CHILD AND FORCED LABOR IN TOBACCO’S KILLING FIELDS OF KAZAKHSTAN

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INTRODUCTION

On a hot summer day in June of 2009, fourteen-year old Raikan is working in a tobacco field in Kazakhstan.1 As the sun beats down on her, her face and neck begin to severely blister from sunburn.2 Raikan should be in school instead of this field, but the local school will not accept her registration because she does not meet the residency requirements.3 In addition, her family is still paying off a debt owed to a local tobacco farmer.4 Raikan’s brother has been living in Kazakhstan with his wife since 2006 trying to work off the debt they first incurred when an intermediary brought them there.5 In 2008, the same intermediary convinced her mother to come to Kazakhstan under the pretense that Raikan’s brother needed help to pay his debts.6 Once Raikan and her mother arrived in Kazakhstan, the intermediary demanded $409 USD from the brother for Raikan and his mother’s trip.7 Consequently, her brother borrowed additional monies from the tobacco farmer in order to cover the cost of Raikan’s and his mother’s trip.8 After earn-

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2 Id.
3 Id. at 100–01.
4 Id. at 50.
5 Id. at 49–50.
6 Id. at 50.
7 Id.
8 Id.
ing only $242 USD in 2009, the family of four will have to work for at least another year to pay off their debt and still have enough money left to travel back home.\textsuperscript{9} Raikan and her family have experienced the “hellish work in tobacco.”\textsuperscript{10}

According to a report by Human Rights Watch, Raikan is one of approximately seventy-two children between the ages of ten and seventeen that it has documented as working in the tobacco fields of Kazakhstan in 2009.\textsuperscript{11} Raikan’s family is not the only family to experience a form of forced labor.\textsuperscript{12} The tobacco farmers benefiting from this child and forced labor are suppliers for Philip Morris Kazakhstan (PMK), a wholly owned subsidiary of Philip Morris International, Inc. (PMI).\textsuperscript{13}

Human Rights Watch is not the only organization to document child and forced labor in the tobacco fields. In 2011, the U.S. Department of Labor published a report entitled the \textit{List of Goods Produced by Child Labor or Forced Labor}.\textsuperscript{14} The purpose of the report is to detail the goods that are produced by child and forced labor and to list the countries where these goods are produced.\textsuperscript{15} The report lists sixteen countries, including Kazakhstan, where child or forced labor is used in the tobacco industry.\textsuperscript{16} This article will focus on the country of Kazakhstan.

Part one of this article will discuss the applicable Kazakhstani and international laws. Part two will detail the evidence of child and forced labor in Kazakhstan. Part three will detail the physical suffering and other harmful effects from working in the tobacco fields. Finally, part four will discuss the steps that PMI, PMK, and the Kazakhstani government can take in order to make the tobacco fields safer.

\begin{itemize}
\item \textsuperscript{9} Id.
\item \textsuperscript{10} Id. at 49.
\item \textsuperscript{11} Id. at 11.
\item \textsuperscript{12} Id.
\item \textsuperscript{13} Id. at 30.
\item \textsuperscript{15} Id. at iii.
\item \textsuperscript{16} Id. at 23. The sixteen countries listed in the report are: Argentina, Brazil, Cambodia, Indonesia, Kazakhstan, Kenya, Kyrgyz Republic, Lebanon, Malawi, Mexico, Mozambique, Nicaragua, Philippines, Tanzania, Uganda, and Zambia. Id.
\end{itemize}
I. How the Practice of the Tobacco Industry Violates the Law

A. Kazakhstani Laws

1. Constitution

The Kazakhstani Constitution states that Kazakhstan shall recognize and guarantee human rights and freedoms.\(^{17}\) These rights and freedoms are absolute and inalienable.\(^{18}\) The Constitution also extends these rights to foreigners and stateless people.\(^{19}\) Furthermore, Article 16 grants the right of personal freedom to all people.\(^{20}\)

Not only does the Constitution protect human rights, it also protects the rights of workers. For example, involuntary labor is prohibited by Article 24.\(^{21}\) Article 24 also states that "[e]veryone shall have the right to safe and hygienic working conditions" and to be paid without discrimination for the work performed.\(^{22}\) Workers have the right to receive rest and "[w]orking labor agreements stipulating the length of working time, days-off and holidays, and paid annual leave shall be guaranteed by law."\(^{23}\)

2. Labor Code

The Kazakhstani Labor Code states that when any international treaty is signed by Kazakhstan establishing rules different from the labor code, the rules of the treaty will be applied.\(^{24}\) Article 4 lists several principles that guide the labor legislation of Kazakhstan including: the prohibition of "forced labour and the worst forms of child labour,"\(^{25}\) the right to safe and healthy working conditions,\(^{26}\) the place-

\(^{17}\) KAZ. CONST. art. 12, § 1, available at http://www.umt.edu/cali/KazakhstanConstitution.htm.

\(^{18}\) Id. art. 12, § 2.

\(^{19}\) Id. art. 12, § 4 ("Foreigners and stateless persons . . . shall enjoy rights and freedoms . . . established for the citizens unless otherwise stipulated by the Constitution, laws and international treaties.").

\(^{20}\) Id. art. 16, § 1.

\(^{21}\) Id. art. 24, § 1.

\(^{22}\) Id. art. 24, § 2.

\(^{23}\) Id. art. 24, § 4.


\(^{25}\) Id. art. 4(3). The code defines forced labor as "any work or services required from any person under threat of any punishment, for fulfillment of which the person has not offered services voluntarily . . . ." Id. art. 8, para. 2.
ment of a priority on the welfare of the worker over increased productivity, a guaranteed right to wages not less than the minimum wage and for a fair value, the right to rest, and the state regulation of labor protection and safety.

The code grants certain basic rights to employees. These rights include: the right to protection and safety, the right to "receive full and true information about the working conditions and labour safety," the right to the full payment of wages in a timely manner, the right to be paid for idle time, the right to rest and be paid annual vacations, the right to training, the right to be compensated for any injuries or harm suffered while working, the right to have labor disputes to be mediated or referred to a court of law, the right to a work place that is safe, the right to be provided with protective or special clothing, and the right to be paid according to the worker’s “qualifications the complexity of the work, the quantity and quality of the work performed, as well as the working conditions.” These rights impose an obligation on the employer.

The code also regulates the age at which a legal employment contract can be formed by citizens. A legal contract can be executed with any citizen over the age of sixteen. This age limit is reduced for fifteen year-olds, as long as the employee has finished his or her secondary education, and one parent or guardian has provided written consent. Fourteen year-olds may receive an employment contract if the work does not occur during school time, does not interfere with study

26 Id. art. 4(4).
27 Id. art. 4(5).
28 Id. art. 4(6).
29 Id. art. 4(7).
30 Id. art. 4(11).
31 Id. art. 22, § 1(3).
32 Id. art. 22, § 1(4).
33 Id. art. 22, § 1(5).
34 Id. art. 22, § 1(6).
35 Id. art. 22, § 1(7).
36 Id. art. 22, § 1(10).
37 Id. art. 22, § 1(11).
38 Id. art. 22, § 1(16).
39 Id. art. 22, § 1(17).
40 Id. art. 22, § 1(18).
41 Id. art. 22, § 1(23).
42 See id. art. 23, § 2.
43 Id. art. 30, § 1.
44 Id. art. 30, § 2(1).
time, it is not harmful, and one parent or guardian has provided written consent.\textsuperscript{45}

The code places other responsibilities and restrictions on employers. First, employers have three days to take the contract to the employee and have the employee verify that he or she has been familiarized with the contract.\textsuperscript{46} Second, employers must provide a certified copy of the contract to the employee upon the employee’s demand.\textsuperscript{47} In addition, the employer cannot demand that the employee perform work that is outside the scope of the employment contract, except as allowed by law.\textsuperscript{48}

The code also regulates work hours. First, a normal work week is forty hours.\textsuperscript{49} Work weeks consist of either five days or six days.\textsuperscript{50} Employers that use a five-day work week must limit the hours worked each day to eight hours for a forty hour work week, seven hours and twelve minutes for a thirty-six hour work week, and five hours for a twenty-four hour work week.\textsuperscript{51} For employers that use a six-day work week, the limit of hours is seven for a forty hour work week, six hours for a thirty-six hour work week, and four hours for a twenty-four hour work week.\textsuperscript{52} Employees must be given at least twelve hours off before starting the next workday or shift.\textsuperscript{53} Work done on an employee’s day off or on an official holiday must be approved by the employee in writing.\textsuperscript{54} In addition, overtime work is prohibited for pregnant women\textsuperscript{55} and anyone under the age of eighteen,\textsuperscript{56} unless agreed upon in writing by the employee.\textsuperscript{57} Furthermore, overtime is limited to two hours per day or one hour per day for employees working in hazardous or harmful conditions\textsuperscript{58} and cannot exceed 120 hours a year.\textsuperscript{59} Employees also have the right to “one rest and meal break of at least half

\textsuperscript{45} Id. art. 30, § 2(2).
\textsuperscript{46} Id. art. 33, § 2.
\textsuperscript{47} Id. art. 33, § 3.
\textsuperscript{48} Id. art. 40.
\textsuperscript{49} Id. art. 77, § 1.
\textsuperscript{50} Id. art. 81, §§ 1–2.
\textsuperscript{51} Id. art. 82, § 1.
\textsuperscript{52} Id. art. 82, § 2.
\textsuperscript{53} Id. art. 95.
\textsuperscript{54} Id. art. 97, § 1.
\textsuperscript{55} Id. art. 88, § 1(1).
\textsuperscript{56} Id. art. 88, § 1(2).
\textsuperscript{57} Id. art. 88, § 2.
\textsuperscript{58} Id. art. 89, § 1.
\textsuperscript{59} Id. art. 89, § 2.
an hour" that must be provided after three hours and before four hours of work. Finally, annual paid leave of twenty-four days must be provided to all employees.

Wages are also regulated by the code. Kazakhstan shall establish a minimum wage that is not "less than the subsistence level . . . and shall be paid in proportion to the time worked." All employees must be paid a wage that is at least equal to the minimum wage. Employees working overtime must be paid at least 150 percent for the overtime hours, this is the same rate for work done at night. Work done on public holidays or days off is to be calculated at 200 percent of the hourly wage. Wages must be paid once a month by no later than the tenth day of the month. Withholding money from an employee's wages toward a debt owed to the employer can only be done with the written consent of the employee, and the withholding is limited to no more than fifty percent of what is owed to the employee.

The code has a section for the rights of employees under the age of eighteen. The code prohibits "employees under the age of eighteen years to perform heavy work or to work under harmful (particularly harmful) and (or) hazardous working conditions, as well as to perform work that might be harmful to their health and moral development . . . ." Included in the last category is the production of tobacco goods. In addition, a mandatory medical examination must be completed before a contract can be established with anyone under the age of eighteen, and annual medical examinations are to be performed until the employee reaches the age of eighteen. Furthermore, employees between the ages of fourteen and sixteen are limited to no more than

60 Id. art. 93, § 1.  
61 Id. art. 93, § 2.  
62 Id. art. 101.  
63 Id. art. 122, § 1.  
64 Id. art. 122, § 3.  
65 Id. art. 127.  
66 Id. art. 129. Night work is work that is done between the hours of ten p.m. and six a.m. Id. art. 87, § 1.  
67 Id. art. 128.  
68 Id. art. 134, § 1.  
69 Id. art. 137, § 2.  
70 Id. art. 137, § 3.  
71 Id. art. 179, § 1. Women are also prohibited from performing "heavy work or work under harmful (particularly harmful) and (or) hazardous working conditions." Id. art. 186, § 1.  
72 Id. art. 179, § 1.  
73 Id. art. 180.
twenty-four hours a week, and employees between the ages of sixteen and eighteen are limited to no more than thirty-six hours a week.

Employees engaged in "heavy work or work under harmful (particularly harmful) or hazardous working conditions" are also protected by the code. These employees are granted a shorter work week of thirty-six hours and at least six additional days of paid leave per year. They are also given higher wages than employees working under normal conditions. In addition, they "shall be issued, at the employer's expense, with special clothing, special footwear and other means of personal protection, washing and disinfectant materials . . . ."

B. International Law

The practice of PMK and its suppliers also violates international law. According to the Kazakhstani Constitution, international treaties are part of the functioning law of Kazakhstan. Furthermore, any international treaty ratified by the Kazakhstani government has supremacy over its domestic laws. Kazakhstan has signed several United Nations (UN) conventions and ILO conventions.

1. UN Conventions

The UN adopted the Universal Declaration of Human Rights on December 10, 1948, which provided human rights to all individuals regardless of their status. Article 4 prohibits slavery or servitude or anything that takes the form of slavery or servitude. Article 13, Sec-

74 Id. art. 181(1). The time limit is further reduced to two and a half hours per day during the school week. Id. art. 181(3).
75 Id. art. 181(2). The time limit is further reduced to three and a half hours per day during the school week. Id. art. 181(3).
76 Id. art. 202, § 1.
77 Id.
78 Id. arts. 102, § 1(1); 203.
79 Id. art. 204, para. 1.
80 Id. art. 205.
81 KAZ. CONST., supra note 17, art. 4, § 1.
82 Id. art. 4, § 3.
tion 1 ensures the right that everyone has to move about freely and to reside within a country.\textsuperscript{85} When an employer confiscates a migrant worker’s documents that worker is no longer allowed to move about freely and article 13 is violated. Section 1 of Article 23 guarantees a safe and favorable work environment.\textsuperscript{86} Section 2 guarantees that everyone has the right for equal pay and the right to be paid for the work performed.\textsuperscript{87} In addition, Article 24 provides a limit to working hours, the right to time off for rest, and holidays off with pay.\textsuperscript{88} Finally, the Declaration provides that “everyone has the right to an effective remedy” when their rights are violated.\textsuperscript{89}

Another UN convention that protects the rights of migrant workers is the International Covenant on Civil and Political Rights (ICCPR). The preamble of the Covenant recognizes that all humans have dignity and equal, inalienable rights.\textsuperscript{90} Kazakhstan signed the ICCPR on December 2, 2003.\textsuperscript{91} The ICCPR provides that member states must respect the rights of all individuals that are in the member state’s territory regardless of that person’s national or social origin.\textsuperscript{92} This means that Kazakhstan has a responsibility to protect the rights of migrant workers. The rights to effective remedies are also guaranteed.\textsuperscript{93} Article 8 of the ICCPR prohibits slavery, servitude, and forced or compulsory labor.\textsuperscript{94} The ICCPR also protects the right for individuals to freely move about.\textsuperscript{95} Furthermore, the ICCPR protects the rights of children to be treated as minors regardless of that child’s country of origin or nationality.\textsuperscript{96} Article 26 of the ICCPR makes all persons equal before the law, and all persons are entitled to the equal protection of the law.\textsuperscript{97}

\textsuperscript{85} Id. art. 13, § 1.
\textsuperscript{86} Id. art. 23, § 1.
\textsuperscript{87} Id. art. 23, § 2.
\textsuperscript{88} Id. art. 24.
\textsuperscript{89} Id. art. 8.
\textsuperscript{92} ICCPR, supra note 90, art. 2, § 1.
\textsuperscript{93} Id. art. 2, § 3(a).
\textsuperscript{94} Id. art. 8, §§ 1–3(a).
\textsuperscript{95} Id. art. 12, § 1.
\textsuperscript{96} Id. art. 24, § 1.
\textsuperscript{97} Id. art. 26.
The International Covenant on Economic, Social and Cultural Rights (ICESCR) mandates that member states do not discriminate on the basis of national origin.\textsuperscript{98} The ICESCR has several provisions related to work. First, workers must be paid fair wages for work that is done.\textsuperscript{99} Another provision requires the provision of a work environment that is safe and healthy.\textsuperscript{100} The right to rest, a reasonable limit to the hours worked, and holidays with pay are also guaranteed by the ICESCR.\textsuperscript{101}

In addition, the Convention on the Rights of the Child (CRC) applies to the children of migrant workers in Kazakhstan under the age of eighteen.\textsuperscript{102} The convention prohibits discriminating against children based on either the parent’s or child’s national or ethnic origin.\textsuperscript{103} Article 3 states that “the best interests of the child shall be a primary consideration” in all decisions regarding the child.\textsuperscript{104} The convention also recognizes that the child has the right to be protected from economic exploitation and hazardous or harmful work.\textsuperscript{105}

2. International Labour Organization Conventions

According to the International Labour Organization (ILO), it “is the international organization responsible for drawing up and overseeing international labour standards.”\textsuperscript{106} One of the ILO’s missions is to promote the rights of workers.\textsuperscript{107} Kazakhstan is a party to nineteen ILO conventions.\textsuperscript{108}

\begin{itemize}
\item \textsuperscript{99} Id. art. 7(a)(i).
\item \textsuperscript{100} Id. art. 7(b).
\item \textsuperscript{101} Id. art. 7(d).
\item \textsuperscript{103} Id. art. 2, § 1.
\item \textsuperscript{104} Id. art. 3, § 1.
\item \textsuperscript{105} Id. art. 32, § 1.
\item \textsuperscript{108} List of Ratifications of International Labour Conventions – Kazakhstan, INT’L LABOUR ORG. [hereinafter List of Ratifications of International Labour Con-
One of the conventions that Kazakhstan has signed is the Convention Concerning Forced or Compulsory Labour (Forced Labour Convention). The Forced Labour Convention states that member parties should, as soon as possible, end the use of forced or compulsory labor.\textsuperscript{109} According to the Forced Labour Convention, forced or compulsory labor is work that is not done voluntarily or work that is done under the threat of penalty.\textsuperscript{110} The Forced Labour Convention also states that “deductions from wages shall not be made . . . for special food, clothing or accommodation supplied to a worker for the purpose of maintaining him in a fit condition to carry on his work under the special conditions of any employment, or for the supply of tools.”\textsuperscript{111} In addition, member states shall ensure that those who are guilty of using forced or compulsory labor are adequately punished, and that punishment is strictly enforced.\textsuperscript{112}

Kazakhstan is also a party to the Labour Inspection (Agriculture) Convention.\textsuperscript{113} Kazakhstan signed this convention on July 6, 2001.\textsuperscript{114} One of the functions of a labor inspection is “to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, weekly rest and holidays, safety, health and welfare, the employment of women, children and young persons . . . .”\textsuperscript{115} The labor inspectors have the right to enter any agricultural land without notice to inspect.\textsuperscript{116} The inspectors also have the right to interview any person undertaking any matter related to this convention.\textsuperscript{117} Inspectors can remedy any defects they observe including defects related to the use of materials or substances that may threaten the health

\textsuperscript{9}\textsuperscript{110} Id. art. 2, § 1.
\textsuperscript{111} Id. art. 14, § 5.
\textsuperscript{112} Id. art. 25.
\textsuperscript{114} List of Ratifications of International Labour Conventions – Kazakhstan, supra note 108.
\textsuperscript{115} Labour Inspection (Agriculture) Convention, supra note 113, art. 6, § 1(a).
\textsuperscript{116} Id. art. 16, § 1(a).
\textsuperscript{117} Id. art. 16, § 1(c)(i).
or safety of workers. In addition, local laws should provide an adequate penalty for obstructing an inspector.

Kazakhstan is also a party to the Minimum Age Convention having signed it on May 18, 2001. The purpose of the convention is that every member will pursue the elimination of child labor. The minimum age for a child to work shall not be less than fifteen; however, in countries that are underdeveloped the minimum age may initially be fourteen. The minimum age is raised for work that might put the health or safety of a young person at risk, which is increased to not less than eighteen years of age. Article 5 lists different types of work, including agricultural, that this convention specifically applies to due to the nature of the work. This age limit can be reduced to sixteen in cases where the person has “received adequate specific instruction or vocational training in the relevant branch of activity.”

Kazakhstan is also a member of the Occupational Safety and Health Convention. It signed the convention on July 30, 1996. The convention mandates that each member state shall have a national policy on occupational safety. Included in the work activity regulated by this convention is the use of chemical substances. To make the convention effective, member states shall install an adequate method of inspection, and they shall create an enforcement system

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118 Id. art. 18, § 1.
119 Id. art. 24.
121 List of Ratifications of International Labour Conventions – Kazakhstan, supra note 108.
122 Minimum Age Convention, supra note 120, art. 1.
123 Id. art. 2, § 3.
124 Id. art. 2, § 4.
125 Id. art. 3, § 1.
126 Id. art. 5, § 3 (“The provisions of this Convention shall be applicable as a minimum to the following: . . . plantations and other agricultural undertakings mainly producing for commercial purposes . . .”).
127 Id. art. 3, § 3.
129 List of Ratifications of International Labour Conventions – Kazakhstan, supra note 108.
130 Occupational Safety and Health Convention, supra note 128, art. 4, § 1.
131 Id. art. 5(a).
132 Id. art. 9, § 1.
that imposes sufficient penalties for violators.\textsuperscript{133} Article 11 provides that competent authorities shall determine what substances should be regulated and to what extent.\textsuperscript{134} In addition, where dangerous conditions exist, "the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health."\textsuperscript{135}

In addition, Kazakhstan is a party to the Worst Forms of Child Labour Convention,\textsuperscript{136} it signed on February 26, 2003.\textsuperscript{137} Under the Child Labour Convention, "child" applies to anyone under the age of eighteen.\textsuperscript{138} The worst forms of child labor include slavery or any practice similar to slavery, such as debt bondage or forced labor,\textsuperscript{139} and work that "is likely to harm the health, safety, or morals of children."\textsuperscript{140} Children working in the tobacco fields are involved in work that is harmful.

II. EVIDENCE OF CHILD AND FORCED LABOR IN THE TOBACCO FIELDS OF KAZAKHSTAN

Despite being prohibited under international and domestic law, multiple sources have disclosed evidence of child and forced labor in Kazakhstan. Human Rights Watch issued a report entitled \textit{Hellish Work: Exploitation of Migrant Workers in Kazakhstan} that detailed violations of the law in Kazakhstan. In addition, the U.S. Department of State has detailed violations in Kazakhstan in its Trafficking in Victims Protection Report.

A. "Hellish Work"

In 2010, Human Rights Watch issued a report detailing examples of child and forced labor in the tobacco fields of Kazakhstan. The report was issued after preliminary research, interviews with 115 people,
and field research that included photo documentation.\footnote{\textit{HELLISH WORK, supra note 1, at 20.}} In addition, Human Rights Watch met with representatives from several organizations including the International Labour Organization (ILO), the International Organization for Migration (IOM), the Eurasia Foundation of Central Asia, and other non-government organizations (NGOs).\footnote{\textit{Id. at 21.}}

According to Human Rights Watch, “PMK is the sole purchaser of tobacco products in the [Enbekshikazakh] district.”\footnote{\textit{Id. at 30.} The vast majority of tobacco cultivation takes place in this district.} The tobacco season runs for approximately eight months and is very difficult and labor-intensive work.\footnote{\textit{Id. at 31.}} PMK purchases tobacco that is produced by local Kazakhstani landowners.\footnote{\textit{Id. at 30.}} These landowners often hire migrant workers, mostly from Kyrgyzstan, to cultivate the tobacco.\footnote{\textit{Id.}} The typical migrant worker travels with his or her family and together they work the tobacco fields.\footnote{\textit{Id. at 31.}}

It is estimated that Kazakhstan has anywhere from 300,000 to 1 million migrant workers.\footnote{\textit{Id. at 30.}} Human Rights Watch was told by the Kazakhstani government that there were 28,008 migrant workers in 2009 and 54,204 in 2008.\footnote{\textit{Id. at 25.}} One of the reasons for the discrepancy in the numbers is the government quota system. Each year the government sets an annual quota on the number of foreign workers that can be hired, and employers must apply for permits to hire those workers.\footnote{\textit{Id. at 26.} The quota is based on the estimate of the labor market, the number of applications for permits, and the economically active population. \textit{Id.}} For 2009, the quota was approximately 66,350 people; however, only 4,146 were reserved for agricultural workers, and no permits were allocated to the Almaty Province, although this is where the majority of tobacco is grown.\footnote{\textit{Id. at 27.}} According to a letter received by Human Rights Watch from PMK, PMK estimates the number of migrant workers in the tobacco industry was 1,300 in 2009, a drop from the 3,500 in 2007.\footnote{\textit{Id. at 25.}} According to a report issued by the Institute for War and Peace Reporting, the quota for 2010 is approximately 64,000 peo-
The report states that the unofficial number of foreign workers in Kazakhstan is around half a million. Thus, the vast majority of migrant workers in Kazakhstan are in the country illegally.

The quota system adds to the vulnerability of migrant workers. First, arrest and deportation are serious threats to the illegal migrant worker. Second, an employer cannot sign a legal contract with a foreign worker without government authorization, usually in the form of one of the permits. In addition, a legal migrant worker’s employment is limited to only those employers who have the proper quota permit. Last, a migrant worker can be fined and expelled for working for an employer who does not have the proper quota permit. This added vulnerability makes it easier for a migrant worker to be exploited. According to Human Rights Watch, “[t]he 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 first “pervasive practice” is the lack of written contracts for the migrant workers. Human Rights Watch noted that only two of the migrant workers it interviewed had employment contracts. However, these contracts were unenforceable because the employers lacked the permit authorizations required by the quota system. Without a valid contract, the migrant worker lacks any of the rights and obligations provided by Kazakhstani law. According to Human Rights Watch, the lack of a contract would make it difficult for an employee seeking to contest his or her employer’s actions in court because, legally, no labor relation exists. In years when the government issued more permits, a few migrant workers had contracts. However, these contracts were usually for the head of household, and remaining fam-

153 Nikolai Tsoy, Kazak Migrant Policy Criticised, RCA No. 601, INST. FOR WAR & PEACE REPORTING (Jan. 27, 2010), available at http://www.unhcr.org/refworld/topic,4565c2258,4565c25ff9,4b61b2e2c,0.html.
154 Id.
155 HELLISH WORK, supra note 1, at 39.
156 Id. at 28.
157 Id.
158 Id. at 38.
159 Id. at 39.
160 Id.
161 See Kaz. Labor Code, art. 20, § 1 (the employment contract is the beginning of labor relations between the employee and the employer).
162 HELLISH WORK, supra note 1, at 40.
163 Id.
family members did not have a contract with the landowner. In previous years, a few migrant workers had employment contracts with landowners through an employment agency in a nearby village. Human Rights Watch obtained some sample copies from this employment agency; the contracts were only for the head of the household, even though the rest of the family would be working too, and the contracts were in Russian, a language many of the migrant workers do not speak. The sample copies also established eight-hour work days, weekends and holidays off, and monthly payments; however, workers interviewed by Human Rights Watch claimed they worked more than eight-hours a day, rarely if ever had a day off, and were only paid at the end of the tobacco season. Even PMI told Human Rights Watch that it is highly unusual for a landowner and a migrant worker to have a written contract.

Another one of the “perverse practices” documented by Human Rights Watch is the failure of the landowners to make regular payments and to pay at least minimum wage. Kazakhstani law provides that all employees should be paid a monthly or hourly wage that includes overtime, and work performed on public holidays, scheduled days off, or at night. In addition, this amount must not be below the minimum wage as prescribed by law. All of the migrant workers interviewed by Human Rights Watch claimed they were only paid at the end of the eight to nine month tobacco harvest when the tobacco had been delivered to PMK. In a letter to Human Rights Watch, PMI confirmed this practice with an explanation that payment depends on the crop yield. In addition, the family was paid one lump sum, so the other family members, including children, were dependent on the head of the family to give them the money they had earned. According to research conducted by Human Rights Watch, the minimum salary in Kazakhstan was $91 USD in 2009 and $99 USD in 2010, while the average monthly payment in 2009 was $560 USD with low paying

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164 Id.
165 Id.
166 Id. at 40–41.
167 Id. at 41.
168 Id. at 39.
169 Kaz. Labor Code, art. 120.
170 Id. art. 121, § 2.
171 HELLI SH WORK, supra note 1, at 41–42.
172 Id. at 42.
173 Id.
sectors averaging $213 USD.\textsuperscript{174} Two examples provided by Human Rights Watch showed payments were far less for migrant workers in the tobacco fields.\textsuperscript{175} One family was paid $79 USD per person, and the other family was paid $53 USD per person.\textsuperscript{176} The practice of lump sum payments also contributes to the exploitation of migrant workers because any migrant worker who has been abused or wants to leave his or her employment before the end of the season would forfeit any wages earned.\textsuperscript{177} Finally, the practice of lump sum payments at the end of the tobacco harvest causes many of the migrant workers to go into debt, since they have little or no money to pay for any of their necessities.

The lack of money for their daily needs leads to deductions from the lump sum payments of migrant workers because they depend on the landowners to provide them for these daily needs. Most migrant workers owe for food, medical expenses, transportation, and to intermediaries that helped find them employment.\textsuperscript{178} Human Rights Watch documented some cases in which the migrant workers had to either share the cost of fertilizers and other farm equipment, or they had to pay for these costs in full.\textsuperscript{179} In the cases Human Rights Watch documented, deductions ranged “from 34 to 60 percent.”\textsuperscript{180} In some cases, migrant workers were allowed to grow their own vegetables or were allowed to work additional jobs for additional money; however, most landowners did not permit this.\textsuperscript{181} Kazakhstani law only permits deductions by court approval,\textsuperscript{182} and the deductions “shall not exceed 50 per cent of the wages due the employee.”\textsuperscript{183} Since most migrant workers do not have written contracts, the court would have no authority to approve the deductions, and the practice of making lump sum payments also violates the law. In addition, most of the landowners and migrant workers did not keep accurate records of deductions.\textsuperscript{184} Often the migrant workers were cheated by excessive, arbitrary, or unex-

\textsuperscript{174} Id.
\textsuperscript{175} Id. at 43.
\textsuperscript{176} Id.
\textsuperscript{177} Id.
\textsuperscript{178} Id.
\textsuperscript{179} Id.
\textsuperscript{180} Id. at 44.
\textsuperscript{181} Id.
\textsuperscript{182} Kaz. Labor Code, art. 137, § 1.
\textsuperscript{183} Id. art. 137, § 3.
\textsuperscript{184} HELLISH WORK, supra note 1, at 44.
pected deductions. She claims her landowner took deductions for items she did not understand ($133 USD), for residency registration ($40 USD), even though she was not officially registered, and for excessive expenses like transportation to Kazakhstan ($365 USD) and food ($398 USD). After harvesting 2.5 tons of tobacco, Sharapat was paid only $1,194 USD.

Human Rights Watch also documented instances of migrant workers being fined for speaking to a foreign delegation. One reason for this is the cost of intermediaries who bring the migrant workers to the landowners. For example, Ulkan came to Kazakhstan based on the promise of earning $2,335 USD by an intermediary who brought her and her four children (all under the age of sixteen) to a landowner. After deductions at the end of the season, including a $779 USD fee for an intermediary, she still owed $708 USD to a landowner. Another example is the case of Damira, who worked for seven months and was told she owed a landowner $400 USD. She complained about her unfair treatment, but was then threatened and cursed at. Then, she went to a local vegetable farmer for help; he agreed to pay her debt, but in return she had to work for him. One year later, she still owed him the money he “bought” her with.

The next “pervasive practice” is the retention of identification documents by landowners. Under Kazakhstani law, an identity document or passport is needed to complete an employment contract.

185 Id. at 45.
186 Id. at 46.
187 Id.
188 Id.
189 Id. at 47–48 (discussing the cases of Zhumartbek and Umut).
190 Id. at 48.
191 Id.
192 Id.
193 Id. at 49.
194 Id.
195 Id. at 50–51.
196 Id. at 51.
197 Id.
198 Id.
199 Kaz. Labor Code, art. 31, § 1, cl. 1.
However, employers are allowed to hold documents, with the worker's consent, provided they issue a written obligation to return the documents to the employee.\(^{200}\) As previously noted, almost all migrant workers in the tobacco industry did not have employment contracts. Human Rights Watch reported that in half of the cases documented, landowners retained passports and the birth certificates of the children.\(^{201}\) In other cases, the intermediaries took the passports and gave them to the landowners.\(^{202}\) According to Human Rights Watch, the holding of documents resulted in some workers feeling like they had to continue working to the end of the season, some remaining in abusive situations.\(^{203}\) One intermediary, interviewed by Human Rights Watch, confirmed the practice of taking the workers' passports because the landowners had paid for the transportation and food costs, and it would not be fair for the workers to run away without working off their debt.\(^{204}\) Workers also mentioned that they were not allowed to travel around the area.\(^{205}\) In addition, without their passports workers could be expelled from the country and have difficulty making it back to Kyrgyzstan.\(^{206}\) Human Rights Watch documented a few cases in which the workers voluntarily gave the landowners their passports for safe keeping.\(^{207}\) The report did not disclose if the workers were given written obligations that documents would be returned as prescribed by law.

The retention of documents led to instances of coercion and confinement.\(^{208}\) Human Rights Watch documented six cases it considered to be forced labor or considered analogous to forced labor, because the "workers felt compelled to remain in abusive situations" while their documents were retained.\(^{209}\) Some workers were forced to do additional work, such as cleaning or working with other crops, without pay.\(^{210}\) In other cases, intermediaries promised working conditions and

\(^{200}\) Id. art. 31 § 3.
\(^{201}\) HELLISH WORK, supra note 1, at 52.
\(^{202}\) Id.
\(^{203}\) Id.
\(^{204}\) Id. at 53.
\(^{205}\) Id.
\(^{206}\) Id. at 54.
\(^{207}\) Id. at 53.
\(^{208}\) Id. at 54.
\(^{209}\) Id. at 52.
\(^{210}\) Id. at 54.
pay that were completely different from what the workers experienced.\footnote{211}

One documented story is that of Almira and her family.\footnote{212} The intermediary, who acted as driver and a recruiter, promised them an annual salary of $2,320 to $2,655 USD for working in the tobacco fields.\footnote{213} The landowner confiscated their passports, expected them to work in his other fields, made them do household chores, and forced them to do maintenance on the house and barns, all without pay.\footnote{214} They worked eleven to thirteen hours each day.\footnote{215} Almira and her family could not leave, since the landowner had their passports, and they had no money to get back home, as they would not get paid until the end of the tobacco harvest.\footnote{216} For all their hard work, they were only paid $796 USD for their 0.2 hectares of the 1.5 hectares they farmed.\footnote{217} Almira’s story is similar to Zhumartbek and his family.\footnote{218} Zhumartbek’s family members were promised good jobs and good working conditions by the intermediary; however, they were forced to do additional work without pay, were given very few days off, and were forced to endure these conditions since they did not have their passports.\footnote{219} These are just two of the cases Human Rights Watch documented and reported.\footnote{220}

The next two “perverse practices” are long working hours and insufficient rest. Kazakhstani law regulates the work week as being forty hours long.\footnote{221} The amount of hours worked is reduced for employees under the age of eighteen,\footnote{222} and for work that is harmful or hazard-

\footnote{211} Id.
\footnote{212} Id. at 56–57.
\footnote{213} Id. at 56.
\footnote{214} Id.
\footnote{215} Id.
\footnote{216} Id. at 56–57.
\footnote{217} Id. at 57.
\footnote{218} Id. at 57–58.
\footnote{219} Id.
\footnote{220} See id. at 58–61.
\footnote{221} Kaz. Labor Code, art. 77, § 1.
\footnote{222} Id. art. 78, § 1. Employees aged between fourteen and sixteen are limited to twenty-four hours a week; employees aged between sixteen and eighteen are limited to thirty-six hours a week; employees between fourteen and sixteen are limited to two and a half hours a day during the academic year; and employees between sixteen and eighteen are limited to three and a half hours a day during the academic year. Id. art. 181, §§ 1–3.
ous. Human Rights Watch documented one case in which a landowner "used physical force to coerce workers, including a child, to work long hours." Akdana told Human Rights Watch that she and her family worked sixteen-to-eighteen hours a day from June through September and nine hours a day from September through October. Some workers described nineteen-hour days with no days off and only thirty-minute lunch breaks. Other workers said that they were physically beaten, along with their children, so they would work harder. Other sources reported children working as many as twenty hours a day during the peak season and six to fourteen hours a day the rest of the season.

The final "perverse practice" is the substandard living conditions migrant workers have to endure. Human Rights Watch did not visit a single farm that had potable water. Most migrant workers used the water from irrigation canals for drinking and cooking. Using water that was used to irrigate the fields may expose workers to the pesticides and fertilizers sprayed on the crops. Migrant workers need access to clean drinking water to prevent dehydration and other heat-induced ailments, since they work outside in the heat. In addition, outhouses are sometimes constructed by the migrant workers on the edge of the fields near these same canals.

Human Rights Watch also documented cases of migrant workers living in makeshift accommodations with frames made of branches. These frames were covered with anything the migrant workers could find like burlap, plastic tarps, or cardboard. These structures lack electricity, running water, heat (in the winter months), and protection from the weather. Living in makeshift accommodations near the tobacco fields contributes to the amount of time migrant workers

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223 Id. art. 78 § 2. Employees working in hazardous or dangerous conditions are limited to thirty-six hours. Id. art. 202, § 1.
224 HELLISH WORK, supra note 1, at 61.
225 Id.
226 Id. at 62.
227 Id.
228 U.S. DEP'T LABOR, supra note 14, at 28.
229 HELLISH WORK, supra note 1, at 71.
230 Id.
231 Id.
232 Id.
233 Id. at 72.
234 Id. at 73.
235 Id.
236 Id.
spend working. Some migrant workers are allowed to use the landowner’s barn or shed for housing, while other migrant workers receive housing from the landowner.

B. 2011 Trafficking in Victims Protection Report

Human Rights Watch focused on violations of the law; the U.S. Department of State focused on the Kazakhstani government’s response to human trafficking issues, including child and forced labor. The Trafficking in Victims Protection Report (TIP Report) is based on information gathered by the Department of State “from U.S. embassies, government officials, nongovernmental and international organizations, published reports, research trips to every region, and information submitted to” the Department’s e-mail address. The Department of State uses a three-tier ranking system, and each country in the TIP Report is placed into one of these tiers. The tier placement is based on the response of the country’s government in acknowledging the issue of human trafficking, its action taken to combat human trafficking, and its compliance with the Victims of Trafficking and Violence Protection Act’s (TVPA) minimum standards. These minimum standards are:

1. The government of the country should prohibit severe forms of trafficking in persons and punish such acts of trafficking.
2. For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

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237 Id.
238 Id.
240 Id. at 11. In addition to the three tiers, the TIP Report includes a Tier 2 Watch List category for countries that meet the qualification to be a Tier 2 country, but their efforts’ effectiveness is decreasing as seen by the significant number of victims, the “failure to provide evidence of increasing efforts . . . and decreasing evidence of complicity . . .” or compliance based on future commitments over the next several years. Id. at 13–14.
241 Id. at 11.
(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.242

"The TVPA’s minimum standards measure a country’s efforts to combat trafficking under the ‘3P’ paradigm: prosecution, protection, and prevention."243 Tier 1 countries are “[c]ountries whose governments fully comply with the TVPA’s minimum standards for the elimination of trafficking.”244 Tier 2 countries are “[c]ountries whose governments do not fully comply with the TVPA’s minimum standards but are making significant efforts to bring themselves into compliance with those standards.”245 Finally, Tier 3 countries are “[c]ountries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.”246

Kazakhstan was designated a Tier 2 country in the U.S. Department of State’s 2011 TIP Report.247 It received this designation because its government “does not fully comply with the minimum standards for the elimination of trafficking . . . .”248 The main reason behind this placement is the government’s failure to adequately screen migrant workers for potential forced labor abuses “despite being a significant destination country for foreign victims of forced labor.”249

Kazakhstan is considered a destination country for trafficking victims and occasionally a source or transit country.250 Men, women, and children “from Uzbekistan, Kyrgyzstan, Tajikistan, Mongolia, and Nigeria” are trafficked into Kazakhstan to be used as forced laborers in the tobacco and cotton fields.251

243 Id. at 13.
244 Introductory Material, supra note 239, at 16.
245 Id.
246 Id. at 14. A Tier 3 ranking may result in government sanction by the U.S.
248 Id.
249 Id.
250 Id.
251 Id.
The TIP Report’s “Prosecution” section for Kazakhstan notes that “[t]he government of Kazakhstan demonstrated modest progress in anti-trafficking law enforcement efforts during the reporting period.” The TIP Report commends Kazakhstan for strengthening its punishment for child sex trafficking in its penal code in 2010. The Kazakhstani police, with the help of foreign donors, conducted training to assist in victim identification and investigation techniques. In addition, trafficking investigations increased from forty-nine in 2009 to eighty-eight in 2010; prosecutions increased from thirty-five in 2009 to forty-eight in 2010; and convictions increased from twenty-four in 2009 to thirty-two in 2010. However, twenty-seven of the thirty-two convicted traffickers received sentences that only ranged from two to fourteen years, and the five other convicted traffickers received no jail time because they were paroled. In addition to the small sentences given to the traffickers, the government failed to start any new investigations, or prosecute and convict any police officers or other government officials that have been reported to be complicit in trafficking or to be in association with traffickers.

The TIP Report also notes the government’s efforts in fighting forced child labor. In areas where cotton is grown, several directives were issued “that explicitly prohibited the use of child labor (including forced child labor) during the 2010 fall cotton harvest.” The Department of Education made sure the local schools were open during the cotton harvest, and labor inspectors inspected the cotton and tobacco fields for any evidence of child labor. The labor inspectors found no evidence of child labor, and regional NGOs reported a significant decrease from previous years.

Under the “Protection” section for Kazakhstan, the TIP Report stated Kazakhstan “made [only] some progress in identifying and protecting victims.” The government did make some positive progress. First, the government identified twenty-three more victims of traffick-
ing in 2010 compared to 2009.263 These victims were also provided with provisions to help with basic necessities like food and shelter and other services.264 One NGO-run shelter is fully funded by the government, and another is partially funded by the Almaty Province’s government.265 These shelters provide assistance with medical, legal, and psychological needs, and they permit adult victims to freely come and go.266 In 2010, the government adopted a measure to provide victims with compensation.267 In addition, no reports were made of trafficking victims being prosecuted for unlawful acts they committed while being trafficked or directly related to them being trafficked.268

However, the government also made some negative decisions. First, “the government identified only one foreign labor trafficking victim, despite being a recognized destination for foreign victims of forced labor.”269 Second, the immigration police failed to identify a single foreign trafficking victim despite screening illegal migrants during immigration raids.270 The immigration police also deported thousands of migrants without making efforts to screen for possible trafficking victims.271 Another negative was the decrease in government funding for trafficking victims from $84,000 USD in 2009 to $70,000 USD in 2010.272 In addition, despite making provisions for some trafficking victims, other victims were “unable to access medical assistance due to a lack of health insurance or temporary residency permits.”273 Another issue is that child trafficking victims were often held in detention facilities while charges were pending against them.274 Furthermore, although Kazakhstan allowed trafficking victims who agreed to testify to stay in the country during the criminal investigation, these trafficking victims were not permitted to work because of their temporary residence status.275 Finally, these trafficking victims were all forcibly repatriated.276

263 Id.
264 Id.
265 Id.
266 Id.
267 Id. at 211–12.
268 Id. at 212.
269 Id. at 211.
270 Id.
271 Id.
272 Id.
273 Id.
274 Id.
275 Id. at 212.
276 Id.
The TIP Report, which commends Kazakhstan for its “Prevention” efforts,\textsuperscript{277} noted an increase in prevention efforts, and specifically mentioned the awareness campaign directed at employers in the cotton and tobacco industries.\textsuperscript{278} Kazakhstan also increased awareness of trafficking through 191 newspaper articles and seventy-three videos that discussed human trafficking.\textsuperscript{279} The government also created a hotline for trafficking victims as part of an anti-trafficking campaign on passenger trains.\textsuperscript{280} In addition, both the local and the national governments increased the amount of funds contributed to anti-trafficking NGOs that included a second trafficking victim hotline, and contributions were made to “a program designed to reduce demand for sex trafficking.”\textsuperscript{281}

Finally, the TIP Report makes several recommendations for Kazakhstan. The first recommendation is for the government to provide expanded training to police and other government officials in order to increase the identification of foreign trafficking victims.\textsuperscript{282} Second, the government needs to do more to make sure foreign trafficking victims receive assistance.\textsuperscript{283} Next, the government needs to make sure the immigration police are screening anyone detained to ensure they are not victims of trafficking.\textsuperscript{284} The government also needs to make sure any government officials suspected of trafficking are investigated and those complicit are investigated, prosecuted, convicted, and sentenced to the fullest extent of the law.\textsuperscript{285} The government needs to continue to work to prevent forced labor during the cotton and tobacco seasons.\textsuperscript{286} It also needs to increase funding for NGOs that assist trafficking victims to ensure more victims receive assistance.\textsuperscript{287} In addition, the government needs to “conduct trafficking awareness campaigns aimed at reducing the demand for both labor trafficking and commercial sexual exploitation.”\textsuperscript{288} The last recommendation is to ensure police, prosecu-

\textsuperscript{277} Id.
\textsuperscript{278} Id.
\textsuperscript{279} Id.
\textsuperscript{280} Id.
\textsuperscript{281} Id.
\textsuperscript{282} Id. at 211.
\textsuperscript{283} Id.
\textsuperscript{284} Id.
\textsuperscript{285} Id.
\textsuperscript{286} Id.
\textsuperscript{287} Id.
\textsuperscript{288} Id.
tors, and judges have the capacity and capability to prosecute and adjudicate trafficking cases and to strengthen this capacity.\textsuperscript{289}

III. THE DANGERS OF THE TOBACCO FIELDS

Migrant workers and their children face many dangers and other issues by working in the tobacco fields. Most of these are physical and include the threat of Green Tobacco Sickness and the hazards of pesticides. Children also face the consequences of missing school and an education by working in the fields.

A. Green Tobacco Sickness and the Physical Toll of Working in the Tobacco Fields

Migrant workers, especially children laboring in the tobacco fields, face many physical hazards. One hazard unique to the tobacco industry is acute nicotine poisoning which is commonly referred to as Green Tobacco Sickness (GTS).\textsuperscript{290} GTS is caused when workers come into contact with mature tobacco leaves causing nicotine to be absorbed through the skin.\textsuperscript{291} According to the World Health Organization, workers diagnosed with GTS often experience "weakness, headache, nausea, vomiting, dizziness, abdominal cramps, breathing difficulty, abnormal temperature, pallor, diarrhoea, chills, fluctuations in blood pressure or heart rate, and increased perspiration and salivation."\textsuperscript{292} Exposure to nicotine, and therefore GTS, is even greater when the tobacco leaves are wet. Reports estimate that tobacco leaves wet from dew or rain may contain 9 milligrams of nicotine that is equivalent to that of six cigarettes.\textsuperscript{293} Humidity might increase the worker's exposure to six times this amount.\textsuperscript{294} The physical exertion required in harvesting tobacco also increases the nicotine absorption as blood flows closer to the skin.\textsuperscript{295}

\textsuperscript{289} Id.
\textsuperscript{290} Robert H. McKnight & Henry A. Spiller, \textit{Green Tobacco Sickness in Children and Adolescents}, 120 PUB. HEALTH REP. 602, 602 (2005); see also \textsc{Hellish Work, supra} note 1, at 69; U.S. DEP'T LABOR, \textit{supra} note 14, at 29.
\textsuperscript{291} McKnight & Spiller, \textit{supra} note 290.
\textsuperscript{293} McKnight & Spiller, \textit{supra} note 290, at 603.
\textsuperscript{294} Id.; see also U.S. DEP'T LABOR, \textit{supra} note 14, at 29.
\textsuperscript{295} McKnight & Spiller, \textit{supra} note 290, at 604.
GTS is not the only threat migrant workers face in the tobacco fields. Another serious threat comes from pesticides and fertilizers. Pesticides and fertilizers can be dangerous without the knowledge of their proper use, handling, dangers, and storage. Part of this knowledge is using the proper protective equipment when handling. According to Human Rights Watch, none of the migrant workers it interviewed had any knowledge of the dangers of pesticides and fertilizers.296 Only one of the workers had received any written instructions, and none of them had received training provided by PMK, despite PMK’s claims of providing training through agronomists.297 Another problem is that the standard materials were written in Russian, a language most migrant workers do not read.298

According to Human Rights Watch, migrant workers reported using the pesticides Decis and Confidor.299 The Material Data Safety Sheet (MSDS) for Decis lists the following harmful effects: it is corrosive and can cause irreversible eye damage, contact with the skin should be avoided as it can be absorbed through the skin resulting in burns and irritation, it should not be swallowed as ingestion can be fatal, and its vapors and spray mist should not be inhaled, as this also can be harmful.300 The MSDS also warns against contaminating food and water from improper storage.301 In addition, the MSDS warns against the potential harm caused by applying Decis to water either directly or through runoff and the threat to surface or ground water by improper use or disposal.302 Finally, the MSDS lists protective eye-wear, chemical-resistant gloves, footwear, headgear, coveralls worn over long sleeved shirt and pants, and socks as the necessary personal protective equipment to be used in order to protect workers from exposure.303

The MSDS for Confidor warns that Confidor is harmful if ingested or inhaled, and may cause eye and skin irritation.304 The MSDS rec-

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296 HELLISH WORK, supra note 1, at 62–63.
297 Id. at 63.
298 Id.
299 Id. at 63–67.
301 Id. at 4.
302 Id. at 7.
303 Id. at 4.
ommends that washing facilities be provided in all workplaces. The suggested personal protective equipment to be worn around Confidor is goggles, fully buttoned cotton overalls, elbow-length PVC gloves, a washable hat, and a mask to protect from inhalation.

In addition to the threat from nicotine and pesticides, migrant workers face other physical dangers. Human Rights Watch research found that children, for the most part, perform the same work as adults. Tobacco work is physically strenuous labor. This kind of work involves lots of bending, lifting, and moving heavy loads. The constant stooping and lifting causes physical problems that are more pronounced in children. This results in musculoskeletal issues and pain in the joints, especially in the knees, back, and shoulders. In addition, children are at risk of experiencing stunted growth. Children are also at risk of developing respiratory infections and diseases like tuberculosis from breathing in particles during the process of drying and grinding the tobacco. Many children suffer burns and eye injuries from the heat, smoke, and toxic fumes used in the curing sheds. An additional risk to the children is the use of sharp tools to cut the tobacco plants and during other cultivating activities.

Migrant workers, especially their children, need to be protected from these physical hazards. First, the migrant workers must have the necessary personal protective equipment to wear. In addition to the threat of GTS from working directly with the tobacco, the workers are using harmful pesticides that can cause serious injury. The MSDS instructions for both pesticides, Decis and Confidor, recommend the use of this protective equipment in order to keep the workers safe while applying the chemicals. Since the protective equipment can be hot to wear, in already hot weather conditions, workers should be provided with breaks and should not be punished for taking them. Workers also need to be supplied with fresh water. They need clean water not just for drinking, but also for washing, bathing, and cleaning their hands off after use of the pesticides. Furthermore, the workers need to work normal hours to limit their exposure to the heat.

305 Id. at 2.
306 Id. at 3.
307 HELLISH WORK, supra note 1, at 95.
308 U.S. DEP'T LABOR, supra note 14, at 28.
309 Id. at 28–29.
310 Id. at 29.
311 Id.; see also HELLISH WORK, supra note 1, at 90.
312 U.S. DEP'T LABOR, supra note 14, at 29.
313 Id.
B. Missing School and the Cycle it Causes

The physical effects are not the only dangers faced by children in the tobacco fields. Human Rights Watch discovered, through its investigations and interviews, that most migrant families did not attempt to enroll the children in local schools. The main reason for this is the need for children to help work in the tobacco fields, since the families get one lump sum payment instead of being paid by the hour. A representative from the Kyrgyzstan government told Human Rights Watch that “he regularly encounters child labor in the tobacco fields.”

These children are not in the schoolroom, but are in the tobacco fields. Human Rights Watch found only one family that had successfully enrolled their children in school in Kazakhstan. Two other families attempted to enroll their children in school, but were denied access by the local school administration because of a lack of residency registration. Human Rights Watch was told by the government that “only migrants with permanent residence in Kazakhstan and in possession of a stamp indicating residency registration may enroll their children” in schools. Due to the inability to enroll in school, most children miss at least two to three months of school and some the entire school year.

Migrant children missing school leads to a cycle of migrant work due in part to the lack of an education. The ILO recognized this reality in its Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. This convention noted “that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education . . . .” The convention also recognized the relationship between child labor, poverty, and a lack of education. Member states are supposed to “take[] into account the importance of education in eliminating child labour” by providing free education and, to the extent necessary to prevent child...
labor, vocational training. Universal education is to be a partnership between member states. This means claiming residency issues to keep children out of school is not a valid reason in light of the partnership that should exist between member states Kazakhstan and Kyrgyzstan.

In addition, international law guarantees children the right to an education. Article 13 of the ICESCR recognizes that everyone has the right to an education. According to the ICESCR, primary education shall be available to all children for free, secondary education, including vocational school, shall be generally available, and higher education shall be accessible on an equal basis. Furthermore, Article 28 of the Convention on the Rights of the Child (CRC) recognizes that every child has the right to an education. The CRC also states that primary education shall be made available and free to all, secondary education shall be available and accessible to all, including vocational training, and shall be free or financial aid shall be available for those in need. Additionally, higher education shall be made accessible to all. Kazakhstan must ensure all children have access to an education. The fact that children are migrants does not change the obligation that the government has to educate children.

Article 32 of the convention tells members to recognize that children have the right to be protected from work that is hazardous or interferes with the child’s education. Member parties shall legislate a minimum age for employment, the hours and conditions of employment, and the penalties and sanctions for violations that are effective to deter violations. The Kazakhstani government must enforce the minimum age for workers, ensure that employers are not keeping children from school by having them work during school

323 Id. art. 7, § 2(c).
324 Id. art. 8.
325 ICESCR, supra note 98, art. 13, § 1.
326 Id. art. 13, § 2(a).
327 Id. art. 13, § 2(b).
328 Id. art. 13, § 2(c).
329 CRC, supra note 102, art. 28, § 1.
330 Id. art. 28, § 1(a).
331 Id. art. 28, § 1(b).
332 Id. art. 28, § 1(c).
333 Id. art. 32, § 1.
334 Id. art. 32, § 2(a).
335 Id. art. 32, § 2(b).
336 Id. art. 32, § 2(c).
hours, and provide adequate penalties for those employers violating the law.

IV. CHANGING THE TOBACCO INDUSTRY TO MAKE THE FIELDS SAFER

The tobacco industry is filled with physical and emotional dangers as well as violations of domestic and international law. The responsibility to change the tobacco industry in Kazakhstan is shared by PMI, PMK, and the Kazakhstani government. PMI, PMK, and the Kazakhstani government must take action to ensure change instead of relying on laws that are not being enforced.

A. PMI and PMK

PMI needs to take responsibility for the actions of its subsidiary PMK. PMI has control over the actions that its subsidiary takes. If PMK refuses to take this action then PMI needs to fire those in charge and replace them with individuals who will follow the orders of PMI’s management. PMI is ultimately responsible for what PMK does. Until it enforces change, change will not occur.

PMK needs to take several steps to ensure the safety of the workers, and to ensure the law is followed. First, PMK controls the purse strings; if suppliers want to get paid then they need to follow the law and PMK’s rules. Second, PMK needs to make sure that its suppliers honor the contracts in place with the migrant workers. For those workers who do not have a contract, PMK needs to force its suppliers to initiate contracts with the workers.

Due to Kazakhstan’s quota system, most of the workers do not have contracts. To solve this problem, PMK needs to mandate that all suppliers must have contracts with all workers. Even though these contracts will not have the force of law, PMK can force its suppliers to honor the contracts by threatening to withhold payment. These contracts need to state the amount of hours to be worked each day and include the time off according to the applicable laws. Next, PMK needs to make sure its people spray the pesticides instead of having the migrant workers perform that task, and it needs to make sure the pesticides are not stored where the migrant workers live. PMK needs to make sure that its suppliers give migrant workers access to clean water. PMK must tell its suppliers it will not tolerate child labor. This must be a zero tolerance policy. PMK needs to inspect the farms to make sure its suppliers are in compliance. These inspections should be carried out periodically and randomly.
B. Kazakhstan

First, and foremost, Kazakhstan needs to enforce its laws, including all international treaties it has signed. Second, it needs to protect the rights of all people, not just its citizens. It should not allow non-citizens to be injured and to be taken advantage of simply because the law does not protect non-citizens. Another step it can take is to give non-citizens access to the courts for remedies without the threat of deportation. The threat of deportation keeps many migrant workers from reporting violations and enables employers to use coercion against the migrant workers. Kazakhstan needs to make sure its labor inspectors are checking the tobacco farms. These inspectors need to make sure children are not working, pesticides are not being stored where the migrant workers live, and that the migrant workers have access to clean water. Kazakhstan needs to open its schools to all children regardless of registration requirements, or in the alternative, supply teachers to the tobacco farms to make sure the children are receiving the education entitled to them by law. Finally, Kazakhstan needs to sign and ratify the International Covenant on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The International Covenant on the Protection of the Rights of All Migrant Workers and Members of Their Families was created because of the vulnerability of migrant workers.\textsuperscript{337} The Covenant prohibits slavery or servitude\textsuperscript{338} and forced or compulsory labor.\textsuperscript{339} Article 16 protects migrant workers and their families from violence and threats from all members of the public, government, or institutions.\textsuperscript{340} Migrant workers are also protected from being detained or imprisoned from failing to fulfill a contract obligation.\textsuperscript{341} Article 25 seeks to ensure migrant workers are paid for the work they do according to the law.\textsuperscript{342} Children have the right to an education according to Article 30.\textsuperscript{343} Finally, Article 43 grants migrant workers and their families the right to

\textsuperscript{338} Id. art. 11, § 1.
\textsuperscript{339} Id. art. 11, § 2.
\textsuperscript{340} Id. art. 16, § 2.
\textsuperscript{341} Id. art. 20, § 1.
\textsuperscript{342} Id. art. 25, § 1.
\textsuperscript{343} Id. art. 30.
"enjoy equality of treatment with nationals of the State . . . ."\(^\text{344}\) By signing and ratifying the convention, Kazakhstan will begin the process of protecting migrant workers and their families, and will show the international community that it is serious about making positive changes. These steps will begin the process of protecting migrant workers, including children, from the killing fields of tobacco.

\(^{344}\) Id. art. 43, § 1.