

# Beyond Corruption

## An Assessment of Russian Law Enforcement's Fight Against Human Trafficking

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**Abstract:** In recent years, Russia has been dealing with a serious human trafficking issue. Russian law enforcement's perceived failure to effectively prosecute traffickers is often blamed on corruption and their efforts have been criticized by domestic and foreign actors alike. This article explores human trafficking in the context of the criminal justice system as a whole, examining the incentives and disincentives that Russian law enforcement agencies have for enforcing anti-trafficking laws. Analysis reveals that poor performance is not due solely to corruption or disinterest in human trafficking. Structural impediments combined with problems specific to the anti-trafficking law have made it more likely that they will use other parts of the Criminal Code to prosecute traffickers instead of the laws specific to trafficking.

**Keywords:** corruption, criminal justice system, human trafficking, law enforcement, police, Russia

Over the past two decades, human trafficking has become an increasingly serious problem for Russia. Because it has been framed as a manifestation of transnational organized crime, law enforcement has the primary role in making sure that traffickers are found and punished. Russia's performance in dealing with the problem, however, has been roundly criticized by domestic and foreign actors alike. As of October 2007—despite the December 2003 passage of a law criminalizing human trafficking—of the over 350 cases of human trafficking registered under the new law, only 10 of them had been brought to court.<sup>1</sup>

Scholars and policymakers have identified a number of causes for Russia's poor performance, but corruption almost always appears near the top of the list.<sup>2</sup> Though corruption is certainly a contributing factor to the spread and persistence of human trafficking in Russia,

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it does not fully explain Russian law enforcement's behavior. It does not, for example, explain why a non-corrupt law enforcement agent might choose not to pursue a human trafficking case when the evidence seems to clearly indicate trafficking. To understand this situation, it is important to look at human trafficking in the context of the criminal justice system as a whole.

I argue that the basic structure of law enforcement creates a series of barriers that deters prosecution of many crimes in Russia. Investigative and prosecutorial functions are strictly separated, creating a situation in which no one can take "ownership" of a case and see it through to completion. The process is further complicated by a system of career advancement that relies heavily on the number of cases cleared, leading law enforcement agents to fear anything that is new and unfamiliar to them. As a new crime, human trafficking presents its own set of challenges. It requires law enforcement to learn new techniques for dealing with witnesses who are also victims. It also requires that they learn strategies for how to apply the new law effectively.

In this article, I examine how Russian law enforcement implemented the human trafficking law from its initial passage in December 2003 until an amendment was made in November 2008. The amendment was a relatively minor change to the wording of the law but was a response to law enforcement complaints about why they could not do more.<sup>3</sup> It therefore provides a convenient stopping point to analyze the first four years of law enforcement practice and a starting point for future analysis of improvements.

The data for this project come from eleven months of fieldwork in Russia as a Fulbright scholar (September 2007 to July 2008) and a trip for follow-up data collection in the summer of 2009. In-depth research into law enforcement practices in Russia is relatively rare since law enforcement agencies continue to operate in a non-transparent fashion and are reluctant to open up their practices to scrutiny by outsiders. This is especially true of an issue like human trafficking, which has garnered widespread international attention largely because of law enforcement's failure to act.

During my research, I spoke with police in the Interior Ministry (MVD—*Ministerstvo Vnutrennykh Del*), prosecutors (*Generalnaya Prokuratura*)<sup>4</sup> and agents in the security services (FSB—*Federalnaya Sluzhba Bezopasnosti*). To account for potential regional variation in enforcement practices, I visited cities across Russia: Moscow, Vladivostok, Khabarovsk, Yoshkar Ola, Kazan, Saratov, Stavropol and Irkutsk (all capital cities of their regions). Moscow, Vladivostok, Khabarovsk and Yoshkar Ola all had at least one trafficking prosecution during the time period of my study. In those cities, I sought out law enforcement agents (MVD, *prokuratura* and sometimes judges) and other stakeholders (non-government organizations and experts) who had experience with the trafficking laws to better understand the challenges they faced.<sup>5</sup> Other cities, (Stavropol, Kazan and Irkutsk) initiated their first prosecutions after my research trips there, so I was only able to attend conferences and speak with conference attendees.<sup>6</sup>

I also attended conferences focused on law enforcement education usually as an invited guest of U.S. Embassy officials or international organizations. These conferences brought together law enforcement agents from several regions, expanding my scope of respondents. At these conferences, my conversations with law enforcement were necessarily casual and often took place on the sidelines at coffee breaks or mealtimes. In contrast to their conference presentations, which usually covered legal theory instead of on-the-ground practice, this was the time when they were most honest about the challenges that they faced in

implementing the human trafficking law.<sup>7</sup> I also spoke with non-government organizations (NGOs) offering rehabilitative services to trafficking victims as well as Russian and American experts on human trafficking. This gave me an outside perspective on law enforcement's successes and failures.

My qualitative data collection methodology allowed me to gain the trust of the agents I spoke with so that I could get beyond statistics on investigations and prosecutions and explore not just whether but also when they used the new laws. Speaking to actors outside of law enforcement gave me the ability to corroborate the information I got from agents themselves. Based on the consistent responses I received from my informants across regions, ministerial boundaries and types of actors, I conclude that law enforcement agents make pragmatic choices about when to deploy the human trafficking laws based on previous experience, ideas about how other actors in the justice system will behave and institutional constraints.

The article will begin by describing the scope of Russia's human trafficking problem, the laws that have been passed to combat it and the results of law enforcement's efforts. I discuss corruption's ill effects within Russian law enforcement and how it relates to human trafficking. From there I suggest that corruption, though easy to blame for Russia's seemingly inadequate efforts on human trafficking, is only part of the story. I suggest that the institutional structure and promotion criteria within Russian law enforcement agencies impede prosecutions more generally. I then focus on the specific challenges posed by the trafficking law itself. Because it is a new law and one that requires specialized investigative techniques, enforcement can be even more difficult. I conclude by offering a more optimistic assessment of Russian law enforcement's efforts on trafficking to date, suggesting that much like law enforcement in other countries, they have worked within existing institutional constraints to prosecute traffickers with the means they have at their disposal.

### **Background**

Russia has a serious trafficking problem. In the 1990s, it mostly concerned women being sold into sexual slavery, but now, the trafficking problem is more multi-faceted and complex. It is estimated that approximately 10,000 people per year are still trafficked out for sexual exploitation (prostitution, pornography, exotic dancing).<sup>8</sup> More recently, Russia has also become a significant destination country for labor trafficking (housework, agricultural and factory work, begging). In one study, expert Yelena Tiuriukanova estimates that up to 1 million migrants in Russia experience some form of trafficking-like or slavery-like exploitation.<sup>9</sup> Labor trafficking victims come from the Central Asian republics, Ukraine, Moldova and some Asian countries. Russia also serves as a transit country for trafficking from Central and East Asia to Europe and the Middle East. Finally, many people are trafficked within Russia for both labor and sexual exploitation.<sup>10</sup>

International and domestic pressure combined with a growing recognition that human trafficking was a threat to national security compelled the Russian government to respond. In 2003, a Duma working group was convened to draft comprehensive legislation to fight human trafficking based on the successful experiences of other countries, including the United States. The draft law included protection for victims and assigned responsibility for coordinating efforts on human trafficking to various government agencies. However, domestic politics intervened and the draft law was never presented for ratification.<sup>11</sup> Instead, in December 2003, in a general bill entitled "On Changes to the Criminal Code,"

two new articles 127.1 (human trafficking) and 127.2 (use of slave labor) were added to the Criminal Code. Punishments for trafficking related crimes (recruitment into prostitution, organizing prostitution) were also increased.<sup>12</sup> While this was a defeat to those who supported the more comprehensive draft legislation, together these two new articles in the Criminal Code gave Russian law enforcement the necessary legal tools for fighting all manifestations of trafficking. The new trafficking laws did not, however, give law enforcement the necessary supporting infrastructure such as rehabilitation shelters and temporary residence permits which would allow them to enforce the laws effectively.

Human trafficking is a difficult crime to investigate because it is usually hidden from view. Victims have often crossed borders illegally and are therefore hesitant to reveal themselves to law enforcement, which may deport them for migration violations. In addition, they are often forced, both physically and psychologically, to stay in the trafficking situation.<sup>13</sup> Crime groups involved in trafficking are flexible and can quickly change tactics in response to law enforcement's efforts. And while traffickers are not limited by national borders, law enforcement is. Once the trafficking is outside their national borders, law enforcement must rely on the notoriously slow and cumbersome procedures of Interpol to get information from their colleagues in other countries.<sup>14</sup> Thus, Russian law enforcement is not alone in having difficulty combating trafficking.<sup>15</sup>

In 2001, the American government began an effort to rank countries' progress on human trafficking.<sup>16</sup> Russia has consistently performed poorly in this annual report. For the past 5 years, it has been placed on the second lowest level for "failure to show evidence of increasing efforts to combat trafficking . . . particularly in providing assistance to victims."<sup>17</sup> The Russian government is criticized for lacking political will to deal with the crime, continued refusal to fund victim protection services and failure to establish a coordinating body to oversee anti-trafficking activities.

The main criterion for judging Russia's performance on human trafficking has been the number of cases prosecuted under the new Criminal Code articles, 127.1 (human trafficking) and 127.2 (use of slave labor). Article 127.1 is usually used for sex trafficking, international or domestic, and Article 127.2 for forced labor trafficking. From January 2004 through December 2008, a total of 519 episodes (*epizodi*) of human trafficking (Article 127.1) and the use of slave labor (Article 127.2) were registered (see Table 1).<sup>18</sup> A single case can have multiple episodes of the crime within it. Given the number of victims that are

**TABLE 1. Human trafficking cases registered under Articles 127.1 and 127.2**

Year	2004	2005	2006	2007	2008	Total
Article 127.1 Human Trafficking Cases Registered	17	60	106	104	112	399
Article 127.2 Use of Slave Labor Cases Registered	8	19	19	35	39	120

Source: MVD Statistics, on file with author; International Organization for Migration, 2008.

thought to cross Russian borders annually, it should be no surprise that Russia is roundly criticized for what is perceived as its lack of effort.<sup>19</sup>

These statistics look even worse when one looks at how the registered cases have fared in the criminal justice process. Registering (*zaregistrirovat*) a case does not mean that it will be officially opened (*vozbuzhdat*), a formalized procedure outlined in the Criminal Procedure Code.<sup>20</sup> In 2006, of the 125 cases registered under both Articles 127.1 and 127.2, 47 cases were opened. In 2007, of the 139 total cases, 54 cases were opened. Opening a case does not guarantee that it will be investigated (*rassledovat*) and move forward to trial. By mid-2008, only 10 cases had been investigated under Article 127.1, of which 9 were sent to trial. In 6 of those cases there was a guilty verdict (12 individuals convicted) and in the other 3 cases, the accused were found guilty of other crimes (recruitment into prostitution, organization of prostitution), but acquitted of human trafficking.<sup>21</sup>

As bad as they look, these statistics do not tell the full story. Exploring why the numbers are so low reveals a more complex picture. Law enforcement is not simply ignoring the new law because they do not believe in it or because they are lazy and corrupt. Instead, they face real constraints on their capacity to enforce the law and must make decisions based on those constraints. First, however, it is important to acknowledge the role corruption plays in Russian law enforcement more generally and in trafficking in particular.

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### Corruption

Russian law enforcement has been described as following a model of “predatory policing,” enriching themselves and the institution as a whole rather than protecting the public.<sup>22</sup> Corruption in law enforcement has a long history in Russia, starting in the Communist period and persisting through today.<sup>23</sup> Scholars have cited low wages, a lack of respect for the law and low legal consciousness as important contributing factors to the continued prevalence of low-level corruption in the police force.<sup>24</sup>

Most Russians view their law enforcement negatively. The police are regularly rated as one of the least trusted institutions in Russia, with about two-thirds of the population reporting little to no trust.<sup>25</sup> Police are also considered very corrupt.<sup>26</sup> In one survey, 92.1 percent of Russian respondents believed police took bribes rather or very often.<sup>27</sup> This belief is borne out by the evidence. In a large study of current police, most reported earning more from non-state actors than from the state budget and spending more time on illegal activities during working hours than in their free time.<sup>28</sup>

Further complicating the issue is the attitude of law enforcement officers themselves to corruption. In a study of cadets and recently graduated officers, Beck and Lee found that many believe corruption is morally acceptable/justifiable under certain circumstances or for particular goals, generally when their crimes were victimless or when it was necessary to help friends and/or family.<sup>29</sup> There is a well known (and even published!) accepted set

of costs for particular police activities including, among other things, dropping a criminal complaint, giving out classified information, forging documents and providing protection to businesses.<sup>30</sup>

Corruption has been identified as both an “underlying root cause and a facilitating tool” for human trafficking, ensuring that it “remains a low-risk, high profit crime.”<sup>31</sup> There are many ways that corruption can feature in human trafficking. Corrupt officials can be involved in falsifying travel documents and can be paid off at border crossings to facilitate illegal entry. Investigators, prosecutors and judges can be bought in the process of the criminal investigation.<sup>32</sup> In Russia, corruption appears when an employer of a company using slave labor or the owner of a brothel pays protection money to law enforcement so they look the other way. Another common exchange for protection is in-kind, often involving a brothel owner sending women from his/her brothel to participate in a “subbotnik,” a day with the police in a sauna.<sup>33</sup>

Though my interview subjects may have been reluctant to implicate themselves or their colleagues in corruption-related practices, I was surprised at how infrequently the issue of corruption naturally came up in my conversations with law enforcement agents. Though there are no specific statistics, the amount of corruption in trafficking crimes in Russia seems to be at a similar level to the amount of corruption in other organized criminal activities and illegal underground businesses. A full understanding of what goes on in the enforcement of human trafficking laws must look beyond corruption. Other factors such as the institutional structure of law enforcement, promotion criteria, misunderstandings about the law’s provisions and evidentiary requirements and investigative techniques also contribute to Russian law enforcement’s difficulties in enforcing human trafficking laws. I will explore each in turn.

### **Institutional Structure**

Russian law enforcement has been one of the slowest institutions to change and is still steeped in the practices and traditions of the authoritarian Soviet Union. Despite many attempts at reform and reorganization in the post-Soviet period, law enforcement continues to be a conservative, militaristic organization very resistant to change. They have been unable to develop legitimacy in the eyes of the populace or a system of public accountability, both considered important aspects of moving away from an authoritarian past.<sup>34</sup>

Today, like many countries in Europe, Russia has a centralized, hierarchical policing structure that is replicated in each region. This structure is incredibly complex with specialized departments at all levels ultimately answering to the federal level MVD or the Procurator General. For the purposes of this article, I will restrict my discussion of the MVD and *prokuratura* only to those departments that are involved with the enforcement of human trafficking laws, leaving out the myriad other departments that work to maintain law and order.

In Russia, the two main tasks of enforcing any criminal law, investigating and prosecuting, are split up among three to four different people/departments depending on the severity of the crime.<sup>35</sup> In a trafficking investigation, the first department involved is the operational investigators (*operativniki*) who are part of the MVD. They gather informants, conduct preliminary interviews, perform searches, and collect evidence.<sup>36</sup>

When a new law is passed, the federal level MVD assigns responsibility for enforcement to one of its many units of *operativniki*. In 2007, the MVD established a unit of *operativniki*

at the federal level specifically trained to investigate human trafficking and kidnapping crimes. In addition to investigating human trafficking crimes in Moscow, this unit offers logistical support and expertise to *operativniki* working on trafficking cases in regions throughout Russia. In some particularly difficult cases, they have sent their *operativniki* out to work directly with the *operativniki* in other regions.

The federal level MVD also issued an edict to specialized units of *operativniki* for fighting organized crime, UBOP (*Upravlenie po Borbe s Organizovannoi Prestupnostyu*), at the regional level, assigning them responsibility for investigating trafficking cases. This edict required that several UBOP agents in each region have human trafficking as one of their specified duties. This does not mean that they only work on human trafficking, but that if a case were uncovered, it would fall within the competence of these particular agents.<sup>37</sup>

When the *operativniki* have finished, the evidence is then passed on to a criminal investigator (*sledovatel*) who can either be part of the Investigative Committee (*Sledstvennii komitet*), a separate division within the MVD, or part of the Investigations Committee located in the *prokuratura* (*Sledstvennii komitet pri prokurature RF*). The *sledovatel* decides which article/articles of the Criminal Code to classify the case under, officially opens the case (a formalized procedure), and converts the evidence into an admissible format for use in the case file.

Which *sledovatel* (in the MVD or the *prokuratura*) has jurisdiction over a case is outlined in the Criminal Procedure Code.<sup>38</sup> Human trafficking is one of the few articles of the criminal code which has split jurisdiction. If there are no aggravating factors, the case stays with the MVD *sledovatel*.<sup>39</sup> If aggravating factors are identified immediately, it must go to a *sledovatel* in the *prokuratura*. If more complex circumstances are discovered by the MVD *sledovatel* during the process of investigation, the case must be immediately passed to a *sledovatel* in the *prokuratura*. Once passed to a *sledovatel* in the *prokuratura*, the case cannot be passed back to the MVD. Trafficking cases are rarely opened as trafficking. Usually they are uncovered in the process of investigating another crime that the MVD has jurisdiction over like recruitment into or organization of prostitution. Trafficking cases that start out as more serious crimes such as kidnapping or illegal confinement are under the jurisdiction of *sledovатели* in the *prokuratura* and so will continue to be investigated by those *sledovатели*.

The situation is more complicated if the case has anything to do with illegal migrants because jurisdiction is in the hands of the Federal Migration Service (FMS—*Federalnaya Migratsionnaya Sluzhba*). For example if there is suspicion that a construction crew is using illegal migrants, the *operativniki* are not empowered by law to enter the premises, even if they think there may be a trafficking or slave labor crime involved. Conversely, the FMS is not allowed to do any of the activities assigned to *operativniki*, they can only enter the premises and do document checks. If there is a suspected crime, the FMS must then call in the *operativniki* to assess whether there is a crime and if so to collect evidence. According to my interviews this coordination happens infrequently. This is unsurprising, as it is not unusual for enforcement agencies to stay strictly within their mandates due to time and resource constraints. Here, the FMS looks for border violations and the MVD uncovers and investigates crimes. However, in the case of human trafficking, cross-agency cooperation would lessen the number of steps before investigation could begin.

Though the responsibility for investigating most trafficking crimes falls to the MVD and *prokuratura*, *operativniki* and *sledovатели* from the federal security service (FSB) have also

been involved in investigating trafficking, including some of the largest international cases. The FSB, also responsible for border security, is interested in trafficking cases insofar as they involve border violations. They are also interested in cases that use Russia as a transit point for trafficking to third countries.

After the *sledovatel* finishes his/her work, he/she writes up the indictment (*obvinitelnoe zaklyuchenie*) outlining the evidence against the accused.<sup>40</sup> The case is then passed to a state prosecutor (*gosobvinitel*). Unlike many legal systems in which the prosecutor who works on the case then takes it to court, the Russian system has a separate set of prosecutors (*gosobviniteli*) who go before the court to argue the state's case. *Gosobviniteli* are not

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involved in any stage of the investigation process up to that point, though they can do further investigation if they deem it necessary. Prior to going before the court, they receive several volumes of paper, which comprise the case file (*delo*). Within 10 days, the *gosobvinitel* must decide whether to uphold the classification made by the *sledovatel*, send it back to the *sledovatel* to change the classification, or drop the case altogether.<sup>41</sup>

The long chain of people that a case must pass through creates a lack of “ownership” over a case. No link in the chain really has any incentive to follow a case through, or fight to keep a crime classified under a particular article of the Criminal Code. No matter how much hard work they put in, the classification could be changed by the next person in the chain. There are at least 5 points during the investigation/prosecution process at which a case could have its classification changed. After opening a case, and during the process of investigation, the *sledovatel* can change the charges. The head of whichever investigative agency (*rukovoditel sledstvennogo organa*) the *sledovatel* belongs to can change it in the process of oversight. The *prokurator* can change it when he/she looks at the indictment. The *gosobvinitel* can change his/her mind and refuse to support the charges in court. Finally, the judge (*sudya*) can reclassify the charges upon hearing the case.

Without a sympathetic next link in the chain, *operativniki* often have to fight for a case to be opened and investigated as trafficking. Occasionally there is communication between the *sledovatel* and the *operativnik* to make sure that the necessary evidence is gathered for a trafficking charge. However, usually the splitting of functions means that an *operativnik* will hand over the evidence to the *sledovatel* and be done with it. The *sledovatel* can choose whether to open the case and what to charge, if anything.

However, I heard of several instances in which *operativniki* fought for trafficking charges. In one case where two female victims were rescued, it took involvement from the federal level *operativniki* to get the case opened. Immediately after the rescue, the local MVD had a statement ready for the women to sign, declining to open a case. The local *prokuratura* also refused to open the case, saying there was no evidence of a crime. Without the interference of a local anti-trafficking NGO and several dedicated upper level regional *operativniki*, the case would not have moved forward. Only when the federal level

*operativniki* became involved was the case opened, though as recruitment into prostitution (Article 240), not as trafficking. *Operativniki* who I spoke with that had worked on trafficking cases expressed frustration at the fact that *sledovateli* frequently refused to go forward with trafficking charges that they had worked hard to gather evidence on.

Inherent in the hierarchical structure of Russian law enforcement, especially in the MVD, is an emphasis on subordination of lower ranks to higher ones. It is rare for individual officers to take initiative without receiving the approval of their superiors. In the context of trafficking, this has been both good and bad. Lower level officers who have attended trainings on human trafficking, or are particularly committed to the trafficking issue, often cannot find support from their superiors. Many risk reprimand if they do anything that is not approved procedure. In one case, a senior level MVD officer allowed a rescued woman to sleep on his office floor during the investigation because she had nowhere else to go. An ordinary officer would probably not have been willing to take this chance given the emphasis on rule-following within the MVD.

On the other hand, because subordinate MVD divisions are required to carry out orders from above, they must respond to demands from the federal level MVD to produce more human trafficking cases. Several of my respondents, both law enforcement and NGO representatives who had worked with law enforcement, noted that law enforcement's attitudes changed once the amendments to the Criminal Code were enacted because of this demand from above for results. Before the law was passed, the MVD usually sent lower-level officers to conferences and trainings run by international organizations and domestic NGOs as more of a goodwill gesture than because they had an active interest in the issue. After the law was passed, however, law enforcement became more pragmatic, open to cooperation with these organizations because they had expertise on how to work trafficking cases.

### Promotion Criteria

In criminal justice systems around the world, law enforcement agents' behavior is often driven by concern over promotions. Agents are eager to show their superiors that they are successful in the field by making arrests and successfully investigating and prosecuting cases. In the Russian case, the disincentives that exist because of the basic structure of law enforcement are compounded by the system of promotion for law enforcement officers. Much like the retention of the basic institutional structure from the Soviet era, patterns and practices for promotion have also persisted. Though technically illegal, during the Soviet era law enforcement were given quotas to fill for each year.<sup>42</sup> In a practice referred to as "chopping sticks," law enforcement tried to pad their arrest statistics to meet goals set by their superiors.<sup>43</sup> Promotion was contingent on how many cases were cleared which led to falsification of evidence, framing of suspects, and getting convicted offenders to accept blame for unsolved crimes.<sup>44</sup> Another systemic problem was that law enforcement would also not record that a crime had occurred if they thought they would be unable to find the offender. Although these practices have been identified in other countries as well, law enforcement agents in the authoritarian Soviet Union feared that failure could lead not just to dismissal but a guilty sentence for undermining the goals of the socialist state. This made "fulfilling the plan" a much higher priority. A lack of institutional turnover in personnel after the end of the Soviet period means that many Soviet era law enforcement agents are still working and training new recruits.<sup>45</sup> Despite the country's best efforts to reform and

change policing attitudes and practices, many Soviet practices have been replicated in the next generation of law enforcement officers.

The system of promotion within Russian law enforcement continues to be based on statistics of cases opened, closed and convicted. This serves as a tremendous disincentive for law enforcement at all stages of a case. Russian law enforcement officers are obligated by law to investigate any report of a crime and to charge the correct crime.<sup>46</sup> But this can be especially complicated with new crimes, crimes that rely heavily on victim testimony, crimes which are intent driven and crimes for which corroborating evidence is difficult to collect. The crime of human trafficking falls into all of these categories, creating a disincentive to look for human trafficking (rather than another, more familiar crime) right from the beginning, when law enforcement agents receive a tip.

Because trafficking cases are long and complicated to investigate, if the preliminary investigative work by the *operativnik* fails to yield a charge of trafficking, the *operativnik* would have to account to his superiors for the period of time when he worked and did not collect enough evidence to forward a case to the *sledovatel*. This would appear as a blemish on the *operativnik*'s record. When the case reaches the *sledovatel* and is officially opened, the *sledovatel* is required by law to finish his/her investigation within a 40 day period. They can get permission for an extension from a judge, but with the pressure to clear cases, if they feel that they have enough evidence to go forward with another charge, they will. There is no incentive to look further into the situation to see if they can uncover trafficking and classify the crime correctly.

If at any point after the *sledovatel* finishes his/her investigation, the classification is changed (by the *gosobvintel* or the judge), it is a negative for the *sledovatel*'s record. The *gosobvintel* may not have an incentive to uphold the *sledovatel*'s charge of trafficking if they fear that the judge will return a not-guilty verdict. This is often because judges are unfamiliar with the new laws. An acquittal would negatively affect the *gosobvintel*'s statistics. If the case is returned for further investigation because of a technical error or if the case is overturned in a court of higher instance, this is a blemish on everyone's record. Concerns over promotion (*prodvizhenie*) were mentioned by a number of my respondents as the reason they did not want to risk using the human trafficking laws.

### **The Challenges of Human Trafficking as a New Law**

Disincentives arising from law enforcement's structure and promotions system can hold any case back, not just human trafficking. The fact that human trafficking is a new law compounds these already existing problems. Once a new law is passed, it does not mean that law enforcement will automatically start using it. New laws can help solve an existing problem like human trafficking, but they can also present a series of challenges for law enforcement. Law enforcement must overcome institutional inertia to learn how to use new laws, otherwise they will continue to use laws they are already familiar with.

Russian law enforcement had been seeing human trafficking-like crimes for years before the trafficking laws were on the books. Rather than ignoring them because there was no law, they would attempt to fit them into existing articles of the criminal code, including: kidnapping (Art. 126), illegal confinement/deprivation of freedom (Art. 127), organization of a criminal group (Art. 210), recruitment into prostitution (Art. 240), organizing prostitution (Art. 241), distribution of pornographic materials (Art. 242), and falsifying documents (Art. 327).

Over time, law enforcement agents have accumulated significant experience in investigating these crimes, both when they apply to trafficking and when they do not. They know which investigative techniques to use and what evidence is required to prove them definitively. As a crime, trafficking is particularly difficult because at first glance, it often masquerades as one of these other crimes. A trafficking crime is made up of many individual elements and each can appear as a stand-alone crime if law enforcement does not step back and look at the whole picture.

Though law enforcement was already prosecuting human trafficking under other articles of the Criminal Code, it did not obviate the need for a law to specifically criminalize trafficking. But while the new law solved one problem, it created several more. It was written unclearly and law enforcement was uncertain about the evidentiary requirements. In the original Article 127.1, human trafficking was defined as “the buying and selling of a person, or the recruitment, transportation, transfer, harboring or receiving of a person for the purpose of their exploitation.”<sup>47</sup> The wording created confusion and uncertainty over whether the buying and selling must be related to the exploitation or could stand alone. This confusion paralyzed law enforcement and was frequently cited as a reason for their poor enforcement of the human trafficking laws both by law enforcement agents and other people who were familiar with law enforcement practice.

In the Russian legal system, there are two main ways to clear up uncertainty in laws. The first is commentaries (*kommentarii*) written by legal experts and academics which describe how to interpret a particular law. While these commentaries are not binding, they are often consulted in the preparation of the indictment or by judges if the law is new. There have been several commentaries issued on Article 127.1 that law enforcement could reference.<sup>48</sup> Another way to clarify how a law should be interpreted is a decree (*postanovlenie*) from the Plenum of the Supreme Court. Unlike commentaries, these decrees are binding on courts. While these decrees are sometimes issued at the same time a law is passed for clarification purposes (i.e. Criminal Code, Civil Code), for other laws, decrees are usually only issued after there has been enough judicial practice on a law to show that there is confusion. Both law enforcement professionals and academics have stressed the need for a decree on the human trafficking law to provide needed clarification for confused practitioners and ensure some level of consistency in the application of the new law. Law enforcement agents who I spoke with said that they were hesitant to use the law without the explanations this decree would provide. This creates a vicious circle in which no new judicial practice is created so no decree can be issued.

Given the absence of a decree, and the fact that few cases have been successfully prosecuted, law enforcement has tended to be cautious in their enforcement of the trafficking law. They are afraid to use a law they do not fully understand because they fear reprimand from above and adverse effects on their performance statistics. Before the amendment clarified that intent to exploit was not a necessary element of the crime, they took the conservative position on the definition, assuming that any and all acts involved in human trafficking had to be done with the intent of exploitation. Proof of intent is difficult in any legal system. With trafficking, unless there is a clear statement of intent to exploit or law enforcement can in some way find a paper trail that leads to a place of exploitation (i.e. a brothel), it is almost impossible to prove. In my interviews, law enforcement professionals and academics cited proof of the intent to exploit as one of the biggest barriers to effective enforcement of the trafficking laws. The emphasis on exploitation also hampered them from prosecuting cases of

parents selling their children for non-exploitative purposes (i.e. adoption or simply to make easy money), which has provoked public outcry on more than one occasion.<sup>49</sup>

Another problem with the law was that it overlapped significantly with some of the Criminal Code articles that law enforcement had already been using to prosecute trafficking-like crimes. The article that it most closely overlaps with is Article 240, recruitment into prostitution (*vovlechenie v zanyatii prostitutsii*). Much of the Russian academic work that has been done on human trafficking in the institutes of the MVD and *prokuratura* has focused on clarifying what makes these two articles (127.1 and 240) different.<sup>50</sup> The differences boil down to fairly technical distinctions, ones that an average law enforcement

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***“As a general rule, human trafficking victims do not trust law enforcement, believing them to be corrupt and not interested in helping them.”***

officer who is trying to get cases cleared from his/her desk will probably not take the time to unravel. At one conference I attended in Moscow, the head of a law enforcement unit in one of the regions explained that their region had had no experience with Article 127.1 because they opened all trafficking cases under Article 240 to stay on the safe side.

Finally, before the amendments went into effect, the 5 year minimum sentence for human trafficking was not high enough to classify it as a “grave crime” (*tyazhкое prestuplenie*). When a crime is classified as grave, it changes the types of investigative activities that are authorized by law and changes the type of prison sentence that the criminal may have to serve if convicted.<sup>51</sup> The fact that law enforcement gains no particular investigative advantages if they use the law on human trafficking means that there is little incentive to try to use it more aggressively.

Finally, before the amendments went into effect, the 5 year minimum sentence for human trafficking was not high enough to classify it as a “grave

Law enforcement also gained very little by way of increased punishment of traffickers for using the new trafficking law. Although the penalties correspond with penalties worldwide and those required by international conventions, penalties for Articles 127.1 (human trafficking) and 127.2 (use of slave labor) are not that much different from the penalties for crimes committed under articles that law enforcement had previously prosecuted trafficking with (240, 241 and 127 for sex trafficking and 127 for labor trafficking) (see Table 2). When combined with the uncertainty of how a judge will react to a human trafficking charge, it is not a surprise that law enforcement would continue to take the safe bet, charging crimes they understand well.

The November 2008 amendment mentioned above clarified that any transaction involving a human being (even if the goal was not exploitation) is a crime.<sup>52</sup> In addition, the amendment added two new aggravating factors: trafficking “committed against victims who were known to be helpless or who were dependent on the accused” and “committed against a woman who the accused knew was pregnant.”<sup>53</sup> The amendment also changed the minimum sentence for 127.1 to 6 years, making human trafficking a “grave crime.” With the new investigative tools at their disposal for grave crimes, this may give *operativniki* and *sledovateli* more motivation to look for trafficking in a situation that may have elements of multiple crimes. The previous formulation of the law created few incentives for

**TABLE 2. Possible sentences under Criminal Code articles**

	Basic	1st Level Aggravating Factors	2nd Level Aggravating Factors
<b>127.1</b> (Human Trafficking)	up to 6 years (after 11/2008)	3 to 9 years	8 to 15 years
<b>127.2</b> (Use of Slave Labor)	up to 5 years	3 to 9 years	8 to 15 years
<b>240</b> (Recruitment into Prostitution)	up to 3 years	up to 6 years	3 to 8 years
<b>241</b> (Organization of Prostitution)	100,000 to 500,000 ruble fine	up to 6 years	3 to 9 years
<b>127</b> (Illegal confinement/ deprivation of freedom)	up to 2 years	3 to 5 years	4 to 8 years

*Source.* Criminal Code of the Russian Federation

law enforcement agents to change their behavior so it will be interesting to see the results of the new amendments, especially given that law enforcement has excused its inaction by blaming the law's confusing wording.

### **New Investigative Techniques and Lack of Supporting Legislation**

Another complicating factor specific to the law on human trafficking is the evidentiary requirements. When asked what the most important piece of evidence was for going forward with a trafficking case, the unanimous answer from the law enforcement agents I spoke to was victim testimony. Though they considered audio, video and document-based corroborating evidence to also be important, without victim testimony they felt it would be impossible to show "intent to exploit." Victim cooperation has been hampered by two major problems: training in techniques to deal with traumatized victims and the absence of a law allowing victims temporary residence in their place of destination.

Education and training are important for bringing new laws to law enforcement's attention, guiding them on how they should be applied and training them in particular investigation techniques that the new laws require. With trafficking this is particularly important, especially since having witness statements from the victims can make the difference in determining whether a trafficking case will go forward or not. Unlike material witnesses in other crimes, such as drug offenses or murders, the key witnesses in trafficking crimes are also the victims, and in most cases have been at least psychologically (if not physically) traumatized. Questioning these victims often requires special techniques and training that takes account of this trauma.

As a general rule, human trafficking victims do not trust law enforcement, believing them to be corrupt and not interested in helping them.<sup>54</sup> At conferences that brought together law enforcement and NGO participants, I frequently heard law enforcement

agents mention that they needed NGOs because the victims did not trust them but did trust the NGOs. Often, victims have experienced law enforcement agents as clients or have seen them receive bribes from the pimps and therefore believe they are “in the pockets” of their traffickers. In some cases they have seen law enforcement return victims to their traffickers after an escape attempt. Those who have been trafficked abroad have often had bad experiences with law enforcement in the destination countries, especially because of immigration violations.<sup>55</sup> And those who have been trafficked internally often encounter indifference from local law enforcement.<sup>56</sup>

From the law enforcement side, the victims, who are usually prostitutes and immigrants, can be difficult to deal with because they do not speak the language, are violent and/or are addicted to drugs. During the investigation they may leave the city and refuse to help further. These difficulties will often drive law enforcement to classify the crime as something else because it is not worth the effort of dealing with the victim who is critical to making the case.

Active MVD and *prokuratura* learn about new laws and new techniques through weekly meetings and briefings. They are also required to fulfill continuing education requirements every two years so they can continue to move up the ranks. Training materials and instructional manuals on investigating human trafficking have been developed and distributed to many regions throughout Russia.<sup>57</sup>

In addition, many law enforcement professionals have participated in local trainings run by NGOs, many of which have received grants for the purpose of educating law enforcement. These tend to have a regional focus and most frequently occur in areas where there is a local NGO doing work on human trafficking. While some are more conference-like and aim to educate participants about the issue of trafficking through a series of presentations, others are more hands-on. In these hands-on trainings, law enforcement professionals have worked with real case files, learned techniques for uncovering and investigating trafficking cases and learned how to work with victims in a way that makes them less intimidated and more willing to act as witnesses. In these trainings, instructors appeal to the pragmatic side of law enforcement, suggesting that by using good “human rights practices” with the victims, they will be able to get more reliable and better testimony and therefore more prosecutions and better statistics.

These conferences and trainings have varying levels of attendance by law enforcement but have often created good connections between participants in law enforcement and the community. Through these conferences, NGOs assisting trafficking victims have started to develop referral networks with law enforcement. Though seemingly promising, these relationships are not a stable form of cooperation. Because they are based on personal connections, if people leave or are transferred to new positions the cooperation will cease. In rare cases, the relationships have been institutionalized with memoranda of understanding between the NGOs and local MVD outlining the responsibilities of each in fighting trafficking.

A second problem with getting victim testimony is the lack of shelter and temporary residence permits. Whether it is at a specific trafficking shelter, a state-run center for women in difficult situations or a homeless shelter, there are no resources available for law enforcement to shelter and protect victims for the duration of the investigation and trial. This means that law enforcement must get the victim’s story right away or within the time it takes to deport the person. This does not give them much chance to question the victim,

even if they do suspect trafficking. This point was brought home by one *operativnik* who suggested that the most successful way for law enforcement to access victims is if they are hospitalized for injuries sustained during trafficking. Given the level of trauma necessary to require hospitalization, the victim is unlikely to provide a coherent story and accurate recall of events, not to mention the further trauma they might experience through questioning about their experiences.

If a victim does decide to participate in a trial as a witness, his/her life could be endangered. Traffickers are known for their brutality and their willingness to do anything to protect themselves and their business interests.<sup>58</sup> The Russian government enacted witness protection legislation in 2004 which could be applied to trafficking victims.<sup>59</sup> As currently written, the legislation only applies for the duration of the trial and does not protect the witness after the verdict is handed down. Both because of a lack of funding and because the provisions do not offer adequate protection for victims/witnesses whose lives are at risk, it is fair to say that the witness protection legislation is not yet an adequate solution for law enforcement.<sup>60</sup> Without any place for victims to stay and/or a guarantee of protection, they often disappear back to their home region or worse, return to their trafficker, the only person they know in the city where they are currently located.

For victims to legally remain where the investigation is being conducted, the state would need to create a system of temporary residence permits. Though important in all countries, this is especially important in the Russian context where a registration system applies to both citizens and foreigners. Russian citizens are each registered to a particular address, giving them access to medical care and other state benefits in their locality. If they are trafficked to another location, they are unlikely to be registered there, making the provision of temporary housing problematic from a legal standpoint. Furthermore, they cannot receive state-funded medical assistance anywhere but in their home region. If they do return home, registration data contained in their passport often does not correspond to their actual place of residence, so it is impossible to find them again for the purposes of investigation. The lack of legislation providing a victim the opportunity to temporarily reside in another location hampers law enforcement efforts.

With international victims there is no way to assure they can remain in Russia legally during the process of investigation and prosecution of the trafficking case. Instead they are usually deported, a process handled by the Federal Migration Service (FMS), a separate agency from the MVD. Though there have been some informal arrangements struck between the MVD and the FMS to give illegal migrants temporary legal status, this is far from the norm. The absence of these types of supporting legislation has made it difficult for law enforcement to obtain the critical piece of evidence to support a trafficking case, the victim's testimony.

### **Pragmatic Investigation and Prosecution**

Given the constraints outlined above, what does Russian law enforcement do when confronted with human trafficking? I would argue that they use a strategy of pragmatic investigation and prosecution of human trafficking cases. Like law enforcement worldwide, Russian law enforcement is motivated by the goal of holding criminals responsible for their crimes and preventing them from committing further crimes. This means they tend to charge traffickers under whatever Criminal Code articles they feel that they can most successfully defend in court based on the evidence collected. Consequently, they

only use the articles on human trafficking when they are absolutely positive they have what they need to prove the case, a victim willing to testify and additional evidence of the intent to exploit.

This strategy of prosecutorial discretion is by no means unique to Russian law enforcement. In the U.S. context, prosecutors often decide whether to go forward with charges based on a strategy of minimizing uncertainty, especially with respect to the probability of conviction.<sup>61</sup> Though European countries vary in the amount of legal discretion that they give prosecutors to drop cases, recent research has shown that prosecutors and police often use discretion to help them deal with case overload and resource constraints.<sup>62</sup>

Russian law enforcement uses several strategies to help them find workable solutions for prosecuting human traffickers. If they are lucky and there has been another case of trafficking successfully prosecuted in their region, they will often look at the documents from that case to see what lines of argumentation were convincing to the judge and copy them. I saw this practice in several regions that I visited. Some cases were copied so closely that they also made sure to have the exact same number of victim-witnesses to testify. Those who are particularly committed to using the trafficking laws have often looked to Russia's obligations as a signatory to the United Nations "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children"<sup>63</sup> for clarification. The protocol outlines the means by which the crime can be committed and says that consent to any part of the trafficking crime should have no bearing on whether the crime is charged as trafficking. They also use the protocol to justify their decisions to charge human trafficking to skeptical prosecutors and judges by claiming that Russia has an international obligation to prosecute.

Getting a trafficking case through the investigative/prosecutorial chain requires that each link in the chain have a unified understanding of the elements of the crime. Unlike murder or kidnapping, where there is generally agreement on what constitutes the crime (a dead body or a missing one), trafficking is more complicated. In the absence of significant guidance or previous experience, law enforcement has started using its own unofficial criteria to determine whether something is trafficking.

These criteria are usually not part of the evidentiary requirements for trafficking in the Criminal Code. For instance, in a case of sex trafficking, they will ask, "did she know she was going to be a prostitute?" If the answer is yes, which it often is, many law enforcement do not believe it can be trafficking.<sup>64</sup> They fail to recognize that even with the victim's consent, there is often recruitment or transfer involved, both prosecutable offenses under Article 127.1. Another frequent issue in sex trafficking cases is whether the victim received any money for her services. If she received as little of 5 percent of the profits, it is not considered to be trafficking, even though by most objective standards this would still be considered exploitation.

Another question is, "did they have any chances to escape and if so, why didn't they?" The answer to the first question is usually yes. It is rare that victims are physically restrained. But there may be a number of other reasons that a victim will not leave the situation including threats of violence to them or their families or because they have had their documents taken away. Many *sledovатели* and *gosobviniteli* will only accept physical restraint (chains, handcuffs, etc.) to prosecute under Article 127.2 (use of slave labor), probably because physical restraints easily correspond to what they recognize as slavery.

One *operativnik* joked with me that slave labor prosecutions would be much easier if “we chained them up first and then rescued them.”

Another strategy that law enforcement uses to deal with the uncertainty of the new law is to defer to familiar articles of the Criminal Code which require less evidence. According to one *operativnik* in the federal anti-trafficking unit, approximately half of the cases of recruitment into prostitution (Article 240) could probably have been classified as trafficking, but were not because of resource concerns. Trafficking takes significantly more resources, both time and manpower, since the evidence is so much more difficult to collect. As if to confirm how real these considerations are, he then added that his unit had to make a tradeoff, prosecute ten cases of recruitment into prostitution (Article 240) or one case of trafficking (Article 127.1). To him, the choice seemed clear, the more criminals that could be prosecuted the better.

In Table 3, we can see evidence of this practice. There has been a significant increase in the number of cases related to prostitution since the trafficking laws were enacted in December 2003.<sup>65</sup> For crimes of recruitment into prostitution (Article 240), there was a 187 percent increase between 2003 and 2004 and for crimes of organization of prostitution (Article 241) there was a 174 percent increase. Given the widespread acceptance of prostitution throughout Russian society, it seems likely that the drastic change in the numbers is not evidence that law enforcement has taken a new interest in combating this crime. Instead, it shows that law enforcement is using the laws on prostitution to pursue human trafficking cases because they are more familiar and the evidence required does

**TABLE 3. Cases registered under sex trafficking-related Criminal Code articles**

	2000	2001	2002	2003	2004	2005	2006	2007	2008
240: Recruitment into Prostitution Cases Registered	34	46	92	96	276	390	548	575	655
241: Organization of Prostitution Cases Registered	145	165	241	356	976	1030	1376	1570	1831

Sources: MVD Statistics (on file with author)

not involve victim testimony. Because the 2003 law also increased penalties for crimes under Articles 240 and 241 (see Table 2), law enforcement can now get the benefits of a higher punishment for these crimes without having to change their pre-existing enforcement practices.<sup>66</sup>

The strategies of pragmatic investigation and prosecution are active attempts to combat trafficking given the uncertainties over the new law and the institutional constraints that law enforcement faces. There is also a separate subset of cases which are opened under Articles 127.1 or 127.2 and then either drop to a lesser charge during the investigation/prosecution process or drop out of the criminal justice system entirely. Sometimes despite the best efforts of law enforcement, the human trafficking charge cannot be sustained. This

happens when they can no longer find the witness(es) or when they cannot find enough evidence to support the trafficking charge. However, cases may also be reclassified because someone further along in the chain decides that it is not trafficking or thinks the evidence is not strong enough to support a trafficking charge. According to my informants, this is a frequent occurrence. It shows yet again why it makes sense that an *operativnik* or *sledovatel* would not put in the initial time and manpower resources to investigate a trafficking charge as such.

### Conclusion

Corruption, in both its petty and grand forms, is blamed for many of Russia's current ills. It would be easy to blame Russian law enforcement's problems with enforcing the new human trafficking laws on the institutionalized practice of "predatory policing."<sup>67</sup> In this explanation, corrupt law enforcement agents allow organized crime groups to operate with impunity because it enriches their own pockets. In some cases, this may be true, but an assessment of Russia's progress on combating human trafficking also needs to filter the results through the lens of domestic law enforcement institutions and the disincentives they provide.

Much like law enforcement throughout the world, the majority of Russian law enforcement agents are honest and hard-working, trying to do their jobs within a set of institutional constraints. Because of the basic institutional structure and the system for promotions, it is easy to see why a normal, non-corrupt law enforcement official may have trouble investigating or prosecuting any case, let alone a trafficking case. It is difficult to care about the outcome of a case and follow it through the justice system when the functions of law enforcement are divided up into so many different agencies. Even if a person is very dedicated to the outcome of a particular case, it is out of their hands once they have fulfilled their function in the system.

Fear of not getting promoted because of poor statistical performance is still as real as it was in the Soviet period. With the increased prestige and salary available as law enforcement agents move up the ranks, they are hesitant to risk making any mistakes or trying new laws when there is uncertainty about the results. They are also unlikely to look for more complex crimes than what they see and can immediately charge and clear from their desks. A trafficking crime rarely appears to be trafficking at first glance, even to the most well-trained law enforcement professionals around the world. Only through a resource-intensive process of questioning and gathering evidence do the elements of trafficking begin to appear. Complicating the task further, trafficking crimes are often hidden beneath other, more obvious crimes that law enforcement is familiar with and is already adept at collecting evidence for.

In Russia, the difficulties created by the basic institutional structure of law enforcement are compounded by the way that the law on human trafficking was written and the confusion over the evidentiary requirements for proving the case. In a situation of uncertainty over the meaning of trafficking, law enforcement agents have made pragmatic choices. Without clear guidance, they have resorted to using criteria like non-consent and restriction on movement that they believe conclusively indicate trafficking, even if they are not specified in the Criminal Code article. Russian law enforcement has also had to deal with a lack of supporting legislation that would enable them to do their jobs more effectively. They have had to learn how to work with psychologically traumatized

victims without the benefit of having a place to shelter them until they are ready to share their stories.

In response to these constraints, Russian law enforcement has tried to combat trafficking in other ways. They have used more familiar Criminal Code articles to bring traffickers to justice, believing that an imprisoned trafficker is better than a free one. They have conceptualized human trafficking as a suite of crimes which encompass the human trafficking articles (127.1 and 127.2) but which also include articles dealing with prostitution and pornography as well as those facilitating illegal migration. In this way, they are able to combat trafficking in ways that are not obvious when looking at statistics of trafficking cases registered, opened and prosecuted under Articles 127.1 and 127.2.

After adding up all the disincentives to work on trafficking, it is a wonder that Russian law enforcement has managed to do anything at all. Of course, this is not to say that they cannot and should not do more to combat human trafficking. There is room for improvement on many fronts, including corruption. Law enforcement could improve their investigative techniques through more and better trainings that would help them to recognize human trafficking and deal with its victims. Finally, law enforcement could use some help from the state. Funding provisions allowing law enforcement to shelter victims and have them temporarily reside where the investigation is taking place would be a tremendous help to law enforcement's efforts. While changing the wording of the law to eliminate confusion and increasing the penalties to give law enforcement agents access to more advanced investigative technologies were helpful, we have yet to see how these changes will affect practice on the ground. Short of fundamental reforms within the structure of law enforcement, however, it is unlikely that some of the most basic problems in fighting crime will change in Russia, stymieing progress on human trafficking as well as criminal justice more generally.

## NOTES

1. Poyasnitelnaya Zapiska k Proektu Federalnogo Zakona, "O Vnesenii Izmenenii v Statyu 127.1 Ugolovnogo Kodeksa Rossiiskoi Federatsii," 2007. These are only statistics on article 127.1 (human trafficking) the number of cases brought to court under article 127.2 (use of slave labor) is not available.

2. Louise Shelley and Robert W. Ortung, Russia's Efforts to Combat Human Trafficking, in *Ruling Russia: Law, Crime and Justice in a Changing Society*, William Alex Pridemore, ed. (Lanham, Md: Rowman and Littlefield, 2005); Donna Hughes, Trafficking for Sexual Exploitation: The Case of the Russian Federation, *IOM Migration Research Series*, 68 (Geneva, Switzerland: International Organization for Migration, 2002); Yelena Tiuriukanova, *Human Trafficking in the Russian Federation: Inventory and Analysis of the Current Situation and Responses*, (Moscow: UNICEF, 2006).

3. The amendment was meant to clarify that trafficking applied to all transactions with humans, not just those where the intent was exploitation. It also increased the punishment for traffickers by one year.

4. The Russian *prokuratura* combines functions that are usually found as several separate institutions in other countries. It performs the functions of a Ministry of Justice (overseeing the legal system), an ombudsman (investigating and protesting illegal acts of government agencies against citizens), and a public prosecutor's office (representing the state in criminal prosecutions).

5. Though it would have been interesting to investigate how much the average law enforcement officer knew about human trafficking, I did not focus on this set of people because I was more interested in the challenges that law enforcement encountered in actually implementing the law on human trafficking.

6. Despite my best efforts, I was unable to speak with representatives of either the MVD or *prokuratura* in Saratov, where there had been a case prosecuted in 2005.

7. To protect their confidentiality, I only reference their agency (MVD, *prokuratura*, FSB) and their city.

8. Martii Lehti and Kauko Aromaa, "Trafficking for Sexual Exploitation," *Crime and Justice* 34 (2006): 133.

9. Tiuriukanova, *Human Trafficking in the Russian Federation* 35.

10. There have been many comprehensive studies of the human trafficking situation in Russia. In English, see Alexandra V. Orlova, "From Social Dislocation to Human Trafficking: The Russian Case," *Problems of Post-Communism* 51, no. 6 (2004): 14-22; Hughes, "Trafficking for Sexual Exploitation"; Johanna Granville, "From Russia without Love: The 'Fourth Wave' Of Human Trafficking," *Demokratizatsiya* 12, no. 1 (2004); Mary Buckley, "Public Opinion in Russia on the Politics of Human Trafficking," *Europe-Asia Studies* 61, no. 2 (2009); Tiuriukanova, *Human Trafficking in the Russian Federation*; Sally Stoecker and Louise Shelley, eds., *Human Traffic and Transnational Crime: Eurasian and American Perspectives*, (Lanham, Md: Rowman & Littlefield, 2005); Emily E. Schuckman, "Antitrafficking Policies in Asia and the Russian Far East: A Comparative Perspective," *Demokratizatsiya* 14, no. 1 (2006). In Russian, see Maria Buryak, *Torgovlya Liudmi i Borba s Nei*, (Vladivostok: Dalnevostochnogo Universiteta, 2006); Liudmila Erokhina and Maria Buryak, *Torgovlya Zhenshchinami i Detmi v Sotsialnoi i Kriminologicheskoi Perspektive*, (Moscow: Profobrazovanie, 2003); Elena B. Mizulina, *Torgovlya Liudmi i Rabstvo v Rossii*, (Moscow: Iurist, 2006); C. Yu Zhuravlev and A.M. Pigaev, *Torgovlya Liudmi: Mekhanizm Prestupnoi Deyatelnosti, Metodika Rassledovanie*, (Moscow: Yurлитinform, 2006); Elena Tiuriukanova, *Predotvrashchenie i Protivodeistvie Rasprostraneniyu Rabstva i Torgovlya Liudmi v Rossiiskoi Federatsii*, (Moscow: International Organization for Migration, 2008).

11. For more detail on what happened during the attempted passage of this legislation see Janet Elise Johnson, *Gender Violence in Russia: The Politics of Feminist Intervention*, (Bloomington, IN: Indiana University Press, 2009); Louise Shelley, "Russia's Law against Trade in People: A Response to International Pressure and Domestic Coalitions," *Public Policy and Law in Russia: In Search of a Unified Legal and Political Space*, Robert Sharlet and Ferdinand Feldbrugge, eds., (Leiden, The Netherlands: Koninklijke Brill NV, 2005), 291-305; Mary Buckley, "Human Trafficking as a Political Issue Legislation and Problem Awareness in Russia," *Osteuropa* 56, no. 6 (2006).

12. Federal Law 162-FZ, "O vnesenii izmenenii i dopolnenii v Ugolovyi kodeks Rossiiskoi Federatsii" (On changes and additions to the Russian Federation Criminal Code), enacted December 8, 2003.

13. Many scholars and journalists have written about the trafficking process more generally, for examples, see: Kathryn Farr, *Sex Trafficking: The Global Market in Women and Children* (New York: Worth Publishers, 2004); Kevin Bales, *Disposable People: New Slavery in the Global Economy*, Revised ed. (Berkeley: University of California Press, 2004); Phil Williams, ed., *Illegal Immigration and Commercial Sex: The New Slave Trade*, (London: Frank Cass Publishers, 1999); Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery*, (New York: Columbia University Press, 2008); David Kyle and Rey Koslowski, eds. *Global Human Smuggling: Comparative Perspectives*, (Baltimore, Md.: Johns Hopkins University Press, 2001); Victor Malarek, *The Natashas: Inside the New Global Sex Trade*, (New York: Arcade, 2004).

14. One way around this is if two countries have a mutual legal assistance treaty (MLA). MLAs allow for quicker exchange of information during investigation.

15. In a smaller but similar interview project with U.S. law enforcement agents, they identified many of the same problems as their Russian counterparts. Some of the inherent difficulties in prosecuting trafficking crimes are: finding trafficking crimes, gathering sufficient evidence, convincing the victims to share their stories and participate as witnesses.

16. As part of the Trafficking Victim Protection Act, comprehensive legislation passed in the U.S. in 2000, the Department of State is required to produce an annual report on the progress other countries have made in fighting trafficking. Countries are ranked on four tiers (1, 2, 2-Watch List, 3), with those in the tier 3 subject to withholding of future U.S. aid that is not humanitarian or economic.

17. Department of State: Office to Monitor and Combat Trafficking in Persons, Annual Trafficking in Persons Report, 2005, 2006, 2007, 2008, hereafter, TIP Report.

18. Complete statistics on law enforcement's efforts are difficult to obtain because the MVD and the *prokuratura* keep separate statistics. The statistics cited here are from the MVD, though there is some overlap on cases between the two institutions.

19. This is especially damning considering that other former Soviet countries, Ukraine and Moldova, considered to have similar levels of trafficking, have been much more successful. In 2007 alone, Moldova opened 507 trafficking cases and Ukraine prosecuted 95 cases, convicting 83 traffickers, TIP Report 2008.

20. Criminal Procedure Code of the Russian Federation, Section VII.

21. *Poyasnitelnaya zapiska*, 2007.

22. Theodore Gerber and Sarah Mendelson, "Public Experiences of Police Violence and Corruption in Contemporary Russia: A Case of Predatory Policing?," *Law and Society Review* 42, no. 1 (2008): 1-43.

23. Louise Shelley, *Policing Soviet Society: The Evolution of Social Control* (London: Routledge, 1996).

24. Louise Shelley, "Post-Socialist Policing: Limitations on Institutional Change," in *Policing across the World: Issues for the Twenty-First Century*, R.I. Mawby, ed. (London: UCL Press, 1999); Annette Robertson, "Police Reform in Russia," in *Transforming Police in Central and Eastern Europe: Process and Progress*, Marina Caparini and Otwin Marenin, eds. (New Brunswick, NJ: Transaction Publishers, 2004).

25. This is in comparison to other institutions, such as President who is trusted by 73 percent and distrusted by 19 percent; the media, trusted by 46 percent and distrusted by 44 percent and the army, trusted by 49 percent and distrusted by 40 percent. Gerber and Mendelson, *Public Experiences of Police Perception* 24.

26. Corruption in law enforcement, of course, is not limited to Russia. Countries throughout the world have had to fight corruption in the ranks of law enforcement.

27. V. Baird and D. Javeline. "USAID Democratic Initiatives Final Survey Report, Russia 2003, General Population, Ngo Leaders and Lawyers." USAID, 2003: 204.

28. Cited in Brian D. Taylor, *Russia's Power Ministries: Coercion and Commerce*, (Syracuse, NY: Institute for National Security and Counterterrorism, Syracuse University, 2007): 46-7.

29. Adrian Beck and Ruth Lee. "Attitudes to Corruption amongst Russian Police Officers and Trainees," *Crime, Law and Social Change* 38, no. 4 (2002): 357.

30. Cited in Taylor, *Russia's Power Ministries* 47.

31. "Background Paper-Corruption and Human Trafficking: The Grease That Facilitates the Crime," Vienna, Austria: United Nations Global Initiative to Fight Human Trafficking (UNGIFT), 2008.

32. UNGIFT, *ibid*; Shelley and Orttung, "Russia's Efforts to Combat Human Trafficking."

33. In Soviet times, a *subbotnik* was a day for the people to clean public places throughout the country, this is obviously a serious perversion of the good deeds that were done under the name *subbotnik* during the Soviet period.

34. Shelley, *Policing Soviet Society*; Marina Caparini and Otwin Marenin, eds., *Transforming Police in Central and Eastern Europe: Process and Progress* (Piscataway, NJ: Transaction Publishers, 2004); Robertson, "Police Reform in Russia"; Niels Uildriks and Piet van Reenen, *Policing Post-Communist Societies: Police-Public Violence, Democratic Policing and Human Rights*, (New York: Intersentia, 2003); Peter Solomon, Jr., "The Reform of Policing in the Russian Federation," *The Australian and New Zealand Journal of Criminology* 38, no. 2 (2005): 230-40.

35. For an excellent overview of the process of investigation of a criminal case in Russia, see William Burnham and Thomas A Firestone, *Investigation of Criminal Cases under the Russian Criminal Procedure Code*, (2007), unpublished, copy on file with author.

36. *Operativniki* are governed by a code which delineates their duties and responsibilities. FZ 144-F3, "Ob operativno-rozysknoi deyatelnosti," (On Operational-Investigative Activities), August 12, 1995.

37. The UBOP was disbanded under a Presidential order from Dimitri Medvedev in September

2008. The order shuts down the specialized unit which investigated organized crime (and trafficking) and reassigns these operatives back into the general pool of operatives investigating all crimes. It remains to be seen if and how this will affect trafficking prosecutions now that they are no longer assigned to an elite and more prestigious unit. So far, the change seems to have left the same people in charge of working on trafficking, simply changing who their units are subordinated to. On the dissolution, see Nabi Abdullaev, "Anti-Organized Crime Unit Dissolved," *The Moscow Times*, September 11, 2008; Vladimir Ovchinskii, "Za Chto Borolis?," *Ogonek* 2008.

38. See Criminal Procedure Code Article 151(2), parts 1-4.

39. First degree aggravating factors include trafficking: two or more people; a known minor; by using official status; by transporting someone across Russian borders; with false documents; withholding or destroying the victim's documents; using violence or threats of violence. Second degree aggravating factors include trafficking: resulting in the accidental death or grave harm to the victim; done in a way that endangers many people; done by an organized group. (Criminal Code Article 127.1).

40. Criminal Procedure Code of the Russian Federation, Article 220.

41. Criminal Procedure Code of the Russian Federation, Article 221, there are other options, but these are the most common.

42. Shelley, *Policing Soviet Society*.

43. Carl Schreck, "Chopping Sticks Beats Solving Crimes," *The Moscow Times*, May 20, 2004; "Police Should Chase Killers Not Quotas," *The Moscow Times*, October 26, 2007; Nabi Abdullaev, "Caucasus Cities Called the Safest," *The Moscow Times*, August 27, 2008.

44. Adrian Beck and Annette Robertson, "Policing in Post-Soviet Russia," in *Ruling Russia: Law, Crime and Justice in a Changing Society*, William Alex Pridemore ed. (Lanham, Md: Rowman and Littlefield, 2005); Shelley, *Policing Soviet Society*.

45. Shelley, *Policing Soviet Society*.

46. Criminal Procedure Code Article 144.

47. Criminal Code Article 127.1.

48. Several volumes of commentaries are issued every year. Some examples of these commentaries include: *Kommentarii k ugolovnomu kodeksu Rossiiskoi Federatsii*, ed. S.V. Dyakov and N.G. Kadinkov (Moscow: Iurisprudentsia, 2008); *Kommentarii k ugolovnomu kodeksu Rossiiskoi Federatsii*, ed. V.I. Radchenko (St. Petersburg: Piter, 2007); *Kommentarii k ugolovnomu kodeksu Rossiiskoi Federatsii s postateinymi materialami i prakticheskimi razyasneniyami* (Moscow: Knizhnii Mir, 2008); *Kommentarii k ugolovnomu kodeksu Rossiiskoi Federatsii*, 5<sup>th</sup>ed. issued by Verkhovnyi Sud (Moscow: Normy, 2007); *N.A. Ovchinnikov Kommentarii k ugolovnomu kodeksu Rossiiskoi Federatsii* (Moscow: Ekzamen, 2007).

49. Law enforcement agents that I talked to were frustrated that Article 152 (trafficking of minors) was removed when the new laws were passed. They believed that it was the best way to deal with this problem since it did not specify intent to exploit.

50. A.I. Dvorkin, *Torgovliya Liudmi v Rossiiskoi Federatsii: Kvalifikatsiya, Preduprezhdenie, Rassledovanie*. (Moscow: Iurist, 2007); Inna Alikhadzhieva, *O Razgranichenii Torgovli Liudmi i Vovlechenie v Zanyatie Prostitutsiei* (Stati 127.1 i 240 UK Rossii), *Ugolovnoe Pravo*, no. 1 (2008): 4-8.; A. Naumov, *Razgranichenie Prestuplenii Predusmotrennykh st. 127.1 i 240 UK, Zakonnost*, no. 6 (2007): 4-5.

51. Criminal Code articles 15 and 58. Also see Article 8 of *Ob operativno-roysknoi deitelnosti* which allows investigative actions for grave and especially grave crimes to take place without the prior approval of a judge, provided that the *operativniki* inform a judge within 24 hours and get a warrant within 48 hours.

52. In 2006, there had been a small change in wording to Article 127.1, but the larger questions about "intent to exploit" were not addressed at that time. Federal law number 73-FZ passed July 21, 2004.

53. Federal law number 218-FZ, "O vnesenii izmenenii v statyu 127.1 Ugolovnogo Kodeksa Rossiiskoi Federatsii" (On Changes in Article 127.1 of the Russian Federation Criminal Code) signed November 25, 2008.

54. Rebecca Surtees, *Listening to Victims: Experiences of Identification, Return and Assistance*

in *South-Eastern Europe*, (Vienna, Austria: International Centre for Migration Policy Development (ICMPD), 2007)

55. Surtees, *Listening to Victims*; Melissa Farley, ed. *Prostitution, Trafficking and Traumatic Stress* (Haworth Maltreatment and Trauma Press 2004).

56. Valentina Blinova, "Propashchie," *Ogonek*, February 12, 2007, 18-21.

57. Ivan Shushkevich, *Osobennosti Predotvrashcheniya i Rassledovaniy Prestupleniy, Svyazannykh s Torgovlei Liud'mi*, (Moscow: Wolters Kluwer, 2008); The International Organization for Migration has also prepared a training manual that is in the process of being distributed to law enforcement.

58. Lise Bjerkan and Linda Dyrliid. *The Courageous Testimony: Trafficked Women's Motivations for and Experiences from Testifying against Their Traffickers*, forthcoming.

59. Federal Law number 119-FZ "O gosudarstvennoi zashchite poterpevshikh, sviditelei i inykh uchastnikov ugovnogo sudoproizvodstva" (On state protection for victims, witnesses and other participants in the judicial process), passed August 20, 2004.

60. The witness protection legislation has only been used a few times for trafficking victims.

61. Celesta A. Albonetti, "Prosecutorial Discretion: The Effects of Uncertainty," *Law and Society Review* 21, no. 2 (1987): 291-313.

62. Yue Ma, "Prosecutorial Discretion and Plea Bargaining in the United States, France, Germany and Italy: A Comparative Perspective," *International Criminal Justice Review* 12 (2002): 22-52; Shawn Boyne, *Prosecutorial Discretion in Germany's Rechtsstaat: Varieties of Practice and the Pursuit of Truth*, University of Wisconsin-Madison, 2007.

63. This was an optional protocol to the UN Convention against Transnational Organized Crime and went into effect in 2003. Russia signed in 2000 and ratified it on April 26, 2004.

64. Though international definitions of trafficking make the victim's consent irrelevant if the end result is exploitation, this is not codified in Russian legislation. In effect the victim ends up on trial, having to defend her consent instead of the trafficker having to defend his or her actions. Alexandra V. Orlova and Sasha Baglay, "A Comparative Analysis of Russian and Ukrainian Legislative Efforts Directed against Human Trafficking," *Osteuropa* (2006).

65. I do not have the statistics for cases opened under article 127, the most frequently used article to prosecute labor exploitation before the new laws were passed. Furthermore, these statistics would likely be misleading because there are many more ways that Article 127 is used besides prosecuting slave labor cases. Article 240, on the other hand, can be easily identified as an alternative to prosecuting sex trafficking.

66. It is particularly interesting to note that most of the crimes prosecuted under article 240 would qualify as "severe forms of trafficking" under the U.S. definition, the standard by which the efforts of foreign governments are judged.

67. Gerber and Mendelson, *Public Experiences of Police Violence*.