

**Submission to the United Nations Office of the
High Commissioner for Human Rights (OHCHR)
regarding the protection of the rights of the child
in the context of migration**

April 8, 2010

Abuses faced by migrant agricultural workers in Kazakhstan

In 2009, Human Rights Watch interviewed migrant workers employed in tobacco farming in the Enbekshikazakh province of Almaty province and migrant workers employed in cotton farming in southern Kazakhstan. In both tobacco and cotton farming we found numerous cases of child labor. In tobacco farming, we also found a range of labor and other abuses against children and adult workers.

Child labor

Migrant agricultural workers often travel together and work as families. Human Rights Watch found the use of child labor in tobacco and cotton farming among migrant workers in Kazakhstan common, with children as young as 10 working. Owing to the difficulty of the work and the risks associated with exposure to pesticides, and, in the case of tobacco, hazards associated with the handling of tobacco leaves, experts agree that tobacco and cotton farming are two of the worst forms of child labor, or sectors in which children under 18 are categorically prohibited from working.

Other abuses against migrant tobacco workers

Human Rights Watch documented a number of other abuses against both adult and child migrant tobacco workers. Migrant tobacco workers from Kyrgyzstan told Human Rights Watch how the Kazakhstani farmers who employed them did not provide them with written employment contracts and did not pay regular wages during their eight to nine months of employment. Instead, the landowner paid one member of a migrant worker family, often the male head of household, a lump sum payment at the end of the tobacco harvest. Other family members who worked on the farm, including both children and other adults did not earn any direct payment for their work.

In numerous cases, migrant workers stated that employers confiscated their passports, which in many cases served as a means of coercing the workers to remain on the farm through the entire tobacco season. In the worst cases, Human Rights Watch believes its evidence indicates that passport confiscation, coupled with the single end-of-season payment

structure led to migrant families being trapped into forced labor or situations analogous to forced labor. In these cases, employers required the migrant workers to perform other work, without pay, in addition to tobacco farming.

Both adult and child migrant tobacco workers stated that employers forced them to work excessively long hours, and provided days off only very irregularly.

Both migrant workers and government officials consistently stated to Human Rights Watch that migrant workers did not appeal to official agencies in case of abuse. The absence of such appeals raises concerns as to whether migrant workers have access to such agencies, or whether they are effectively denied this avenue of redress. Even if migrant tobacco workers were to turn to government agencies, officials consistently told Human Rights Watch that the authorities would typically deport any found to be working unofficially or with irregular migration status, and would not seek to investigate any complaints of abuse made by that worker.

Education

Children work with their families on tobacco farms for eight to nine months a year and typically miss several months of school each year. In the event that their families remain in Kazakhstan for more than one season, children miss entire academic years. In some cases migrant children face obstacles in accessing local schools in Kazakhstan because their parents lack residency registration or because teachers are reluctant to take migrant children as students. Children who work in cotton farming come for a shorter period during the cotton harvest in September and October, but also miss several weeks or a few months of school.

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.¹ In order for a child to be enrolled in a school, a parent or guardian must present a document verifying permanent residence in the Republic of Kazakhstan with a stamp

¹ Law on Education, 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 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."

indicating residency registration.² 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.³

Migration policy in Kazakhstan and Impediments to Regularization for Migrant Worker Children and Adults

Experts estimate that Kazakhstan has between 250,000 and 1 million migrant workers, the majority of whom are employed informally. Government statistics for the first 11 months of 2009 indicate that 28,008 foreign workers were officially employed; 54,204 migrant workers were formally employed in 2008.

In response to the global economic crisis, the Kazakhstani government has reduced significantly its annual quota for foreign workers. On the basis of this quota, employers may apply for permits to hire foreign workers. The government reduced the quota for foreign workers in 2009 to .75 percent of the economically active population, or roughly 66,350 people, a decrease of more than 50 percent from 2008. For the fourth category of workers (seasonal agricultural workers), the 2009 quotas were set at .05 percent of the economically active population, or approximately 4,146 people.⁴

Despite allocating a quota for foreign agricultural workers in 2009, the Ministry of Labor and Social Protection of the Population did not allocate permits for hiring foreign workers under the quota to Almaty province,

² Letter from Meuret Saudabay, Counselor, Embassy of the Republic of Kazakhstan, Washington, DC, to Human Rights Watch, March 29, 2010.

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

⁴ 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: National Legislation, International Standards and Practices,” May 2008.

http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/right_migrant_kaz_en.pdf.

even though tobacco as well as other crops in the region are in large part cultivated by migrant workers from Kyrgyzstan. There were no permits allocated for workers from Uzbekistan to work in any region, as Kazakhstan and Uzbekistan do not have a bilateral agreement concerning migrant workers. As a result of these policies, in 2009 nearly all migrant agricultural workers working in these regions worked informally.

Governments have the right to develop laws and policies to regulate migration, including migration for work. However, Kazakhstan still has obligations to protect the fundamental rights of all within its jurisdiction, including migrant workers irrespective of their migration status. These obligations should inform the formation of migration policy.

Migrant workers seeking informal employment, often as a result of a strict quota system such as operates in Kazakhstan, are vulnerable to abuse. Migrants with irregular status are more vulnerable to abuses and less willing to seek assistance from government agencies out of real fears that approaching any official person or body will result in a form of sanction or at worst expulsion. As noted above, in interviews with Human Rights Watch in November 2009, Kazakhstani government officials stated 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.