

**Beyond Corruption: An Assessment of Russian Law Enforcement's
Fight against Human Trafficking**

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Introduction

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. Despite the December 2003 passage of a law criminalizing human trafficking, as of October 2007, of the over 350 cases of human trafficking registered under the new law, only 10 of them had been brought to court (Poyasnitel'naya zapiska, 2007).¹

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 (Shelley and Orttung, 2005; Hughes, 2002; Tiuriukanova, 2006). Though corruption is certainly a contributing factor to the spread and persistence of human trafficking in Russia, 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.

The basic structure of law enforcement creates a series of barriers that deters prosecution of many crimes in Russia. Investigative and prosecutorial functions are 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 new and unfamiliar to

¹ 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.

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.

Based on a series of interviews conducted in Russia from September 2007 to July 2008, I examine what Russian law enforcement has done during the first four years the human trafficking laws have been on the books (2004-2008). Information gathered from law enforcement agents, representatives of international and domestic non-government organizations, and academics in cities across Russia allows me to explore not just *whether* but also *when* law enforcement has used the new laws.² I find that they 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 paper 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 outline the institutional structure of Russian law enforcement to show how it impedes prosecutions more generally and then focus specifically on the challenges posed by the trafficking law itself. I conclude by offering a more optimistic assessment of Russian law enforcement's efforts on trafficking to date, suggesting that they have worked within existing institutional constraints to prosecute traffickers with the means they have at their disposal.

Background

² Cities included Moscow, Vladivostok, Khabarovsk, Yoshkar Ola, Kazan, Saratov, Stavropol and Irkutsk.

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) (Lehti and Aromaa, 2006). 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 (2006, 35). 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.³

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.⁴ 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

³ There have been many comprehensive studies of the human trafficking situation in Russia. In English, see Orlova (2004); Hughes (2002); Granville (2004); Buckley (2009); Tiuriukanova (2006); Stoecker and Shelley, (2005); Schuckman, (2006). In Russian, see Buryak, (2006); Erokhina and Buryak, (2003); Mizulina, (2006); Zhuravlev and Pigaev, (2006); Tiuriukanova, (2008).

⁴ For more detail on what happened during the attempted passage of this legislation see: Johnson, (2009); Shelley, (2005); Buckley, (2006).

crimes (recruitment into prostitution, organizing prostitution) were also increased.⁵ While this was considered a defeat by those who supported the more comprehensive draft legislation, together these two new articles in the Criminal Code have given Russian law enforcement the necessary tools for fighting all manifestations of trafficking.

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.⁶ 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.⁷ Thus, Russian law enforcement is not alone in having difficulty combating trafficking.⁸

In 2001, the American government began an effort to rank countries' progress on human trafficking.⁹ 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

⁵ 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

⁶ Many scholars and journalists have written about the trafficking process more generally, for examples, see: Farr, (2004); Bales, (2004); Williams (1999); Kara, (2008); Kyle and Koslowski, (2001); Malarek, (2004).

⁷ One way around this is if two countries have a mutual legal assistance treaty (MLA). MLAs allow for quicker exchange of information during investigation.

⁸ In a smaller but similar interview project with US 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.

⁹ As part of the Trafficking Victim Protection Act, comprehensive legislation passed in the US in 2000, the Department of State is required to produce an annual report on the progress other countries have made in fighting trafficking, the Trafficking in Persons (TIP) report. Countries are ranked on four tiers (1, 2, 2-Watch List, 3), with those in the tier 3 subject to withholding of future US aid that is not humanitarian or economic.

to combat trafficking...particularly in providing assistance to victims” (TIP Report, 2005, 2006, 2007, 2008). 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 criteria 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).¹⁰ A single case can have multiple episodes of the crime within it. Given the number of victims that are 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. 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).

Table 1: Human Trafficking Cases registered under Articles 127.1 and 127.2

Article 127.1 Human Trafficking

Year	2004	2005	2006	2007	2008	Total
Cases Registered	17	60	106	104	112	399
Defendants Charged	39	24	45	55	*	163**

¹⁰ 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.

Article 127.2 Use of Slave Labor

Year	2004	2005	2006	2007	2008	Total
Cases Registered	8	19	19	35	39	120
Defendants Charged	9	10	15	22	*	56**

* Numbers for 2008 are unavailable at the time of writing this paper

**Does not include numbers for 2008

Source: Tiuriukanova, 2008; MVD Statistics, on file with author

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.¹¹ 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 (Poyasnitel'naya zapiska, 2007).

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

¹¹ Criminal Procedure Code of the Russian Federation, Section VII

constraints. First, however, it is important to acknowledge the role corruption plays in Russian law enforcement more generally and in trafficking in particular.

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 (Gerber and Mendelson, 2008). Corruption in law enforcement has a long history in Russia, starting in the Communist period and persisting through today (Shelley, 1996). 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 (Shelley, 1999; Robertson, 2004).

Most Russians view their law enforcement negatively. The police are regularly rated as one of the least trusted institutions in Russia, with about 2/3 of the population reporting little to no trust.¹² Police are also considered very corrupt.¹³ In one survey, 92.1% of Russian respondents believed police took bribes rather or very often (Baird and Javeline, 2003, 204). 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 (cited in Taylor, 2007, 46-7).

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

¹² This is in comparison to other institutions such as President who is trusted by 73% and distrusted by 19%; the media, trusted by 46% and distrusted by 44% and the army, trusted by 49% and distrusted by 40%, (Gerber and Mendelson, 2008, 24)

¹³ 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.

goals, generally when their crimes were victimless or when it was necessary to help friends and/or family (Beck and Lee, 2002, 357). 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 (cited in Taylor, 2007, 47).

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” (UNGIFT, 2008). 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 (UNGIFT, 2008; Shelley and Orttung, 2005). In Russia, corruption is most frequent 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.¹⁴

Though it is cited throughout the literature, whenever I asked in my interviews why Russian law enforcement was not doing more with the new trafficking laws, the answer was rarely corruption.¹⁵ 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

¹⁴ 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.

¹⁵ Of course, interview subjects may be reluctant to implicate themselves or their colleagues in corruption-related practices. Nevertheless, the issue of corruption was rarely mentioned.

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 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 (Shelley, 1996; Caparini and Marenin, 2004; Robertson, 2003; Solomon, 2005).

Today, Russia retains 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 Interior Ministry (MVD—*Ministerstvo Vnutrennykh Del*) or the Procurator General (*generalnaya prokuratura*). For the purposes of this paper, 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.¹⁶ 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.¹⁷

When 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 federal level unit of *operativniki* 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 was uncovered, it would fall within the competence of these particular agents.¹⁸

If the case has anything to do with illegal migrants, the jurisdiction is solely in the hands of the Federal Migration Service (FMS—*Federalnaya Migratsionnaya Sluzhba*). For example if

¹⁶ 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.

¹⁷ *Operativniki* are governed not by the Criminal Procedure Code, but by a separate piece of legislation that delineates their duties and responsibilities FZ № 144-F3 “*Ob operativno-rozysknoi deyatelnosti*,” (On Operational-Investigative Activities), August 12, 1995.

¹⁸ The UBOP was disbanded under a Presidential order from Dmitry 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 Abdullaev, (2008); Ovchinskii, (2008).

there is a 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. Usually this second step does not happen because often, the FMS is only looking for violations of the border regime, not trafficking. Since that is what they are trained to look for, this should not be a surprise.

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 prokulture 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.¹⁹ 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*.²⁰ 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*

¹⁹ See Criminal Procedure Code Article 151(2) parts 1-4.

²⁰ First degree aggravating factors include trafficking: 2 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)

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*.

Though the responsibility for investigating most trafficking crimes falls to the MVD and *prokuratura*, *operativniki* and *sledovатели* from the federal security service (FSB-*Federalnaya Sluzhba Bezopasnosti*) 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.²¹ The case is then passed to a state prosecutor (*gosobvinitel*). Unlike many legal systems where 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* have not been 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

²¹ Criminal Procedure Code of the Russian Federation, Article 220

the classification made by the *sledovatel*, send it back to the *sledovatel* to change the classification, or drop the case altogether.²²

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 *prokuror* 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, *operativniki* have also been known to fight 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

²² Criminal Procedure Code of the Russian Federation, Article 221, there are other options, but these are the most common.

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. Many *operativniki* 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. Many of my respondents noted that once the amendments to the Criminal Code were enacted, there was an immediate 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 taken an active interest in the issue. After the law was passed, law enforcement became

more pragmatic, open to cooperation with these organizations because they had expertise on how to work trafficking cases.

Promotion Criteria

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 (Shelley, 1996). In a practice referred to as “chopping sticks,” law enforcement tried to pad their arrest statistics to meet goals set by their superiors (Schreck, 2004; Moscow Times, 2007; Abdullaev, 2008). 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 (Beck and Robertson, 2005; Shelley, 1996). Law enforcement would also not record crimes if they thought they would not be able to find the offender. 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. Thus, these 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 trafficking case. In theory, any Russian law enforcement officer will say that he/she is obligated by law to charge the correct crime, and therefore if it is trafficking it will be charged as trafficking. In reality, the disincentives to look for trafficking are present right from the beginning, when they 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.

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.

Overcoming Institutional Inertia

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 Article 127.1, human trafficking is defined as “the buying and selling of a person, or the recruitment, transportation,

transfer or harboring of a person for the purpose of their exploitation.”²³ The wording has created confusion and uncertainty over whether the buying and selling must be related to the exploitation or can stand alone. This confusion has paralyzed law enforcement and is frequently cited as a reason for poor enforcement of the new human trafficking laws.

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. 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. 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. Unfortunately these decrees are usually only issued after there has been enough judicial practice on a law to show that there is confusion. But, many law enforcement agents say that they are 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. They have taken a more conservative position on the definition, assuming that any and all acts involved in human trafficking must be

²³ Criminal Code Article 127.1

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 intended exploitation as one of the biggest barriers to effective enforcement. The emphasis on exploitation has 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.²⁴

Another problem with the new 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 (Dvorkin, 2007; Alikhadzhieva, 2008; Naumov, 2007). The differences boil down to fairly technical distinctions, ones that an average law enforcement officer who is trying to get cases cleared from his/her desk will probably not take the time to unravel.

Finally, the 5 year minimum sentence for human trafficking is not high enough to make it 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

²⁴ Many people that I talked to were frustrated that Article 152 (trafficking of minors) was removed when the new laws were passed. They believed that Art. 152 was the best way to deal with this problem since it did not specify intent to exploit.

sentence that the criminal may have to serve if convicted.²⁵ 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.

Spurred by a few high profile cases in which mothers sold their babies but could not be prosecuted for human trafficking, the MVD, *prokuratura*, and other domestic actors successfully lobbied for changes in the wording of Article 127.1.²⁶ In November 2008, the article was amended to clarify that any transaction involving a human being (even if the goal was not exploitation) is a crime. 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.”²⁷ The amendments also changed the minimum sentence for 127.1 to 6 years, making it 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 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

²⁵ 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.

²⁶ 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.

²⁷ Federal law number 218-FZ, “O vnesenii izmenenii v statyu 127.1 Ugolovnogo Kodeksa Rossiskoi Federatsii” (On Changes in Article 127.1 of the Russian Federation Criminal Code) signed November 25, 2008.

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 law enforcement was victim testimony. 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.

Many victims do not trust law enforcement, believing them to be corrupt and not interested in helping them. Often they have seen them as clients 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 (Surtees, 2007; Farley, 2004). From the law enforcement side, the victims, 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.

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 (Shushkevich, 2008).²⁸

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 that is 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

²⁸ The International Organization for Migration and the American Bar Association have also prepared training manuals that are in the process of being distributed to law enforcement.

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 (Bjerkan and Dyrliid, forthcoming). The Russian government enacted witness protection legislation in 2004 which could be applied to trafficking victims.²⁹ 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

²⁹ Federal Law number 119-FZ "O gosudarstvennoi zashchite poterpevshikh, sviditelei i inykh uchastnikov ugolovnogo sudoproizvodstva" (On state protection for victims, witnesses and other participants in the judicial process), passed August 20, 2004.

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 an adequate solution for law enforcement.³⁰ 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 remain legally 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 this 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.

³⁰ The witness protection legislation has only been used a few times for trafficking victims.

Cautious Enforcement and Pragmatic 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 cautious enforcement and pragmatic 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.³¹ 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.

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 "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children"³² 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

³¹ This strategy of discretion is by no means unique to Russian law enforcement. In the US 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 (Albonetti, 1987). 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 (Ma, 2002; Boyne, 2007).

³² 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.

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.³³ They fail to recognize that even with 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% 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 *sledovateli* and *gosobviniteli* will only accept physical restraint (chains, handcuffs,

³³ 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 (Orlova and Baglay, 2006).

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 a choice, 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 2, 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 2003.³⁴ For crimes of recruitment into prostitution (Article 240), there was a 187% increase between 2003 and 2004 and for crimes of organization of prostitution (Article 241), there was a 174% increase. Given the widespread acceptance of prostitution throughout Russian society, and the frequent use of law enforcement for protection of the sex industry, 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 not involve victim testimony. Because the 2003 law also increased penalties for crimes under

³⁴ I do not have the statistics for cases opened under article 127 (illegal confinement/deprivation of freedom), the most frequently used article to prosecute labor exploitation before the new laws were passed.

Articles 240 and 241, law enforcement can now get the benefits of a higher punishment for these crimes without having to change their pre-existing practices.³⁵

Table 2: 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
• Defendants Charged	5	19	18	17	100	100	262	273	*
241: Organization of Prostitution									
• Cases Registered	145	165	241	356	976	1030	1376	1570	1831
• Defendants Charged	138	145	158	247	656	741	967	1049	*

*Numbers unavailable at the time of writing this paper

Source: MVD Statistics (on file with author)

The strategies of pragmatic prosecution and cautious enforcement 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

³⁵ It is particularly interesting to note that most of the crimes prosecuted under article 240 would qualify as “severe forms of trafficking” under the US definition, the standard by which the efforts of foreign governments are judged.

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." 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.

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. 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 deal 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. 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.

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