firstly, for migrant workers without an employment contract, the labor inspectorate and judiciary are very unlikely to recognize that labor relations existed. Secondly, only advocates, or members of the Bar, may represent plaintiffs in administrative cases; however, under Kazakhstani law, advocates may not work in social organizations.²⁴⁴

According to the Eurasia Foundation of Central Asia (EFCA), there are approximately 30 small NGOs working in the Enbekshikazakh district of Almaty province.²⁴⁵ These organizations each focus on a specific theme, such as protection of the environment; promotion of tourism; support for the elderly, persons with disabilities, women, or veterans; as well as programs for children and other topics. Only one organization, Kazygurt, in Chilik, which is run by a local school director, has done any work related to migrant workers. Kazygurt prioritizes ecological and economic education, with a focus on low-income families. Kazygurt's director, Ardak Kyrykbai, is also the head of the T. Kenzhebaieva high school in Chilik. Kyrykbai told Human Rights Watch that she is also a certified UN business trainer and she holds trainings for representatives of small and medium business in Chilik. She also trains farmers and one of the components of her trainings is to raise awareness of child labor. When Human Rights Watch spoke to her in 2010, Kyrykbai said that her organization did not have funds for specific projects to assist migrant workers, but she continues to conduct the trainings on her own. In 2007, Kazygurt ran a summer camp for migrant children sponsored by PMK via EFCA. The summer camps program is described in more detail in the next section. According to

²⁴² Human Rights Watch interview with Viktoriya Tyuleneva, Almaty, November 10, 2009.

²⁴³ Human Rights Watch email correspondence with Viktoriya Tyuleneva, March 9, 2009.

²⁴⁴ Human Rights Watch interview with Viktoriya Tyuleneva, November 10, 2009.

²⁴⁵ Human Rights Watch telephone interview with Jeff Erlich, president, Eurasia Foundation of Central Asia (EFCA), March 15, 2010, and EFCA list of nongovernmental organizations in the Enbekshikazakh district, on file with Human Rights Watch.

Kyrykbai, 220 children, aged 9-14, 70 percent of whom were children of migrant workers, attended the camp.²⁴⁶

Trade unions

The Almaty Union of Agro-industrial Workers includes agricultural workers from throughout Almaty province. The head of the union, Tastan Tokseitov, told Human Rights Watch that the union welcomes migrant workers and that in 2008, approximately 140 migrant workers, employed primarily in tobacco farming and, to a lesser degree, in vegetable farming, joined the union. A migrant worker is required to submit a written request and show proof of his residency registration in order to join the union. Although migrant tobacco workers have faced problems with contracts and fair payments, according to Tokseitov, the trade union has not submitted complaints to the prosecutor's office or the judiciary on behalf of migrant workers.²⁴⁷

The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), together with its affiliates, the Almaty Union of Agro-Industrial Workers (AIWU) and the Agricultural Workers Union of Kyrgyzstan, have been working to support and protect migrant workers from Kyrgyzstan working in Almaty province since 2007.²⁴⁸ This effort emerged in response to reports of abuse against migrant agricultural workers in Kazakhstan, including child labor and other abuses.²⁴⁹

As part of this initiative, a union organizer has worked in the Almaty province specifically to defend the labor rights of migrant workers and to organize migrant workers employed in tobacco farming, vegetable farming, and viticulture. The union organizer has assisted migrant workers by accompanying the migrant worker to the employer and insisting on a written contract. In 2008, there were 1,647 migrant agricultural workers with contracts in Almaty province.²⁵⁰ The union organizer also has helped migrant workers join the AIWU Almaty.²⁵¹

²⁴⁶ Human Rights Watch telephone interview with Ardak Mukhamedjanovna Kyrykbai, director, Kazygurt, and director, T. Kenzhebaeva High School, March 19, 2010.

²⁴⁷ Human Rights Watch interview with Tastan Tokseitov, Almaty, June 8, 2009.

²⁴⁸ IUF is a global trade union federation with a membership of 363 affiliated organizations representing 12 million workers in 128 countries. Members are employed in agriculture, the preparation and manufacture of food and beverages, hotels, restaurants and catering services, and all stages of tobacco processing. The IUF, <http://cms.iuf.org/?q=node/149> (accessed February 11, 2010).

²⁴⁹ Human Rights Watch interview with Lika Shershukova, Regional Coordinator, International Union of Foodworkers, Moscow, April 23, 2009.

²⁵⁰ Human Rights Watch interview with union organizer, Chilik, June 17, 2009; out of concerns for his safety, the union organizer asked not to be named.

²⁵¹ Human Rights Watch interview with union organizer, June 17, 2009.

In a June 2009 interview with Human Rights Watch, the union organizer also stated that he was concerned about employers' confiscating migrant workers' passports, and would take efforts to ensure migrant workers kept identity documents in their possession. He has approached employers himself directly to discuss this concern. He confirmed that workers have had complaints about deception in the final payment, including in 2008. In most cases, the representative seeks to settle these disputes directly with the employer, at times with the assistance of district or regional AIWU Almaty representatives.²⁵²

3.3 The Government of Kyrgyzstan

Labor-sending countries also bear responsibility to minimize the risk of abuse to workers who seek employment abroad. There are a range of measures governments can and, at times, do take to help ensure protection of migrant workers from their countries. These include providing effective consular services specific to the needs of migrant workers in countries of employment; implementing anti-trafficking legislation and policies; regulating employment agencies and individual employment recruiters; receiving and investigating complaints of abuse against migrant workers' rights by all parties, and when it is within their jurisdiction to pursue remedies against those responsible for abuse. Home country governments should also cooperate with international organizations such as the International Organization for Migration (IOM) and the International Labour Organization (ILO) as well as domestic NGOs in the formulation and implementation of protective measures.

The government of Kyrgyzstan's State Committee on Migration and Employment has a representative based in the consulate of Kyrgyzstan in Almaty. Although the then-head of the State Committee, Algul Ryskulova acknowledged some of the abuses experienced by migrant workers from Kyrgyzstan in Kazakhstan, the government in Bishkek has not taken an active role in protecting and assisting migrant tobacco workers from Kyrgyzstan. Most migrant workers interviewed by Human Rights Watch had not had any contact with the consulate and did not regard the consulate as a meaningful option for seeking assistance.

Abdykappar Tuyaliev, the representative of Kyrgyzstan's State Committee on Migration and Employment at the consulate of Kyrgyzstan in Almaty told Human Rights Watch that the consulate receives complaints by telephone and during visiting hours twice a week. Tuyaliev also stated that he travels to the villages where migrant workers are employed in tobacco farming. He stated that previously there were many complaints regarding non-payment of

²⁵² Ibid.

wages and that in 2009 there were problems for migrant workers in securing contracts. He planned to travel to villages to assist migrants with securing contracts.²⁵³

Tuyaliev also stated that he regularly encounters child labor in the tobacco fields and tries to encourage parents to send children home. He also acknowledged that children are likely to study in school only if their parents live in Kazakhstan for several years consecutively, but was unaware of any efforts by the government of Kyrgyzstan to promote access for migrant workers' children to Kazakhstan schools.²⁵⁴

With respect to Kazakhstan's moratorium on permits for workers in agriculture for 2009, Tuyaliev stated that Kyrgyzstan had not advocated for a revision of this policy, because it "was not going to become involved in the internal politics of Kazakhstan."²⁵⁵

Migrant workers interviewed by Human Rights Watch had had a variety of experiences with the consulate. Some had encountered a representative from the consulate who visited the tobacco fields, though most had not. Nor had they considered traveling to Almaty to visit the consulate, in some cases because their employers had confiscated their passports making them unable to leave their workplaces. Migrant workers also expressed little trust in the consulate or little belief that the effort of making a complaint would produce a result. One expert on labor migration in Kazakhstan confirmed this, stating that sending countries are not sufficiently supportive to migrant workers in Kazakhstan whose rights have been abused, cutting off an important potential avenue of redress.²⁵⁶

One family of migrant workers who worked in Malybai in 2007 told Human Rights Watch that they had spoken with a consular representative during his visit to the tobacco fields and told him that they were having difficulties with their employer. They described the consular official's efforts: "He went, looked at things, spoke with the landowner and with us, but there were no results."²⁵⁷ Another worker confirmed that the consular representatives "came to our fields in 2004-2007," but that no one had visited in the last two years.²⁵⁸ A few workers said that they had never seen consular representatives, including Bekbolot B., who was working in Koram in 2008 and 2009. "No one from the consulate or embassy ever

²⁵³ Human Rights Watch interview with Abdykapar Tuyaliev, Almaty, June 10, 2009.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Human Rights Watch interview with Vadim Ni, independent expert, Almaty, June 11, 2009.

²⁵⁷ Human Rights Watch interview with Nadira N., Karatash, April 6, 2009.

²⁵⁸ Human Rights Watch interview with Kapar K., Malybai, June 11, 2009.

comes here,” he told Human Rights Watch.²⁵⁹ Migrant workers engaged in vegetable farming also told Human Rights Watch that they had not encountered any consular representatives.²⁶⁰

3.4 The Role of Philip Morris International and Philip Morris Kazakhstan

On its website, Philip Morris International expresses its aim “to be a responsible corporate citizen and to conduct [its] business with the highest degree of integrity.”²⁶¹ PMI states a desire to ensure “the fair treatment of our employees, suppliers, and customers” and to eliminate child labor.²⁶² Its commitments range from “supporting communities around the world, to addressing issues impacting employees and leading responsible environmental and agricultural practices.”²⁶³

The Good Agricultural Practices Policy

PMI maintains a Good Agriculture Practices (GAP) policy that should be implemented by all those who supply tobacco to PMI worldwide.²⁶⁴ PMI describes the program as “one component of PMI’s commitment to social responsibility.”²⁶⁵ The GAP relates to various aspects of tobacco farming and is designed to protect the environment as well as to “promote economic viability for the farmer and a safe working environment for those directly involved in the production of the crop.”²⁶⁶ It has six key components: Mission and Values; Variety Management and Integrity; Crop Management; Integrated Pest Management (IPM); Sustainability; and Product Integrity. The GAP also states that PMI has a company policy regarding child and forced labor and communicates this policy to its tobacco leaf suppliers.²⁶⁷

The “Mission and Values” component of GAP sets out “measurables” on which PMI and its subsidiaries will assess tobacco supplier performance. Among the measurables relevant to concerns identified in this report are indicators concerning child labor. These include

²⁵⁹ Human Rights Watch interview with Bekbolot B., Koram, June 8, 2009.

²⁶⁰ Human Rights Watch interview with Khalisan, Koram, June 8, 2009.

²⁶¹ Philip Morris International, Inc., “Our goals,” undated, http://www.philipmorrisinternational.com/PMINTL/pages/eng/ourbus/Our_goals.asp (accessed July 16, 2009).

²⁶² Philip Morris International, Inc., “How we operate,” undated, http://www.philipmorrisinternational.com/pmintl/pages/eng/ourbus/how_we_operate.asp (accessed July 16, 2009).

²⁶³ Philip Morris International, Inc., “Responsibility,” undated, <http://www.philipmorrisinternational.com/PMINTL/pages/eng/community/Responsibility.asp> (accessed July 6, 2009).

²⁶⁴ Philip Morris International, “Good Agriculture Practices: Guidelines and Assessment,” undated, on file with Human Rights Watch, p. 3

²⁶⁵ *Ibid.*, p. 4.

²⁶⁶ *Ibid.*, p. 2.

²⁶⁷ *Ibid.*, pp. 3-4.

requirements to “prohibit unlawful child labor at the farm level;” to “implement a comprehensive plan to address child labor issues in tobacco production;” to conduct “random unannounced visits;” and to “encourage/support school attendance.” PMI and PMK’s response to child labor is addressed in detail in chapter 4.

Concerning worker safety, the “Mission and Values” section also includes the requirement to “establish an effective training program for CPA [Crop Protection Agents] handling, application, and storage.” In the “Integrated Pest Management” measurables on pesticide use expect suppliers to “promote the use of personal protective equipment.”²⁶⁸ However, the GAP does not address other rights, including worker rights issues such as written, enforceable contracts, wages paid in accordance with local laws, limits on working hours, etc.

*Implementation in Kazakhstan*²⁶⁹

In Kazakhstan, monitoring of compliance with GAP policies is conducted by PMK agronomists, who are expected to regularly visit the tobacco farms. Agronomists are agricultural specialists who are typically former tobacco farmers themselves and live in the primary tobacco-growing communities. In 2009, there were four PMK agronomists responsible for monitoring 519 farms in the Enbekshikazakh district.

According to senior PMI and PMK executives, PMK agronomists visit each tobacco farm two to three times per month for routine inspections and also conduct unannounced audits.²⁷⁰ These audits focus on compliance with agricultural practices and child labor. In a November 10, 2010 letter, PMI stated that PMK agronomists had conducted 171 unannounced audits in 2009. A March 2010 letter from PMI indicated that PMK’s agronomists had conducted 209 unannounced audits, during the 2009 growing season, 146 of which took place on farms employing migrant workers.²⁷¹

Training is another important component of the GAP. In November 2009 PMI told Human Rights Watch that PMK conducted over 500 training sessions for farmers and their workers in 2009, which covered, among other matters, child labor prevention.²⁷² PMI and PMK executives also said that PMK agronomists conduct four separate training sessions per year

²⁶⁸ *Ibid.*, p. 10.

²⁶⁹ PMI and PMK’s response to child labor is addressed in chapter 4.

²⁷⁰ Their workload is about 15 farms per day. Human Rights Watch interview with PMI and PMK executives, Almaty, November 13, 2009. PMK agronomists conducted 363 unannounced audits of farms in 2008. Letter from Hurwitz, November 10, 2009.

²⁷¹ Letter from Hurwitz, March 11, 2010.

²⁷² Letter from Hurwitz, November 10, 2009.

with all farmers contracting with PMK. In 2009, PMK had contracts with farmers on 519 farms. Five to seven farmers participate at each session, and the training is dedicated to a certain areas of farming relevant to that season, such as pesticides, protection of the crop, and handling of seedlings. The company reports prevention of child labor is always included as a topic. Farmers are required to attend and confirm their attendance by signature. PMI and PMK executives also stated that “workers also usually attend, but they don’t sign in.”²⁷³

Despite the existence of the GAP policy and PMI and PMK’s steps to implement it in Kazakhstan, Human Rights Watch has reached the conclusion that these measures were not sufficient to prevent and remedy a range of abuses and exploitation, including child labor and forced labor Kazakhstan, as this report documents. For example, taking the “protect, respect, remedy” framework proposed by the U.N. Special Representative on Business and Human Rights, it is Human Rights Watch’s assessment that Philip Morris did not have adequate procedures in place to assess its human rights risks, examine the scope of its problems, and effectively mitigate those human rights problems. Nor did it have a mechanism to provide remedy to those children and adults whose rights were violated.

As described in more detail in the recommendations section of this report, PMI’s GAP policies should be revised to adequately address a range of rights concerns relevant for tobacco workers, with attention given to the particular vulnerabilities of migrant workers. PMI should ensure that the commitments it has made to engage third-party monitoring and to revise and expand internal monitoring procedures result in effective implementation of the GAP and other relevant policies.

PMI and PMK response to Human Rights Watch

During the research for this report Human Rights Watch and PMI maintained a dialogue through letters and meetings. In response to Human Rights Watch’s concerns raised in an initial October 13, 2009 letter to PMI, PMI and PMK undertook a three-day investigation in the Enbekshikazakh region. Throughout its dialogue with Human Rights Watch Philip Morris International said that the investigation had not found evidence of some of the worst abuses documented by Human Rights Watch, such as forced labor or debt bondage. Nevertheless, PMI has stated that the company “will not tolerate conduct such as that reported by Human Rights Watch from our suppliers, vendors, or contractors,”²⁷⁴ as described in more detail below.

²⁷³ Human Rights Watch interview with PMI and PMK executives, Almaty, November 13, 2009.

²⁷⁴ Letter from Hurwitz, January 14, 2010.

According to PMI, during the investigation, carried out in November 2009, PMI and PMK representatives visited “over 30 farms that employ or have employed migrant workers and conducting interviews with members of the PMK agronomy team, representatives of schools, local authorities, as well as NGOs we have been working with in the past.”²⁷⁵ The investigation found no “evidence of debt bondage structures.” PMI stated that any advanced payments or expenses made by landowners on behalf of workers were not sufficiently large to put workers into debt equal or greater to the final payment.²⁷⁶ Nor did PMI and PMK “find any cases where a worker claimed that the farmer had not honored his or her commitments made verbally.”²⁷⁷ PMI told Human Rights Watch that it believes that “work [performed by workers for landowners] on other crops is compensated separately from and on top of the tobacco-related income.”²⁷⁸ PMI also told Human Rights Watch that in the course of its November 2009 investigation, it found “a widespread acceptance of farmers holding passports “to protect against loss or theft, to protect [migrant workers] against alleged harassment from the police, and for registration purposes.” It also found evidence of passports being retained “as a security for advance payments” made by the landowner to workers.²⁷⁹

Commitments from PMI

PMI officials have told Human Rights Watch that PMI is “opposed to and committed to preventing child labor, forced labor, and other abusive and illegal conduct towards migrant workers in tobacco in Kazakhstan” and that the company is “taking steps to address the widest range of conduct.”²⁸⁰ PMI has made several important commitments which if fully implemented and monitored would significantly improve the rights situation of migrant tobacco workers.

Contractual obligations

PMI and PMK have stated that they will strengthen future contracts concluded with landowners, for example by requiring that landowners “comply with the labor laws of Kazakhstan, including a prohibition of child labor and forced labor, requirements regarding safe and hygienic working conditions, and written employment contracts with all members

²⁷⁵ Letter from Hurwitz, January 14, 2010. Human Rights Watch interview with PMI and PMK executives, Almaty, November 13, 2009.

²⁷⁶ Letter from Hurwitz January 14, 2010.

²⁷⁷ Ibid.

²⁷⁸ Letter from Hurwitz, March 11, 2010.

²⁷⁹ Letter from Hurwitz, January 14, 2010.

²⁸⁰ Ibid.

of the migrant worker family.”²⁸¹ The contractual obligations for landowners also include a prohibition on the withholding of “passports or other official documents as a deposit or guarantee of fulfillment of the Employee’s obligations.” Documents can be held by the landowner only with the agreement of the worker and exclusively for the purposes of safekeeping. PMI and PMK have also stated that future PMK contracts with landowners would include a requirement that all fertilizers and pesticides be used in compliance with all safety requirements while using and storing them, and that the landowner ensures workers use the individual protective gear provided to them, including for the application of pesticides.²⁸² Violation of any of the terms of the contract will be grounds for termination of the contract by PMK.²⁸³

PMK will also provide landowners a template written contract to be concluded with each worker. According to PMI, the contract specifies that the farmer ensures “appropriate labour conditions in accordance with the legislation of Kazakhstan.” The contract establishes a combination payment scheme, whereby workers will receive a monthly payment not less than the minimum wage as well as a lump sum payment at the end of the season based on the weight and grade of the tobacco leaves.²⁸⁴ These payments should be made in “a timely manner and in full.” PMI also said that should landowners need to receive prepayments from PMK to finance monthly wages, the contract between the landowner and PMK provides for this.²⁸⁵ This is a significant step, given that the end-of-season lump sum payment structure puts workers at risk of becoming trapped in abusive employment situations and also contributes to the use of child labor.

The template contract will include a requirement for a 40-hour work week, with a provision indicating that extra work on certain days could be offset by reduced work hours on other days, but that extra hours worked would not be considered overtime. Workers would also be granted at least 24 days of paid annual leave.²⁸⁶ The contract also includes a provision for the employer to provide the necessary individual protective gear to workers using pesticides.²⁸⁷ In addition to rubber boots, gloves, and masks, PMK will also make available protective suits for a nominal fee and verify that the protective gear is worn during the application of crop protection agents.²⁸⁸ Given the inherently hazardous nature of pesticide

²⁸¹ Letter from Hurwitz, March 11, 2010.

²⁸² *Ibid.*

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

use Human Rights Watch has recommended to PMI that PMI and PMK should provide all safety equipment at no cost to the workers.

Contracts with landowners and landowners' contracts with workers will also include a requirement that landowners provide "sufficient drinking and washing water on the work premises."²⁸⁹ Both PMK's contracts with landowners and landowners' contracts with employees will mandate that landowners provide employees with "minimum standard living conditions, including dry and warm housing, sanitary facilities and access to potable water near the housing, except for employees who have their own accommodation near the place of work."²⁹⁰

Pesticides and fertilizers

In January 2010 PMI stated that it would "refresh the content of the safety instruction handouts and provide them in Russian, Kazakh and Kyrgyz language[s]."²⁹¹ With regard to the Decis and Confidor pesticides, in March 2010, PMI told Human Rights Watch that they have "checked again the PMK pesticides handout that was used last year against the safe handling instructions provided by the supplier of Decis and Confidor and believe that they are substantially consistent."²⁹²

Training of agronomists

In January 2010 PMI and PMK indicated commitment to expanding the training of agronomists to include topics such as forced labor, passport retention, living conditions, and access to education for children.²⁹³ In March 2010 PMI indicated that PMI and PMK planned to review "the question of whether it is reasonable to expect the agronomists to be responsible both for monitoring agricultural issues (tobacco quality and yield) and labor issues (child and forced labor, working and living conditions), with the involvement of the Environment, Health and Safety (EHS) Department of PMK."²⁹⁴ PMI said that PMK "is considering increasing the percentage of total farms audited in 2010 to 50 percent, which would ... result in a complete coverage of all farms employing migrant workers."²⁹⁵

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ Letter from Hurwitz, January 14, 2010.

²⁹² Letter from Hurwitz, March 11, 2010.

²⁹³ Letter from Hurwitz, Ibid.

²⁹⁴ Letter from Hurwitz, March 11, 2010.

²⁹⁵ Ibid.

PMI is also working to improve internal monitoring and adopting internal checks,²⁹⁶ including working with a third-party organization expert in monitoring labor violations to verify landowners' compliance with new policies.²⁹⁷ They also plan to continue outreach to the ILO, local NGOs and local government officials.²⁹⁸

²⁹⁶ Ibid.

²⁹⁷ Letter from Hurwitz, January 14, 2010.

²⁹⁸ Letter from Hurwitz, March 11, 2010.

Part 4: Child Labor and Other Abuses against Migrant Worker Children

Child labor in tobacco is a long standing concern in Kazakhstan. The International Labour Organization and others have identified child labor among both migrant workers and Kazakhstani children in agriculture and other sectors in Kazakhstan.²⁹⁹ Human Rights Watch interviews and farm visits confirmed the frequent use of child labor.

As described in chapter 3, migrant tobacco workers in Kazakhstan generally travel together and work as families. Migrant workers who travel with their children to Kazakhstan for employment on tobacco farms generally expect their children to work with them through some or all stages of the tobacco farming and curing process. Human Rights Watch identified children aged 10-17 working. Younger children often accompany their families but do not work.

The practice of a single end-of-season payment based on volume of tobacco produced contributed to the pressure that parents feel to include their children in the farm work. Parents interviewed by Human Rights Watch in 2009 stated that they felt they must commit as much effort and as many working hands as possible each day to tobacco farming in hopes of producing the expected volume of tobacco and of receiving decent earnings at the end of the season.

Tobacco cultivation is painstaking manual work and poses significant health risks, including musculoskeletal disorders, exposure to high heat and sun during the summer months, exposure to pesticides, and health risks associated with the handling of tobacco plants, all of which are particularly acute for children. Child migrant workers are exposed to the same lack of adequate sanitary and hygiene conditions and substandard housing conditions as adult migrant workers.

In only one case among the migrant workers Human Rights Watch interviewed, did a family have school-age children enrolled in school. In nearly all cases, migrant workers did not attempt to enroll their children in local schools, since they expected the children to work with them. In the two cases in which migrant workers interviewed by Human Rights Watch had attempted to enroll their children in local schools, they were refused due to lack of

²⁹⁹ See International Labour Organization International Programme on the Elimination of Child Labor (ILO-IPEC) and the Center for Study of Public Opinion (CSPO), "Child Labor in Tobacco and Cotton Growing in Kazakhstan," Almaty, 2006; and Concluding Observations of the Committee on the Rights of the Child: Kazakhstan, CRC/C/KAZ/CO/3, 19 June 2007, paras. 63-66; and ILO-IPEC, *CAR Capacity Building Project, Project Document*.

residency registration. The government confirmed to Human Rights Watch that only migrants with permanent residence in Kazakhstan and in possession of a stamp indicating residency registration may enroll their children.³⁰⁰ Other migrant worker families reported other obstacles in accessing schools such as lack of assistance to help migrant children assimilate in a new school environment. In all cases documented by Human Rights Watch, children miss at least two to three months of school in Kyrgyzstan in order to accompany their families to Kazakhstan for work. In a few cases documented by Human Rights Watch, children of migrant workers missed entire academic years.

Child labor is also a problem among Kazakhstani families, who also often rely on their children to contribute to a season's harvest, interfering with children's education. However, child labor is particularly prevalent among migrant worker families, who are typically poor and who work together in tobacco farming in Kazakhstan in hopes of securing a basic living. In addition, the particular vulnerabilities of migrant worker adults, including severe poverty, absence of legal residency and employment status, low knowledge of Kazakh or Russian as well as Kazakh labor protection laws and migration laws all serve to make migrant worker children especially vulnerable.

There is some indication that the use of child labor in tobacco farming in Kazakhstan has declined in recent years. PMI told Human Rights Watch that it believed that its policies "have had a direct impact on reducing child labor on tobacco farms."³⁰¹ A 2006 ILO-IPEC study on child labor in agriculture found that although child labor in tobacco farming was still prevalent, interviewees suggested that there had been a reduction in the use of child labor, possibly in conjunction with PMK's policy prohibiting child labor.³⁰² Nevertheless, the study found that although tobacco farmers who contract with PMK "familiarize themselves with relevant legislation and their responsibilities and commit themselves not to engage children under the age of eighteen in tobacco growing and processing," these terms "are often violated."³⁰³

The employment of children in tobacco cultivation violates international law prohibiting the employment of children under the age of 18 in harmful or hazardous work and also Kazakhstani law prohibiting child labor in harmful sectors, including tobacco farming. Preventing children from attending school violates international law guaranteeing children,

³⁰⁰ Letter from Meuret Saudabay, Counselor, Embassy of the Republic of Kazakhstan, Washington, DC, to Human Rights Watch, March 29, 2010.

³⁰¹ Letter from Hurwitz, January 14, 2010.

³⁰² ILO-IPEC and CSPO, "Child Labor in Tobacco and Cotton Growing in Kazakhstan," p. 10.

³⁰³ *Ibid.*, p. 21.

including the children of migrant workers, the right to education. Several sets of actors share to varying degrees responsibility for the violation of these fundamental rights and should take measures to address the situation. Tobacco farm owners have a responsibility not to employ or allow children to work on their farms. The Kazakhstani government should enforce existing laws prohibiting child labor in tobacco, including through inspections and apply proportionate and dissuasive sanctions against violators, and guarantee access to primary education for all children, including children of migrant workers. PMK and PMI also have the responsibility to strengthen measures to prevent the use of child labor and support alternatives for children of migrant workers, so that these companies do not benefit from abusive practices.

4.1 Child Labor in Tobacco Farming

Hazardous child labor

Tobacco growing and harvesting is hazardous work due to a number of factors, including the physical difficulty of the work and its repetitive motions, long working hours, exposure to high heat and sun during the summer months, exposure to pesticides and to fumes from tobacco plants, health risks associated with the handling of tobacco plants, as well as poor sanitation and hygiene and substandard living conditions.³⁰⁴ Short-term effects of tobacco and pesticide exposure include nausea, headaches, vomiting, and dizziness. Long-term effects of pesticide exposure can include brain damage and cancer. For children, these hazards are particularly acute, as immature and still-growing bodies are more vulnerable than adults' bodies to systemic damage.³⁰⁵

Through interviews with both children and adults Human Rights Watch documented 86 children, aged 10-17, working, or who had previously worked, in tobacco—72 of them working in 2009. Human Rights Watch witnessed children working or interviewed children who said they were working or had worked. Both parents and children interviewed by Human Rights Watch stated that children perform the same tobacco farming work as adults, including: planting, watering, weeding, fertilizing, harvesting, stringing and drying tobacco. In several other cases documented by Human Rights Watch, younger children traveled with their families but did not work.

³⁰⁴ For a detailed list of the hazards posed to children in tobacco farming see ILO, “Training Resource Pack on the Elimination of Hazardous Child Labor in Agriculture, September 2005, http://www.ilo.org/global/What_we_do/Publications/ILOBookstore/Orderonline/Books/lang--en/docName--WCMS_091344/index.htm (accessed February 11, 2010).

³⁰⁵ ILO-IPEC, “Child Labour by Sector: Agriculture,” undated, <http://www.ilo.org/ipecc/areas/Agriculture/lang--en/index.htm> (accessed February 11, 2010).

International standards, Kazakhstani law, and hazardous child labor

In recognition of the potential benefits of some forms of work and of the realities that require many children to enter the workforce to support their own or their families' basic needs, international law does not prohibit children from carrying out work as such. However, international treaties address the particular circumstances under which children under 18 may work and define standards to protect children from exploitation and other harmful consequences of child labor. These standards protect children from hazardous work, from working at young ages and from labor that has a negative impact upon their education.

The UN Convention on the Rights of the Child, the ILO Minimum Age Convention, and the ILO Worst Forms of Child Labour Convention, all ratified by Kazakhstan, generally prohibit the employment of children under the age of 18 in harmful or hazardous work.³⁰⁶ The Worst Forms of Child Labour Convention defines the worst forms of child labor as “slavery or practices similar to slavery, such as the sale and trafficking of children and forced or compulsory labor.”³⁰⁷ Other types of work are also prohibited if they constitute “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”³⁰⁸

Although the ILO does not have a specific list of occupations that constitute the worst forms of child labor, agriculture is considered one of the three most dangerous sectors in which children work, along with construction and mining.³⁰⁹ Tobacco farming, as well as cotton farming, is widely accepted as a crop in which children under the age of 18 should not be

³⁰⁶ The Convention on the Rights of the Child guarantees all children under eighteen the right “to be protected from economic exploitation and from performing any work that is likely to be . . . harmful to the child’s health or physical, mental, spiritual, moral or social development. Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Kazakhstan on August 12, 1994 art. 32. ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (Worst Forms of Child Labor Convention), adopted June 17, 1999, 38 I.L.M. 1207, entered into force November 19, 2000, ratified by Kazakhstan on February 26, 2003, art. 3; ILO Convention No. 138 concerning the Minimum Age for Admission and Employment (Minimum Age Convention), adopted June 26, 1973, 1015 U.N.T.S. 297, entered into force June 19, 1976, ratified by Kazakhstan on May 18, 2001, art. 2.

³⁰⁷ Worst Forms of Child Labour Convention, art. 3(a).

³⁰⁸ Worst Forms of Child Labour Convention, art. 3(d). ILO Recommendation 190, which accompanies Convention 182, suggests that states parties identify the following as hazardous labor to be prohibited: labor that exposes children to physical, psychological or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; work in an unhealthy environment which may expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employers. ILO, R 190, Worst Forms of Child Labor Recommendation, 1999, para. 3, <http://www.ilo.org/ilolex/english/recdisp2.htm> (Accessed December 7, 2009).

³⁰⁹ ILO-IPEC, “Child Labour by Sector: Agriculture,” undated, <http://www.ilo.org/ipecc/areas/Agriculture/lang--en/index.htm> (accessed February 11, 2010).

employed, as reflected by ILO and ILO-IPEC documentation and practice.³¹⁰ A resolution from a February 2003 ILO tripartite meeting on the future of employment in the tobacco sector called for the ILO Director General to continue to promote the Minimum Age Convention and the Worst forms of Child Labor Convention and to assist in their application specifically in the tobacco sector. The resolution also called on all parties engaged in implementing these conventions to adopt “concrete measures to eliminate child labour in the tobacco chain.”³¹¹

Kazakhstani law also contains numerous provisions designed to protect children from working at a young age and from harmful work, including work in tobacco. An order from the Ministry of Labor and Social Protection of Kazakhstan regarding hazardous professions explicitly prohibits the employment of children under 18 in tobacco.³¹² In addition, the Labor Code of Kazakhstan prohibits the employment of persons under age 18 in “heavy physical labor or in harmful (extremely harmful) and (or) hazardous (extremely hazardous) working conditions,” in work that is harmful to their health and moral development, and in work requiring lifting of heavy objects.³¹³ For other types of work, the minimum age of employment is 16 years, with possible exceptions if there is parental consent, and only in work “that is not harmful to health and does not disrupt their studies.”³¹⁴ Children under 18 are also required to work fewer hours per week than adults and are prohibited from work at night and from working overtime.³¹⁵

Hazardous child labor on Kazakhstani tobacco farms

The fact of children working in tobacco farming in Kazakhstan has been previously documented by ILO-IPEC, which in 2006 issued a report on child labor in both tobacco and

³¹⁰ See especially, ILO, “Tackling hazardous child labour in agriculture: Guidance on policy and practice (toolkit),” October 2006, <http://www.ilo.org/ipeinfo/product/viewProduct.do?productId=2799>; and ILO, “Training Resource Pack on the Elimination of Hazardous Child Labor in Agriculture, September 2005, http://www.ilo.org/global/What_we_do/Publications/ILOBookstore/Orderonline/Books/lang-en/docName--WCMS_091344/index.htm (accessed February 11, 2010); and Gerald F. Peedin, “Tobacco Cultivation,” http://www.ilo.org/safework_bookshelf/english?content&nd=857170790 (accessed February 11, 2010).

³¹¹ Tripartite meetings bring together a cross-section of government, employer and worker representatives from countries that are prominent or have a strong interest in a given sector. ILO Tripartite Meeting on the Future of Employment in the Tobacco Sector, “Resolution Concerning Child Labour in the Tobacco Sector,” February 24-28, 2003, <http://www2.ilo.org/public/english/dialogue/sector/techmeet/tmetso3/tmets-res-10.pdf> (accessed February 11, 2010).

³¹² Order of the Ministry of Labor and Social Protection of the Republic of Kazakhstan, No. 185-P, July 31, 2007, On Confirming the List of Professions in Which It Is Prohibited to Hire Workers Under the Age of Eighteen Years Old, and Establishing the Norms For Hauling and Moving of Heavy Loads for Workers Under the Age of Eighteen.

³¹³ Labor Code of the Republic of Kazakhstan, arts. 26 and 179.

³¹⁴ Individual labor contracts may be concluded with persons 16 years and older. Employment of children aged 15 who have received secondary education is permitted only with the written consent of their parents or of a guardian. Individual labor contracts may, with the consent of a parent or guardian, be concluded with children 14 years old and older for work during their spare time from studying, and only in work that is not harmful to health and does not disrupt their studies. Labor Code of the Republic of Kazakhstan, art. 30.

³¹⁵ The Labor Code establishes shorter working hours for employees aged 14-16 years (not more than 24 hours per week) and 16-18 (not more than 36 hours per week), Labor Code of the Republic of Kazakhstan, arts. 181 and 183.

cotton farming. This report found both Kazakh and migrant children aged 5-17 frequently working in tobacco farming.³¹⁶ The children worked long hours, had inadequate rest, had little or no access to proper sanitation and nutrition, were exposed to high heat and sun, had no masks or protective clothing, suffered skin complaints from contact with tobacco leaves, and had limited access to medical care.³¹⁷ In 2009 a representative of Kyrgyzstan's State Committee on Migration and Employment at the consulate of Kyrgyzstan in Almaty, Abdykapar Tuyaliev, confirmed to Human Rights Watch that during his visits to Almaty province, he regularly encounters child labor in the tobacco fields and tries to encourage parents to send children home.³¹⁸

Migrant workers interviewed by Human Rights Watch said that child labor in tobacco farming is common and has been going on for years. For example, 49-year-old Gulnara G. from Kyrgyzstan told Human Rights Watch that in 2000, she sent her two oldest daughters, who were 10 and 14 at the time, to Kazakhstan to farm tobacco under the supervision of Chinara Ch., an intermediary whom she met in Kyrgyzstan. Since 2001, Gulnara G. or her husband had been coming annually to Kazakhstan together with their three daughters to farm tobacco.³¹⁹

Migrant workers with children working told Human Rights Watch that children performed some or all of the same labor-intensive, difficult work that adults do. For example, Alym A., a 42-year-old worker from Karatash, Kyrgyzstan, spoke to Human Rights Watch about the work his 14-year-old daughter did throughout the 2009 season, "She did all of the same work that we did in the fields: planted tobacco seedlings, watered the tobacco plants, hoed, picked the leaves, and strung, dried, steamed and pressed the leaves. All the same work, basically."³²⁰ Umut U., 34, from Karatash, told Human Rights Watch that she went in March 2009 to Malybai together with her four children, aged 10, 11, 13, and 14. "The children worked together with me on the tobacco," Umut U. told Human Rights Watch. "The two youngest only did the stringing following the harvest. Before that, they were just playing. The two older children grew the seedlings in the steam-room [in Russian, *parilka*], then planted them in the fields. ... The children also applied fertilizer and pesticides. We applied them only one time. We had no special clothes or shoes."³²¹

³¹⁶ ILO-IPEC and CSPO, "Child Labor in Tobacco and Cotton Growing in Kazakhstan," p. viii.

³¹⁷ *Ibid.*, pp. 10-19.

³¹⁸ Human Rights Watch interview with Abdykapar Tuyaliev, Almaty, June 10, 2009.

³¹⁹ Human Rights Watch interview with Gulnara G., Malybai, Kazakhstan, September 25, 2009.

³²⁰ Human Rights Watch interview with Alym A., Karatash, Kyrgyzstan, December 12, 2009.

³²¹ Human Rights Watch interview with Umut U., Karatash, Kyrgyzstan, December 13, 2009.

Children worked long hours, as many as 12 to 13 hours during the main tobacco picking and drying season [July-September] and have very few days off, including no regular weekend days off. According to Sabir S., who was interviewed in Malybai working with his son, 15 and daughter, 13, “The children work like we do, doing everything. Typically we work from 7:00 a.m. to 7:00 or 8:00 p.m. About 11 to 12 hours per day. Sometimes we will come to the field at 4:00 a.m. If the tobacco is not ready, though, we will rest. For a whole season [of nine months] we will get about three weeks worth of days off.”³²² According to Sharapat Sh., who worked in Malybai with her adult son and 15-year-old daughter, the family worked 11 to 13 hours a day, first growing the seedlings, then transplanting the seedlings on the field, and then cultivating the plants and processing them at the end. For the nearly nine months that they were in Kazakhstan (March 12- December 5, 2009), they took a total of no more than 14 days off total, including weekends.³²³

Children may suffer health effects as a result of exposure to tobacco, pesticides and the elements. Sharapat Sh., who worked with her adult son and 15-year-old daughter in Malybai in 2009, told Human Rights Watch that she did not know about any dangers associated with pesticides or with working with tobacco. She recalled only an unidentified rash that appeared on some children from families who worked in the fields together with her family. “We don’t know of any harm [from pesticides or working with tobacco]. But, come to think of it, some children in the fields got some kind of rash. A red rash appeared on them on their stomachs and necks. After a few days it disappeared.”³²⁴ It was impossible for Human Rights Watch to know what specifically caused the rash.

Working in high heat under bright sun may also have negative consequences on the health of children. In June 2009, Human Rights Watch researchers met Raikan R., 14, who was working in Malybai together with her mother, brother, and sister-in-law. Raikan R. had what appeared to be severe blistering as a result of sunburn over much of her right cheek and neck. She said, “As a result of the sun, my face is completely covered by these splotches.”³²⁵

4.2 Violation of the Right to Education

In all cases researched by Human Rights Watch except one, children working on tobacco farms missed some or all of the academic school year in Kyrgyzstan and did not attend school in Kazakhstan. Some parents told Human Rights Watch that they took their children

³²² By contrast, a person working a 40-hour work week for nine months, or 36 weeks, would get at a minimum of 72 weekend days (or approximately 10 weeks) off. Human Rights Watch interview with Sabir S., Malybai, June 11, 2009.

³²³ Human Rights Watch interview with Sharapat Sh., Karatash, Kyrgyzstan, December 13, 2009.

³²⁴ Human Rights Watch interview with Sharapat Sh., December 13, 2009.

³²⁵ Human Rights Watch interview with Raikan R., Malybai, June 13, 2009.

out of school in Kyrgyzstan in March or April to travel to Kazakhstan for the tobacco planting and growing seasons, but that some family members would return home with the children in August so that the children may begin the school year. Other children remained with their parents until November or December to assist with the harvesting and curing of tobacco. Many parents indicated to Human Rights Watch that they see their children as integral to the family's ability to complete the labor-intensive work of the tobacco season. In only one case did parents state that they had enrolled their children in a local school, in Chilik. In two cases, parents interviewed by Human Rights Watch had attempted unsuccessfully to enroll their children in local schools.

International standards and Kazakhstani law

The right to education is affirmed in the International Covenant on Economic, Social and Cultural Rights and in the Convention on the Rights of the Child.³²⁶ States are required to make primary education compulsory and free to all,³²⁷ and to protect children from work that interferes with their education.³²⁸ Furthermore, the Worst Forms of Labor Convention highlights the "importance of education in eliminating child labor" and calls upon states to ensure access to free basic education and vocational training.³²⁹ These obligations extend to all children on the state's territory, including children of migrant workers, even migrant workers whose migration status or employment status is irregular.³³⁰

Kazakhstani law establishes compulsory primary and secondary education (grades 1-12) for citizens of Kazakhstan, age 16 and under. Foreigners and persons without citizenship permanently living in Kazakhstan are also guaranteed this right.³³¹ In order for a child to be

³²⁶ The International Covenant on Economic, Social and Cultural Rights provides that primary education "shall be available to all" and that secondary education "shall be made generally available and accessible to all by every appropriate means. International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Kazakhstan January 24, 2006, art. 13. Article 28 of the Convention on the Rights of the Child recognizes "the right of the child to education."

³²⁷ Convention on the Rights of the Child, arts. 28 and 29.

³²⁸ *Ibid.*, art. 32.

³²⁹ Worst Forms of Child Labor Convention, art. 7.

³³⁰ Although Kazakhstan has not ratified the International Convention for the Protection of All Migrant Workers and Members of their Families, the treaty nevertheless provides useful guidance on states' responsibilities vis-à-vis migrant workers. Article 30 of the Convention states: "Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment." International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), adopted December 18, 1990, G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003.

³³¹ Law on Education of the Republic of Kazakhstan, article 31. Law on the Rights of the Child of the Republic of Kazakhstan, no. 345, August 8, 2002. Article 2 states: "This Law applies to the citizens of the Republic of Kazakhstan, foreigners and stateless

enrolled in a school, a parent or guardian must present a document verifying permanent residence in the Republic of Kazakhstan with a stamp indicating residency registration.³³² In 2007 the UN Committee on the Rights of the Child called on the government to “ensure that compulsory education is free of cost and accessible for all children,” and to take specific steps to enroll particularly vulnerable populations, including children living in rural and remote areas and children of migrant workers, in schools.³³³

Children missing school

In all cases documented by Human Rights Watch, children of migrant workers missed at least two to three months of school while they were engaged in tobacco farming. Gulnara G.’s youngest daughter, Bibigul G., now 16, was working in the tobacco fields at the time of the Human Rights Watch interview in September 2009 and had been working with the family each season in recent years.³³⁴ Each year, Bibigul G. would leave school in Kyrgyzstan at the end of April to travel to Kazakhstan with her family to begin farming. The family planned to return to Kyrgyzstan only in November 2009, at which time Bibigul G. could return to school. Bibigul G. worked full time farming tobacco while in Kazakhstan and did not attend a local school.³³⁵ In May 2009 Almira A. traveled with her 16-year-old daughter for the first time to Kazakhstan, where they worked together for the entire tobacco season. She told Human Rights Watch, “My daughter should have graduated from school this year. She didn’t go to school there [in Kazakhstan]. We went with her for work, not for study!”³³⁶

According to Alym A., who worked with his wife and 14-year-old daughter in Kazakhstan for the 2009 tobacco season, “Our daughter was always working with us. She didn’t go to school [in Kazakhstan]. After we came back to Kyrgyzstan, she went to school. In the end she missed six months of school.”³³⁷ Another worker told Human Rights Watch that his daughter, 16, and son, 14, worked together with him and his wife in Malybai from March 7, 2009 to November 20, 2009. “Our children worked with us. They didn’t go to school [in Kazakhstan].

persons.” Article 15 states: “Every child has the right to education. The State provides free secondary education and vocational primary education; and on a competitive basis – free vocational secondary and higher education.”

³³² Letter from Meuret Saudabay, Counselor, Embassy of the Republic of Kazakhstan, Washington, DC, to Human Rights Watch, March 29, 2010.

³³³ Concluding Observations of the Committee on the Rights of the Child: Kazakhstan, CRC/C/KAZ/CO/3, June 19, 2007, para. 58.

³³⁴ Human Rights Watch interview with Gulnara G., Malybai, September 25, 2009.

³³⁵ Ibid.

³³⁶ Human Rights Watch interview with Almira A., Karatash, Kyrgyzstan, December 20, 2009.

³³⁷ Human Rights Watch interview with Alym A., Karatash, Kyrgyzstan, December 12, 2009.

They missed about seven months of school.”³³⁸ Akbar A., from Uzgen, Kyrgyzstan, told Human Rights Watch that each year his family submits a petition to take the children, ages 15 and 12, out of school early, in March, so that the family can travel to Kazakhstan for tobacco farming. The children work with their parents farming tobacco from March-August, when the children return with their mother to begin the school year.³³⁹

Some children missed whole school years if their family did not return to Kyrgyzstan for the winter. Nadira N. worked in Malybai with her children for several tobacco seasons, beginning in 2004. Her daughter, Aigul N. told Human Rights Watch that she missed two years of school, and found it difficult to return to her studies. “I was 12 years old when we went [to Kazakhstan in 2004]. I worked with my mother from morning to night. Now I’m in tenth grade. I want to be a doctor. When we came back in August 2006 it was difficult to study: algebra and geometry were especially hard. Another one of my classmates had similar difficulties, as he had also worked for several years in Kazakhstan,” she said.³⁴⁰

Ulkan U., 41, from Suzak, Kyrgyzstan, told Human Rights Watch that in April 2007 she came to Malybai with her four children, now ages 7, 12, 14 and 17. The family was beginning its third season in tobacco farming. “Our children don’t study,” Ulkan U. said. “The three oldest children work with me, the youngest doesn’t work. Since we left home in 2007, we have worked here cultivating tobacco and have not gone home.”³⁴¹ As described above, Ulkan U. and her children remained in Kazakhstan for three tobacco seasons after falling into a situation of debt bondage when their first employer charged her excessive recruitment fees which he required her repay.

As noted above, the 2006 ILO-IPEC report found that child labor in tobacco farming was prevalent not only among migrant workers’ children but also among Kazakhstani families. Local Kazakhstani children may also not receive full education because they are expected to assist their families. While Human Right Watch did not set out to research this, we did interview one Kazakhstani boy, 15, who said that for the first several months of the school year, which coincide with the end of the tobacco harvest, he attends school only in the morning. In the afternoon, he helps his family string and dry tobacco at home.³⁴²

³³⁸ Human Rights Watch saw this family working together with eight other families on a large farm in Malybai in October 2009 and interviewed them after their return to Kyrgyzstan in December 2009. Human Rights Watch interview with Zhumartbek Zh., Karatash, Kyrgyzstan, December 13, 2009.

³³⁹ Human Rights Watch interview with Akbar A., Koram, June 9, 2009.

³⁴⁰ Human Rights Watch interview with Aigul N., Karatash, Kyrgyzstan, April 6, 2009.

³⁴¹ Human Rights Watch interview with Ulkan U., Malybai, June 17, 2009.

³⁴² Human Rights Watch interview with Aidyn A., Malybai, June 10, 2009.

Accessing local schools

Local officials and local trade union representatives told Human Rights Watch that migrant workers' children could attend local schools without difficulty. However, Human Rights Watch found that for migrant tobacco workers from Kyrgyzstan, lack of proper registration was an obstacle preventing children from attending school in Kazakhstan. Human Rights Watch received conflicting information regarding data for migrant children from Kyrgyzstan enrolled in Almaty province. In a March 2010 letter to Human Rights Watch, the government of Kazakhstan informed Human Rights Watch that its records indicate that 2,540 children of migrants study in schools in Almaty province, but none of those enrolled are from Kyrgyzstan.³⁴³ However, the director of a high school in Chilik told Human Rights Watch that 30 migrant worker children, mainly from Osh and the Osh region of Kyrgyzstan, study in the school.³⁴⁴ Neither the school director nor Human Rights Watch could determine the reason for this discrepancy.

According to one akim [mayor] in a major tobacco-growing district, "Children [of migrant workers] attend classes as auditors, or children who observe in the classroom but who are not actually enrolled. Our government doesn't provide money for their education. Therefore, we try to accommodate and accept them as auditors. After all, they all will just leave afterwards."³⁴⁵ The head of the Almaty Trade Union of Workers in the Agro-Industrial Complex told Human Rights Watch, "Children study in schools. If someone is here legally or illegally, it doesn't matter, they can all study."³⁴⁶ Also, as described above, local school officials told PMI that migrant workers' children can attend Kazakhstani schools with written permission from their parents and the Kazakhstani farmer.

However, in interviews with Human Rights Watch two migrant worker parents who wanted to send their children to local schools specifically cited the lack of residency registration as an obstacle preventing their children from attending. Sabir S. worked in Malybai in 2009 with his wife and two children, 15 and 13, and had worked in Karaturyk in previous years. He told Human Rights Watch, "Our children will go back to Nookat, Kyrgyzstan, in September. Without residency registration the schools here won't take them."³⁴⁷ Zhazira Zh., who also worked in Malybai, also said her 14-year-old daughter was not able to go to school because of the absence of registration. "In order to send Raikan R. to school, we don't have the

³⁴³ Letter from Saudabay, March 29, 2010.

³⁴⁴ Human Rights Watch telephone interview with Ardak Mukhamedjanovna Kyrykbai, director, T. Kenzhebaeva High School, March 19, 2010. Kyrykbai is also the director of the organization, Kazygurt, described below.

³⁴⁵ Human Rights Watch interview with akim, June 9, 2009, name and location withheld.

³⁴⁶ Human Rights Watch interview with Tastan Tokseitov, Almaty, June 8, 2009.

³⁴⁷ Human Rights Watch interview with Sabir S., Malybai, June 11, 2009.

proper documents, just her birth certificate,” she said. One unofficial intermediary from Kyrgyzstan who also farms tobacco and has been working in Kazakhstan for 10 years, said, “They don’t take children into the schools here. ... I don’t know anyone who had children who studied here.”³⁴⁸

Experts confirmed that children of migrant workers face difficulties enrolling in schools in Kazakhstan. According to Dana Zhandayeva, the ILO-IPEC national project coordinator in Kazakhstan, “The absence of residency registration is an obstacle for children to enroll in schools. In addition, teachers often feel reluctant to accept migrant children into their classrooms. Migrant children may struggle academically in the new language and the new academic environment, and teachers are responsible to the Ministry of Education for the performance of each student in their classrooms. Access to local schools for migrant [children] is practically not possible.”³⁴⁹ The 2006 ILO-IPEC study on children in tobacco and cotton farming also noted that “many children from migrant families could not attend school because they did not have legal status in Kazakhstan and they had to work.”³⁵⁰

Some migrant workers who wanted to provide their children with education in Kazakhstan stated that their children, who may struggle with Kazakh language and are often seen as outsiders, have difficulty assimilating into local schools. Nazgul N. and Bazarkan B., who are from Nookat, Kyrgyzstan, but had been living continuously in the village of Lavar with their children since 2006, told Human Rights Watch that they attempted to enroll their youngest child, eight, in a local school, but that they stopped sending him because the other children beat him and they felt it was not safe. Their oldest children, aged 12, 14 and 17, have not attended school since 2006.³⁵¹

A union organizer who works to protect the interests of migrant workers from Kyrgyzstan working in agriculture in the Almaty province told Human Rights Watch, “While there are children [of migrant workers] who study in school, they are children of those migrant workers who more or less permanently live in Kazakhstan.”³⁵² Zhandayeva similarly stated, “Only children of migrant workers who remain in Kazakhstan continuously for several years will have the opportunity to study.”³⁵³ Abdykapar Tuyaliev, a representative of Kyrgyzstan’s State

³⁴⁸ Human Rights Watch interview with Chinara Ch., Malybai, June 11, 2009.

³⁴⁹ Human Rights Watch interview with Dana Zhandayeva, Almaty, November 12, 2009; and Human Rights Watch email exchange with Dana Zhandayeva, February 26, 2010.

³⁵⁰ ILO-IPEC and CSPO, “Child Labor in Tobacco and Cotton Growing in Kazakhstan,” p. ix.

³⁵¹ Human Rights Watch interview with Nazgul N. and Bazarkan B., Lavar, June 10, 2009.

³⁵² Human Rights Watch interview with union organizer, Chilik, Kazakhstan, June 17, 2009; out of concerns for his safety, the union organizer asked not to be named.

³⁵³ Human Rights Watch interview with Dana Zhandayeva, Almaty, November 12, 2009.

Committee on Migration and Employment at the consulate in Almaty, also confirmed this.³⁵⁴ The director of a school in Chilik who told Human Rights Watch that 30 migrant worker children from Kyrgyzstan study in the school, told Human Rights Watch that she requires that the children stay for the entire school year.³⁵⁵

The only migrant worker parents interviewed by Human Rights Watch who had children who enrolled in a local school were those who stayed in Kazakhstan continuously. Dinara D. told Human Rights Watch that she and her family had been coming to Kazakhstan for ten years, always working with the same landowner, farming tobacco and vegetables. Dinara D. from Karasuu, Kyrgyzstan told Human Rights Watch, “Our children go to school in Chilik. They are in the ninth and tenth grades. They study in Kazakh. Over the winter they go home [and also go to school].”³⁵⁶

4.3 Response of the Government of Kazakhstan to Migrant Child Labor

In correspondence with Human Rights Watch, the government of Kazakhstan reported 911 incidents of child labor in 2009 and 1,202 incidents in 2008. An unspecified number of cases of child labor occurred in tobacco fields in Almaty province. The government did not elaborate on the methodology of these findings (see Appendix C).³⁵⁷

In response to the problem of child labor and in conjunction with its ratification of the ILO Worst Forms of Child Labour Convention in 2003, the government has developed a number of national programs and has established inter-agency groups tasked with addressing child labor. Since 2004, the government of Kazakhstan has participated in an ILO-IPEC regional program aimed at contributing to the elimination of the worst forms of child labor.³⁵⁸ Within the scope of this project, the government established, in 2006, a National Coordinating Council on Child Labor under the Ministry of Labor and Social Protection, which brings together representatives from relevant ministries and government agencies working on child labor as well as representatives from trade unions and the employers’ confederation.³⁵⁹ The Coordinating Council’s responsibilities include: coordination and guidance of activities

³⁵⁴ Human Rights Watch interview with Abdykapar Tuyaliev, Almaty, June 10, 2009.

³⁵⁵ Human Rights Watch telephone interview with Ardak Mukhamedjanovna Kyrykbai, March 19, 2010.

³⁵⁶ Human Rights Watch interview with Dinara D., Chilik, June 17, 2009.

³⁵⁷ Letter from Saudabay, March 29, 2010.

³⁵⁸ The program is called “CAR Capacity-Building Project: Regional Programme on the Worst Forms of Child Labour.” ILO Committee of Experts on the Application of Conventions and Recommendations, CEACR: Individual Direct Request concerning Worst Forms of Child Labor Convention, 1999 (No. 182), Kazakhstan (ratified 2003) Submitted 2009.

³⁵⁹ Written Replies by the Government of Kazakhstan Concerning the List of Issues (CRC/C/KAZ/Q/3) Received by the Committee on the Rights of the Child Relating to the Consideration of the Second and Third Combined Periodic Report of Kazakhstan, April 17, 2007.

regarding eradication of the worst forms of child labor; dissemination of information; and integration of the issue of child labor and its worst forms in the activities of various agencies.³⁶⁰

In 2007, the government also created a focal unit for child labor within the Ministry of Labor and Social Protection, called the National Information and Resource Centre on the Problems of Child Labor. This agency prepares reports on Kazakhstan's implementation of the Worst Forms of Child Labor Convention and the ILO Minimum Employment Age Convention.³⁶¹ According to Dana Zhandayeva of the ILO-IPEC office in Kazakhstan, the Inter-Agency Commission on Minors' Affairs and Protection of their Rights under the Government of the Republic of Kazakhstan, which coordinates all agencies working on children and children's rights, is also tasked with addressing child labor among other concerns.³⁶²

Together with ILO-IPEC, a number of Kazakhstani government agencies, the Federation of Trade Unions, and the Confederation of Employers created a plan of action for combating the worst forms of child labor in Kazakhstan from 2009-2011. The plan's priority areas are child labor in agriculture and the informal sector in cities. Specific actions include: creating of a system for monitoring child labor; conducting information campaigns to raise awareness about child labor among the public, government officials and with families; creating alternative educational programs; ensuring biannual meetings of the National Coordinating Council; and developing and implementing policies and laws.³⁶³ The plan mentions one project targeted specifically at migrant child workers, in the context of the ILO-IPEC action programme. Under the "Enrolling children in educational programs," project heading, the plan envisions educational and other alternative programs in southern Kazakhstan for child migrant workers. This project also includes "the opening of a support center for children in Almaty province."³⁶⁴

These support centers are also a component of a national program called "Children of Kazakhstan 2007-2011," designed to improve the lives of children. Two centers, one in Almaty province and one in Southern Kazakhstan province, were established to reduce the use of child labor and eliminate the worst forms of child labor. The activities of these centers

³⁶⁰ ILO Committee of Experts on the Application of Conventions and Recommendations, CEACR: Individual Direct Request concerning Worst Forms of Child Labor Convention, 1999 (No. 182), Kazakhstan (ratified 2003) Submitted 2009.

³⁶¹ Human Rights Watch interview with Dana Zhandayeva, Almaty, November 12, 2009.

³⁶² *Ibid.*

³⁶³ ILO-IPEC, Ministry of Labor and Social Protection of Kazakhstan, General Prosecutor's Office of Kazakhstan, et al., "Joint Plan of Work for Combating the Worst Forms of Child Labor and Realizing ILO Convention 182 in Kazakhstan for 2009-2011," on file with Human Rights Watch.

³⁶⁴ *Ibid.*, p. 9.

are described in detail in a March 29, 2010 letter from the government of Kazakhstan, which can be found in Appendix C of this report. As another measure to combat child labor, the government instructed local government officials to create a unified database of children employed illegally; hold accountable employers using child labor; and cooperate with other agencies in preventing the worst forms of child labor. The government did not specify how it addresses the specific concerns related to migrant workers in these policies.³⁶⁵

The government of Kazakhstan also informed Human Rights Watch that the Ministry of Education and Science contributed recommendations to projects under the Ministry of Employment and Social Protection supporting agricultural workers. The recommendations called for “constant monitoring of child labor, including the elimination of child labor in cotton and tobacco farming, uncovering cases of child labor, concluding memoranda with employers to create safe conditions for child labor.”³⁶⁶

However, based on the information available to Human Rights Watch, we believe that these initiatives lack sufficient focus to address the particular concerns regarding child labor among migrant workers. This view is shared by an international expert working on migrant workers and child labor in Kazakhstan told Human Rights Watch that despite these measures, coordination among agencies remains poor, and the government lacks sufficient knowledge and capacity to effectively address child labor.³⁶⁷ Interviewees in the 2006 ILO-IPEC study also considered the government’s response to child labor inadequate, especially for migrant families, including children, who are “the most vulnerable.”³⁶⁸

4.4 Response of Philip Morris International and Philip Morris Kazakhstan to Child Labor

PMI has vigorously articulated a policy opposing child labor in tobacco. Its website states that the company is “opposed to child labor playing any part in [its] industry.”³⁶⁹ PMI’s Corporate Code of Conduct states that PMI and its affiliates do not engage in or condone child labor and that employees will “work with others... to progressively eliminate these abuses in the labor market related to our business supply chain.”³⁷⁰ In a November 10, 2009 letter to Human Rights Watch PMI stated that “Philip Morris International and its affiliates,

³⁶⁵ Letter from Saudabay, March 29, 2010.

³⁶⁶ Ibid.

³⁶⁷ Human Rights Watch interview with international expert, Almaty, November 2009; exact date withheld.

³⁶⁸ ILO-IPEC and CSPO, “Child Labor in Tobacco and Cotton Growing in Kazakhstan,” pp. 21-22.

³⁶⁹ Philip Morris International, Inc., “Child Labor,” undated, http://www.philipmorrisinternational.com/PMINTL/pages/eng/community/Child_labor.asp.

³⁷⁰ Letter from Hurwitz, November 10, 2009.

including Philip Morris Kazakhstan, have policies and procedures in place that seek to prevent child labor....”³⁷¹ In a November 13, 2009 meeting with Human Rights Watch in Almaty, Kazakhstan, PMI and PMK executives reiterated that PMI has a zero tolerance policy on child labor.³⁷² As described in the previous chapter, PMI’s Good Agricultural Practices (GAP), or set of requirements it expects its suppliers worldwide to implement, prohibit tobacco leaf suppliers from using child labor on their farms, among other requirements.

PMI and PMK have implemented monitoring, training and alternative programs designed to detect and prevent child labor in tobacco in Kazakhstan. Despite these efforts, child labor remains a serious concern in tobacco farming. As noted above, Human Rights Watch documented 72 incidents of child labor in 2009 and found an acceptance of the practice among migrant workers and in local communities. In a January 14, 2010 letter to Human Rights Watch, PMI indicated that PMK agronomists had reported 22 incidents of child labor on farms from which PMK purchases tobacco in 2009. The letter further stated that although PMI and PMK believe that “the policies and procedures we have adopted and implemented have had a direct impact on reducing child labor on tobacco farms,” 22 incidents of child labor are not acceptable.³⁷³

Human Rights Watch recognizes that PMI and PMK have made efforts to combat child labor in Kazakhstan but believes that there is much more the companies need to do. PMI and PMK have an important role to play in preventing child labor. In addition to the key structural changes described in the previous chapter related to labor terms and conditions, PMI and PMK should implement other specific measures. These include improved and expert monitoring, additional awareness raising for migrant workers and farmers, support of school attendance for migrant workers’ children, and support of sustained, accessible alternative educational and leisure programming for children of migrant workers. In meetings and correspondence with Human Rights Watch, PMI stated its intention to strengthen its efforts to prevent child labor, including by working with a third-party company with expertise in monitoring and supporting programs to provide alternative educational or other programs for children.³⁷⁴

³⁷¹ *Ibid.*

³⁷² Human Rights Watch interview with PMI and PMK executives, Almaty, November 13, 2009.

³⁷³ Letter from Hurwitz, January 14, 2010.

³⁷⁴ Human Rights Watch interview with PMI and PMK executives, Almaty, November 13, 2009; letter from Hurwitz, November 10, 2009; and letter from Hurwitz, January 14, 2010.

Monitoring by PMK

As described above, detecting and reporting incidents of child labor are key elements of the monitoring conducted by PMK agronomists to ensure farmers' compliance with PMI's Good Agricultural Practices (GAP) policy. As part of this, PMK maintains a record of all farms hiring migrant workers, at least in part in recognition of the more frequent use of child labor among migrant workers. In 2009, there were four PMK agronomists responsible for monitoring 519 farms in the Enbekshikazakh district.

PMK agronomists recorded a total of 22, 36 and 54 instances of child labor in 2009, 2008, and 2007, respectively. PMK acknowledged these figures might not be comprehensive because in some instances families may hide children when they see the agronomist arriving.³⁷⁵ Prior to 2007, there was no formal recording system, although, according to PMI "child labor prevention was already a central part of PMK's GAP program and its regular training for farmers."³⁷⁶

In the instances of child labor identified by PMK agronomists in 2009, the farmer was warned that repeat incidents would result in termination or discontinuation of his contract and the name and identification number of the farmer and the location are recorded in a book. PMK discovered a repeat violation on one farm in 2009 and intends to discontinue its relationship with that farmer in 2010.³⁷⁷

Migrant workers interviewed by Human Rights Watch reported a range of experiences with PMK agronomists. Some migrant workers reported seeing a PMK agronomist regularly, at least once a month or more frequently.³⁷⁸ Others saw an agronomist only a few times during the season, or not at all, as the following cases illustrate. Some of these workers had children working together with them in the fields. Zhanyl Zh., who worked in Malybai with her husband and adult children, told Human Rights Watch, "The Philip Morris [Kazakhstan] agronomist comes a few times per year. He looks at how the tobacco is growing. He tells us when to water, when to fertilize."³⁷⁹ According to Aym A., who in 2009 worked together with his wife and 14-year-old daughter in the village of Karaturyk, "While we were actually working, no agronomist came to the fields. At the beginning, there was a Russian man, an agronomist

³⁷⁵ Human Rights Watch interview with PMI and PMK executives, Almaty, November 13, 2009.

³⁷⁶ Letter from Hurwitz, November 10, 2009.

³⁷⁷ Human Rights Watch interview with PMI and PMK executives, Almaty, November 13, 2009; letter from Hurwitz, November 10, 2009; and letter from Hurwitz, January 14, 2010.

³⁷⁸ Human Rights Watch interview with Akdana A. and Iskender I., Nookat, Kyrgyzstan, August 5, 2009; Human Rights Watch interview with Chingiz Ch., Malybai, June 12, 2009; Human Rights Watch interview with Ruslan R., Malybai, September 25, 2009; and Human Rights Watch interview with Bekbolot B., Koram, June 8, 2009.

³⁷⁹ Human Rights Watch interview with Zhanyl Zh., Malybai, June 12, 2009.

from Philip Morris [Kazakhstan]. People told us that he was replaced by someone else, but we never saw him [the replacement].”³⁸⁰ Sharapat Sh., who worked with her adult son and 15-year-old daughter in Malybai in 2009, told Human Rights Watch, “No one [from Philip Morris Kazakhstan] ever came to see us.”³⁸¹

Human Rights Watch interviewed one family of migrant workers who stated that the PMK agronomist raised concern directly about children working. Nursuluu N., from Uzgen, Kyrgyzstan, who was working in Malybai in 2009 with her son, 11, daughter, 12, niece, 17, and her daughter-in-law, said, “A man from Philip Morris [Kazakhstan] comes, and gets angry when the children are working. He says, ‘I don’t want to see them!’”³⁸² Her daughter-in-law confirmed the visits of the agronomist and the inspecting for child labor, “The agronomist comes almost every day and asks how we are getting along with the landowner. When [inspection] commissions come, the children simply [stop working] and start to play.”³⁸³

Training and awareness-raising by PMK

PMI and PMK executives told Human Rights Watch that PMK agronomists conduct four training sessions per year for all farmers contracting with PMK. The trainings always include prevention of child labor.³⁸⁴ Farmers are required to attend and to confirm their participation by signature. PMI and PMK executives also stated that “workers also usually attend, but they don’t sign in.”³⁸⁵

However, no migrant workers whom Human Rights Watch asked about trainings and instructional materials indicated that they had participated in any trainings, and only one migrant worker stated that she had been given instructional materials, a brochure about pesticide use.³⁸⁶ Alym A., who worked in 2009 in Karataryk said, “There were no trainings about tobacco. No one gave us any kinds of brochures.”³⁸⁷ Nurdin N., who also worked in 2009 in Karataryk said, “There were no trainings of any kind. What, trainings to teach us something? How to harvest tobacco? No, nothing like that. And they didn’t give out any [instructional] materials.”³⁸⁸ Sharapat Sh., who worked in Malybai in 2009 said, “There were

³⁸⁰ Human Rights Watch interview with Alym A., Karatash, Kyrgyzstan, December 12, 2009.

³⁸¹ Human Rights Watch interview with Sharapat Sh., Karatash, Kyrgyzstan, December 13, 2009.

³⁸² Human Rights Watch interview with Nursuluu N., Malybai, June 13, 2009.

³⁸³ Human Rights Watch interview with Aisha A., Malybai, June 13, 2009.

³⁸⁴ Human Rights Watch interview with PMI and PMK executives, Almaty, November 13, 2009

³⁸⁵ Ibid.

³⁸⁶ Human Rights Watch interview with Gulumkan G., Koram, September 23, 2009.

³⁸⁷ Human Rights Watch interview with Alym A., Karatash, Kyrgyzstan, December 12, 2009.

³⁸⁸ Human Rights Watch interview with Nurdin N., Karatash, Kyrgyzstan, December 12, 2009.

no seminars. No one gave out any handouts or brochures.”³⁸⁹ Umut U., who worked in 2009 in Malybai with her children, also said, “There were no trainings. They also didn’t give out any brochures. No one teaches us how to cultivate tobacco.”³⁹⁰

The government of Kazakhstan, PMI and PMK should enhance education for both farmers and migrant workers regarding the consequences of child labor. They should also ensure access to education and other programs for children, and insist on children’s attendance at school.

Prevention through education and other alternative programs for children

During the November 13, 2009 meeting with PMI and PMK executives, one PMI official told Human Rights Watch that according to the department of education in Almaty province and local schools in the Enbekshikazakh district, there are five different documents required for children to be enrolled in schools, including local residency registration, which irregular migrant workers do not have. However, school officials also told PMI representatives that “the majority of schools accept migrants’ children in any case, requiring only written requests from the farmer and the migrant worker parent, and a birth certificate.”³⁹¹ This finding differed significantly from the information provided by the government of Kazakhstan as well as Human Rights Watch’s findings regarding the ease of access to schools for migrant worker children, as described above. Education officials also told PMI that local schools have summer programs for children, but only for those who are officially enrolled.³⁹²

In reality, children of migrant workers in Kazakhstan not only have limited opportunities to attend school but also in the summer have no access to programs or activities that would serve as alternatives to working. PMK funded a Child Labor Prevention Program from June to August 2007 that was implemented by the Eurasia Foundation of Central Asia (EFCA) through grants to local NGOs. The program came at the initiative of PMK, which approached the foundation with a project to address child labor.³⁹³ EFCA organized four 15-day summer camps for 337 children of migrant workers and 263 children of local tobacco farmers. According to PMI the project “was completed as planned,” and “the results were viewed as a success in that the children received training, enjoyed the activities, and most important, were not engaged in child labor.”³⁹⁴ EFCA President Jeff Erlich described one of the

³⁸⁹ Human Rights Watch interview with Sharapat Sh., Karatash, Kyrgyzstan, December 13, 2009.

³⁹⁰ Human Rights Watch interview with Umut U., Karatash, Kyrgyzstan, December 13, 2009.

³⁹¹ Human Rights Watch interview with PMI and PMK executives, Almaty, November 13, 2009.

³⁹² Ibid.

³⁹³ Human Rights Watch interview with Jeff Erlich, president, Eurasia Foundation of Central Asia, Almaty, March 31, 2009.

³⁹⁴ Letter from Hurwitz, November 10, 2009.

challenges the program faced: Many farmers did not support the summer camps, and in at least one instance a farmer drove to a camp and attempted to bring the children back to the farm, saying, for example, “Give us the kids back. We pay for them, and you are taking them away.”³⁹⁵ PMK decided not to continue its support of the summer camps program.³⁹⁶ A PMI executive told Human Rights Watch that the company “found there to be too much possible risk” with respect to the safety of children at camps in remote locations.³⁹⁷

Although many migrant workers with children in Kazakhstan interviewed by Human Rights Watch had worked repeatedly for many years, only one woman, an intermediary from Kyrgyzstan who had worked for 10 years, stated that she knew about the summer program in Chilik sponsored by PMK and knew children who had attended.³⁹⁸ Other families interviewed by Human Rights Watch, and specifically asked about summer programs, said that they had never heard of such programs.

Going forward, PMI plans to “expand their working relationships with local akimiyats [local government] to improve the situation for migrant workers’ children,” but did not elaborate as to specific steps. They also intend to evaluate possible options regarding alternative education or leisure programs for children of migrant workers, such as the summer camp program, possibly through NGOs or local schools.³⁹⁹ In March 2010, Philip Morris International executives told Human Rights Watch that Philip Morris Kazakhstan had begun a discussion with the ILO-IPEC office in Almaty about these types of activities.⁴⁰⁰

³⁹⁵ Human Rights Watch interview with Jeff Erlich, Almaty, March 31, 2009.

³⁹⁶ Letter from Hurwitz, November 10, 2009.

³⁹⁷ Human Rights Watch interview with PMI and PMK executives, Almaty, November 13, 2009.

³⁹⁸ Human Rights Watch interview with Chinara Ch., Malybai, June 11, 2009.

³⁹⁹ Human Rights Watch interview with PMI and PMK executives, Almaty, November 13, 2009.

⁴⁰⁰ Human Rights Watch interview with Even Hurwitz and Ez Mazou, Director Government Affairs Stakeholder Outreach, PMI, New York, March 2, 2010.

Recommendations

To the Government of Kazakhstan

Regarding child labor

- Rigorously enforce existing laws prohibiting child labor in tobacco farming, including by allocating resources to ensure a sufficient number of inspectors to guarantee effective implementation of child labor laws through proactive monitoring and unannounced on-site inspections, and by imposing effective penalties against employers who violate the law.
- Conduct regular information sessions and trainings for children, parents, teachers, employers, local officials, labor inspectors and other relevant actors concerning the hazards of child labor in tobacco farming.
- Ensure that all children, including children of migrant workers, are able to access existing schools and summer educational programs, including through programs to identify migrant children who are not in school. Ensure that residency registration is not a requirement for school enrolment and identify and address other barriers that may inhibit enrollment and attendance. Work together with Philip Morris International and Philip Morris Kazakhstan to develop alternative summer programs for children, including children of migrant workers, as a means of providing alternatives to work.

Regarding enforcement of labor and other laws

- Rigorously investigate and prosecute employers who retain passports and other identity documents, force employees to work long hours and without days off, employ child labor, or commit other violations of Kazakhstani law.
- Rigorously enforce the legal requirement for employers to pay regular wages and to provide written employment contracts to workers, including migrant workers.

Regarding effective remedies for abuse

- Establish accessible, effective complaint mechanisms and rigorously investigate complaints of abuse made by migrant workers, irrespective of a migrant workers' contractual status or migration status.
- Ensure that migrant workers who access the redress mechanism or make complaints of abuse are protected against reprisals by their employer or the landowner for whom they work.

- Ensure the same protections and access to redress mechanisms to all migrant workers, including those working informally.
- Expand the authority of the labor inspectorate to investigate fully complaints of any labor law violations, including wage violations, even in cases in which workers are employed informally.
- Ensure that the labor inspectorate has sufficient staff trained in addressing the complaints of migrant workers, including in cases when there is no employment contract or no work permit.
- Train prosecutors to more rigorously investigate complaints made by migrant workers, including criminal as well as labor claims. Emphasize that all labor claims should be pursued, even in the absence of written labor contracts, and encourage pursuit of evidence other than written labor contracts to demonstrate employment relations.
- Train judges to consider all cases of alleged violations of the rights of migrant workers, even those in which workers do not have employment contracts to demonstrate formal work relations, including by emphasizing the possibility that other evidence may be sufficient to prove employment relations.

Regarding migration policy

- Facilitate the lawful hiring of migrant agricultural workers each year depending on the actual need of employers for migrant agricultural workers, including in the Enbekshikazakh district of Almaty province.
- Allow workers to apply for a work permit directly with a government agency, such as the local departments of the Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan. Workers should be given a reasonable period following their entry into Kazakhstan to apply for a work permit and then an additional period to identify an employer.
- Simplify the registration process to allow migrant workers to register their stay directly with local administrative agencies, within a reasonable period after their arrival in Kazakhstan. Residency registration should not be dependent on an employer.

Regarding rights education

- Take immediate action to inform and educate migrant workers arriving in Kazakhstan of their rights under Kazakhstani law.
- Conduct information and rights awareness campaigns for arriving migrant workers.
 - Consider organizing these campaigns in conjunction with employers, NGOs, diaspora groups, and embassies of governments whose citizens work in Kazakhstan.

- As part of rights-awareness training, ensure that migrant workers are aware of the complaint mechanisms available to them and the location and contact information of relevant offices.
- To the greatest extent possible, written materials should be available in the languages of the migrants.

Regarding international law

- Sign and ratify the following international treaties relevant to protection of migrant workers and comply with treaty-body reporting requirements and recommendations
 - The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
 - The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

To Philip Morris International

As the parent company, Philip Morris International has a responsibility for ensuring implementation of these recommendations for all of its global subsidiaries, including for Philip Morris Kazakhstan.

- Revise the Good Agricultural Practices (GAP) Guidelines and Assessment to include the protection of labor and other rights of workers employed by suppliers to Philip Morris International and its subsidiaries. In the meantime, all Philip Morris International subsidiaries, including Philip Morris Kazakhstan, should implement these provisions directly and without delay:
 - Signed, enforceable employment contracts with all workers (not just “head of household”) in a language which the worker understands if that language is different from the official language.
 - No less than monthly wage payments to all workers, not just the “head of family,” as required under Kazakhstani law.
 - A strict prohibition on suppliers retaining workers’, including migrant workers’, passports or other identity documents, without workers’ informed, written consent, in a language which they understand.
 - Limits on working hours for workers; guarantee of at least one day off per week.
 - Provision of potable water in sufficient quantities for all workers every day.
 - Provision of adequate sanitary facilities, including hand and other washing facilities, to all workers, including those living in remote areas.

- Provision of adequate housing facilities, when the employer provides housing as an element of compensation.
- Strict enforcement of safety procedures for use and handling of all toxic substances such as pesticides and fertilizers, including the provision of protective clothing.
- Expand the GAP Guidelines and Assessment on Integrated Pest Management to include:
 - Direct provision to all workers of first aid and safe-handling instructions for all pesticides *specific* to each pesticide used in a particular season, in a language that the worker understands. Direct provision to all workers engaged in handling and applying pesticides of all necessary personal protective equipment as required by the label instructions specific for each pesticide used in a particular season. This equipment should be provided for free, without any cost to the worker.
- Enhance programs to eliminate child labor in tobacco including by:
 - Working with federal and local government officials to ensure full and free access for children of migrant workers to local schools. Special measures should be taken to ensure that all children of school age who are found working are enrolled in school or a suitable academic alternative, in line with Kazakhstan law that mandates primary and secondary schooling.
 - Implementing each year free summer programs for children of migrant workers and local children, as an alternative to working in tobacco. These programs should be accessible locally, as parents may be reluctant to send their children to overnight summer camps.
 - Training agronomists, suppliers, and workers on the hazards to children working in tobacco. Utilize outside experts on child labor and the worst forms of child labor to conduct these trainings where appropriate.
 - Training agronomists, suppliers, and workers on the importance of education for children, including for children's long-term future success and to escape the cycle of poverty in which many migrant workers find themselves.
 - Work with employers who are found to use child labor to bring their practices into compliance with national law and international norms. Discontinue contracts with farmers that repeatedly violate laws prohibiting child labor.
 - Where possible, cooperate with the ILO-IPEC, non-governmental organizations, and others undertaking efforts to prevent child labor.
- Establish within Philip Morris International an internal monitoring department responsible for preventing and remedying a range of rights issues including: child labor, forced labor, debt bondage, illegal passport retention, non-provision of contracts, non-payment of wages, excessively long working hours and lack of days off, lack of potable water, lack of adequate hand washing and other sanitary facilities, and lack of adequate housing.

- Ensure an adequate number of monitors to conduct regular and rigorous monitoring of all farms, including through unannounced visits.
- Ensure monitors are sufficiently independent from local suppliers.
- Set up a complaint mechanism whereby workers are able to submit complaints directly to PMI subsidiaries about any concerns about labor or other violations
- Ensure that workers are able to submit complaints and speak with monitors, including third party monitors, without fear of repercussions from PMI, its subsidiaries or suppliers.
- Immediately investigate in a fair and transparent manner all reports of abuse reported by Philip Morris International monitors, agronomists, third parties, workers, including migrant workers, or others.
- To the greatest extent possible, ensure that workers, including migrant workers, employed by suppliers be present at the delivery point for the end-of-season delivery of tobacco to ensure a degree of transparency in the purchasing process.
- Ensure qualified, experienced independent third-party monitoring of implementation of all of the above-stated policies.

Acknowledgements

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Human Rights Watch expresses its gratitude to the migrant workers who shared their stories with us. Human Rights Watch also thanks the many individuals and organizations in Kazakhstan that contributed to this report with their time, expertise and information.

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300
Email: hrwnyc@hrw.org

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APPENDIX A: CORRESPONDENCE BETWEEN HUMAN RIGHTS WATCH AND PHILIP MORRIS INTERNATIONAL

October 13, 2009

Louis C. Camilleri
Chief Executive Officer
Philip Morris International, Inc.
120 Park Avenue
New York, NY 10017

Dear Mr. Camilleri,

Please accept my regards on behalf of Human Rights Watch.

Human Rights Watch is conducting research on labor rights in the agricultural sector in Kazakhstan. We are interested in learning more about the policies and practices Phillip Morris has in place regarding migrant workers and regarding children in Kazakhstan.

In June of this year, we were in contact with Mr. Dmitry Belousov, Corporate Affairs Director for Philip Morris Kazakhstan, LLP, regarding a meeting. Mr. Belousov informed us that his office would need several weeks to prepare before such a meeting could take place.

As our relevant staff will again be in Kazakhstan in mid-November, I am writing to kindly request your assistance in helping facilitate a meeting between Jane Buchanan, senior researcher in the Europe and Central Asia division of Human Rights Watch, and Viktoriya Kim, associate in the Europe and Central Asia division, and Mr. Belousov or other senior staff of Philip Morris Kazakhstan.

During our research in April, June, September, and October 2009 in Kazakhstan, we identified the following concerns:

- Local farmers or landowners of farms producing tobacco for Philip Morris regularly did not provide written contracts, as required under Kazakh law, to migrant workers employed to farm tobacco on their farms.
- Local farmers or landowners of farms producing tobacco for Philip Morris regularly confiscated passports or other identity documents of migrant workers employed to farm tobacco on their land. In the absence of identity documents, migrant workers were confined to the farms on which they worked.
- Migrant workers farming tobacco and employed by local farmers on farms producing tobacco for Philip Morris did not receive regular wages, as required under Kazakh law. In

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previous years, migrant workers received only one lump-sum payment from their employer at the end of the season, and workers employed this year similarly anticipated receiving only one payment at the end of the season. In many cases, the costs of various expenses (such as food, medical treatment, farming materials) incurred by migrant workers are deducted from this sum by their employers.

- This payment structure has rendered some migrant workers into a situation of debt bondage, in which the workers must remain and work a subsequent season for the farmer or land owner in order to pay off the debts incurred.
- In at least two instances, migrant workers employed on farms producing tobacco for Philip Morris have been trafficked into forced labor. The workers had been deceived by an intermediary and then delivered to a local farmer or landowner who paid the intermediary for delivering the migrant worker. The landowner then confiscated the worker's passport and forced the worker to farm tobacco.
- Migrant workers on farms producing tobacco for Philip Morris stated that they had received no information about safe handling of pesticides or the potential risks due to pesticide exposure. They also did not possess any protective clothing to wear during pesticide application.
- On farms producing tobacco for Philip Morris, Human Rights Watch frequently identified a lack of potable water, poor or no sanitary facilities (no toilets or hand washing facilities), and often substandard living conditions for workers.
- On at least five farms producing tobacco for Philip Morris, Human Rights Watch saw children working. Work performed by children included: planting, watering, weeding, fertilizing, harvesting, and drying tobacco. In many cases children working on tobacco farms miss some or all of the academic school year in their home countries and do not attend school in Kazakhstan.

In this regard, we are interested in the following information:

- Do Philip Morris International and Philip Morris Kazakhstan, LLP have policies or procedures to prevent and alleviate poor labor conditions, labor rights violations, and other human rights violations, such as the those described above? What are these policies or procedures?
- How do Philip Morris International and Philip Morris Kazakhstan, LLP monitor the treatment of workers on farms producing tobacco for Philip Morris Kazakhstan, LLP?
- Do Philip Morris International or Philip Morris Kazakhstan, LLP have a mechanism whereby workers employed on farms producing tobacco for Philip Morris Kazakhstan, LLP may submit complaints regarding labor practices or other concerns?
- Have Philip Morris International or Philip Morris Kazakhstan, LLP identified or received any reports of labor violations or other concerns about the treatment

of workers on its tobacco fields either from workers or from others? If so, what actions have Philip Morris International or Philip Morris Kazakhstan, LLP taken?

- What policies or procedures do Philip Morris International and Philip Morris Kazakhstan, LLP have in place regarding the use of child labor in tobacco farming in Kazakhstan?
- Were any incidents of child labor reported to Philip Morris Kazakhstan, LLP or Philip Morris International in 2006, 2007, 2008, or 2009? If so, how did they respond to these reports?
- What measures do Philip Morris Kazakhstan, LLP or Philip Morris International take to ensure that children whose families are involved in tobacco farming are able to attend school?

We would also be grateful for information on the duration and scope of the previous joint project between Philip Morris Kazakhstan, LLP and the International Labor Organization to combat the worst forms of child labor, in particular:

- How many children were placed in schools and summer camp programs during this project?
- What other activities did this project involve?
- What was the duration of the project and why was it terminated?
- Does Philip Morris Kazakhstan, LLP plan any similar projects in the future undertaken either in conjunction with international organizations, the government of Kazakhstan or independently?

We would be grateful to receive brief data on Philip Morris Kazakhstan, LLP tobacco production in Kazakhstan, including:

- the total volume of tobacco produced in Kazakhstan for the years 2006, 2007, 2008, and
- the price per tobacco sort for 2006, 2007, 2008, and 2009.

We would also be grateful for data on how these numbers compare to Philip Morris International's tobacco production and pricing in other countries.

We would also like to learn about the system used to determine the price Philip Morris International pays for tobacco in Kazakhstan and other countries.

As you may know, Human Rights Watch is a nongovernmental organization that monitors human rights in more than 70 countries worldwide. We have been monitoring human rights in Central Asia and Russia for many years. We also have done work on workers' rights and migrants' rights in the United States, European Union member states, the Middle East, and Central America.

Ms. Buchanan and Ms. Kim will be in Almaty, Kazakhstan, on November 10 and 11. We hope that a meeting can be arranged with senior Philip Morris Kazakhstan officers on one of these dates. Alternatively, we would be available to meet with you in your New York or other offices.

Should you have any questions regarding this meeting, please feel free to contact me at cartneh@hrw.org or at 212.216.1288.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink that reads "Holly Cartner". The signature is written in a cursive, slightly slanted style.

Holly Cartner
Executive Director
Europe and Central Asia division



PHILIP MORRIS
INTERNATIONAL

FACSIMILE TRANSMISSION

To : Mrs Holly Cartner / Human Rights Watch

Date : November 10, 2009

Fax No : +1.212.736 13 00

Page : 1 of 7

From : Even Hurwitz

Cc :

Philip Morris International Management SA

AVENUE DE RHODANIE 50 · 1007 LAUSANNE · SWITZERLAND · TELEPHONE : +41 58 242 00 00 · TELEFAX : +41 58 242 01 01

www.philipmorrisinternational.com



PHILIP MORRIS
INTERNATIONAL

EVEN HURWITZ
SENIOR VICE PRESIDENT CORPORATE AFFAIRS
PHILIP MORRIS INTERNATIONAL INC.



Holly Cartner
Executive Director, Europe and Central Asia Division
Human Rights Watch
350 Fifth Avenue
34th Floor
New York, New York 10118-3299

November 10th, 2009

Dear Ms. Cartner:

I am writing in response to your October 13, 2009 letter to Louis Camilleri regarding migrant tobacco workers in Kazakhstan and Philip Morris Kazakhstan's policies and practices regarding forced labor and child labor.

As discussed with Ms. Koonce, I have arranged for a meeting on November 13 with Ms. Buchanan and Ms. Kim at the offices of Philip Morris Kazakhstan (PMK). I am providing the following information in response to the questions you raised in your letter in advance of that meeting.

Tobacco Growing in Kazakhstan

Tobacco grown in Kazakhstan is a variety known as "semi-oriental" tobacco that is air-dried, meaning it is cured in the sun. The tobacco is priced relatively high compared to similar tobaccos in the region. For example, the price of one kilogram of tobacco in Kazakhstan is almost twice the price of similar quality tobacco grown in Kyrgyzstan. Unlike other tobacco varieties, such as Burley or Virginia, bulk use of semi-oriental is limited to so-called local brands usually competing in low price segments. In fact, Philip Morris International purchases semi-oriental tobacco only in three countries: Kazakhstan, Moldova and Ukraine.

In Kazakhstan, PMK is the sole purchaser of locally grown tobacco. The production of local tobacco has dramatically declined. In 2001, the local tobacco crop was 10,000 tons. This year PMK estimates that the crop will be approximately 1,500 tons. The reduction in crop yields is also mirrored in reduction in tobacco farms which decreased from slightly more than 2,500 in 2005 to 519 in 2009.

There are several reasons for this decline in local tobacco production. Over the last ten years (until the onset of the financial crisis), Kazakhstan has enjoyed robust economic

growth fueled by natural oil and gas reserves. Among other things, this growth led to large infrastructure projects, a building boom and increased urbanization. Moreover, the government has been providing financial incentives for other agricultural goods (e.g. vegetables). Thus, tobacco farm land has been lost to building and infrastructure projects but also to substitute crops. Also, farmers increasingly take up employment in towns and cities. While for these reasons the supply of locally grown tobacco has already been decreasing, there has also been a massive decline in the demand for "local brands" of cigarettes, i.e., brands that were previously manufactured by the state monopoly and which are the only brands produced by PMK with semi-oriental tobacco. Taken together, these multiple factors explain the significantly reduced number of tobacco farms.

Traditionally, many tobacco farmers, in particular those cultivating an area of more than one hectare, have sought to fulfill their intensive labor requirements with migrant workers principally from Kyrgyzstan. According to estimates of PMK, the number of migrant workers employed by tobacco farmers decreased from over 3,500 in 2007 to approximately 1,300 in 2009, which is largely consistent with the decline in total tobacco production during that time (from 4,690 tons in 2007 to 1,500 tons in 2009). We estimate that of the 519 farms, between 230 and 250 work with migrants.

PMK's Labor Policies and Procedures

Philip Morris International and its affiliates, including PMK, have policies and procedures in place that seek to prevent child labor and forced labor. Those policies are stated in our Corporate Code of Conduct which is available on our internet site at www.pmintl.com. The Code states that PMI and its affiliates do not engage in or condone child labor or forced labor and that our employees will "work with others...to progressively eliminate these abuses in the labor market related to our business supply chain." Most relevant to farm workers, PMI's Operations department has developed and implemented Good Agricultural Practices (GAP) that cover a range of issues including child labor, forced labor, proper and safe application of crop protection agents (pesticides), and workplace safety.

Training is an integral component of PMK's GAP program. For example, in 2008, PMK conducted over 500 training sessions for farmers and their workers (both locals and migrants) that covered, among other matters, child labor prevention, instructions on handling pesticides, consequences of exposure to pesticides, "green tobacco sickness," and instructions on handling equipment.

Pesticide Use on Tobacco Farms in Kazakhstan

According to the GAP program, farmers do not apply pesticides as a preventive measure but only when issues with pests or plant diseases arise during the year. Thus, in 2009, pesticides were applied at only 86 of the 519 farms, of which 49 employed migrant workers. As a matter of course, two times per year, all farmers are given training on how to detect plant diseases and how to handle crop protection agents if need be. When PMK agronomists supply relevant farmers on-site with pesticide solutions for application, they

give specific safety instructions to the workers who will do the actual spraying of the solution onto the plants, and provide them with protective masks and gloves, as well as rubber boots when needed. The PMK agronomist then supervises the application of the crop protection agents.

PMK's Monitoring of Tobacco Farms

Monitoring in the form of unannounced "audits" of farms is an integral part of the GAP program in Kazakhstan. In 2008, 363 such audits were conducted. 171 unannounced audits have been conducted to date this year. The monitoring focuses on compliance with GAP policies, putting a significant emphasis on child labor. We are considering how to more systematically broaden the scope of PMK's monitoring to also cover certain aspects of how workers are treated.

PMK Monthly Meetings with Farmers and Farm Workers

PMK has regular meetings -- at least two to three times per month -- with farmers and their contracted labor force. According to PMK, representatives of migrant workers are present at these meetings and can raise concerns regarding labor conditions and general welfare and safety. However, I recognize that workers may not feel that they are able to raise complaints of abuse or other problems in the presence of farm owners, and the creation of an effective method to allow them to do so is one of the action items we are currently addressing.

Reports of Incidents of Child Labor 2006-2009

As of October 31, PMK agronomists had recorded 21 incidents of child labor for 2009. In each case, the farmer was warned that repeat incidents would result in termination or discontinuation of his contract with the company. Records are made of the name of the farmer on whose land the child was discovered, the exact location of the field and identification number of the farmer. In 20 of these cases, no subsequent violations have been reported on the farms at issue to date. PMK believes to have discovered the first instance of a repeat violation on a farm just last week, and we are considering our action with regard to the farmer in question. In the majority of cases in 2009, the cases involved children of migrant workers (as opposed to children of the farmer) between 9 and 17 years of age who helped their parents with activities such as stringing, weeding or drying tobacco. In one case, a 6-year-old Kyrgyz boy was noticed carrying seedlings. In a few cases, reports were made of minors involved in the harvesting of tobacco.

In 2008 and 2007, a total of 36 and 54 incidents of child labor, respectively, were recorded by PMK agronomists. In 2006, there was no formal recording system in place although child labor prevention was already a central part of PMK's GAP program and its regular training for farmers.

Reports of Forced Labor and Other Incidents Raised in HRW Letter

To my knowledge, prior to your letter, there have been no reports in PMK of migrant workers in the tobacco farms being put into debt bondage, abducted or otherwise coerced into forced labor. If correct, such conduct is of course abhorrent. We are currently considering how to best investigate and address these and the other matters in your letter with the utmost diligence, including the lack of potable water, lack of sanitary facilities, failure to pay for work, the failure to provide training on pesticide handling and/or failure to provide protective clothing, the lack of written contracts, and the keeping of migrant workers' passports. We will discuss our investigative process to date, how we can fully investigate these matters going forward and, most important, the implementation of effective preventative measures with Ms. Buchanan and Ms. Kim.

PMK's Funding of the Summer Camps Program for Children of Tobacco Workers

We believe the program you refer to is the Child Labor Prevention Program implemented by the Eurasia Foundation of Central Asia in the Engbekshikazakh district of Kazakhstan during June-August 2007. EFCA organized four summer camps for 337 children of Kyrgyz migrant workers and 263 children of local tobacco farmers. The program was fully funded by PMK. Three of the four camps were "nature based" (with attendance of 500 of the children) and one was "school based" (with attendance of 100 children). EFCA awarded grants to three local NGOs to administer the camps. The nature based camps included ecological components, sports and games, botany, and fishing. The school based camp included educational components such as computer literacy and English language.

The project was completed as planned. The results were viewed as a success in that the children received training, enjoyed the activities and, most important, were not engaged in child labor. Although PMK decided not to repeat the summer camps program, the company has continued to provide funding to EFCA. In fact, since 2003, PMK has provided over \$1 million in funding to EFCA, including most recently a grant of US \$109,090 to support a project targeted at increasing living standards, youth development and education initiatives in the Enbekshykazakh tobacco growing region.

Tobacco Production in Kazakhstan: Volumes and Pricing

As noted above, PMK is, to our knowledge, the sole purchaser of tobacco in Kazakhstan. The total volume of tobacco produced in Kazakhstan for the years 2006, 2007, 2008 was approximately 8,340 tons, 4,690 tons and 2,129 tons, respectively. As noted above, Philip Morris Kazakhstan expects to purchase the entire tobacco crop of approximately 1,500 tons in 2009.

The chart below indicates the prices per tobacco grade per kg from 2006 to 2009. Prices are expressed in Kazakhsan Tenge (KZT); 100 KZT are roughly \$0.67. In terms of

“tobacco sort”, please note that virtually the entire tobacco production in Kazakhstan consists of semi-oriental tobacco.

2006		2007		2008		2009	
	KZT/Kg		KZT/Kg		KZT/Kg		KZT/Kg
1 P	275.00	1P	275.00	1	275.00	1	280.00
1	255.00	1	255.00	2	230.00	2	250.00
2	205.00	2	210.00	3LB	207.00	3LB	225.00
3	180.00	3	185.00	3V	180.00	3V	190.00
3LB	170.00	3LB	175.00	3/4D	145.00	3/4D	160.00
3V	157.00	3V	160.00	5BG	70.00	5BG	80.00
3D	128.00	3D	120.00				
4D	90.00	4D	120.00				
5BG	60.00	5BG	55.00				

The so-called green leaf weighted average price was 170.3 KZT in 2006, 191.8 KZT in 2007 and 220.4 KZT in 2008. For the 2009 crop, this average can only be calculated after all purchases are completed.

Also as noted, PMI affiliates purchase semi-oriental tobacco only in two other countries: Moldova and Ukraine. The estimated volumes for 2009 are 550 tons and 60 tons, respectively. The prices paid in these countries for semi-oriental are slightly lower than in Kazakhstan.

Semi-oriental tobacco with very similar characteristics is also grown in neighboring Kyrgyzstan. We do not buy tobacco in Kyrgyzstan. It is noteworthy, however that prices in Kazakhstan are almost twice as high. For instance, first grade tobacco costs \$1.80 in Kazakhstan and only \$0.97 in Kyrgyzstan.

The chart below lists the main countries from which we or our suppliers purchase tobaccos used in our products.

Country	Total tobacco crop size (thousand tons)	Average farm size for tobacco (total farm size)	Dominant tobacco type
Brazil	710	2.5 ha (17)	Burley / Virginia
U.S.A.	100	6 ha (60)	Burley
	230	40 ha (200)	Virginia
Indonesia	75	0.5 ha (0.5)	Various
Malawi	220	0.5 ha (2)	Burley
	20	30 ha (200)	Virginia

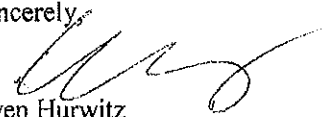
Argentina	40	2.2 ha (20)	Burley
	80	20 ha (120)	Virginia
India	300	2 ha (2)	Various
Mozambique	40	0.5 ha (0.5)	Burley
Turkey	70	1.6 ha (5)	Oriental
Tanzania	60	1 ha (6)	Virginia
Italy	30	1.5 ha (4)	Burley
	50	19 ha (25)	Virginia

The countries above represent the majority of PMI tobacco purchased each year. The remaining tobaccos are sourced from other countries depending on the year including Bulgaria, Canada, China, Colombia, D.R. Congo, Dominican Republic, Ecuador, France, Macedonia, Germany, Greece, Kazakhstan, Lebanon, Malaysia, Mexico, Pakistan, Philippines, Poland, Portugal, Serbia, Spain, Switzerland, Thailand, Ukraine and Zambia.

I hope this information has provided you with answers to some of your questions regarding the policies, procedures and practices of PMK. I want to assure you that Philip Morris International is committed to taking action to prevent child labor and forced labor in the farms from which we buy tobacco in Kazakhstan. We will discuss our investigation and action plans in more detail with Ms. Buchanan and Ms. Kim on the 13th in Almaty. Given the importance with which Philip Morris International views this matter, I will join my colleagues in Almaty to meet with Ms. Buchanan and Ms. Kim.

I would also appreciate the opportunity to meet with you in New York at your convenience to discuss the prevention of child labor and forced labor in tobacco farming globally. Philip Morris International's efforts in this area are not limited to Kazakhstan, and Human Rights Watch's expertise would provide us with important insights and perspectives on these serious issues.

Sincerely,


Even Hurwitz

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300

December 17, 2009

Even Hurwitz
Senior Vice President for Corporate Affairs
Philip Morris International
Avenue de Rhodanie 50
1001 Lausanne
Switzerland



www.hrw.org

**EUROPE AND CENTRAL ASIA
DIVISION**

Holly Cartner, *Executive Director*
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Veronika L. Szente Goldston, *Advocacy Director*
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Wanda Troszczynska van Genderen, *Researcher*
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Emma Sinclair-Webb, *Researcher*
Kathryn Koonce, *Coordinator*
Iwona Zielinska, *Senior Associate*
Yuliya Gorbunova, *Associate*

Dear Mr. Hurwitz,

It was a pleasure to meet you and your colleagues last month in Almaty.

Thank you for your letter of November 10. We are grateful for your responses



PHILIP MORRIS
INTERNATIONAL

FACSIMILE TRANSMISSION

To : Ms Buchanan Human Rights Watch

Date : 14.01.10

Fax No : +1.212.736.13.00

Page : 1 of 9

From : Even Hurwitz

Cc :

Subject :

Philip Morris International Management SA

AVENUE DE RHODANIE 50 · 1007 LAUSANNE · SWITZERLAND · TELEPHONE : +41 58 242 00 00 · TELEFAX : +41 58 242 01 01

www.philipmorrisoninternational.com



PHILIP MORRIS
INTERNATIONAL

EVEN HURWITZ
SENIOR VICE PRESIDENT CORPORATE AFFAIRS
PHILIP MORRIS INTERNATIONAL INC.



Jane Buchanan
Human Rights Watch
Europe and Central Asia Division
350 Fifth Avenue
34th Floor
New York, New York 10118-3299

14th April, 2010

Dear Ms. Buchanan,

On behalf of Philip Morris International (PMI) and Philip Morris Kazakhstan (PMK), I would like to thank you for the constructive meeting in our offices in Almaty on November 13, 2009. I very much appreciated the frank and open discussion we had regarding the treatment of migrant workers, child labor and related matters in the tobacco farms in Kazakhstan.

As I stated in my November 10 letter to Ms. Cartner, PMI and PMK are opposed to and committed to preventing child labor, forced labor and other abusive and illegal conduct towards migrant workers in tobacco farms in Kazakhstan. I want to be very clear that we will not tolerate conduct such as that reported by Human Rights Watch from our suppliers, vendors or contractors.

I have summarized below the findings of our investigation which we reported to you and the measures that PMK is implementing to supplement its existing policies and procedures based on our investigation as well as our discussion with you. We believe that these measures will improve PMK's ability to prevent, become aware of, and act swiftly to rectify, to the extent it can, abusive and illegal labor conduct going forward.

Findings

The information we shared with you during the November 10 meeting was based on an investigation conducted jointly by PMI and PMK, which consisted mainly of visiting over 30 farms that employ or have employed migrant workers and conducting interviews with members of the PMK agronomy team, representatives of schools, local authorities as well as NGOs we have been working with in the past. Although we did not find evidence of all of the worst forms of abuse reported in your letter to us, we remain greatly concerned and are, as noted, taking steps to address the widest range of conduct.

Child labor prevention

As already reported in my November 10 letter, PMK's agronomists reported 21 incidents of child labor during 2009. This was despite an extremely high awareness of PMK's strict position on child labor by farmers and workers alike, which we confirmed during our investigation. In addition, during our investigation, a 16 year old girl acknowledged in discussions with PMI and PMK representatives that she had been working on a tobacco farm throughout the entire season.¹ In total, therefore, we had 22 reports of child labor on the farms from which we purchase tobacco in 2009.

We believe that the policies and procedures we have adopted and implemented in Kazakhstan have had a direct impact on reducing child labor on tobacco farms. However, 22 incidents of child labor in 2009 are not acceptable. Moreover, we recognize that the local attitudes towards child labor are not consistent with our own and that our efforts may be constrained by the knowledge of the farmers of our policies and limitations on our ability to conduct audits without forewarning. Therefore, in order to see whether it is possible to improve our procedures to monitor and enforce our policies against child labor in Kazakhstan, PMI is considering working with a third party company with expertise on monitoring and verifying that agricultural crops are not grown with child or forced labor.

As we discussed, the availability of alternatives to child labor such as educational programs and recreational activities during vacation periods can be an important factor in reducing child labor. In this regard, we have shared with you information on the EFCA summer camp program which PMK funded in 2007 as well as our general learning about the schooling situation. PMK will explore the potential to support programs such as these.

We also looked into the matter of schooling for children of migrant workers. As we explained, schooling for migrant workers' children is only optional in Kazakhstan. In the past, PMK made efforts to simplify the enrollment process in local schools for these children. Our recent discussions with representatives of seven different schools revealed that the actual practice of admitting Kyrgyz migrant children to schools varies significantly from school to school and appears to be largely at the discretion of the school's management. Unfortunately, there are currently no means by which authorities or schools track the attendance of migrant children in Kazakh schools. At the time of our investigation many of the children have already gone back to Kyrgyzstan to resume school there. It was, therefore, difficult to determine the level of attendance earlier in the year, in particular during the months before the summer vacation.

¹ As we discussed with you, we will penalize the farmer in question by terminating our contract with him. However, sharing your concern regarding the migrant worker family on the farm, we will not sever our relationship with the farmer only after the Kyrgyz workers, including the 16 year old girl, have received their share of the crop income and returned back home.

Forced labor

Based on what we have been able to observe, we do not believe that there are common practices qualifying as forced labor. As we describe further below, however, there was one incidence where it appeared that a passport was held against the will of the migrant worker.

Overall, it is our assessment that the Kyrgyz workers we have met and observed work voluntarily and get paid in accordance with the verbal agreements they concluded with the respective farmers. In the over 20 cases where PMI representatives personally talked with Kyrgyz migrant workers - sometimes with farmers present, sometimes not - the workers did not show signs of fear or intimidation. We also asked several Kyrgyz workers who we met without the farmers present whether they had heard about cases of tobacco farmers forcing people to work or "selling" workers to other farmers. None had ever heard of any such cases. Finally, no workers we talked to said that they had experienced any forms of physical abuse from farmers or heard of cases of physical abuse.

We also did not find evidence of debt bondage structures. It is true that workers, domestic and foreign alike, receive the bulk of their pay from the farmers at the end of the season (which is explained by the fact that the majority of their earnings -- and the farmers' payment from PMK -- depends on the crop yield). And although the farmers made advance payments and/or charges for food and other items to the workers, no payments/charges appeared to be made that could put the workers into debt equal or greater to the final payment. To the contrary, based on our investigation, Kyrgyz workers are usually able to save more than half of their net crop income.

Passports

We found that some workers were in possession of their passports, while others were not. In most cases where workers had their passports, the workers had been working on the same farms for several years, reflecting what we understood were long term relationships with farmers. In general, there appeared to be widespread acceptance of farmers holding passports. Indeed, many workers seemed to have never questioned this practice. Workers gave different reasons for this practice, referring to their own situation or speculation. Most workers stated that farmers kept passports to protect against loss or theft, to protect them against alleged harassment from the police, and for registration purposes. Some workers stated, referring to others, that farmers held the passport as a security for advance payments. In the sole instance where coercion was specifically raised, a worker stated that a farmer had refused to return her passport because she was trying to return to Kyrgyzstan due to poor living conditions.² Although this was the only incident that we encountered where a passport was held against the will of the worker, PMK is taking steps as described below to address this practice which presents potential for abuse.

² The passport was returned following instructions from PMK representatives.

Living conditions

During our investigation we visited more than 30 farms employing migrant workers from Kyrgyzstan. Broadly speaking, there appear to be two types of housing available for Kyrgyz workers in Kazakhstan: a simple brick or clay building next to the farmer's house in the village ("village house") and a temporary structure or building on the tobacco field ("fazenda"). Most Kyrgyz migrant workers and their families that we saw lived in a village house.

A village house, as we saw them, typically consisted of a simple building with windows made either of glass or covered by polyethylene, floors often covered by rugs, some mattresses, and a stove/heater. A family of two adults and two or three children occupied one or two rooms. Clean water was available from a pump or a pipe nearby. The toilet facilities are outside of the house, usually consisting of a structure made of wood or other material with a hole in the ground. The farmer's family uses the same toilet facilities and source of water. Although from western standards the housing and toilets are meager, it is our understanding that in most cases Kyrgyz migrant workers' living conditions in the village are within the range of what would be considered normal for rural villages in Kazakhstan. As we described to you, in one case, the living conditions of a migrant worker was not acceptable. She was living in deplorable conditions without protection against moisture, wind and cold temperatures.³

A "fazenda" is typically made of clay and located far from the village, on or near a tobacco field. The living conditions in the fazendas we visited were generally somewhat below those in the village houses. For example, some of the clay structures appeared incomplete. Inside, however, the living conditions appeared better than expected from the outside: there were solid ceilings, a heating stove with a chimney and electricity, and they were dry and warm inside. In terms of access to potable water, we were informed that water was brought to the fazendas from the village by car or donkey carriage. In one case, the only source of potable water was from a nearby spring. In most cases, the toilet facilities are similar to those of the village houses. On two occasions, however, as we also reported to you, we identified substandard toilet facilities.⁴

We are of course mindful of the limitations of a sample of roughly 30 farms and fazendas we visited, and we take seriously your concerns about migrant housing that is very remote from the farmer's house. We also agree that it will be necessary to evaluate the access to potable water and sanitary facilities in the field during the harvest in summer.

Written contracts

With one exception, none of the farmers or workers we spoke to had written contracts. The terms of the commercial relationship are agreed upon verbally at the beginning of the season. A written contract between a farmer and his seasonal workers, whether from

³ As we reported to you, following instructions from PMK, the worker was moved to acceptable housing.

⁴ PMK instructed the farmers involved to fix the toilet facilities.

Kazakhstan or abroad, is generally seen as very unusual. We did not find any cases where a worker claimed that the farmer had not honored his or her commitments made verbally. That said, written contracts are required by law, and we are taking steps to see that they are implemented.

Payments

As a rule, at the beginning of the season the head of a Kyrgyz migrant worker family makes a verbal agreement with the farmer on the size of the plot of land where tobacco will be cultivated. (Usually, farmers do not hire workers just for tobacco but also to work on other crops, in particular during the months when tobacco requires less work.) The size of the land plot is an indication of the amount of tobacco that will ultimately be harvested. On average, the yield is 1,700 kg from one hectare, with a minimum of two people to work on one hectare. With an average price of 220 KZT per kilo in 2008, the total crop income from one hectare of land would have been about 374 000 KZT, of which the workers typically receive between 50 and 60%.

When tobacco is brought to the PMK buying point, both the farmer and a representative of the Kyrgyz worker family are usually present when PMK specialists determine the grade of tobacco, weigh the tobacco, and determine the total amount of payment for the tobacco. This practice allows workers to know what revenue the farmer will get for the crop and to accurately calculate their own share of the crop income.

Based on our conversations with the workers, they know approximately how much they will be making by the end of the season. They are usually able to save more than half of their income. In fact, Kyrgyz migrant workers indicated that, given the bad economic situation in Kyrgyzstan, working for tobacco farmers in Kazakhstan gave them a relatively good opportunity to earn a living and save money. That is probably why the majority of workers have been coming back to work at the same farms for several consecutive years, in some cases for more than 10 years.

Importantly, we did not find and have not found evidence of debt bondage or that farmers make unreasonable charges for food and other costs. During the season, the workers receive advance payments from the farmer to buy food (which the workers usually purchase themselves at wholesale markets). To our knowledge, no interest is charged on advance payments. If medical assistance is needed, it is customary for the farmer to bring the worker to the doctor or to a hospital and to make an advance payment for medical assistance and any required medicine. Advance payments are either made on an as needed basis or in monthly installments. Both the farmer and his or her worker keep a record of the worker's expenses incurred during the course of the season. These expenses are subtracted from the amount of money the worker and his or her family earns at the end of the season.

Crop protections agents (pesticides) and fertilizers

In your October 13, 2009 letter you raised concerns regarding safe handling of pesticides and information to migrant workers about the potential risks due to pesticide exposure. Accordingly, in responding to these concerns in my letter dated November 10, 2009 and during our meeting on November 13, 2009, we focused specifically on PMK's practices related to pesticides.

As far as pesticides are concerned, only 86 of 519 farms applied pesticides in 2009; 49 of these 86 farms employed migrant workers. The total amount of pesticides distributed by PMK was 51.2 liters (50.7 l of *Decis* pesticide and 4.4 l of *Confidor* pesticide). We believe that PMK's program on pesticides is quite robust: as we have explained, there are regular trainings, specific instructions prior to each actual application as well as supervision of any pesticides application by PMK agronomists. No pesticides are stored on-site. In terms of protective gear, PMK provides farmers and workers with gloves, masks and rubber boots.

At the meeting on November 13, 2009, you mentioned that in two cases Human Rights Watch had discovered large white plastic sacks labeled in Uzbek or Chinese language containing what was assumed to be pesticides. You stated that these bags were on the ground next to and/or in migrant worker housing and were applied by those workers without specific instructions from PMK agronomists. Following our meeting with you, we asked the PMK agronomists about bags fitting your description and, based on that description, we suspect that the bags contained mineral fertilizers, not pesticides. Specifically, we believe the bags contained a commonly used nitrogen fertilizer, ammonium nitrate, which was manufactured in Uzbekistan.

All farmers selling tobacco to PMK use fertilizers. The main difference between pesticides and fertilizers is, simply put, that the latter are used to help plants grow and the former to kill insects or other pests. In case of exposure, fertilizers present much less risk to human health than pesticides, and this difference in hazard potential is reflected in the different handling practices. Tobacco farmers in Kazakhstan can purchase fertilizer from PMK or at any agricultural store. Unlike pesticides, they store the fertilizers themselves and the application of fertilizers is done without supervision of PMK agronomists. However, as part of PMK's regular training on good agricultural practices, PMK agronomists review with farmers and workers the general safe handling instructions that apply to fertilizers, which are also usually printed on the fertilizer bags. One of PMI's handout materials distributed to farmers and workers also contains safe handling instructions for fertilizers.

* * *

Actions

As a result of our investigation, the concerns raised in your letter, and our meeting, PMK intends to implement a number of measures to expand and strengthen its existing labor practices programs in Kazakhstan:

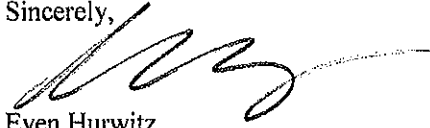
- PMK will broaden the training of its agronomists – and subsequently farmers and workers – to cover not only child labor, but also topics such as forced labor, living conditions, passport keeping, and schooling for children. This will also include focused training of PMK agronomists to spot potential problems in the new areas. For instance, it will be necessary to critically check the workers' access to potable water and sanitary facilities in the field during the harvest in the summer time.
- PMK will use the pre-qualifying process for establishing contracts with farmers at the beginning of the season to impose certain conditions related to the treatment of migrant workers, such as, for instance, written contracts and a minimum standard for living conditions. Farmers who are unwilling or unable to meet these conditions will not be able to sell tobacco to PMK. Importantly, this will apply not just to farmers who seek to establish a contract with PMK for the first time but also to the renewal of already existing farmer contracts.
- PMK will communicate very clearly to farmers – as part of the pre-qualifying process and during training sessions – that it is not legal to keep migrant workers' passports except where a migrant worker voluntarily gives the passport to the farmer for safekeeping against loss or theft.
- Concerning the application of crop protection agents (pesticides), PMK will also refresh the content of the safety instruction hand-outs and provide them in Russian, Kazakh and Kyrgyz language. In addition to rubber boots, gloves and masks, PMK will also make available protective suits for a nominal fee and verify that the protective gear is worn during the application of crop protection agents. PMK will also provide farmers and workers with information on the appropriate handling of fertilizers.
- In order to make monitoring and enforcement of our programs more effective, PMI is considering working with a third party company with expertise on monitoring and verifying that agricultural crops are not grown with child or forced labor.
- We will again engage with the government and local authorities to address the ability of migrant family children to attend schools in Kazakhstan. We will also seek to work with a local NGO that can support Kyrgyz parents with the actual enrollment process, organize transport and assist financially if need be for the purchase of books and clothes. As far as summer programs are concerned, we are prepared to contribute to meaningful initiatives, and will follow up on the suggestions you made regarding potential partners.

Finally, PMI and PMK remain concerned about the allegations in your letter regarding human trafficking, debt bondage and the other incidents of grave abuse that you mention in your letter and that we discussed. Although we did not find evidence of such abuses in our investigation, both PMK management and I are personally committed to take prompt and decisive action if they have happened. To do so, however, we need to have

information about the farmers and workers involved. We believe that it should be possible to do so while simultaneously preserving the confidentiality of your sources, avoiding any risk of retaliation against the workers.

We will continue to keep you informed about the measures we are implementing, and I will be pleased to respond to questions you may have when we meet in New York.

Sincerely,

A handwritten signature in black ink, appearing to read 'Even Hurwitz', with a long horizontal flourish extending to the right.

Even Hurwitz

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300



www.hrw.org

February 9, 2010

EUROPE AND CENTRAL ASIA DIVISION

Holly Cartner, *Executive Director*
Rachel Denber, *Deputy Director*
Benjamin Ward, *Deputy Director*
Veronika L. Szente Goldston, *Advocacy Director*
Allison Gill, *Director, Moscow Office*
Tanya Lokshina, *Deputy Director, Moscow Office*
Jane Buchanan, *Senior Researcher*
Judith Sunderland, *Senior Researcher*
Andrea Berg, *Researcher*
Haleh Chahrokh, *Consultant*
Wanda Troszczynska van Genderen, *Researcher*
Giorgi Gogia, *Researcher*
Emma Sinclair-Webb, *Researcher*
Kathryn Koonce, *Coordinator*
Iwona Zielinska, *Senior Associate*
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Viktoriya Kim, *Associate*

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Jane Olson, *Chair, Board of Directors*

Even Hurwitz
Senior Vice President for Corporate Affairs
Philip Morris International
Avenue de Rhodanie 50
1001 Lausanne
Switzerland

Dear Mr. Hurwitz,

Thank you for your detailed letter sent on January 14, 2010. In addition to the responses to our questions and other information you kindly provided in previous correspondence, I would like to request some additional background information about Philip Morris International's operations in Kazakhstan:

- a brief history of Philip Morris International in Kazakhstan;
- an overview of Philip Morris Kazakhstan's current operations;
- basic information about the structural relationship between Philip Morris International and Philip Morris Kazakhstan.

Also, further to our recent email exchange, I look forward to meeting with you and Mr. Mazou on March 2.

Thank you for your attention to this request and I look forward to seeing you soon.

Sincerely,

Jane Buchanan
Senior Researcher
Europe and Central Asia division
Human Rights Watch



PHILIP MORRIS
INTERNATIONAL

EVEN HURWITZ
SENIOR VICE PRESIDENT CORPORATE AFFAIRS



Jane Buchanan
Senior Researcher
Europe and Central Asia Division
Human Rights Watch
350 Fifth Avenue
34th Floor
New York, New York 10118-3299
USA

February 19, 2010

Dear Jane:

I am writing to respond to your letter of February 9, 2010 in which you requested additional background information about Philip Morris International's (PMI) operations in Kazakhstan.

In 1993, PMI acquired 99.5% of the Almaty Tobacco Company (ATC) which was the first privatization of a state-owned company in the consumer goods sector in Kazakhstan. In 2001, the company opened its new production complex in Otegen Batyr and the name of the company was changed from ATC to Philip Morris Kazakhstan LLP (PMK).

In addition to its headquarters in Almaty, PMK has six regional offices. PMK has approximately 1000 employees. Currently PMK's brand portfolio comprises eight international brands (*Marlboro, Parliament, Virginia Slims, Muratti, L&M, Bond Street, Next, and President*) and six local brands. PMK's products are distributed throughout Kazakhstan. PMK also manufactures PMI's international brands for export to five other countries in Central Asia.

PMK is an indirect, wholly-owned subsidiary of PMI. The direct shareholder in PMK is Philip Morris Holland Holdings B.V. which is in turn held by several intermediate holding companies.

If you have any other questions, please let me know. I look forward to seeing you on March 2.

Sincerely,

Even Hurwitz

Philip Morris International Management S.A.

AVENUE DE COUR 107 • CASE POSTALE 1171 • 1001 LAUSANNE • SWITZERLAND • TELEPHONE: +41 21 618 61 11 • TELEFAX: +41 21 618 46 18

www.philipmorrisinternational.com



PHILIP MORRIS
INTERNATIONAL

EVEN HURWITZ
SENIOR VICE PRESIDENT CORPORATE AFFAIRS



Jane Buchanan
Human Rights Watch
Europe and Central Asia Division
350 Fifth Avenue
34th Floor
New York, New York 10118-3299

March 11, 2010

Dear Jane,

I would like to thank you for the meeting in your offices in New York on March 2, 2010, as well as the positive discussions you and I had by phone at the end of last week. I am heartened to hear that you appreciate the steps Philip Morris International Inc. (PMI) and Philip Morris Kazakhstan LLP (PMK) are taking to address child labor and other labor problems faced by migrant workers and their families working on tobacco farms in Kazakhstan. I truly appreciate the constructive dialogue between Human Rights Watch and my company, and I want to reiterate that we are committed to doing our part to address the problems of child labor and forced labor.

During our meeting, Human Rights Watch raised a number of questions which I was not able to respond to in detail. I can provide some details at this time to most of them. On a few, I will provide responses when I have more information. I also want to seek clarification on a few points that I raised with you by telephone last week.

1. Contracts Between PMK (Buyer) and the Farmers (Sellers)

As I explained to you during our meeting, the contracts that were in place in previous years already contained a range of robust provisions in particular regarding child labor and forced labor and the use of pesticides; in part, relevant obligations, e.g. regarding safe working conditions, were incorporated into the contract by requiring farmers to fully comply with all applicable laws. Building on that, PMK has strengthened the relevant provisions of the contract by more directly spelling out the farmers' obligations in certain areas of concern (e.g. passport holding, living conditions). Taken together, the specific provisions of the contracts between PMK and the farmers that are of relevance are:

- A broad undertaking coupled with a definition of “Employee” that requires the farmers to comply with the labor laws of Kazakhstan, including a prohibition of child labor and forced labor, requirements regarding safe and hygienic working conditions, and written employment contracts with all members of the migrant worker family that will work on the farm:
 - “If the Seller [farmer] hires Employees to grow Raw Tobacco, the Seller undertakes to strictly adhere to the requirements of the effective legislation of the Republic of Kazakhstan, including in particular those legislative rules (i) that prohibit forced labour and hiring women and persons under eighteen years of age for tobacco growing or tobacco leaf processing operations, and (ii) that prescribe safe and hygienic working conditions. In addition, the Seller shall undertake to, upon first request of the Buyer, provide the Buyer with all appropriate written documents evidencing that the Seller is in compliance with the effective labour legislation of the Republic of Kazakhstan with respect to persons employed by the Seller, including, but not limited to the written employment contracts with each individual Employee.”
 - “ ‘Employee’ means a person, citizen of the Republic of Kazakhstan or a foreign citizen, 18 years old or older, who has no medical contraindications to working in tobacco growing and tobacco leaf processing operations. If the Employee has a family and his/her family member(s) will be also working for the Seller, then the Seller should treat the eligible family members as Employees and thus sign a written employment contract with each of them. If the Seller has a family and his/her family member(s) will be also working for the Seller, then the Seller should treat his/her eligible family members as Employees and thus sign a written employment contract with each of them; ”
- A provision mandating that labor conditions for migrant workers are the same as for local workers:
 - “If the Seller intends to hire migrant workers, the Seller undertakes to provide such migrant workers with the same labor conditions as to local workers.”
- A provision mandating a minimum standard of living conditions for migrant workers and other workers in need of temporary housing:
 - “The Seller shall provide his/her employees with minimum standard living conditions, including dry and warm housing, sanitary facilities (including standard toilet near the housing) and access to potable water near the housing, except for employees who have their own accommodation near the place of work. ”
- A provision mandating that the farmers comply with safety for storage and use of pesticides.
 - “All fertilisers and toxic chemicals supplied by the Buyer to the Seller under Clause 3.2 hereof (the “Substances”) shall be used by the Seller and/or its personnel only for the purpose of growing Raw Tobacco intended for the Buyer, subject to the compliance with all safety requirements while using and storing them.”
- A provision mandating safe working conditions:
 - “The Seller ensures that he/she and his/her personnel strictly observe the safety and labour protection requirements established by legislative acts of Kazakhstan; the Seller in particular ensures that workers have sufficient drinking and washing water on the work premises and that they use the individual protective gear provided to them for specific task related to tobacco growing or tobacco leaf processing operations, e.g, the application of pesticides.”
- A provision prohibiting the withholding of passports or other documents such as birth certificates unless agreed to by the worker for purposes of safe keeping:
 - “The Seller must strictly adhere to the requirements of the effective legislation of the Republic of Kazakhstan, including those legislative rules that prohibit to accept and/or transfer the Employees’ passports or other

official documents as a deposit or guarantee of fulfilment of the Employee's obligations. If the Employees, including migrants, voluntarily give their passports or other official documents to the Seller exclusively for purposes of safe keeping, the Seller shall provide them with a written confirmation on return of the document upon first request of the passport owner."

The violation of any of these terms by the farmer is grounds for termination of the contract by PMK.

2. The Template Employment Contracts Between a Farmer (Employer) and Workers (Employees)

The template contract between the farmer and the worker specifies that the farmer ensures "appropriate labour conditions in accordance with the legislation of Kazakhstan." In addition, the contract contains the following provisions:

- "The Employee's working week (Monday through Friday) shall consist of forty (40) hours. In case of production necessity and taking into account the specific nature of work, the Employer may establish the cumulative recording of hours worked under which the work duration on certain days may be different from the working hours defined herein. In such case, extra hours worked on certain days will be offset by reduced work hours on other days or the Employee will be granted additional days-off within the record time. Such extra hours worked will not be deemed to be overtime. The record time under the cumulative recording of the hours worked is a year."
- "The Employee shall be entitled to a paid annual leave of twenty-four (24) calendar days per calendar year in accordance with the Labour Code, and also an additional paid leave of ___ calendar days as per the List of Operations, Workshops, Occupations and Jobs, and the List of Arduous Work or Work Under Harmful (Extremely Harmful) and/or Hazardous labour conditions, if applicable, and subject to the Employer's internal order."
- "The Parties hereby agree that the Employee shall be paid on the basis of piece-rate payment, which means that the Employee shall be paid: (i) a compensation of ___ (___) tenge per month, including all applicable taxes and other obligatory payments to the budget, but not less the minimum wage established by legislation and shall be paid no later than the 10th day of the month following the month worked; and (ii) the rest of the salary shall be paid in the end of the working season upon the results of Employee's work, which depends on the weight and grade of collected tobacco leaves and its price as follows: [please insert the percentage] of the price of collected tobacco leaves."
- "The Employer shall:
 - provide the Employee, at the Employer's expense, with safe and hygienic working conditions as well as means and materials required for the Employee to perform his/her duties, individual protective gear, water, health and dietary meals in the amount not less than those defined by the labour, health and safety legislation of Kazakhstan;
 - pay labour compensation and other payments required under the Employment Contract, laws and regulations of the Republic of Kazakhstan and Employer's orders, in a timely manner and in full;
 - provide the necessary individual protective gear to the Employee;
 - provide sufficient drinking and washing water at the work premises;
 - provide the Employee with minimum standard living conditions, including dry and warm housing, sanitary facilities (including standard toilet near the housing) and access to potable water near the housing, unless the Employee has his or her own accommodation near the place of work;
 - adhere to the requirements of the effective legislation of the Republic of Kazakhstan, including those legislative rules that prohibit to accept and/or transfer the Employee's passport as a deposit or guarantee of fulfilment of the Employee's obligations. If the Employee voluntarily gives his/her passport to the Employer exclusively for safe keeping purposes, the Employer shall provide the Employee with a written confirmation on return of the document upon first request of the passport owner;
 - the Employer shall have other obligations as set out in the Labour Code."

3. Payment Structure

We believe that the requirement in the employment contract to pay the workers a monthly payment no less than the minimum wage (as provided also in Kazakh law) may help address the concerns raised by Human Rights Watch related to the payment structure (i.e, the fact that workers receive their wages when the tobacco is sold to PMK at the end of the year). Based on our calculations, monthly wages at the minimum wage would equal the average amount earned by a single worker for the entire crop.¹ Thus, under this new payment structure, migrant workers should be able to leave, if they choose to do so, and not lose their wages for the time they have worked. If farmers in turn need to receive prepayments from PMK to finance the monthly wages, the contract between the farmers and PMK already provides for that possibility.

4. Pesticides

PMK confirmed that the pesticides packaging shown on the picture you gave us is not a pesticide that has been used or provided to farmers by PMK. I'm attaching pictures of the pesticides *Decis* and *Confidor* which, as you know, PMK uses and provides to farmers under strict supervision.

The same is true for the pesticides spraying equipment shown on the other picture you gave us. PMK confirmed that it does not use such equipment or provide it to farmers. As you can see from the attached picture, the type of spraying equipment PMK uses and provides to farmers, is clearly different.

We have also checked again the PMK pesticides handout that was used last year against the safe handling instructions provided by the supplier of *Decis* and *Confidor* and believe that they are substantially consistent.

5. Agronomists and Monitoring/Audits

PMK has confirmed that the number of farms expected to be contracted for the 2010 growing season is approximately 350. Last year, the number was 519. Of the 519, 206 hired migrant workers, and of those 135 had families with children.² 209 unannounced audits were conducted during the growing season by PMK's agronomists covering approximately 40% of all farms. However, of the farms audited, 146 employed migrant workers and 121 employed migrant workers with children. That means that the unannounced audits in 2009 covered over 70% of the farms employing migrant workers and 90% of the farms employing migrant workers with children.

¹ This is the case even if taking fully into account the time during which little to no work is done on tobacco and migrant workers usually work on other crops. According to our discussions with farmers and workers, such work on other crops is compensated separately from and on top of the tobacco-related income.

² The number of 206 does not include farmers who may hire on an ad hoc basis, during the peak harvest, migrant workers for only a couple of days.

As we discussed during our meeting, PMK is considering increasing the percentage of total farms audited in 2010 to 50%, which should, based on the 2009 figures, result in a complete coverage of all farms employing migrant workers. The final decision will be made following the conclusion of the contracts with the farmers which will give PMK an understanding of expected number of migrant workers for the 2010 growing season. In any event, PMK will select the farms subject to unannounced audits in accordance with the following priorities:

- (i) farms that employ migrant workers who have children and where migrant housing is remote from village;
- (ii) farms that employ migrant workers who have children and where migrant housing is in village;
- (iii) farms that employ domestic workers with children;
- (iv) farms that employ migrant workers without children and where migrant housing is remote from village;
- (v) farms that employ migrant workers without children and where migrant housing is in village;
- (vi) other farms.

PMK and PMI are also reviewing the question of whether it is reasonable to expect the agronomists to be responsible both for monitoring agricultural issues (tobacco quality and yield) and labor issues (child and forced labor, working and living conditions), with the involvement of the Environment, Health & Safety (EHS) Department of PMK. We recognize that there is some potential for conflict and burden; but we also believe that there is a substantial benefit to having the employees in our companies who have the closest working relationships with the tobacco farmers be responsible for labor issues.

6. Questions Regarding Forced Labor and Debt Bondage

Finally, as I explained to you by telephone, I respectfully request that Human Rights Watch provide us with more detailed information regarding abuses raised in the October 13, 2009 letter sent to Mr. Camilleri and subsequently during our meetings, including the meeting last week in New York. We would like to know the facts supporting Human Rights Watch's position that the farmers with whom PMK has contracts are engaged in (1) human trafficking, (2) the confinement of workers against their will on farms, and (3) debt bondage. Specifically, it is crucial for PMK to know how many of the farmers Human Rights Watch believes are engaged in such unacceptable conduct.

To be clear, from our perspective, a single case of any of these actions is completely unacceptable. As I explained to you last week over the phone, our objective in obtaining this information is to ensure that we have the facts that will permit us to address the very grave violations of human rights that you have raised. From the outset, PMI and PMK have acted swiftly and thoroughly in response to your letter. We have repeatedly reported to you that we have not found evidence of the farmers engaging in human trafficking, confining their workers against their will to their farms (with the exception of one case in which a farmer had held the passport of one worker who wanted to leave), or debt

bondage. Nevertheless, we have not dismissed the reports by Human Rights Watch, and we do not intend to do so now. We are asking, however, that the facts be made clearer. This is solely for the purpose of allowing us to make the appropriate decisions going forward, especially now when PMK is about to enter into contracts potentially with the same farmers that we presume you referred to in your letter. Obviously, knowing whether your evidence implicates only a few farmers or 5% or 10% or even more of the farmers with whom PMK enters into contracts is vitally important.

With regard to human trafficking, in the October 13 letter, Human Rights Watch stated that "*in at least two instances, migrant workers employed on farms producing tobacco for Philip Morris had been trafficked into forced labor. The workers were deceived by an intermediary and then delivered to a local farmer or landowner who paid the intermediary for delivering the migrant worker. The landowner confiscated the workers' passports and forced the workers to farm the tobacco.*" During our meeting last week, you described a practice of farmers working with drivers who solicited workers in Kyrgyzstan. As you described, workers are driven to farms in Kazakhstan, their passports are taken by the farmers, and then the farmers charge them the "cost" of transportation which is deducted from their wages (a cost that is larger than or equal to their total wages). You confirmed by phone that this practice is the trafficking referred to in the October 13 letter. Can you provide us with the names/locations of the farms that you referenced in the October 13 letter when you wrote that "in at least two instances" farmers from whom PMK buys tobacco were involved in human trafficking? As I understand from our telephone conversation, you do not believe that most or many of the farmers PMK contracts with are engaged in this or other forms of human trafficking.

On debt bondage, we would similarly like to understand better the facts that you have regarding the extent to which farmers with whom we contract are deducting improper and excessive costs from the salaries of their workers. Deducting fictitious or unreasonable fees is unacceptable, and no worker should be placed in a situation of debt bondage. However, as I explained to you in my January 14 letter, we did not find that farmers were deducting unacceptable fees from wages and that the workers we interviewed were able to save more than half of their net crop income. In the October 13 letter, Human Rights Watch wrote that the payment structure that exists "rendered some migrant workers into a situation of debt bondage." Following our meeting last week, it is still unclear to us whether the facts, as your investigation uncovered, show that a few, some, many or most farmers are improperly deducting costs from the workers' payments and how many workers are in "a situation of debt bondage." We would greatly appreciate knowing the facts you have regarding improper deductions/charges by the farmers and the existence of debt bondage.

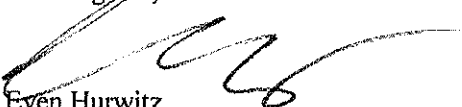
In the October 13 letter, Human Rights Watch stated that farmers "regularly confiscated passports" and, as a result "workers were confined to the farms on which they worked." We recognize the potential for abuse and, as described above, we are taking steps to address the practice of holding passports. However, we did not find that workers felt coerced into staying on the farms against their will, except in one case. I will state again: one case is too many. But we believe that most workers – indeed, many who return year

after year to work with the farmers – do not feel compelled to stay on the farms against their will. Again, not to dispute your findings but to understand the facts from your investigation, could you explain how many workers you interviewed said that they were not able to leave before the growing season was over either because the farmers held their passports (or the birth certificates of their children) or because they did not want to lose their wages at the end of the season?

I should reiterate that none of the answers to these questions will change our commitment to address the very important and serious issues that Human Rights Watch has raised and that we have discussed. The actions summarized in our January 14 letter are under way. In particular, we are implementing the measures to strengthen the contractual documents, including the requirement of a written contract between farmers and workers, and to optimize the pre-qualifying process, are working on improving our internal monitoring and adopting external checks, and continue the outreach to ILO, local NGOs and local government officials to address child labor, schooling and activities for children outside school.

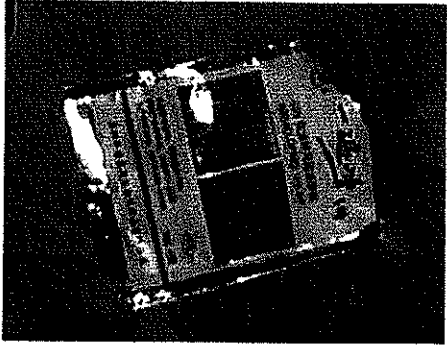
Let me say in closing how much I appreciate the advice and guidance from you and your colleagues. We look forward to continuing the productive collaboration with Human Rights Watch.

Kind regards,

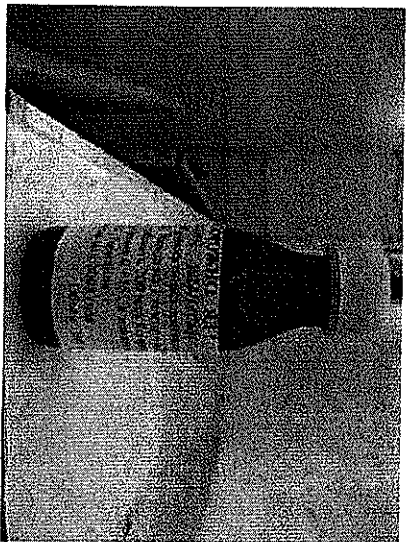
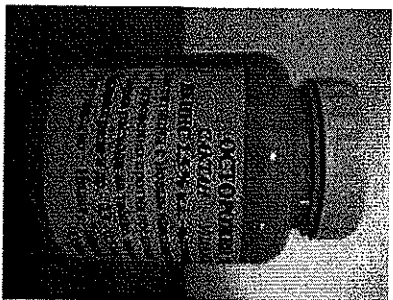


Even Hurwitz

HRW picture

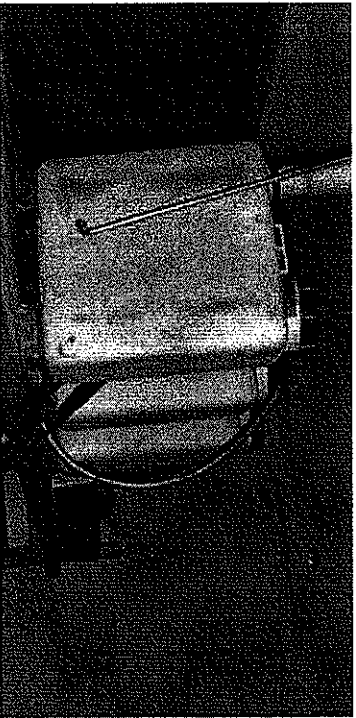


Pesticides used by PMK





HRW picture



Pesticides applicator
used by PMK

Инструкция по безопасному обращению с пестицидами и минеральными удобрениями.

Минеральные удобрения должны вноситься согласно рекомендациям агронома.

Для борьбы с вредителями и болезнями табака используются пестицидные препараты 3-4 классов опасности, т.е. относящиеся к малоопасным, не представляющим серьезной угрозы для здоровья человека, при использовании. Вносятся согласно рекомендациям агрономов.

Правила обращения:

1. Перевозите и храните пестициды и минеральные удобрения отдельно от пищевых продуктов.
2. Проверьте плотно ли закрыта емкость с пестицидом, не имеет ли она повреждений.
3. Емкости с пестицидами, должны быть промаркированы, если нет надписи, обязательно подпишите их.
4. Храните пестициды в недоступных для детей местах

Внимание: К работе с пестицидами не допускаются дети, беременные женщины и кормящие матери, а также лица с хроническими заболеваниями легких и сердца.

Во время работы:

Работы по внесению минеральных удобрений и пестицидов должны производиться в безветренную погоду в утренние и вечерние часы при температуре воздуха не выше 22-25 градусов тепла. В пасмурную погоду можно работать в дневное время. Присутствие посторонних лиц, не занятых непосредственно работой с химикатами в период обработки плантаций **запрещается**. Нельзя ходить по только, что обработанному участку.

Во время работы с пестицидами и минеральными удобрениями нельзя принимать пищу, курить.

После завершения работы:

- Снять и постирать одежду, в которой производилась обработка;
- Открытые участки тела промыть водой с мылом;
- Использованную стеклотару помыть и сдать обратно на заготовительный пункт.
- Мешкотару из-под удобрений и пластиковую тару запрещается использовать повторно.

Средства защиты:



Работать с пестицидами необходимо в одежде застегнутой на все пуговицы, которая скрывает как можно большую часть тела человека.



Никогда не работайте с пестицидами босиком или в открытых сандалиях, работать нужно в сапогах или закрытой обуви.

Руки необходимо защищать перчатками или рукавицами, обязательно целыми, без дыр.



Для защиты органов дыхания использовать ватно-марлевую повязку, одноразовую маску или респиратор.



Для защиты глаз можно использовать защитные очки, козырек или кепку с козырьком.



После завершения работы открытые участки тела промыть водой с мылом;

Первая медицинская помощь:

При попадании препарата в глаза или на слизистую носа, промыть обильно большим количеством воды. Немедленно обратиться к врачу.

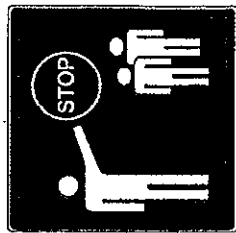
При первых симптомах отравления через дыхательные пути (головокружение, тошнота и т.д.) пострадавшего вывести на свежий воздух, освободить от стесняющей дыхание одежды, дать обильное питье и обратиться к врачу

При попадании на кожу снять препарат куском ткани не втирая его в кожу, затем промыть большим количеством воды с мылом.

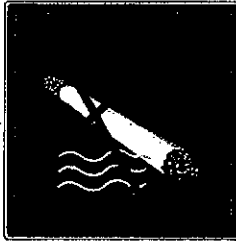
При отравлении через желудочно-кишечный тракт – пострадавшего вывести из зоны работы, дать выпить несколько стаканов теплой воды или слабо розового раствора марганцовки, вызвать рвоту. Обратиться к врачу.

Во всех случаях отравления пестицидами, необходимо обратиться к врачу.

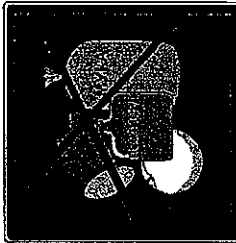
ЭТО НУЖНО ЗНАТЬ ПРИ РАБОТЕ С ПЕСТИЦИДАМИ



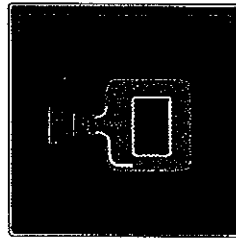
Запрещается работать с пестицидами лицам до 18 лет, беременным и кормящим женщинам.



Не курить, не есть, не пить во время работы с пестицидами.

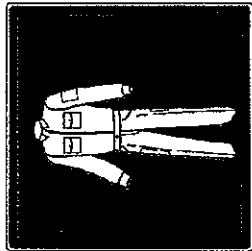


Не хранить пестициды вместе с продуктами, водой и фуражом.

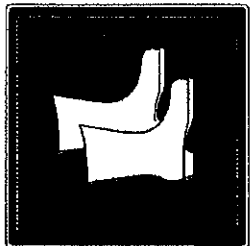


Емкости с пестицидами должны быть промаркированы, плотно закрыты.
Хранить в недоступных для детей местах.

СРЕДСТВА ИНДИВИДУАЛЬНОЙ ЗАЩИТЫ



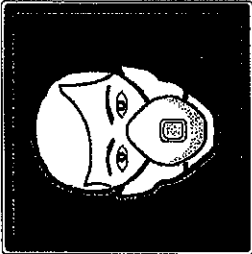
Работайте в спецодежде застегнутой на все пуговицы



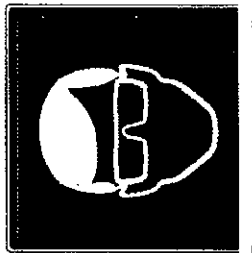
Работайте только в закрытой обуви



Защищайте руки перчатками или рукавицами

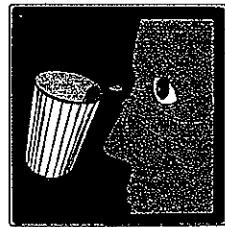


Для защиты органов дыхания работайте в респираторах или ватно-марлевых повязках

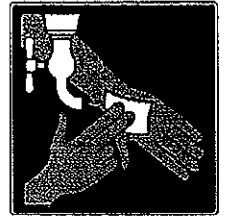


Для защиты глаз используйте защитные очки, козырек или кепку с козырьком

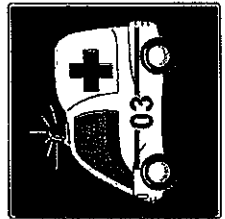
ОКАЗАНИЕ ПЕРВОЙ МЕДИЦИНСКОЙ ПОМОЩИ



При попадании пестицида в глаза — обильно промыть их водой, обратиться к врачу.



При попадании на кожу, осторожно снять препарат куском ткани, промыть водой с мылом.



При отравлениях — вывести пострадавшего из зоны работы, дать выпить теплой воды или слабого раствора марганцовки. Обратиться к врачу.

Во всех случаях отравления пестицидами — обязательно обратиться к врачу.

Instructions for the safe handling of pesticides and mineral fertilizers

Mineral fertilizers ought to be used in accordance with the instructions of an agronomist. For combating tobacco pests and diseases, pesticides of the 3rd -4th hazardous class (low-hazard), which do not present a serious threat to human health, are used. They are applied in accordance with the recommendations of the agronomist.

Rules of Use:

1. Transport and store pesticides and mineral fertilizers away from food products.
2. Check carefully to make sure that containers containing pesticides are tightly sealed and undamaged.
3. Containers with pesticides should be clearly marked; if there is no label, be sure to write one.
4. Store pesticides out of the reach of children.

Warning: Children, pregnant and nursing women, and those with chronic lung and heart issues should not work with pesticides.

While working:

Application of mineral fertilizers and pesticides should take place in windless weather in the morning or evening hours when the air temperature is not warmer than 22-25 degrees Celsius. On overcast days, it is possible to work during the afternoon. Only those applying the chemicals should be present. The presence of persons not directly engaged in the application is strictly prohibited. Never enter an area recently treated.

After completing work:

- Remove and wash clothing worn while working.
- Wash exposed areas of the body with soap and water.
- Clean and return empty containers to the storage location.
- Reuse of fertilizer bags and plastic packaging is prohibited.

Means of Protection:

While working with pesticides, it is essential to wear clothing that covers as much of the body as possible and that is completely buttoned.

Never work with pesticides barefoot or in open sandals. Always wear boots or closed-toe shoes.

It is important to protect your hands with gloves; make sure that the gloves are whole, without any holes.

To protect your respiratory system, use a padded gauze mask, disposable mask, or a respirator.

To protect your eyes, use protective glasses, a visor, or a hat with a visor.

After completing the work, wash exposed areas of skin with soap and water.

First Aid:

In case of contact with the eyes or any mucous membrane, flush area with large amounts of water and immediately consult a physician.

At the first sign of poisoning from fumes (dizziness, nausea, etc), take the affected person into the fresh air, open clothing to allow the free passage of air, give him large amounts of water, and consult a physician.

In case of contact with the skin, remove chemicals with a piece of cloth without rubbing into the skin, then wash with a large amount of soap and water.

In the event of poisoning by ingestion, remove the affected person from the work area, give him several glasses of warm water or a weak manganese solution, and induce vomiting. Consult a physician.

In all cases of pesticide poisoning, it is necessary to consult a physician.

(End of pg.1)

What You Should Know When Working with Pesticides:

Anyone under the age of 18 and pregnant and nursing women are prohibited from working with pesticides.

Do not smoke, eat, or drink while working with pesticides.

Do not store pesticides together with food, water, or grain.

Containers with pesticides should be clearly marked and tightly sealed. Store containers out of the reach of children.

Means of Personal Protection

Wear special work clothing buttoned up all the way.

Work only in closed-toed shoes or boots.

Protect hands with gloves.

To protect the respiratory system, work wearing a respirator or a padded gauze mask.

Protect your eyes using protective glasses, a visor or a hat with a visor.

First Aid Directions

If the case of contact with the eyes, flush eyes with large amounts of water and consult a physician.

In case of contact with the skin, carefully remove chemicals from skin with a piece of cloth and wash with soap and water.

In the event of poisoning take the person away from the work area; give him warm water or a weak manganese solution to drink. Consult a physician immediately.

In all cases of pesticide poisoning – it is necessary to consult a physician.

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
 New York, NY 10118-3299
 Tel: 212-290-4700
 Fax: 212-736-1300

**APPENDIX C: CORRESPONDENCE BETWEEN HUMAN RIGHTS WATCH AND
 THE GOVERNMENT OF KAZAKHSTAN**

14 декабря 2009

**HUMAN
 RIGHTS
 WATCH**

www.hrw.org

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Нурымбетов Биржан Бидайбекулы
 Вице-министр
 Министерство труда и социальной защиты населения
 Республики Казахстан
 Астана
 Улица Орнбор, 8
 010000

Факсимиле: +7(7172) 74-36-08
 Электронная почта: argadykov_d@enbek.kz

Уважаемый Биржан Бидайбекулы!

Мы хотели бы поблагодарить Вас за встречу с сотрудниками нашей организации, Джейн Бьюкенэн и Викою Ким, в начале ноября и выразить нашу признательность казахскому правительству за готовность к дискуссии о правах трудовых мигрантов и других правозащитных вопросах.

С Вашего позволения, я хотела бы запросить дополнительную информацию по тем вопросам, которые нам не удалось обсудить во время встречи, в связи со вполне понятными временными ограничениями. Я была бы очень признательна, если Ваше министерство смогло бы предоставить нам следующую информацию:

Статистические данные

- Общее число трудовых мигрантов из всех стран, которые работали в Казахстане в официальном порядке в 2009 (по данным, которыми министерство располагает на сегодняшний день), 2008 и 2007 гг.
- Общее число трудовых мигрантов, прибывших с территории бывшего Советского Союза, которые работали в Казахстане в официальном порядке в 2009 (по данным, которыми министерство располагает на сегодняшний день), 2008 и 2007 гг.
- Общее число трудовых мигрантов, работавших в Казахстане в официальном порядке в 2009 (по данным, которыми министерство располагает на сегодняшний день), 2008 и 2007 гг., которые прибыли из:
 - Киргизстана
 - Узбекистана
 - Таджикистана
- Процентное соотношение трудовых мигрантов в каждом из пяти основных секторов экономики, задействующих труд мигрантов.

- Число трудовых мигрантов, работающих в официальном порядке в сельском хозяйстве Казахстана в 2009 (по данным, которыми министерство располагает на сегодняшний день), 2008 и 2007 гг.
- По оценке министерства, приблизительное число трудовых мигрантов, которые работали в Казахстане без разрешения на работу в 2009 (по данным, которыми министерство располагает на сегодняшний день), 2008 и 2007 гг.
- Основные страны, из которых поступает приток неофициальных трудовых мигрантов.

Детский труд

- По оценке министерства, общее число детей, которые работали в Казахстане в 2009 (по данным, которыми министерство располагает на сегодняшний день), 2008 и 2007 гг.
- По оценке министерства, общее число детей среди трудовых мигрантов, которые работали в Казахстане в 2009 (по данным, которыми министерство располагает на сегодняшний день), 2008 и 2007 гг.
- Страны, из которых поступает основной приток работающих детей.
- Информация о правительственных усилиях по искоренению детского труда, включая наихудшие формы детского труда, в 2009 г. и в последние годы, а также будущие планы борьбы с использованием детского труда.

Образование для работающих детей

- Возможно ли для детей трудовых мигрантов посещать местные школы? Каковы требования для посещения ими школ (к примеру, регистрационные свидетельства родителей, другие документы)? Могут ли посещать школу дети трудовых мигрантов, работающих без разрешения на работу?
- Число детей мигрантов, посещающих школы в Алматинской области в 2009, 2008 и 2007 гг.
- Существуют ли какие-то вспомогательные меры для посещения школ детьми трудовых мигрантов, не говорящими по-казахски или по-русски?

Трудовые инспекции

- Количество трудовых инспекций, которые были осуществлены работодателями в сельскохозяйственном секторе в 2009 (по данным, которыми министерство располагает на сегодняшний день), 2008 и 2007 гг.
- Наиболее распространенные нарушения, выявленные трудовыми инспекциями и наложенные санкции.

- Зафиксированные в законах или подзаконных актах обязанности трудовых инспекторов по пресечению детского труда, включая наихудшие формы детского труда.
- Обязанности трудовых инспекторов по защите прав мигрантов, включая мигрантов с неурегулированным миграционным статусом или без разрешения на работу.

Законодательство на стадии рассмотрения

- По имеющимся у нас данным, в настоящее время происходит обновление миграционного законодательства. В интересах прозрачности работы министерства, о которой Вы говорили во время нашей встречи, мы были бы очень признательны, если бы Вы могли поделиться с нами проектом предложенных законопоправок.

Благодарю Вас за внимание и жду ответа в удобное для Вас время.

С уважением,



Холли Картнер
Директор
Отделение по Европе и Центральной Азии

ҚАЗАҚСТАН РЕСПУБЛИКАСЫ
ЕҢБЕК ЖӘНЕ ХАЛЫҚТЫ
ӘЛЕУМЕТТІК ҚОРҒАУ
МИНИСТРЛІГІ



МИНИСТЕРСТВО
ТРУДА И СОЦИАЛЬНОЙ
ЗАЩИТЫ НАСЕЛЕНИЯ
РЕСПУБЛИКИ КАЗАХСТАН

010000, Астана қаласы, 35 – ші көше, 2 үй,
Министрліктер Үйі
Тел.: (7172) 742851, факс: (7172) 743608

010000, город Астана, ул. 35, дом 2,
Дом Министерств
Тел.: (7172) 742851, факс: (7172) 743608

№ _____

на № _____ от _____

Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299

На письмо от 14 декабря 2009 года

Министерство труда и социальной защиты населения Республики Казахстан, рассмотрев Ваш перечень вопросов, и направляет информацию входящую в компетенцию Министерства.

Статистические данные

пункт 6

За различные нарушения правил пребывания в 2009 году к административной ответственности привлечены – 169,2 тыс. иностранцев (СНГ – 155,9 тыс., дальше зарубежье – 13,4 тыс. чел.).

Возбуждено 408 уголовных дел в отношении организаторов незаконной миграции и лиц, не выполнивших постановление суда о выдворении.

Уполномоченными органами выявлены 42 организации использовавших труд 240 иностранных граждан без соответствующего разрешения.

Трудовая инспекция

пункт 1, 2

По итогам 2009 года государственными инспекторами труда проведено 22 116 проверок по вопросам соблюдения трудового законодательства.

В результате проведенных проверок, госинспекторами труда выявлено 100580 нарушений трудового законодательства, из них более половины (58,0 % или 58 435) приходится на нарушения в вопросах трудовых отношений, 40 433 нарушений (или 40,1 %) имели место в области безопасности и охраны труда, 1712 (1,7 %) нарушений по законодательству о занятости населения.

В отношении лиц, допустивших нарушения трудового законодательства, выдано 21897 предписаний, наложено 10785 административных штрафов на общую сумму 310, 5 млн. тенге.

В случаях создания реальной угрозы жизни и здоровью работников госинспекторами труда была приостановлена работа 887 единиц станков, оборудования и механизмов, 43 производственных объектов до их приведения в соответствие требованиям безопасности, а также деятельность 3 организаций.

По требованиям госинспекторов труда работодателями освобождены от работы 4493 должностных лиц, виновных в нарушениях безопасности и охраны труда, ставших причинами несчастных случаев. В правоохранительные органы направлены 2194 материалов по несчастным случаям, по 96 из них возбуждены уголовные дела.

В 2009 году на предприятиях и организациях страны на производстве пострадало 2102 человека, что на 13,9 % ниже уровня прошлого года (2444). Количество погибших на производстве также снизился 14,3 % и составил 346 человека, в 2008 году 404.

В разрезе отраслей высокий уровень травматизма имеет место на предприятиях строительные отрасли и горнометаллургического комплекса.

По итогам 2009 года доля пострадавших работников на предприятиях указанных отраслей составило 34,4 % от общего числа пострадавших в стране (или 724 человека).

Каждый 6 смертельный случай на производстве имел место на предприятиях горнометаллургической отрасли, каждый 4 на строительстве, где основной объем работ выполняется на открытом воздухе, на высоте, под воздействием осадков, перепадов температур т.е. работники строительных организаций работают в условиях повышенной опасности при проведении строительно монтажных работ, а также строительство высотных зданий.

В аграрном секторе доля пострадавших работников составило 5,9 % от общего числа пострадавших.

По пункту 3

Законодательством РК установлены ограничения детского труда и предусматривается уголовная и административная ответственность за вовлечение детей наихудшим формам детского труда.

Так, Трудовым кодексом РК, принятого 15 ая 2007 года, выделена отдельная глава (16) особенности регулирования труда работников, не достигших 18-летнего возраста.

Статьей 178 Трудового кодекса работники не достигшие 18-летнего возраста, в трудовых отношениях приравниваются в правах к совершеннолетнему, а в области охраны труда, рабочего времени и отдыха и других условий труда пользуются дополнительными гарантиями установленными настоящим Кодексом.

Статьей 179 Трудового кодекса РК запрещается применение труда работников, не достигших 18-летнего возраста на тяжелых работах, работах с вредными (особо вредными) и (или) опасными условиями труда, а также на работах выполнение которых может причинить вред их здоровью и нравственному развитию (игорный бизнес, работа в ночных развлекательных

заведениях, производство, перевозка и торговля алкогольной продукцией, табачными изделиями, наркотическими веществами, психотропными веществами и прекурсорами).

Запрещаются переноска и передвижение работниками, не достигшими 18-летнего возраста тяжестей, превышающих установленные для них предельные нормы.

Статьи 182, 183 Трудового кодекса РК содержат нормы выработки для работников не достигших 18-летнего возраста; режима труда и отдыха для работников не достигших 18-летнего возраста.

по пункту 4

Согласно Закона РК «О занятости населения» государственные инспектора труда обязаны проводить проверку на соблюдение особых условий, определенных при выдаче разрешения на привлечение иностранной рабочей силы, привлечение иностранной рабочей силы без разрешения на осуществление трудовой деятельности.

Вместе с тем, в соответствии с пунктом 4 статьи 12 Конституции РК иностранцы и лица без гражданства пользуются в Республике правами и свободами, а также несут обязанности, установленные для граждан, если иное не предусмотрено Конституцией, законами и международными договорами.

Приложение: информация по пунктам 1,2,3,5,6 раздела «статистические данные»

**Директор Департамента
занятости и миграции населения**

Д. Аргандыков

Исп. Альжан М.И.
тел. 74-35-25

Раздел А - ВВОЗ иностранной рабочей силы в Республику Казахстан

А	Б	2007 год	2008 год	11 месяцев 2009 года
16	5. Прибыло (привлечено) из стран ближнего зарубежья, всего	5545	6467	2414
	из них (указать название страны)			
	Россия	1014	1971	1052
	Украина	409	522	357
	Беларусь	81	127	53
	Таджикистан	162	216	159
	Узбекистан	887	791	200
	Кыргызстан	2192	1864	73
	Азербайджан	439	547	359
	Грузия	34	139	35
	Молдова	253	226	71
	Туркмения	43	34	23
	Литва	8	7	9
	Эстония	5	8	7
	Латвия	4	5	6
	Армения	14	10	10
17	6. Прибыло (привлечено) из стран дальнего зарубежья, всего	53265	47737	25594
	из них (указать название страны)			
	Австралия	176	221	116
	Австрия	21	26	20
	Албания	11	142	68
	Алжир	10	6	9
	Аргентина	13	10	7
	Афганистан	5	7	9
	Бангладеш	61	133	221
	Бельгия	24	18	12
	Болгария	118	155	67
	Боливия	10	9	2
	Босния-Герцеговина	91	41	45
	Бразилия	4	5	6
	Бруней	0	0	1
	Великобритания	2151	2366	1783
	Венгрия	1072	705	628
	Вануат	0	3	0
	Венесуэла	29	27	25
	Вьетнам	1	0	1
	Гана	2	2	2
	Германия	204	197	150
	Голландия	4	4	28
	Греция	7	7	7
	Дания	31	40	34

Египет	64	105	98
Исландия	0	0	1
Израиль	38	40	65
Индия	1954	2379	2269
Индонезия	51	34	61
Иордания	45	56	87
Ирак	13	14	2
Иран	307	307	258
Ирландия	81	121	53
Испания	16	21	13
Италия	1324	1394	1390
Йемен	0	1	1
Канада	339	362	198
Кения	1	1	1
Китай	8098	10104	5773
Конго	3	1	0
Кипр	5	4	0
Колумбия	69	77	39
КНДР	197	478	277
Куба	2	1	2
Косово	443	693	264
Катар	0	0	4
Камерун	0	0	1
Лаос	0	0	1
Ливан	88	106	114
Ливия	0	0	1
Либерия	2	1	0
Мавритания	0	1	0
Малайзия	305	258	122
Мальта	3	2	1
Марокко	55	20	11
Мексика	7	9	11
Македония	154	114	59
Монголия	2	0	0
Маврикий	0	0	1
Мьянма	2	1	1
Непал	5	5	25
Нидерланды	103	170	95
Нигерия	10	9	15
Новая Зеландия	37	64	29
Норвегия	65	214	240
ОАЭ	33	7	25
Оман	1	1	1
Пакистан	149	109	84
Палестина	10	34	7
Перу	3	3	1
Панама	0	0	1
Португалия	54	44	32

Польша	247	116	171
Румыния	1467	964	563
Саудовская Аравия	0	1	9
Сингапур	50	39	38
Сирия	36	12	6
Сербия	944	706	445
США	804	670	422
Словакия	24	20	20
Словения	3	3	8
Сенегал	0	1	0
Сальвадор	0	0	1
Тайланд	525	801	627
Тунис	4	7	4
Турция	28894	21279	6813
Тринидад и Тобаго	14	14	4
Уругвай	1	0	0
Филиппины	1218	843	977
Финляндия	0	8	3
Франция	146	132	189
Хорватия	96	107	69
Чили	3	1	0
Чехия	43	48	31
Черногория	163	197	1
Швеция	7	20	18
Швейцария	14	16	8
Шотландия	1	0	0
Шри-Ланка	7	12	5
Эквадор	6	6	2
Эфиопия	5	1	1
ЮАР	171	209	90
Южная Корея	182	3	78
Япония	6	12	16
Ямайка	1	0	0

С В Е Д Е Н И Я

о привлечении иностранных специалистов в
Республику Казахстан в разрезе стран и отраслей промышленности

	2007 год	2008 год	11 месяцев 2009 года
Сельское хозяйство, охота и лесное хозяйство	2089	1704	22
Рыболовство, рыбоводство			2
Горнодобывающая промышленность	5444	4682	2769
Обрабатывающая промышленность	2560	3613	2622
Производство и распределение электроэнергии, газа и воды	173	46	31
Строительство	43477	36669	16273
Торговля; ремонт автомобилей, бытовых изделий и предметов личного пользования	641	797	369
Гостиницы и рестораны	524	590	341
Транспорт и связь	743	724	261
Финансовая деятельность	122	120	112
Операции с недвижимым имуществом, аренда и предоставление услуг	1966	3616	3120
Государственное управление	2	33	0
Образование	331	197	174
Здравоохранение и предоставление социальных услуг	35	115	551
Предоставление коммунальных, социальных и персональных услуг	668	1261	1273
Деятельность домашних хозяйств, нанимающих домашнюю прислугу и производящих товары и услуги для собственного потребления		7	86
Деятельность экстерриториальных организаций	35	30	2
Итого	58810	54204	28008

ҚАЗАҚСТАН РЕСПУБЛИКАСЫ
ЕҢБЕК ЖӘНЕ ХАЛЫҚТЫ
ӘЛЕУМЕТТІК ҚОРҒАУ
МИНИСТРЛІГІ



MINISTRY OF LABOR AND SOCIAL
PROTECTION OF THE REPUBLIC OF
KAZAKHSTAN

010000, Астана қаласы, 35 – ші көше,
2 үй,

Министрліктер Үйі
Тел.: (7172) 742851, факс: (7172)
743608

House of Ministries
Dom 2, 35th St.
Astana 01000

Tel.: (7172) 742851, Fax: (7172)
743608

_____ № _____

на № _____ от

Human Rights Watch
350 Fifth Avenue. 34th
Floor
New York, NY 10118-
3299

Re: your letter of December 14, 2009

The Ministry of Labor and Social Protection of the Republic of Kazakhstan, having reviewed your enumerated questions, sends the following information within the Ministry competence.

Statistical Data

Point 6

In 2009, 169,200 foreigners (155,900 from CIS countries; 13,400 from elsewhere) were found to have committed administrative violations of various residency laws.

Four hundred and eight criminal cases were initiated against individuals organizing illegal immigration and against individuals who did not execute court orders on expulsion.

The work of official agencies exposed 42 organizations which employ foreign citizens without proper authorization.

Inspections

Points 1, 2

According to data from 2009, government labor inspectors conducted 22,116 inspections on respect for labor laws.

As a result of the inspections, government labor inspectors exposed 100,580 violations of labor law. More than half of these violations (58.0% or 58,435) were violations of labor relations; 40,433 violations (40.1%) were related to occupational health and safety; 1,712 (1.7%) were violations of laws regarding employment of the population.

21,897 warnings were issued against individuals who committed violations of labor laws, and 10,785 administrative fines were imposed with a total sum of 310.5 million tenge.

In situations presenting real threats to the lives and health of the employees, government labor inspectors halted the work was of 887 units of equipment and machinery and 43 manufacturing projects until they were brought into compliance with safety regulations, and halted the activities of three organizations.

In accordance with the government labor inspectors' orders, employers dismissed 4,493 company officials who were guilty of violating employee health and safety, resulting in accidents. Information on 2,194 accidents was submitted to law enforcement officials; criminal cases were initiated in 96 cases.

In 2009, 2,102 people were injured at manufacturing businesses and organizations in Kazakhstan, a 13.9% decrease from the number of injuries from the previous year (2,444). The number of deaths resulting from manufacturing jobs also decreased 14.3% from 404 deaths in 2008 to 346 deaths in 2009.

Construction businesses and mining and smelting operations have the highest injury rates of all industries.

According to figures from 2009, the portion of injured workers in these industries comprised 34.4% of the total number of injured workers in the country (or 724 workers).

One out of every six deaths at the workplace occurred in the mining and smelting industries; one out of every four deaths occurred in construction, where the greatest portion of work is conducted outdoors, at great heights, under exposure to the elements, with changing temperatures. Construction workers work in conditions of increased danger while performing construction assembly work, and while building tall buildings.

In the agricultural sector, the percentage of injuries comprised 5.9% of the total number of injured.

Point 3

The laws of the Republic of Kazakhstan restrict child labor and stipulate criminal and administrative liability for the exploitation of children in the worst forms of child labor.

Also, the Labor Code of the Republic of Kazakhstan, signed on May 15, 2007, created a separate chapter (16) on the importance of regulating the labor of workers under the age of 18.

Article 178 of the Labor Code states that employees under the age of 18 have equal rights with adults in labor relations. However, in relation to occupational health and safety, working hours, time off, and other working conditions, the Labor Code provides minors with additional guarantees.

Article 179 of the Labor Code prohibits employment of individuals under 18 years of age in heavy labor and from working in harmful (especially harmful) and (or) in hazardous working conditions. Likewise, it prohibits minors from performing work that might harm their health or moral development (in the gambling business, night-time entertainment establishments, the production and trade of alcoholic goods, tobacco products, and narcotic and psychotropic substances and their derivatives.)

Workers under the age of 18 are prohibited from carrying or moving items that are heavier than the maximum standards established for these workers.

Articles 182 and 183 of the Labor Code establish standards for compensation for workers under the age of 18 and the working hours and time off for employees under the age of 18.

Point 4

In accordance with the law of the Republic of Kazakhstan “on the employment of the population,” government labor inspectors are required to conduct inspections on whether specific conditions associated with issuing permission to hire foreign workers have been met, and whether foreign workers have been employed without official permission.

Additionally, in accordance with point four of article 12 of the Constitution of the Republic of Kazakhstan, foreigners and stateless persons in the Republic shall enjoy the rights and freedoms as well as bear the responsibilities established for citizens unless otherwise stipulated by the constitution, laws and international treaties.

Appendix: “Information on points 1, 2, 3, 5, 6 are provided in “statistical data.”

**Director of the Department of Employment and Immigration
D. Argandikov**

Completed: M.E. Alzhan
Telephone: 74-35-25

Section A – IMPORT of foreign labor to the Republic of Kazakhstan

A	B	2007	2008	First 11 months of 2009
16	5. Arrived (hired) from countries of the near-abroad [Former Soviet Union], total	5545	6467	2414
	Of them (specify a country)			
	Russia	1014	1971	1052
	Ukraine	409	522	357
	Belarus	81	127	53
	Tajikistan	162	216	159
	Uzbekistan	887	791	200
	Kyrgyzstan	2192	1864	73
	Azerbaijan	439	547	359
	Georgia	34	139	35
	Moldova	253	226	71
	Turkmenistan	43	34	23
	Lithuania	8	7	9
	Estonia	5	8	7
	Latvia	4	5	6
	Armenia	14	10	10
17	6. Arrived (hired) from countries of the far abroad, total	53265	47737	25594
	Of them (specify a country)			
	Australia	176	221	116
	Austria	21	26	20
	Albania	11	142	68
	Algeria	10	6	9
	Argentina	13	10	7
	Afghanistan	5	7	9
	Bangladesh	61	133	221
	Belgium	24	18	12
	Bulgaria	118	155	67
	Bolivia	10	9	2
	Bosnia and Herzegovina	91	41	45

Brazil			
	4	5	6
Brunei	0	0	1
United Kingdom	2151	2366	1783
Hungary	1072	705	628
Vanuatu	0	3	0
Venezuela	29	27	25
Vietnam	1	0	1
Ghana	2	2	2
Germany	204	197	150
Holland	4	4	28
Greece	7	7	7
Denmark	31	40	34
Egypt	64	105	98
Island	0	0	1
Israel	38	40	65
India	1954	2379	2269
Indonesia	51	34	61
Jordan	45	56	87
Iraq	13	14	2
Iran	307	307	258
Ireland	81	121	53
Spain	16	21	13
Italy	1324	1394	1390
Yemen	0	1	1
Canada	339	362	198
Kenya	1	1	1
China	8098	10104	5773
Congo	3	1	0
Cyprus	5	4	0
Colombia	69	77	39
Democratic People's Republic of Korea (DPRK)	197	478	277
Cuba	2	1	2
Kosovo	443	693	264
Qatar	0	0	4
Cameroon	0	0	1
Laos	0	0	1

Lebanon	88	106	114
Libya	0	0	1
Liberia	2	1	0
Mauritania	0	1	0
Malaysia	305	258	122
Malta	3	2	1
Morocco	55	20	11
Mexico	7	9	11
Macedonia	154	114	59
Mongolia	2	0	0
Mauritius	0	0	1
Myanmar	2	1	1
Nepal	5	5	25
Netherlands	103	170	95
Nigeria	10	9	15
New Zealand	37	64	29
Norway	65	214	240
UAE	33	7	25
Oman	1	1	1
Pakistan	149	109	84
Palestine	10	34	7
Peru	3	3	1
Panama	0	0	1
Portugal	54	44	32
Poland	247	116	171
Romania	1467	964	563
Saudi Arabia	0	1	9
Singapore	50	39	38
Syria	36	12	6
Serbia	944	706	445
USA	804	670	422
Slovakia	24	20	20
Slovenia	3	3	8
Senegal	0	1	0
Salvador	0	0	1
Thailand	525	801	627
Tunisia	4	7	4
Turkey	28894	21279	6813
Trinidad and Tobago	14	14	4
Uruguay	1	0	0
Philippines	1218	843	977
Finland	0	8	3
France	146	132	189
Croatia	96	107	69
Chile	3	1	0
Czech Republic	43	48	31
Montenegro	163	197	1
Sweden	7	20	18

Switzerland	14	16	8
Scotland	1	0	0
Sri Lanka	7	12	5
Ecuador	6	6	2
Ethiopia	5	1	1
South Africa	171	209	90
South Korea	182	3	78
Japan	6	12	16
Jamaica	1	0	0

Data
on the employment of foreign specialists
in the Republic of Kazakhstan by country and industry

	2007	2008	11 months of 2009
Agriculture, hunting and forestry	2,089	1,704	22
Fishing, fish farming			2
Mining	5,444	4,682	2,769
Manufacturing	2,560	3,613	2,622
Production and distribution of electricity, gas and water	173	46	31
Construction	43,477	36,669	16,273
Trade; repair of vehicles, household goods, and personal use items	641	797	369
Hotels and restaurants	524	590	341
Transportation and communication	743	724	261
Financial activity	122	120	112
Transactions involving real estate, leases, or the rendering of services	1,966	3,616	3,120
Public administration	2	33	0
Education	331	197	174
Healthcare and social services	35	115	551
Allocation of communal, social and personal services	668	1,261	1,273
Activity of households employing domestic workers and producing goods and services for personal use		7	86
Activity of extraterritorial organizations	35	30	2
Total	58,810	54,204	28,008

Қазақстан Республикасының
Елшілігі



Embassy of the Republic of
Kazakhstan

Вашингтон қаласы

Washington, D.C.

N 261

Holly Cartner
Director European and Central Asian Division
Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299

March 29, 2010

Dear Ms. Cartner,

With reference to your letter dated 3 February, 2010 it is my pleasure to forward to you the information requested by you on a number of issues relating to the rights of migrant workers in Kazakhstan (in Russian language only).

Let me reiterate our appreciation and support for the ongoing cooperation and dialogue with international NGOs, including HRW, Freedom House, NDI, IRI and many others, and express our hope that they will bear many useful and mutually beneficial fruits.

With kind regards,

Counselor
Meruert Saudabay

A handwritten signature in black ink, appearing to be 'MS' or similar initials, written in a cursive style.

Информация о труде несовершеннолетних и доступе детей мигрантов к системе образования в Республике Казахстан

1. О количестве выявленных фактов и принимаемых мерах по искоренению наихудших форм детского труда.

По данным органов образования и защиты прав детей в 2009 году выявлены **911 фактов** использования детского труда (2008 г. - 1202), в том числе **233** несовершеннолетних, которые занимались попрошайничеством и работали в ночное время официантами, мойщиками машин. В Южно-Казахстанской, Алматинской областях выявлены дети, работающие на хлопковых и табачных полях.

Для эффективного решения вопросов улучшения положения детей в республике реализуется программа «Дети Казахстана» на 2007-2011 годы, в соответствии с которой в Алматинской и Южно-Казахстанской областях созданы и действуют социальные центры по профилактике и предупреждению наихудших форм детского труда.

Центры созданы для того, чтобы свести к минимуму эксплуатацию детского труда и в дальнейшем предотвратить вовлечение подростков в наихудшие формы труда.

Работниками центров проводятся беседы, встречи, круглые столы с родительской общественностью об искоренении наихудших форм детского труда, об его последствиях для психического, физического здоровья детей.

Деятельность центров была рассмотрена на 5-ом заседании Межведомственной комиссии по делам несовершеннолетних и защите их прав при Правительстве Республики Казахстан в декабре 2009 года. По итогам приняты рекомендации о решении социально-экономических проблем крестьянских хлопководческих хозяйств и искоренении детского труда в Южно-Казахстанской области, о внесении изменений в законодательство в части создания экономических альтернатив по возмещению хлопкоробам стоимости аренды хлопкоуборочной техники и модернизации хлопководческой отрасли, а также внедрения международных стандартов качества без использования детского труда.

Акимам Алматинской и Южно-Казахстанской областей было рекомендовано осуществлять раннее выявление и создание единого межведомственного учета детей, занимающихся незаконными формами детского труда, а также привлечения к ответственности работодателей, использующих детский труд, и координации деятельности органов, в том числе внутренних дел, труда и социальной защиты, сельского хозяйства по искоренению наихудших форм детского труда.

В целях защиты прав детей, подвергающихся различным видам эксплуатации, находящихся в вечернее и ночное время без сопровождения взрослых в развлекательных заведениях, на улицах, вокзалах, парках и других общественных местах, а также оказанию им помощи, устройству и возвращению их в школу, министерство инициировало ряд акций и рейдов, в

том числе «Дорога в школу», «Забота», «Дети в ночном городе» и др.

Во время рейда «Дети в ночном городе» проверяются места пребывания детей, занимающихся попрошайничеством, бродяжничеством, компьютерные клубы, увеселительные заведения на предмет нахождения в них подростков после 22.00-х часов и выявления взрослых, занимающихся эксплуатацией труда несовершеннолетних.

Для эффективной организации рейдов министерством в 2009 году были разработаны и направлены в регионы «Методические рекомендации по проведению акций, рейдов в сфере охраны прав ребенка на получение образования».

Ежегодно, в рамках Национальной информационной кампании «12 дней борьбы против эксплуатации детского труда» свыше 250 тысяч детей принимают участие в различных конкурсах, встречах, беседах и других мероприятиях кампании.

Кроме того, Министерством образования и науки в проекты стратегических планов министерств труда и социальной защиты населения, сельского хозяйства на 2010 - 2014 годы внесены предложения в части осуществления постоянного мониторинга детского труда, в том числе искоренения детского труда в хлопководческих и табаководческих крестьянских хозяйствах, выявления фактов использования детского труда, заключения меморандумов с работодателями по обеспечению безопасных условий детского труда, разработки и внедрения современных стандартов.

2. О возможности и требованиях посещения школ детьми мигрантов.

Республика Казахстан ратифицировала в 2002 году Конвенцию о правах ребенка, где говорится, что *каждый ребенок имеет право на образование* и ему гарантируется получение бесплатного начального, основного среднего и общего среднего образования.

Порядок приема иностранцев и лиц без гражданства на обучение, организация их обучения осуществляется на тех же условиях, какие предусмотрены и для граждан Республики Казахстан.

Родитель или законный представитель лица до 16 лет - иностранцев и лиц без гражданства при определении своего ребенка в организацию образования должен представить документ на право постоянного проживания в Республике Казахстан с отметкой о регистрации по месту проживания:

- иностранцы - вид на жительство в Республике Казахстан;
- лица без гражданства - удостоверение лица без гражданства.

Детям, проживающим на обслуживаемой территории, не может быть отказано в приеме в соответствующую организацию образования, кроме частных организаций образования.

3. О количестве детей мигрантов, посещающих школы в Алматинской области на 2009 - 2010 учебный год.

Всего в Алматинской области проживают 2540 детей мигрантов, обучающихся в школах республики, из них прибывших из России - 1, Таджикистана - 6, Туркменистана - 11, Узбекистана - 245, Каракалпакстана - 189, Китая - 1855, Монголии - 230 детей и 3 - цыганы.

4. О вспомогательных мерах для посещения школ детьми ораманов, мигрантов, не владеющих казахским или русским языками.

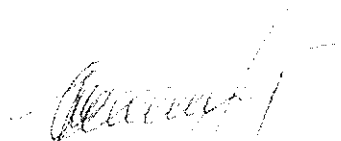
В республике проживают 606 беженцев (197 детей) и 789 339 ораманов, в том числе 325 643 детей.

Для детей ораманов, лиц, имеющих статус беженцев, иностранцев, лиц без гражданства, имеющих вид на жительство, созданы условия для углубленного изучения родного языка. Кроме того, с целью безболезненной интеграции их в учебно-воспитательный процесс, для освоения ими казахского и русского языков организуются дополнительные уроки, языковые кружки, факультативные часы. В 108 школах языки 19 этносов Казахстана преподаются в качестве самостоятельного предмета.

Открыто 195 специализированных этнолингвистических центров, где детьми изучаются культура, традиции, языки 30 этносов.

Для изучения родных языков выделяются бюджетные средства воскресным школам. Всего в республике 79 воскресных школ, в них 3555 детей, которые факультативно или в кружках изучают 25 национальных языков.

Председатель
Комитета по охране прав детей



Р. Шер

Information

On the labor of underage children and on access to the educational system for the children of migrant workers residing in the Republic of Kazakhstan

1. Regarding known instances of child labor and the measures taken for the elimination of the worst forms of child labor.

Based on data from governmental education and children's rights agencies, in 2009 there were **911 instances** of child labor exploitation (in 2008 – 1202 cases), including **233** cases of minors working as beggars, or as waiters or car washers at night. In the South-Kazakhstan and Almaty regions, children were found working in the cotton and tobacco fields.

The government of the Republic of Kazakhstan has implemented a program, "Children of Kazakhstan," for 2007-2011 to improve the quality of life for children in the country. As part of this program, social centers for the prevention of the worst forms of child labor have been established and function in the Almaty and South-Kazakhstan regions.

The centers were created in order to reduce exploitation of children and prevent the involvement of children in the worst forms of child labor.

The centers' staff conducts discussions, meetings, and roundtables with parents about the eradication of the worst forms of child labor, and the psychological and physical effects of these forms of labor on children.

In December 2009, the Fifth Session of the Interdepartmental Commission on Minors and the Protection of their Rights (acting under the authority of the Republic of Kazakhstan) reviewed the work of the centers. As a result, the commission approved the following recommendations:

- to address the socio-economic problems of cotton farmers and the eradication of child labor in the South-Kazakhstan region,
- to introduce legislative changes to create economic alternatives, compensating cotton growers for the cost of renting cotton-harvesting equipment and modernizing the cotton harvesting process,
- to introduce international standards for quality without the use of child labor.

The commission recommended that the mayors of the Almaty and South-Kazakhstan regions expose child labor at an earlier stage and create a single interagency record of children who are employed in illegal forms of labor. The mayors were also asked to ensure that employers who exploit child labor are held responsible. The commission also recommended that the mayors coordinate government agencies including Internal Affairs, Labor and Social Protection, and Agriculture, in the elimination of child labor.

In order to protect the rights of children, who are victims of various forms of exploitation, including in the evening and at night in entertainment establishments, on the streets, in train stations, at parks, and in other public places, and to help children, including through encouraging their return to school, the government has initiated a several programs and raids, including "The Road to School," "Care," and "Children in the Nighttime City."

During the time of the inspection, "Children in the Nighttime City" officials check places such as computer clubs and entertainment establishments, where children are begging, or loitering. The basic premise of the inspections is that the presence of children in such places after 10 p.m. frequently indicates instances of child exploitation.

The document, "Methodical recommendations for conducting programs and raids to protect the rights of the child for receiving education," was developed for the effective organization of the aforementioned inspections.

Each year, as part of the national informational campaign, "12 Days of Activism against Child Labor Exploitation," more than 250,000 children take part in various contests, meetings, discussions and other events.

In addition, the Ministry of Education and Science is introducing proposals to be included in the strategic plans of the Ministry of Labor and Social Protection and the Ministry of Agriculture for 2010-2014. The proposals include the creation of a continuous monitoring system for child labor, including the eradication of child labor in the cotton and tobacco farm industries; exposure of cases of child labor; signing memoranda with employers guaranteeing safe working conditions for children; and the development and introduction of modern standards.

2. Regarding the ability of children of migrant workers to attend school and the demands on the educational system

In 2002, the Republic of Kazakhstan ratified the UN Convention on the Rights of the Child, which states that *every child has the right to an education* and is guaranteed a free, elementary and basic secondary and general secondary education.

The procedures for enrolling foreigners and stateless persons in school are the same as the procedures for enrolling citizens of the Republic of Kazakhstan.

For foreign or stateless persons, a parent or legal guardian wishing to register children under sixteen years of age at an educational institution, first must provide documentation of permanent residence in the Republic of Kazakhstan with a stamp noting the place of residence:

- for foreigners – permanent residence card for the Republic of Kazakhstan
- for stateless persons – certificate of statelessness

Children who reside in the school district cannot be turned away from an educational institution, with the exception of private educational establishments.

3. Regarding the number of children of migrant workers who attend schools in the Almaty region in 2009-2010 academic year.

In the entire Almaty region there are 2,540 children of migrant workers who attend public schools. Of that number: 1 is from Russia, 6 are from Tajikistan, 11 from Turkmenistan, 245 from Uzbekistan, 189 from Karakalpakistan, 1855 from China, 230 from Mongolia, and 3 Roma.

4. Regarding additional steps for assisting the children of migrant workers and Oralmans who speak neither Kazakh nor Russian.

In the Republic there are 606 refugees (197 of whom are children) and 789,339 Oralmans, including 325,643 children.

For children of Oralmans, persons with refugee refugees, foreigners, and stateless persons who have permanent residency, there are programs to help deepen knowledge of native languages. Additional classes, language groups, and tutorials exist to help these children with their mastery of the Kazakh and Russian languages, with the goal of ensuring their smooth integration into the educational system. In 108 schools the languages of 19 ethnicities of Kazakhstan are taught as independent subjects.

195 special ethnological centers were opened where children can learn the culture, traditions, and languages of 30 ethnicities.

Resources for the teaching of native languages are provided to religious schools. In all, there are 79 religious schools in which 3,555 children study 25 national languages in groups or in tutorials.

Head
Child Rights Protection Committee

[signature]

R. Sher

“Hellish Work”

Exploitation of Migrant Tobacco Workers in Kazakhstan

Thousands of migrant workers from Kyrgyzstan, often together with their children, travel to Kazakhstan each year. Many find work in tobacco farming. Human Rights Watch research in 2009 documented abuse and exploitation of many migrant workers by tobacco farm owners who employ them for seasonal work. Tobacco farm owners in Kazakhstan contract with and supply tobacco to Philip Morris Kazakhstan (PMK), a subsidiary of Philip Morris International (PMI), one of the world’s largest tobacco companies.

Migrant workers variously told Human Rights Watch how some employers confiscated their passports, failed to provide them with written employment contracts, did not pay regular wages, cheated them of earnings, and forced them to work excessively long hours. In the worst cases, workers were subjected to forced labor, or situations analogous to forced labor, in which employers confiscated migrant workers’ passports and in some cases required them to perform other work without pay or compensation in addition to tobacco farming.

Human Rights Watch documented 72 cases of children working in tobacco farming in 2009. Owing to the difficulty of the work and the risks associated with handling of tobacco leaves and exposure to pesticides, experts agree that tobacco farming is one of the worst forms of child labor, or labor from which children under 18 are categorically prohibited. Children who work with their families on tobacco farms typically miss several months of school each year, or even entire academic years.

The government should ensure rigorous labor inspections, prosecution of abusive employers, and develop accessible complaint mechanisms for victims and timely and effective investigations into allegations of abuse. PMI and its subsidiaries should ensure fulfillment of commitments made in 2010 in response to Human Rights Watch’s concerns. These commitments include requiring employers in its supply chain provide written contracts, establish regular wages for workers, stop the use of child labor.

*A migrant worker from Kyrgyzstan
picks tobacco leaves near the
village of Malybai, Kazakhstan.*

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