Ethnic Profiling in the Moscow Metro

Ethnic Profiling
in the Moscow Metro

Ethnic Profiling
in the Moscow Metro

Contents

Acknowledgments

I. Executive Summary and Recommendations

Extensive evidence of ethnic discrimination in Russia—particularly the pervasive target-ing of minorities for document checks by police—led the Open Society Justice Initiative, in partnership with JURIX and Lamberth Consulting, to undertake a groundbreaking study of ethnic profiling by police in the Moscow Metro system. The Moscow Metro Monitoring Study marked the first time the rigorous statistical methodology known as observational benchmarking was employed to measure ethnic profiling outside the United States and United Kingdom. The study examined whether and to what extent the Moscow Metro police disproportionately stopped individuals based on their appearance as "Slavs" or "non-Slavs."

The Moscow Metro Monitoring Study found that persons of non-Slavic appear-ance made up only 4.6% of the riders on the Metro system but 50.9% of persons stopped by the police at Metro exits. In other words, non-Slavs were, on average, 21.8 times more likely to be stopped than Slavs. At one station, non-Slavs were 85 times more likely than Slavs to be stopped by the police. By comparison, the highest rates detected in the United States and United Kingdom show that minorities are four or five times more likely than non-minorities to be stopped. This disproportion is massive and cannot be explained on non-discriminatory, legitimate law enforcement grounds.

The Moscow Metro Monitoring Study also analyzed the effectiveness of police efforts in stopping non-Slavs at such a disproportionate rate. The results clearly demonstrate that the Moscow police are wasting their effort: in the overwhelming majority of instances, police simply release those they have stopped. The study concludes that only 3% of police stops resulted in even an administrative infraction such as possessing improper documents. This low "hit rate" should be cause for great concern.

This study was conducted in the context of the Open Society Justice Initiative's ongoing project examining and combating ethnic profiling in Europe. As such, *Ethnic Profiling in the Moscow Metro* begins with an overview of the concept of ethnic profiling and the movement to combat the practice, underscoring that the practice is illegal under international law. The report then provides context and analysis of the Moscow environment in which such systematic ethnic profiling occurs. It surveys the domestic legal framework governing requirements that Russian citizens and foreigners register their permanent residence and temporary stays, as well as the police powers to stop individuals for investigation and document checks, concluding that the law is so permissive as to allow police officers unbridled discretion to stop any individual for document checks at will. Furthermore, the report describes other factors that allow ethnic profiling to occur, such as the disproportionate xenophobic reaction to concerns regarding migration and terrorist threats, the discriminatory application of residence registration requirements, and an ineffective police force known for corruption.

The Moscow Metro Monitoring Study's findings are clear: the Moscow police forces are wasting their efforts by disproportionately targeting non-Slavs for fruitless stops and searches. The Moscow police force must re-evaluate how to deploy its limited resources in an effective manner that is consistent with its legal obligations to respect antidiscrimination norms. To that end, the Justice Initiative and JURIX make the following recommendations:

To the Federal Ministry of the Interior

- Clarify and publicize the objectives of police stops and study current practices of stops to assess their effectiveness in achieving the stated objectives.

- Devise stop-and-search guidelines based on behavior and other objective factors rather than on apparent ethnicity. Review internal policies and training on stops and searches to eliminate the singular reliance on ethnicity as a criterion for stops.

- Mandate the recording of all stops in writing by patrol officers. Develop and distribute a standard form for police to record all stops. Require police to provide each person stopped with a copy of the written record of the stop, which includes an explanation of the reasons for the stop, as well as information on the rights and responsibilities of individuals in encounters with the police and on how individuals can make a complaint.

- Increase police salaries to reduce turnover and improve the competence and professionalism of the police forces.

- Design, develop, implement, and publicize an independent and transparent system of civilian oversight of the Russian police forces, including the Moscow Metro UVD police.

- Design, develop, implement, and publicize an effective system of training of the Russian police forces, including the Moscow Metro UVD police, which makes clear that ethnic profiling is inappropriate and includes as a substantial component training in Russian and international standards on human rights and non-discrimination.

- Direct the Office of Internal Security (*Upravleniye Sobstvennoy Bezopasnosti*) to take punitive action against police officers who engage in ethnic profiling or other discriminatory practices.

- Instruct the Moscow Metro UVD to place a notice board in every Metro station with information on the rights and responsibilities of individuals in encounters with the police and on how individuals can make a complaint.

To Russian Political Leaders and Members of the Duma

- Speak out against ethnic discrimination, including ethnic profiling, and extortion by the police of ethnic minorities; underscore publicly and repeatedly that the fight against crime and terrorism is neither impeded nor aided by discriminatory police practices.

- Amend all legislative provisions and bylaws that allow patrol police to conduct stops for the sole or primary purpose of investigating compliance with the administrative requirements of residence registration.

- Amend the Administrative Code so that absence of registration is not subject to fine.

- Revise the Law on the Status of the Main Identity Document so that it allows the use of any government-issued identification card with a photograph as proof of identity.

- Amend the Law on the Police to make clear that stops by police must be supported by "reasonable suspicion of an actual or possible offense or crime" as recommended in Article 47 of the European Code of Police Ethics.

To Russian NGOs

- Monitor and report on ethnic profiling practices of the police.

- Provide civic education programs to inform the public of their rights when stopped by the police and to disseminate information about complaints procedures.

- Ensure police accountability by assisting individuals in legal actions and police complaints procedures.

- Collaborate with the Ministry of the Interior to assist in revising internal administrative regulations and training procedures concerning stop-and-search practices so as to conform with international human rights law, including the prohibition against racial and ethnic discrimination.

To the International Community

- Monitor and encourage reform of police practices in Russia to ensure that they comply with Russia's international human rights obligations, including the anti-discrimination norm.

- Support more effective police policies and practices through sharing information on best practices.

- The various bodies of the Council of Europe, including the Parliamentary Assembly, the Committee of Ministers, and the Commissioner of Human Rights, should highlight ethnic profiling and other discriminatory practices by the police as an area of particular concern in their monitoring, reporting on, and dialogue with the Russian authorities. This is all the more important as the Russian Federation currently serves as President of the Committee of Ministers.

- The European Union should similarly highlight ethnic profiling and other discriminatory practices by the police in its continuing dialogue with the Russian authorities.

II. Introduction

Systemic discrimination based on race, ethnicity, and nationality[1] in Russia is well documented and lies at the heart of myriad human rights violations against minorities. Russian media propagates racist stereotypes, fueling hate speech.[2] African and East Asian students frequently fall victim to racial violence, from assault to murder, at the hands of right-wing gangs. Migrant workers, primarily from the Caucasus and Central Asia, are exploited and abused. Especially vulnerable are those who are visibly non-Slav, as they receive heightened scrutiny from the police as a result of their presumed national origin. Few victims of discrimination report assaults or denials of their rights. They have come to accept discrimination as the normal state of affairs. Russian police do not effectively investigate and prosecute racist violence.

One of the most persistent forms of discrimination against ethnic minorities is harassment at the hands of Russian police, who have been widely alleged to disproportionately target minorities for stops and document checks. Nowhere is this practice more infamous than in Moscow. But just how widespread is the problem in fact?

Police targeting of minorities in Russia amounts to racial and ethnic profiling, defined as the impermissible use of stereotypes based on ethnicity, or perceived ethnicity, by law enforcement personnel in making law enforcement decisions. In the United States and United Kingdom, discriminatory targeting of minorities by the police was widely accepted and tolerated, until a movement emerged in the 1980s and 1990s to combat this problem. What prompted the public outcry to end the practice was statisti-

cal evidence that both quantified the prevalence of ethnic profiling and also proved that ethnic profiling is an ineffective law enforcement tool.

A recent decision by the European Court of Human Rights, *Timishev v. Russia*,[3] found Russia in breach of the European Convention of Human Rights for targeting Russian citizens of Chechen origin for special restrictions on freedom of movement. The case concerned an official order to traffic police officers not to allow "Chechens" to cross an internal administrative border within the Russian state. In practice, "the order barred the passage not only of any person who actually was of Chechen ethnicity, but also of those who were merely perceived as belonging to that ethnic group."[4] As the *Timishev* decision makes clear, ethnic profiling is a violation of European and international norms, which are part of the Russian constitutional order.[5]

Despite widespread reports of ethnic profiling of minorities in Russia, the prevalence of the problem has never been quantified. This report seeks to fill that gap. From May 2005 through September 2005, JURIX[6] and the Open Society Justice Initiative ("Justice Initiative"),[7] implemented the Moscow Metro Monitoring Study in conjunction with Lamberth Consulting[8] to monitor the practices of the Moscow police in conducting stops of riders on the Moscow Metro and quantify the prevalence of ethnic profiling. The study was born of the convergence of two Justice Initiative programs. First, the Justice Initiative has been working with a consortium of Russian human rights NGOs on documenting and litigating cases of ethnic discrimination in the Russian Federation since 2003. Second, the Justice Initiative is undertaking a comparative study of ethnic profiling in several other European countries, including Spain, Hungary, Bulgaria, France, the Netherlands, and Sweden, which will be released as a separate report.

The Moscow Metro Monitoring Study was a groundbreaking undertaking. It marks the first time that the rigorous statistical methodology of benchmarking and observational monitoring was used to measure ethnic profiling outside of the United States and the United Kingdom. The study scrutinized police stops at the exits of the Moscow Metro. These exits presented an ideal environment in which to conduct the benchmark survey measuring the ethnic composition of the population under study to determine whether ethnic profiling is occurring. Also, the Moscow Metro system is so extensive that its riders represent a cross-section of the population of this expansive city, including the downtown district, residential areas, and railway and bus terminals that connect to the satellite cities surrounding Moscow.

Unlike ethnic profiling studies in the United States or United Kingdom, the Moscow Metro Monitoring Study was conducted independent of any cooperation from the Moscow police. The Moscow police do not currently collect data on the stops of police officers and it would take considerable time and resources to institute such a data collection procedure. In this context, undertaking an independent study guaranteed that the findings would be objective.

This report seeks to contextualize the results of the Moscow Metro Monitoring Study within the general framework of comparative experience with ethnic profiling on the one hand and the unique legal and human rights environment of modern day Moscow on the other.

To begin, Section III of this report provides an overview of the concept of ethnic profiling and describes the evolution of the movement to combat this practice. It explains why ethnic profiling is not an efficient law-enforcement practice and describes the international legal norms which render it unlawful.

Against this backdrop, Section IV discusses both the methodology and results of the Moscow Metro Monitoring Study. It starts by describing the highly rigorous methodology developed to conduct the Moscow Metro Monitoring Study, which observed and analyzed data collected from over 1,500 police stops at 15 Metro stations from May through September 2005. This discussion explains the five elements of the field study including the Metro station selection process, the training of monitors, the benchmarking of the population under study, the observational monitoring of stops, and the interviews conducted with a selection of those stopped.

The monitors classified the ethnic data of individuals at the Moscow Metro station exits into three categories, namely "Slavs," defined as those who appeared to be ethnic Russians, Ukrainians, and Byelorussians; "minorities," namely those who appeared to be national minorities of the former Soviet Union from the Caucasus and Central Asia; and "other." It is important to note that the Moscow Metro Monitoring Study developed these categories to mimic how the Moscow police are believed to classify the public according to physical appearance.

Section IV provides the results of the Moscow Metro Monitoring Study. In sum, the study found that while non-Slavs[9] composed only 4.6% of the riders on the Metro system, they accounted for 50.9% of persons stopped by the police. In other words, non-Slavs are on average 21.8 times more likely to be stopped than Slavs. By comparison, the highest rates recorded in the United States and United Kingdom demonstrate that minorities are four or five times more likely to be stopped by the police than non-minorities. The rate of disproportionate targeting by the police of non-Slavs revealed in this study is the highest ever recorded in a study of ethnic profiling to date. Indeed, the rate is so extreme, it is highly unlikely that it can be explained on non-discriminatory, legitimate law enforcement grounds.

Section V examines the legal framework that governs police powers to stop and check identity documents in Russia. This analysis surveys both the laws governing residence registration and identity papers as well as the police structure and criminal and administrative procedures that define the contours of police powers to stop individuals for investigation.

Section VI then describes specifics of the Moscow environment in which the flagrant ethnic profiling documented by the Moscow Metro Monitoring Study occurs. Several legitimate concerns for heightened law enforcement vigilance exist, namely a situation of migration and episodic terrorist attacks linked to the ongoing war in Chechnya. But the study found that police stops uncover administrative document violations only 3% of the time. Such an exceptionally low hit rate belies any justification of ethnic targeting for migration and anti-terrorist measures. If ethnic profiling cannot be justified based on law enforcement rationales, what else could be driving this practice? This section proceeds to describe the widespread acceptance of discrimination and xenophobia among the Moscow public and the crisis of today's police force in Moscow. In light of these factors, this section probes the question of whether ethnic profiling, in fact, prevails as *de facto* official policy in Moscow.

The report closes in Section VII with a summary of the Moscow Metro Monitoring Study's conclusion that the Moscow Metro police are engaging in ethnic profiling, an unlawful practice that must be addressed.

III. The Movement to Combat Ethnic Profiling

The Concept of Ethnic Profiling and a Methodology to Measure It

Investigating and preventing crime are core functions of law enforcement. "Profiling" refers to the police practice of using a defined set of characteristics or circumstances to identify individuals who are likely to engage in criminal conduct. Individuals who conform to these characteristics are subjected to stops, searches, investigation, or arrests based on their "profile," rather than an articulable suspicion that they are likely the perpetrators of a crime. National and local laws set guidelines and limits under which it is lawful for police to stop individuals in public.

During a stop, police temporarily restrict the movement or liberty of a suspect for questioning to investigate any criminal activity. Some laws allow police to go beyond questioning and to search individuals for weapons or criminal contraband but require that police articulate minimum reasons why they have suspicion to stop and search an individual in public.[10] Police stops, identity checks, and searches cover a range of contacts between the police and the public that form one of the police's investigative powers.

Engaging in profiling to conduct stops and searches is an accepted and permissible law enforcement tool, provided that profiles are based on factors that are objective and statistically proven to be significant indicators of criminal activity. Some profiles may provide helpful markers as an aid to law enforcement personnel in identifying key traits to look for among a large mass of information or individuals.

The term "ethnic profiling" refers to the impermissible reliance on ethnic and racial stereotypes, rather than objectively identified behavioral profiles, as the basis for making law enforcement and investigative decisions about who is involved in criminal activity. Such profiling, based on generalizations about race, ethnicity, or national origin rather than specific evidence that would link a perpetrator to a crime in a particular place at a particular time, can amount to discrimination and is illegal under international and regional standards and some national laws. Police are not engaging in ethnic profiling when ethnicity is part of a suspect-specific and time-bound description.

Although the reality of discriminatory police profiling of ethnic and racial minorities has long been apparent in the United States and Europe, particularly the United Kingdom, opposition to racial profiling began developing only in the 1980s and 1990s.

In the United Kingdom and United States, black and Hispanic minorities have historically borne the brunt of disproportional law enforcement scrutiny. Elsewhere in Europe, discriminatory policing has also been known to occur, be it through frequent raids on Roma communities, disproportionate surveillance, stops and identity checks in immigrant neighborhoods, or a greater incidence of reported acts of police violence against ethnic minority members. So, too, in Russia has discriminatory police targeting of ethnic and racial minorities been widely acknowledged. Regardless of where it is practiced, ethnic and racial profiling by the police is premised at least in part on unfounded stereotypes that specific ethnic and racial minorities are more likely to perpetrate crimes than others.

The United Kingdom experienced decades of tensions between its police forces and the black African-Caribbean community, including race riots, notably in Brixton, in the 1980s. One of the earliest studies commissioned by the U.K. Home Office in 1983 concluded that "blacks, particularly young black males, were much more likely to be stopped and searched by the police than whites" despite the fact that subsequent prosecution rates for the two races were the same.[11]

In the late 1990s, the botched police investigation of a racist murder of a black teenager, Stephen Lawrence, and a study by the London Metropolitan Police confirming a low arrest rate through racially disproportionate stop-and-search practices,[12] finally prompted reform.[13] Through the Race Relations (Amendment) Act of 2000, the United Kingdom has extended the prohibition on racial discrimination to the performance of public functions by public authorities, including the police and government departments.[14]

When studies published in the United States in the 1990s revealed the pervasiveness of discriminatory targeting of minorities in the context of the "war on drugs," opposition to racial and ethnic profiling crystallized. Groundbreaking research quantified alarming evidence of racial profiling by the police in stopping suspect vehicles driving on an interstate highway. For example, between January 1995 and September 1996, 70% of 823 citizens detained for drug searches on a particular highway were African American.[15]

In a landmark case, *State v. Soto*, 734 A.2d 350 (N.J. Super. Ct. Law Div. 1996), a New Jersey court relied on statistical evidence to determine that the New Jersey State Police were engaging in unlawful racial profiling. The case involved 17 African-American defendants who were on trial for transporting illegal drugs after they had been arrested while driving on an interstate highway between Washington, D.C. and New York City. The defendants argued that the evidence against them was illegal because the police unlawfully arrested them based on discriminatory enforcement of traffic laws in violation of the state constitution. As part of their legal defense, social psychologist Dr. John Lamberth conducted a statistical analysis of traffic stops on the highway during the month of June 1993 through the novel methodology of benchmarking and observational monitoring. His study revealed that although only 13.5% of all drivers on the highway during the randomly-selected times were African American, 37.4% of all stops involved racial minorities.[16] The differential yielded a statistically significant disparity: blacks were 4.85 times more likely to be stopped than whites.[17] Presented with this strong statistical evidence, the court concluded that the New Jersey State Police were targeting blacks, an intentional and purposeful form of discrimination against African-Americans that violated the equal protection clause of the New Jersey State Constitution.[18] The court declared the evidence seized from these defendants as a result of the illegal stops and searches inadmissible. *State v. Soto* was a far-reaching legal precedent, signaling that racial profiling is not only an odious practice, it is also illegal.

The methodology of the benchmark survey and observational analysis has since been widely accepted as a reliable tool for measuring the prevalence of ethnic profiling in the United States.[19] Furthermore, the methodology of the observational benchmark has been applied in several studies measuring ethnic profiling of pedestrians and drivers in the United Kingdom.[20]

Separate studies conducted in the United States in the late 1990s revealed further evidence of the prevalence of discrimination in police stop practices. A study of the New York City police force practices in the context of its anti-gun campaign revealed alarming evidence of the pervasiveness of racial profiling: about 51% of all persons stopped between 1998 and 1999 were black, while 33% were Hispanic.[21] Yet a smaller percentage of blacks and Hispanics who were stopped were ultimately arrested than were whites who were stopped.[22]

A Recent Shift in Practice and Public Opinion

This statistical proof of the high rate of ethnic profiling resulted in widespread public condemnation of this practice among the American public. Indeed by late 1999, an overwhelming 80% of all Americans believed that racial profiling is "harmful and must be stopped."[23] To collect data to address racial profiling, more and more police departments around the United States began to record statistics on stop practices that documented race.[24] Furthermore, politicians across the political spectrum condemned racial profiling and vowed to support measures to end it. So committed were politicians to end racial profiling, the United States Congress considered the passage of the End Racial Profiling Act of 2001, which would have explicitly prohibited racial profiling by federal law enforcement and outlined concrete policies the federal government would undertake to end the practice.

The terrorist attacks of September 11, 2001 prompted an immediate shift in public opinion toward racial and ethnic profiling. Whereas 80% of Americans condemned racial profiling in 1999, 58% of those polled shortly after September 11, 2001 agreed that U.S. airlines should subject Arabs, including those who are U.S. citizens, to special, intensive security checks before boarding airplanes in the United States.[25] A clear majority of Americans have come to support ethnic, racial, and religious profiling against Arabs, South Asians, and Muslims in the context of the so-called war on terror.

Counter-terrorism measures in the United Kingdom have resulted in increased ethnic profiling. Section 44 of the Terrorism Act of 2000 permits police officers to use stop-and-search powers without reasonable suspicion in authorized areas of high risk of terrorism, with the entire City of London being designated as one such area. Between 2001 and 2003, the number of people targeted under this provision rose from 8,550 to 21,577 throughout the United Kingdom, with the City of London and Metropolitan Police Services accounting for four-fifths of these stops. These stops disproportionately targeted blacks and Asians, who were four to five times more likely to be stopped than whites.[26] Notably, only 1.18% of these stops resulted in arrests.

The above experience illustrates how views of ethnic and racial profiling—what it is and what is permissible—have changed in the United States and Europe since September 11, 2001. Whereas ethnic profiling was originally understood to concern the stopping of African or Latino citizens in the United States and Roma, immigrants, or persons of African origins in Europe, "[n]ow [it] is more likely to mean security checks or . . . investigations that target Muslim men from the Middle Eastern countries, in order to try to catch terrorists. And now lots of people are for it."[27] Ethnic and racial profiling, however, continues to occur as a practice in both criminal law enforcement and counter-terrorism. Studies must continue to monitor its prevalence and effects in these two distinct spheres and combat it accordingly.

Ethnic Profiling is Inefficient Law Enforcement

Proponents of ethnic profiling claim erroneously that ethnic profiling is an efficient law enforcement tool. Those in favor of ethnic profiling in counter-terrorism measures argue, for example, that we know from September 11, 2001 that terrorist attacks are perpetrated by Arab men from the Middle East; we should therefore focus our resources on stopping, searching, and investigating men from this limited pool of individuals.

Yet evidence from both criminal law enforcement and counter-terrorist efforts reveal the shortcomings of this argument and suggest that in fact, ethnic profiling results in inefficient law enforcement. For example, the U.S. federal government has embarked on three law enforcement campaigns purportedly as counter-terrorism pursuits after September 11, 2001, explicitly targeting Arab, Muslim, and South Asian men.[28] One commentator has noted the resounding failure of this discriminatory effort as follows:

> Of the 80,000 Arabs and Muslim foreign nationals who were required to register after September 11, the 8,000 called in for FBI interviews, and more than 5,000 locked up in preventive detention, not one stands convicted of a terrorist crime today. In what has surely been the most aggressive national campaign of ethnic profiling since World War II, the government's record is 0 for 93,000.[29]

One fundamental difficulty with ethnic profiling can be referred to as a "category problem. Generalizations involve matching a category of people to a behavior or trait . . . [b]ut, for that process to work, you have to be able both to define and to identify the category you are generalizing about."[30] In the counter-terrorism scenario, it is more difficult than assumed to determine what an "Islamic terrorist" looks like. Yet the more law enforcement targets people based on ethnic profiling, the easier it is for terrorists to avoid detection by recruiting perpetrators from outside that ethnic profile. The more predictable law enforcement profiling becomes, the easier it is for perpetrators to adapt to circumvent the profile. Such was the case of the perpetrators of the London bombings in July 2005 who hailed originally from Pakistan, Jamaica, and East Africa rather than a traditional Arab or Middle Eastern country. Raymond Kelly, now police commissioner in New York City, sums up the inefficiency of profiling as follows:

> You think that terrorists aren't aware of how easy it is to be characterized by ethnicity? . . . Look at the 9/11 hijackers. They came here. They shaved. They went to topless bars. They wanted to blend in. They wanted to look like they were part of the American dream. These are not dumb people. Could a terrorist dress up as a Hasidic Jew and walk into the subway, and not be profiled? Yes. I think profiling is just nuts.[31]

Ethnic profiling assumes a consistent association, if not a causal relationship, between race and ethnicity and criminal activity. But focusing law enforcement efforts on race alone is both under- and over-inclusive. Ethnic profiling is under-inclusive in that it fails to detect many criminals who do not fit the ethnic profile. Ethnic profiling is over-inclusive in that it subjects a large number of innocent persons to the burden and, at times, humiliation or worse, of being stopped and/or searched, at least in part, because of their ethnic origin. Thus, the studies mentioned above revealed low hit rates in uncovering criminal activity when law enforcement engaged in racial profiling as part of the drug interdiction campaign on U.S. highways, the anti-gun campaign in New York, or the post 9/11 counter-terrorism campaign in the United States.

Stereotypes about ethnic minority involvement in criminal activity run deep but are often wrong. Unfortunately, statistical links between ethnic groups and crimes become a "self-fulfilling prophecy."[32] The fact that certain ethnic groups are over-represented in arrest figures for certain offenses can be explained by the fact that official statistics are the product of criminal justice practices. One study from the United Kingdom demonstrates that the over-representation in the British criminal justice system of people of African and Caribbean origin does not accurately reflect a general propensity for crime among that population.[33]

To be sure, it is significantly more efficient to identify stable indicators, or objective profiles, that do not feature race. A good illustration that profiling based on behavioral patterns rather than race or ethnicity is in fact more efficient is the experience of the United States Customs service in the late 1990s. This service searches travelers for contraband at U.S. borders. Under the stewardship of then-Commissioner Raymond Kelly, the service overhauled the criteria for stopping suspects at the border. Rather than rely on ethnicity, the service strengthened supervision of searches and adopted the following six broad behavioral criteria to select suspects to stop and search: (1) Is there something suspicious about their physical appearance? (2) Are they nervous? (3) Is there specific intelligence targeting the person? (4) Does the drug-sniffing dog raise an alarm? (5) Is there something amiss in their paperwork or explanations? (6) Has contraband been found that implicates the person?

Prior to the reforms, the Customs service conducted 10,733 personal searches in the first quarter of 1999, which resulted in 376 drug seizures, a hit rate of 3.5%. After the new behavioral criteria had been adopted, 2,814 personal searches were conducted in the first quarter of 2000, resulting in 306 seizures. This represented a dramatic increase in the hit rate to nearly 11%.[34] These figures demonstrate that stable behavioral criteria rather than race or ethnicity are more effective predictors of illegal behavior. Other studies have unearthed low hit rates from crime detention when law enforcement engages in ethnic profiling.[35]

Racial and ethnic profiling is also ineffective in that it alienates communities from cooperating with law enforcement and contributing to law enforcement's gathering of good intelligence.[36] Baseless targeting of innocent members of a racial and ethnic community breeds fear and suspicion of the police, as a racial profiling in the war on drugs and of the more recent ethnic profiling of counter-terrorist measures has shown.[37] As a result, constructive partnerships between communities and the police to foster effective intelligence gathering have been hampered. By undermining relations between law enforcement and law-abiding members of minority communities, ethnic profiling has the perverse effect of ultimately decreasing public safety for all.

The ineffectiveness of racial and ethnic profiling as a law enforcement tool should not overshadow the detrimental human cost that it inflicts on individuals and racial and ethnic minority communities. Being stopped by the police primarily because of ethnicity can amount to discrimination and it has serious consequences for the individuals targeted. At the very least, unjustified stops and searches can be stressful and humiliating experiences. Those who are stopped may be subject to threats or police abuse. More extreme consequences include the type of severe human rights violations suffered by innocent Arab and Muslim men rounded up, detained, and held incommunicado in the wake of September 11, 2001. By officially endorsing negative stereotypes and generalizations of minorities, ethnic profiling perpetuates further discrimination.

The Illegality of Ethnic Profiling under International Law

Ethnic profiling is unlawful under international law. A number of core international human rights norms prohibiting racial and ethnic discrimination are relevant to ethnic profiling.[38] For example, the United Nations Race Convention prohibits racial discrimination with respect to "freedom of movement,"[39] and the "right to equal treatment before the tribunals and all other organs administering justice."[40] The general equality provision of the International Covenant on Civil and Political Rights (ICCPR)[41] and other specific guarantees therein prohibit racial discrimination in relation to the "the right to liberty and security of the person," outlaw "arbitrary arrest or detention," and bar deprivation of liberty "except on such grounds and in accordance with such procedure as are established by law."[42] The Program of Action of the UN World Conference Against Racism in 2000 endorsed these universal standards when it urged "States to design, implement, and enforce effective measures to eliminate the phenomenon popularly known as 'racial profiling.'"[43]

Parallel prohibitions on discrimination and guarantees for the full and equal enjoyment of rights in the administration of justice are enshrined in the European Convention on Human Rights.[44] The European Court of Human Rights has expounded on these provisions in ways that confirm the illegality of ethnic profiling.[45] Building on this jurisprudence, the Council of Europe's Commission against Racism and Intolerance (ECRI) has specifically addressed ethnic profiling in stops and identity checks, even in the context of counter-terrorism measures. ECRI's general policy recommendation No. 9 (2004) on Combating Racism while Fighting Terrorism urges governments to "pay particular attention to . . . ensuring that no discrimination ensues from legislation and regulations—or their implementation" in, among other fields, "checks carried out by law enforcement officials within the countries and by border control personnel."[46]

International and regional guidelines on police conduct also make clear that racial and ethnic discrimination is inconsistent with good practice and the duty to enforce the law. The United Nations Code of Conduct for Law Enforcement Officials[47] provides that rights protected by the UN Race Convention, as well as other international instruments prohibiting racial and ethnic discrimination, are among those "human rights of all persons" that law enforcement officials must "maintain and uphold."[48] The European Code of Police Ethics of the Council of Europe, adopted recently by the committee of Ministers, expressly recommends that "[t]he police shall carry out their tasks in a fair manner, in particular, guided by the principles of impartiality and non-discrimination."[49]

Ethnic and racial profiling is an illegal practice that occurs in many countries.[50] The advanced studies conducted in the United States and the United Kingdom of ethnic and racial profiling in both the criminal law enforcement and counter-terrorism realms prove that such profiling is inefficient and bad policing. The development of the concept of ethnic and racial profiling in the United States and Europe serves as the comparative foundation for the Moscow Metro Monitoring Study, which sought to determine whether and to what degree ethnic profiling is perpetrated by the Moscow police.

IV. The Moscow Metro Monitoring Study: The Highest Ethnic Profiling Odds Ratio Ever Documented

The Study

The Moscow Metro Monitoring Study was the first analysis to apply the rigorous methodology of benchmarking and observational monitoring to quantify ethnic profiling outside of the United States and United Kingdom. The purpose of the study was to test the hypothesis that ethnic minorities are disproportionately stopped by the Moscow police for identity and document checks. Modalities for the study were designed by a leading expert, John Lamberth, and the actual benchmarking, observational monitoring, and interviewing were conducted in Moscow from May through September 2005.

The study involved several elements. First, the sample environment in which to collect statistically reliable and unbiased data was selected. Second, objective monitors were trained. Third, monitors engaged in "benchmarking" in order to determine the characteristics of the general population under scrutiny. Fourth, monitors observed and recorded data concerning the police stops they observed. Fifth, monitors interviewed a

sample group of 367 individuals who had been stopped by the police, to record qualitative data concerning their experience of being stopped. The last three activities—benchmarking, monitoring, and interviewing—occurred in overlapping phases.

To obtain a statistically reliable sample size, the study aimed to record the ethnicities of at least 1,000 passengers at each Metro station monitored and to record data concerning at least 100 police stops at the same. In the end, the study recorded the ethnicities of 33,760 individuals, observed 1,523 police stops across 15 Moscow Metro stations, and conducted 367 interviews with selected individuals who had been stopped.

Sample Selection of the Metro Stations and Times for Monitoring

The Moscow Metro Monitoring Study quantified the stop practice of Moscow police at exits of Moscow Metro stations. Metro exits presented a stable environment in which monitors could consistently observe the actions of the Moscow police in an unobtrusive manner, thereby ensuring the accuracy of the study. The study monitored police behavior at the exits of 15 Moscow Metro stations. Stations were selected that had documented high ridership and stable police presence to justify monitoring.[51] To measure a cross-section of Moscow Metro ridership, the study chose 15 stations divided into five functional categories: three stations at railway terminals, three at bus terminals, one at an open air market, four stations in the downtown district, and four stations serving residential neighborhoods.[52]

Monitoring sessions were conducted at specific times to reflect peak ridership and passenger traffic at the different train stations. As such, downtown stations were monitored from 9:00 to 13:00 to capture commuters arriving in the city; residential stations and bus stations were monitored from 15:00 to 20:00/21:00 to capture those leaving the city. Because activity at railway stations is constantly high all day long, these stations were monitored from 15:00 to 20:00 so the monitoring shifts were contiguous.

Training Monitors

The study's designers hypothesized that law enforcement officials distinguish individuals based on their physical appearance. To mimic this behavior, the Moscow Metro Monitoring Study observed individuals and classified them into three distinct ethnic categories. It should be emphasized that the study defined these categories to mirror what it posited were the stereotypes employed by Moscow police in linking physical appearance to ethnicity and national origin.

The first category consisted of "Slavs," namely those individuals with fair complexion, such as ethnic Russians, Ukrainians, and Byelorussians. The second category was comprised of "minorities," encompassing the national minorities of the former Soviet Union, namely people hailing from the Caucasus and Central Asia. Individuals in this category are typically identified as having a darker complexion than individuals of Slav

appearance, with darker hair and some pronounced facial features. The third category was classified as "other." This last group was intended to encompass all individuals who appear to come from outside the area of the former Soviet Union, including Africans, East Asians, Western Europeans, Americans and others not included in the first two categories.

To guarantee the uniformity of the monitors' classification of individuals into the three categories, an "interrater reliability test" was administered to each. Twenty three pictures of individuals representing a number of ethnicities seen in Moscow were flashed on a computer screen at four-second intervals. The monitor was required to classify the ethnicity of the person in each picture. After all of the monitors were tested, the "correct" answers were determined based on the consensus answers of the monitors' responses.

Benchmarking

The ethnic composition of a population available to be stopped by the police in a certain environment, such as at the exits of Moscow Metro stations, can differ from the ethnic composition of the total population as reported in a census. It is necessary therefore to measure the appropriate ethnic composition of the sample population under scrutiny to determine whether the police are disproportionately stopping members of a certain ethnic group in that context. Measuring this sample population demographic is called the "observational benchmark."[53]

To identify the benchmark against which to measure ethnic profiling, observers monitor specific locations at randomly selected days and times to generalize the population at those locations. The ethnic composition of the population at these locations is then compared to the ethnicity of the individuals who are stopped by the police at these locations. To ensure the accuracy of the observations, the number of individuals in the benchmark should be as large as possible, preferably over 1,000.

Monitoring Stops and Document Checks

For the Moscow Metro Monitoring Study, observational benchmarking was conducted simultaneously with the monitoring and recording of data regarding police stops and document checks observed at the 15 Metro stations under analysis. Teams of three monitors were deployed to each of the 15 Moscow Metro stations under study. Two of the monitors focused on benchmarking, with one monitor determining and recording the ethnicity of the exiting passengers while the other determined the gender and age of exiting passengers. The third monitor focused on and recorded data for individuals they observed being stopped by the police.

Benchmarking observation was conducted between May 21 and July 3, 2005 for seven of the 15 stations and between June 11 and June 27, 2005 for the eight others.

During this time, the ethnicities of 33,760 individuals were recorded across the 15 Metro stations under scrutiny. Because the monitors did not observe at least 100 police stops of individuals at the Metro stations to achieve the desired sample during this time, the monitoring of stops continued along with interviewing through September 2, 2005.

Interviews

From June 29, 2005 through September 2, 2005, individuals who had been stopped by the police were interviewed by the study monitors to determine their perceptions of the encounter with the police. Respondents were asked a set series of questions, including whether they had been stopped by the police before and if so, how often it happened to them. They were also asked if their papers were currently in order, whether the police had confirmed the status of their papers during the stop, whether the police were courteous to them, whether they paid a fine, and why they were let go.

In the last three weeks of the study, monitors asked additional questions of those who reported that they had been stopped before, such as whether they had been taken to a police post during those prior stops. If they had been previously taken to a police post, the monitors asked whether their papers were in order at that time and to describe the specific details of the last time they were taken to the police post.

The Results

Metro Ridership

The Moscow Metro Monitoring Study observed and classified 33,760 individuals to benchmark ethnicity and 32,686 individuals to benchmark age/gender at the 15 stations. The proper categorization of only 131 individuals for ethnicity and 138 for gender/age (0.4% for both categories) was unknown. The benchmarking concluded that the ridership of the Moscow Metro is heavily Slav, with Slav riders constituting 95.4% of all riders at the 15 stations.[54]

It is important to note that the benchmarking and observational monitoring determined that the third category under analysis, namely "other," was very small. Of the 33,891 individuals categorized during benchmarking, only 170 were identified as "other." Furthermore, only 60 stops of the 1,523 total observed were of "others." In response, the study collapsed the third category of "others" into the second category of "minorities." The results of the study, therefore, distinguish two categories, namely "Slavs" and "non-Slavs."

A Clear Pattern of Police Stops

The study monitors also recorded observational data regarding police practices. For example, through the monitors' observation, the study concluded that the police keep no records of the individuals they have stopped. Rather, the clear pattern emerged that police stop a Metro rider, look at his or her identity papers, and then release the subject of scrutiny without recording any information. Because the stops are done quickly with no record made by the police officer, the police stop data recorded in the Moscow Metro Monitoring Study is unique.

The study monitors also observed police escorting a small number of individuals they had stopped to the police posts. Some of these police posts were located within the Moscow Metro stations while others were located outside of the Metro but in the vicinity of the Metro station exits.

Police Stops and Ethnicity

The statistic called the "odds ratio"[55] is the best way to understand whether ethnic profiling is occurring or not. This ratio quantifies whether it is more likely than not that members of a particular ethnic group are stopped by the police compared to others. If no ethnic profiling occurs, the odds ratio would be 1.0 indicating that non-Slavs are no more likely to be stopped than Slavs.

While odds ratios between 1.0 and 1.5 are considered benign, those between 1.5 and 2.0 indicate that a review of the stop practice should be conducted to determine if bias exists. Ratios above 2.0 indicate there is potential targeting of minorities for police stops.

The odds ratio results from the Moscow Metro Monitoring Study are presented for the 15 stations monitored in Table 1.

The odds ratios listed in Table 1 represent the most extreme and egregious ethnic profiling ever documented through a statistical survey of the practice. Of the prior studies in the United States that applied the same benchmarking and observational monitoring methodology, the most egregious case of racial profiling encountered was the 4.85 odds ratio revealed of highway stops by the New Jersey State Police, who admitted that they were targeting black motorists.

On average, non-Slavs constituted 4.6% of the total population of the Moscow Metro at the 15 stations monitored but constituted 50.9% of the total population stopped by the police. The average odds ratio for all of the 15 Metro stations surveyed was 21.8. This is 4.4 times as large as the 4.85 odds ratio, which was previously the highest ethnic profiling odds ratio ever recorded. This odds ratio is so high that a credible explanation for the disparity not based on ethnicity would be difficult to find.

TABLE 1.

Benchmarks Numbers, Percent of Non-Slavs, Non-Slav Stops and Odds Ratios for Minorities at 15 Metro Stations Surveyed

Station	Bench-mark N	Benchmark % Non-Slavs	Stops N	Stops % Non-Slavs	Difference %	Odds Ratio
Belorusskaya	925	6.0	108	19.4	13.4	3.8
Komsomolskaya	6,828	7.6	117	45.3	37.7	10.1
Savelovskaya	1625	3.5	103	56.3	52.8	35.8
Cherkizoskaya	500	7.4	161	80.1	72.7	51.4
VDNH	2,813	4.4	65	63.1	58.7	36.8
Schelkovskaya	3,132	4.7	194	49.0	44.3	19.3
Rechnoi vokzal	3,454	3.6	105	57.1	53.5	35.2
Arbatskaya	1,076	4.4	25	52.0	47.6	23.6
Okhotnyi riad	3,213	3.3	91	29.7	26.4	12.3
Kitai-gorod	1,659	3.1	72	36.1	33.0	17.7
Proletarskaya	1,369	2.7	65	36.9	34.2	21.0
Chertanovskaya	1,130	3.0	111	53.2	50.2	36.9
Tushinskaya	2,500	4.1	96	54.2	50.1	27.5
Medvedkovo	1,698	2.8	80	71.3	68.5	84.9
Tioplyi Stan	1,838	3.9	130	46.2	42.3	21.2
Total	33,760		1,523			

Police Stops and Gender/Age

There were slightly more females (51.6%) observed at the stations studied than there were males (48.4%). Almost 40% of all riders benchmarked were classified as young (30 and below) but the largest group was middle aged people (48.4%) with only 12.2% being classified as old (60 and above). The ages of those stopped by police, however, were quite different from the population: for example, young males represented just 19.4% of all riders but accounted for 43.3% of all stops (see Table 2).

TABLE 2.

Percentages of the Population and Those Stopped by the Police at 15 Metro Stations in Moscow, by Gender and Age.

	Young Males	Middle Males	Old Males	Young Females	Middle Females	Old Females	Total N
Population	19.4	23.0	6.0	19.9	25.4	6.2	32,686
Police Stops	43.3	29.5	4.4	15.0	7.1	0.7	1,502
Difference	23.4	6.5	−1.6	−4.9	−18.3	-5.5	
Odds Ratio	3.2	1.4	0.7	0.7	0.2	0.1	

As Table 2 demonstrates, the only group targeted by the police based on age and gender is that of young males.

Interviews

Monitors conducted 367 interviews during the course of two months.[56] Interviews were conducted at all 15 Metro stations monitored. Interestingly, the overwhelming proportion of those interviewed (89.0%) said that the police were courteous to them.

Monitors asked the respondents whether this was the first time they had been stopped and how often they were stopped. Evidently, being stopped is common for riders of the Moscow Metro: 81.7% of the respondents indicated that they had been stopped before. Non-Slavs (93%) were more likely than Slavs (72%) to have been stopped before.

Monitors asked the interviewees two open-ended questions. The first of these asked what they were told when the police let them go. Of the respondents, 11.4% did not answer the question and 67.4% reported that the police said nothing. Only 0.7% said that the police took money and 2% said they were warned to get a registration. The second open-ended question asked what else happened to the interviewees when they were stopped by the police. The largest number of respondents (72%) who answered said "nothing." The next largest percentage of respondents (20%) said that the police checked their identity papers. Two respondents said that the police checked their papers on a computer. Five respondents were taken to the police room and eight said that they were searched. Finally, only two said that they were fined.

Rationale for Stops: The Hit Rate

The most important piece of information produced by observational monitoring of ethnic profiling is the "hit rate" associated with the police stops, or the rate at which the police discover a breach of the law through their stops. To protect public safety, the police should be watching for suspicious behavior that would indicate criminal or terrorist activity. The most common breach the Moscow Metro Monitoring Study observed, however, was the administrative violation of invalid residence papers.

The study calculated the hit rate from information collected through the interviews with individuals who had been stopped by the police. Monitors asked the interviewees whether their papers were in order. Of the 303[57] interviews carried out, nine (3%) of the respondents indicated that their papers were not in order. This low rate indicates that the police are not getting many "hits," and that those they are uncovering represent minor administrative violations. As such, the police seem to be wasting the vast majority of the time they spend on stopping individuals. It may also indicate that they are employing the wrong criteria in deciding whom to stop. Five of the nine individuals whose papers were not in order were Slavs while four were non-Slavs.

Further evidence on hit rates was gained from the 24 individuals interviewed who said that on previous occasions they had been detained for some time at police posts. Of these, 21 indicated that their papers were in order on that occasion; three indicated that they were not. Thus, even with this selected small sample of individuals whose papers had been checked previously and had been taken to police posts, only 12.5% had a problem with their papers. Because the sample size of 24 individuals is so small and they are not randomly selected it is highly probable that the 3% figure is the more reliable hit rate indicator.

It is not possible to arbitrarily designate an acceptable generic hit rate because the hit rate must be evaluated in the context of what the searches uncover or if the searches are responsible for reducing serious crime. While there is no agreed upon hit rate that is considered desirable by police, some illustrations of how other agencies who stop pedestrians have dealt with the issue are instructive.

The experience from the United States Department of Customs explained in Section III is a good example of how reducing ethnic profiling improves the efficiency of the police. In the study of the U.S. Department of Customs practices from 1998, at a time when disproportionate searches were conducted on minorities, the hit rate uncovering illegal contraband was only 3%. When the Customs director changed the criteria for searching air travelers to rely less on ethnicity and more on objective criteria, the hit rate increased from 3.8% to 14.9%.

With a 3% hit rate, the Moscow police are both failing to uncover illegal activity and potentially alienating 97 out of every 100 individuals stopped. While most stops

are short—less than a minute—there is still a measure of inconvenience. To determine individuals' perceptions of the inconvenience, the last question asked by monitors during interviews was an open-ended question inquiring how the respondents "felt about the stop." Of the 367 interviewed, 33 individuals responded "nothing." Of the 286 who answered the question, 103 answered with a negative comment about their experience. The negative answers ranged from those who said it was unpleasant to increasing expressions of negativity or disdain for the police.

A sample of the negative comments includes the following, from least to most pejorative: (1) "It's a pain in the neck;" (2) "I am fed up;" (3) "I am angry;" (4) "They stop girls because they have nothing to do;" (5) "It's no good;" (6) "It's nasty;" (7) "Shock, I am stricken;" (8) "This country is wide-open, human rights are violated;" (9) "Punks they are, they thrive on us;" (10) "I hate cops;" (11) "It is a clownery, look, here he stays, trainee, look, he goes away, such a snotter, he is new to work, but already wants money;" (12) "They are assholes."

Clearly the police pay a price for these stops, both in the failure to detect serious illegal activity and in damaged relations with the public. It seems they might wish to evaluate whether the pay off, namely uncovering nine people with papers that are not in order, is worth their maintaining this practice.

Rationale for Stops: Police Corruption

Another possible rationale for this practice is that the police are using stops as a means to extract bribes from the population. This question was not one of the articulated goals of the Moscow Metro Monitoring Study, but some of the interview data speaks to the issue.

Those interviewed were asked if they had been asked to pay a fine during the stop. Only 7.1% (18) of those who answered the question indicated a "yes" answer. Monitors also asked the respondents if they had voluntarily offered the police money; only 1.5% (4) of the respondents said that they had. Three of these four respondents were among the 18 respondents that indicated that the police had asked them to pay a fine. Thus, only 19 (7.5%) of the people who answered those questions indicated that they had been asked or offered to pay money.

These two questions, however, elicited the most refusals to answer of any in the interview. To the first question about whether they were asked to pay a fine, 51 (16.7%) did not answer. Slightly fewer (46) did not answer the next question about whether they gave the police money. It is understandable that those who bribe police would not want to answer these questions.

The interviews of the 24 respondents who had previously been taken to police posts shed some light on this issue. Only three of these 24 respondents reported in their interview that their papers were not in order.

These three individuals, when asked to describe the specific details of the last time they were taken to the police post said: (1) "I was arguing with them for 20 minutes. They wanted money. But I said that I don't have the money;" (2) "They held me for three days, then I paid;" (3) "You sit there for three hours, then they let you go."

Of the other 21 who had been taken previously to police posts, six indicated that nothing happened or that they did not remember. The remaining 15 said that either they were asked for money or that they thought the police wanted money. Even presuming that many of those taken to the police post are asked for money, that would account for only 5% of those stopped.

The Moscow Metro Monitoring Study monitors observed over 1,500 stops. At least 350 of those stops were monitored from the moment the monitor saw the person stopped until she was released so that the person stopped could be interviewed. Of all of the stops observed, the monitors saw only two stops at which money changed hands.

In conclusion, the Moscow Metro Monitoring Study reveals unambiguous proof of ethnic profiling: although non-Slavs make up only 4.6% of the riders on the Moscow Metro system, they account for 50.9% of persons stopped by the Moscow police at the exits of the Metro stations. The odds ratio indicating that non-Slavs are 21.8 times more likely than Slavs to be stopped by the police is remarkably four times as high as the highest evidence previously gathered from studies of ethnic profiling. The proof that ethnic profiling is occurring on a massive scale in the Moscow Metro is clear, as is the pointlessness of the exercise. With a hit rate uncovering administrative document violations in only 3% of the stops, no law-enforcement rationale for the continuance of this practice can be put forward. As the study shows that non-Slavs are treated differently from Slavs without any objective justification for this phenomenon, the Moscow Metro Monitoring Study has uncovered an unambiguous case of discrimination.

V. A System Ripe for Discrimination and Abuse: The Law and Practice of Police Stops and Document Checks

The Moscow Metro Monitoring Study's finding that the Moscow police are engaging in ethnic profiling of non-Slavs in its stop practice at exits of the Moscow Metro leaves open the question of why this practice is occurring. Why aren't police held accountable for their time, which is spent fruitlessly stopping individuals without detecting any crime? This section surveys the law governing residence registration requirements, the structure of the police forces in Russia, and police powers to conduct stops to investigate crimes, revealing a permissive legal framework with no oversight—one that provides police officers great discretion in conducting stops and document checks.

The Law on Registration and Identity Documentation

The Origins of the Soviet Passport System

The Soviet Union formed a vast territorial expanse encompassing a rich diversity of ethnicities and cultures of the former Tsarist empire, including distinct nationalities of the Caucasus and Central Asia. Soviet nationalities policy, however, embodied a mixed message, at times celebrating minority nationalities and cultures as part of the diverse heritage of the Soviet empire, while at others discouraging ethnic nationalism and even repressing minority nationalist impulses through force and displacement.[58] From the early years of the Soviet Union, ethnicities and nationalities intermingled throughout Soviet territory.[59]

Movement of peoples in the U.S.S.R. became tightly controlled through the institution of the mandatory internal passport, or *propiska*, system in 1932, implemented to prevent peasants from migrating to the cities.[60] Under this system, individuals were required to request permission from the local authorities to register their permanent residence in a particular locality. Once permission was granted, the authorities issued a *propiska*, which was a stamp placed in internal passports. It was a difficult, bureaucratic procedure to secure formal permission to change one's permanent residence or *propiska*.

In addition to the *propiska*, the internal passports of the U.S.S.R. contained personal information about each individual, including the mandatory designation of one's ethnic nationality.[61]

The Current Regime

The *propiska* system requiring permission-based registration became illegal in the new Russian Federation.[62] Article 27 of the 1993 Constitution of the Russian Federation guarantees the right to freedom of movement. Furthermore, mandatory classification of individuals by their nationality became unconstitutional as well, as Article 26 of the Constitution declares that "[e]veryone shall have the right to determine and indicate his nationality. No one may be forced to determine and indicate his nationality."

The Law on Freedom of Movement,[63] passed in 1993, transformed the principle of registration from an institution under which individuals were required to seek permission from the government to register residence to one of notification of residence. This law never mentions the term *propiska*. Most importantly, it explicitly stipulates that an individual's enjoyment of rights does not depend on registration.[64] Although the *propiska* system has been outlawed, Russian citizens continue to use internal passports as a form of identity document.

Regulations require Russian citizens to notify the government of their permanent residence within seven days of establishing or changing it.[65] Russian citizens who stay

for more than 90 days in living quarters that are not their permanent residence must notify the government of the place of their temporary stay.[66] Foreigners must register with the authorities within three business days of their arrival into the Russian Federation and within three days from changing place of stay within Russia.[67]

Nevertheless, the law continues to require that Russian citizens and foreigners maintain valid current registration, and failure to do so is a violation of the Code of Administrative Offenses. Russian citizens[68] and foreigners[69] alike are subject to fines for infractions of these provisions. Furthermore, a Presidential Decree of 1997 established the requirement that every Russian citizen possess a valid main identity document.[70] This decree, however, is silent as to any requirement to carry the main identity document at all times.

The procedures for registration as set forth in the Law of Freedom of Movement are straightforward: an individual must produce a form of identification and submit a letter of request and documentation that proves his or her right to an accommodation (ownership certificate, lease contract, inheritance certificate, court order, or a letter of the person providing the applicant with the accommodation).[71]

In practice, however, some of the regional administrative districts called "Subjects" of the Russian Federation[72] continued to rely on the *propiska* system, requiring individuals to request permission to register for permanent residency. Some localities perpetuated this registration system in a discriminatory manner against ethnic minorities and to restrict migration into their territories, while others required individuals to produce extensive documentation in excess of that designated under the law.[73] Abolishing the practice of the *propiska* system was further complicated by two factors, namely, the continuing valid usage of former Soviet internal passports, which explicitly revealed an individual's nationality and contained existing *propiskas*,[74] and the practice of interpreting the Soviet Housing Code of 1983.[75]

Further, in clear violation of the Law on Freedom of Movement's guarantees, local authorities continue to require proof of permanent registration before providing individuals with access to state services such as free education for children, medical care, registration of vehicles, and passports. While many individuals within Russia have outdated *propiskas* that do not accurately reflect their residence, some individuals never obtained a *propiska*. Individuals without proof of registration can be barred from obtaining passports or going to court in any jurisdiction in Russia.[76]

The Russian Constitutional Court ruled in 1998 that the Moscow authorities were unlawfully requiring additional documentation for individuals to properly register.[77] On other occasions it has ruled that the *propiska* system's permission requirement was unconstitutional because it breached of the right to freedom of movement, sojourn, and residency. Despite these clear rulings, there were reports in 2003 that about ten Subjects of the Russian Federation continued to require that individuals seek residence permis-

sion under the old *propiska* rules and that many other Subjects continued to link access to public services and enjoyment of basic rights with proof of permanent residence.[78]

Moscow has long been recognized as a "state within a state,"[79] and the city is among the Subjects that continue to implement old rules of the *propiska* system in open defiance of the Constitutional Court.[80] By continuing to follow the strict registration rules of the *propiska* system, Moscow has successfully limited the number of refugees and displaced persons settling within the city compared to some other regions and cities that have absorbed a greater share of this population.[81]

The *propiska* system and the current registration regime set the backdrop for the widespread and systematic practice of document checks. As the next section will show, the requirement of maintaining valid registration is compounded by Russian law, which grants police officers great discretion and authority to stop individuals whom they judge to be suspicious.

Police Stops and Document Checks: Law and Practice

Police Structure

Article 72 of the 1993 Russian Constitution establishes joint jurisdiction between the federal Russian government and the governments of the Subjects of the Russian Federation over law enforcement, law and order, public security, and the border zone regime, among other matters. The federal Ministry of the Interior comprises departments organized in a hierarchical structure that oversee the various police forces.[82] The federal Ministry of the Interior, in conjunction with the governments of the Russian Subjects, appoints the chiefs of the regional Police Administrations of Internal Affairs of the Subjects.[83] The Police Administrations of the subjects in turn create smaller District Administrations of Internal Affairs. Police posts are located within the District Administrations.

The Ministry of the Interior has authority over the following police forces: internal armed forces, traffic police, transport police (air, railway, naval transport), criminal police, organized crime and terrorism prevention units, public security units (including district plenipotentiaries of the police and patrol police), and economic crimes units, among others.[84]

The Principal Administration of Internal Affairs of the City of Moscow (Moscow GUVD) holds the primary authority over police in Moscow. The City of Moscow's website lists ten District Administrations (UVDs with local police posts) throughout the geographic scope of the city.[85]

There exists a separate District Administration (UVD) for the Moscow Metro in addition to the ten District Administrations (UVDs) linked to geographical districts of Moscow City. Information pertaining to the Moscow Metro UVD police force is available from the public information website of the Moscow Metro itself.[86] This source explains the functions of the Moscow Metro UVD as follows:

> The UVD [Administration of Internal Affairs] on the Moscow Metro was created several days before the Moscow Metro opened on May 11, 1935. The Metro has always been a transport organization of high risk. This is why passengers are asked to be watchful and to report anything suspicious to the patrol policemen that are on patrol at each station. Taking into account that more that 9 million people use the Metro every day, offences often occur in the Metro. It's mainly hooliganism, acts of vandalism, stealing, and robberies. UVD on the Moscow Metro is here to prosecute these offences. Moscow Metro is a very complex transport institution of the city. There are many and various installations that help maintain the Metro. In these conditions it is a priority of the UVD on the Moscow Metro to maintain the security of the Metro and counteract terrorism. Officers of the UVD on the Moscow Metro not only patrol it, but also carry out hidden observations of the public order in the stations and on the trains. Part of the UVD is the largest patrol police service in the country—5,000 servicemen. Nowhere in Russia is there such a large patrol police service. The Metro police also has its own investigation department, criminal investigations department, interrogation department, economic crimes department, and 24-hour duty stations. Last year [2004], its own department of mass events security was created. Just recently the UVD opened its own organized crime department. Several years ago, a special unit dealing with vagrancy and panhandling prevention was created in the Moscow Metro. There is also a special unit dealing with minors, including stray children. In the North-East district of Moscow an up-to-date service dog-breeding center was opened. Several dozen dogs trained to detect explosives and drugs work in the Metro.[87]

Patrol forces of the Moscow Metro UVD deploy throughout the platforms, tunnels, and Metro stations subject to instructions by the higher-ranking officials in the force. However, the precise boundaries of the jurisdiction of the Moscow Metro UVD with relation to the jurisdiction of the 10 geographic District Administrations are unclear based on publicly-available information.[88]

Police Powers to Conduct Stops and Identity Checks

Russian laws provide police great discretion and authority to conduct stops and document checks. Article 11(2) of the Law on Police[89] grants police the power to "check citizens' identity papers if there are enough grounds to suspect that the subject has committed a crime or to believe that the subject is wanted or that there are grounds to

initiate administrative proceedings with regards to administrative violations concerning the subject." The Law on Police regulates all police forces, including the UVDs of the City of Moscow.[90]

A separate law, the Patrol Police Statute,[91] provides additional guidelines for officers conducting patrols. Article 1(2) of the Patrol Police Statue establishes the duty of patrol police "to prevent and suppress crimes and administrative offenses."[92] Article 100(3) grants patrol police the authority to "check citizens' and officials' identity papers if there are sufficient grounds to suspect that they have committed a crime or an administrative offense."[93] Article 107 grants patrol police broad authority to justify suspicion: "When on duty, patrols should pay particular attention to persons that are suspiciously watchful and anxious, that are unseasonably dressed, or dressed in clothes that do not fit their body type and height, and also to those who have bandages and injuries." A search of jurisprudence emanating from Russian courts did not uncover any case law that expounded on the degree of suspicion required to justify a stop under the Law on Police or the Patrol Police Statute.

Further, Article 91 of the Criminal Procedure Code explains the circumstances under which police may detain individuals: "In case there is information that provides grounds to suspect that a subject is committing a crime, the subject may be detained if the subject tries to escape, or does not have a place of permanent residence, or their identity is not established. . . "[94] For criminal suspects, Article 5(11) of the Criminal Procedure Code allows interrogators, investigators, and prosecutors 48 hours to detain individuals for the purpose of questioning.[95] By contrast, Article 27.5(1) of the Administrative Code allows police to subject violators of administrative laws to administrative detention lasting three hours. The code considers, however, that immigration violations are more serious and subjects can be held in administrative detention for immigration violations up to 48 hours.[96]

As explained above, Russian citizens are required to possess a valid main identity document and maintain valid current residence registration while foreigners are also required to maintain proper registration and legal immigration status. No law, however, explicitly mandates that Russian citizens and foreigners carry proof of identification or registration documentation at all times while circulating in public. Yet the law provides police officers and patrol police wide latitude to stop suspects, prompting a primary inquiry into a subject's identity and personal information. Though police might justify stopping an individual for questioning based on one articulable suspicion, upon interacting with that individual, the police have concomitant authority to investigate administrative offenses, including violations of Administrative Code Articles 18.18 and 19.15 regarding valid registration. Although carrying an internal passport is not required, failing to do so may lead to lawful arrest by the police for purposes of establishing an individual's identity.

Although police may stop and check identification documents of individuals based on suspicion and thereby uncover administrative violations of faulty registration or document status, the Administrative Code does not allow patrol police to levy fines on the spot. The Administrative Code currently sets the fine for violations of Article 19.15 (for Russian citizens) at 1,500–2,500 Rubles (approximately U.S.$50–$90) and for violations of Article 18.8 (for foreigners) at 1,000–1,500 Rubles (approximately U.S.$35–$50). Based on these amounts, levying fines for violations of these articles must follow the fine procedures set forth in Article 23.3 of the Administrative Code.

Levying fines on the spot for violations under Article 19.15 (Russian citizens without valid registration) is beyond the authority of the police. However, writing up "protocols," or reports, for violations of this article is within the authority of a wide range of police officials, including patrol police conducting community policing.[97] According to Article 28.2 of the Administrative Code, authorities must first write up a protocol of the administrative offense, indicating the fine to be levied. Once a fine is imposed, an individual must pay that fine within 30 days via bank payment.[98]

The list of officials authorized to investigate violations by foreigners of Article 18.8 of the Administrative Code is more limited. Police department chiefs (chiefs of UVDs) and their deputies, police chiefs and their deputies and judges are authorized to investigate violations of registration rules by foreigners,[99] while only officials of the Federal Migration Service are allowed to issue protocols for such violations.[100]

To summarize the most relevant provisions pertinent to the Moscow Metro Monitoring Study of ethnic profiling, it should be clear that patrol police cannot fine either Russian citizens or foreigners for registration and immigration status violations, but they can stop anyone and detain them for up to 48 hours based solely on suspicion of commission of a crime or an immigration violation. This legal regime provides virtually unbridled discretion to the police to stop and check residence registration, creating an environment ripe for discrimination and abuse.

VI. Ethnic Profiling as Official Policy in Moscow?

Against this backdrop lies the stark reality of pervasive racism and discrimination against ethnic minorities in Moscow, even though it is unconstitutional and illegal under Russian law.[101] Ethnic profiling, harassment by police, and police abuse of ethnic minorities are well documented, and identity and document checks constitute a main pretext for this discriminatory policing.[102] A city of increasing immigration under terrorist threat, Moscow faces legitimate security concerns. Yet as the Moscow Metro Monitoring Study proves, discriminatory stopping of non-Slavs for document checks is inefficient law enforcement. This section describes how ethnic profiling is fueled by an environment accepting of discrimination and xenophobia and a police force in crisis.

A City of Migration under Terrorist Threat

Moscow faces two legitimate concerns that merit heightened law enforcement scrutiny. The first is Moscow's position as the target of a series of terrorist attacks since Russia reengaged in armed conflict in Chechnya in 1999. The second is the rise of migration. In light of the serious nature of daily threats to public safety, the Moscow Metro Monitoring Study's results should cause great concern: law enforcement efforts are being

diverted from the effective investigation and prevention of terrorism and serious crime, and are instead focused on ineffective and discriminatory harassment of minorities for fruitless document checks.

In Moscow, the terrorist threat is real. On September 9 and 13 of 1999, bombs exploded in residential buildings in Moscow, killing more than 200 people, marking the beginning of a string of attacks apparently related to Russia's ongoing conflict in Chechnya. Several terrorist attacks over the last years have struck dramatic targets in Moscow. For example, on August 25, 2004 two planes crashed after taking off from Domodedovo Moscow Airport as a result of detonated bombs.[103] On October 23, 2002, 42 Chechen terrorists seized a theater in Moscow and held over 700 people hostage for three days, ultimately resulting in the deaths of over one hundred people.[104]

Closer to home for the vast Muscovite public, however, is the steady string of terrorist attacks aimed either at the Moscow Metro or the vicinity of Metro station exits: On August 31, 2004 a suicide bomber detonated a bomb at Rizkskaya Metro station killing 10 people;[105] on February 6, 2004 a bomb exploded 500 meters from the Avtozavodskaya Metro station platform within the train tunnel killing approximately 60 people;[106] on October 19, 2002 a car bomb exploded at a McDonald's restaurant at the Yugo-Zapadnaya Metro station killing one person;[107] on February 5, 2001 a bomb hidden under a bench in the platform of the Belorusskaya Metro station exploded wounding nine people;[108] on August 8, 2000 a bomb exploded in the underground passenger tunnel connecting the Pushkinskaya and Tverskaya Metro stations killing 13 people and wounding 118 more.[109]

In addition to terrorist threats, Moscow is experiencing an influx of migration.[110] The population of Moscow has most recently been reported to be 10,382,754, with an additional 50,000–250,000 persons living in a dozen satellite cities who commute to Moscow daily.[111] With the Russian population declining as a result of aging and low birth rates,[112] Caucasians, Central Asians, and others are migrating to Russian factories, farms, and cities. In Moscow, such migrants are joined by Russian citizens from rural areas seeking employment.

Today, most immigration to Russia is illegal. As of February 2006, the Russian Federal Migration Service reported 650,000 legal labor migrants in Russia, but confirmed at least 4 million illegal immigrants in Russia and projected the number to be between 12 and 16 million.[113] In 1997, the Federal Migration Service of Russia estimated only 500,000 illegal immigrants in Russia at that time.[114] In light of Russia's strict registration system, however, being "illegal" pertains to both Russian citizens and foreigners who fail to have either the appropriate residence registration or immigration and labor status.

Moscow's Response

The vibrant political and economic capital of the Russian Federation, Moscow retains its predominant ethnic Russian identity while attracting migrants from the former Soviet Republics and farther afield. The influx of migrants has been met in some quarters by xenophobia, racism, and protectionism. These attitudes can be seen in the Russian media. An independent survey of media carried out from 2002-2005 documented the frequent and consistent portrayal of non-Slavs as criminals, terrorists, and threats to the Russian social fabric.[115] Despite the labor shortage and the economic necessity of migration in Russia today, the media negatively depicts migrant workers as taking jobs from Russians. More odiously, the media stereotypes minority ethnic nationalities as criminals and drug dealers.[116] Roma, in particular, have been singled out for unsubstantiated accusations of involvement in the drug trade.[117]

Moscow officials have endorsed xenophobic imagery that depicts an onslaught of immigrants taking over the city[118] and propagates stereotypes of certain minorities as criminals. For example, a Moscow police official said in 2000: "Moscow gypsies are hereditary actors. They deal in gold and are in the drug business."[119] The same racist accusation has more recently been levied against African students in Russia.[120] Public acceptance of such discriminatory rhetoric results in racially-motivated violence against non-Slavs perpetrated either by the police or by private individuals with the complicit oversight of the police.[121]

Migrant workers receive extremely low pay in Moscow[122] and are vulnerable to a range of human rights abuses. Common human rights violations inflicted on this population include the refusal to pay wages, physical attacks, confiscation of passports, and verbal abuse and physical violence from law enforcement.[123]

Singling out of non-Slavs and foreigners for displacement and deportation has been a politically expedient tool that the Moscow government has exploited as an ostensible means of taking a tough stance on crime, although it has never been proven effective. In 1993, for example, Moscow authorities undertook a campaign of "street cleaning" in which they detained about 14,000 persons and deported 9,000, most of whom were dark-skinned individuals. The police claimed they were fighting crime and charged these thousands with failure to possess valid registration.[124] A similar "clean up" campaign in Moscow targeting ethnic minorities and foreigners occurred in 1997 prior to the events to celebrate the 850th anniversary of the city's founding.[125]

The tenor and purpose of ethnic profiling in Moscow shifted dramatically in 1999 after the two residential building bombings. Although no one claimed responsibility for the bombings, Moscow Mayor Yuri Luzhkov asserted in public that Islamic groups from Chechnya were responsible. In response, the mayor announced "Operation Whirlwind," enlisting over 20,000 law enforcement officials to undertake a massive

anti-terror campaign of investigation and arrest. The mayor also issued an order that required all citizens who were temporarily staying in Moscow to reregister with the authorities.[126] Identity checks became the prime pretext for police stops and arrests. This operation rounded up around 20,000 non-Muscovites, mostly ethnic minorities primarily from the Caucasus, and resulted in the expulsion of approximately 10,000 individuals who reportedly did not possess valid residence registration papers.[127] In an opinion poll conducted in September 1999, 90.3% of Moscow residents approved of a stricter registration regime, while only 7–9% did not.[128]

Discriminatory Application of Residence Registration and Document Checks

Since 1999, ethnic profiling and arbitrary enforcement of residence registration rules have remained the norm in Moscow. Waves of ethnically-targeted detentions peaked as the police responded to additional terrorist bombings. The pervasiveness of ethnic profiling prompts the question of whether it is a *de facto* result of prejudiced stereotypes engrained in individual police officers or an actual policy of the Moscow police. Policing strategy and internal regulations of the police are not available to the public.

Press leaks support the position that ethnic profiling indeed is official policy. For example the Moscow newspaper *Novaya Gazeta* obtained in March 2001 a leaked copy of the minutes of a meeting under Lieutenant Colonel A. Podol'niy, chief of the criminal police of the Western District UVD of Moscow. These minutes reveal that the chief set target detection rates for officers of that UVD and reprimanded his subordinates for the following: "Instructions of the Chief of the criminal Police of the UVD of the Western Administrative District are not fulfilled: criminal cases . . . have not been opened for ethnic groups—they should be opened for persons of the following ethnic origins: Gypsies, Tajiks, Uzbeks, Azeris."[129] These internal instructions are proof that the police hierarchy is explicitly directing its officers to engage in ethnic profiling. How many other internal orders or instructions exist that endorse ethnic profiling as official policing strategy? Such police strategy is not transparent and it is very difficult for the public to know.

Local and international human rights organizations and intergovernmental bodies have decried this practice, placing pressure on the governments, both of the city of Moscow and at the federal level, to remedy the situation. In 2003, the United Nations Human Rights Committee expressed its concern "about reports of racial profiling by law enforcement personnel."[130] In the same year, the United Nations Committee on the Elimination of Racial Discrimination examined the crisis of racism and discrimination in Russia and concluded and recommended the following:

13. The Committee is concerned at reports of racially selective inspections and identity checks targeting members of specific minorities, including those from the Caucasus and Central Asia and Roma. The Committee recommends that the State party take immediate steps to stop the practice of arbitrary identity checks by law enforcement authorities. These steps should include the education and sensitization of police and law enforcement personnel to ensure that, in the performance of their duties, they respect and protect the human rights of all persons without distinction as to race, colour, or national or ethnic origin.

14. The Committee is concerned about numerous reports that residence registration is used as a means of discriminating against certain ethnic groups, and the lack of residence registration is used to deny a number of political and social rights. While welcoming the fact that courts in the State party have declared such practices unconstitutional, the Committee recommends that the State party ensure that, in the implementation of the residence registration system, the standards laid down in federal law and supported by decisions of the Constitutional and Supreme Court are strictly applied.[131]

In response to widespread complaints of abuse by the Moscow police in conducting document checks, Moscow police chief Lieutenant-General V.V. Pronin issued an order on February 22, 2003 instructing all heads of units of the Moscow GUVD the following:

> Let every officer know that it is *prohibited for the police to use the kinds of treatment that humiliate citizen's personal dignity, to check identity papers and registration in the city of Moscow without cause.* According to the Law [On Police, Article 5], a police officer is obliged to protect and respect every person with no regard to their citizenship, place of residence, social, economic and professional status, racial or ethnic origin, gender, age, education, language, religious, political or other affiliations.[132]

This order is a ruse. Prohibiting police from stopping and checking identity papers "without cause" only repeats the broad discretion granted to all police officers to stop any individual based on suspicion of that individual's commission of a crime or an administrative violation, such as improper residence registration. Yet Moscow's most liberal newspaper *Novaya Gazeta* described Pronin's order as a "way the police officers are fighting with the corrupt subordinates who are checking the identity papers."[133]

A *Novaya Gazeta* investigation into the impact of Pronin's 2003 order revealed that much more than new instructions are required to reform police behavior. A series of three articles documented the ease with which police officers stopped individuals on the pretext of checking for administrative violations of registration papers. Interviews

with victims of these stops, and police officers' families revealed the primary motivation of the police in conducting these stops: bribes. From the perspective of the victims of these stops, paying a bribe is the price to pay to avoid baseless arrest, detention, harassment, and possibly worse.

To illustrate, the following describes the experience of a Turkish worker named Bairam:

> After the decree of [Pronin in 2003] prohibiting th[e] lucrative pursuit, the only thing that changed for the Turk is that now he is stopped not at the exit from the Metro station, but closer to home . . . And what really deserves attention is that all the papers of the Turkish citizen are in thorough order. But alas, the practice is that policemen, depending on their mood find fault either with the visa, or residential permit (every day they claim that something in his papers is counterfeit. . .) Sometimes Bairam didn't have any money on him, and the officers would kindly give him a comfortable place for the night in the police cells. If by the morning no one brought them 1,500 Rubles (and that is the standard bail for the Turkish worker), they took his mobiles (during 6 months Bairam left 3 of his mobiles with the police), watches (one), new purse (one), and new leather gloves. . . . But as long as he will stay in this Moscow district, he has found only one solution—to keep it secret and silently share his wages with them.[134]

One junior sergeant of the patrol service described his opinion of Pronin's order: "I am not really worried about it. It was clearly said that it is possible to check suspicious individuals. Not only the papers, but their bags or anything for that matter. I could always get out of it."[135]

The wife of a police officer, aware that her husband was supplementing his income with bribes, explained her initial fear at how Pronin's order might cut her husband's earnings:

> I saw it on TV that a law was adopted prohibiting the checks on the streets. I was scared, a little, but still scared. I thought he would have to look for a new job. I called Dennis's mobile and hear that they were boozing hard. They were mourning the loss of incomes (she laughs). After they sobered up they went back out to the streets. Dennis has said that now only the passport and visa officers may check the papers. But how can you recognize them? A man in uniform is asking you for your ID papers, would you risk asking him what he was? Dennis has never met anyone who would do that. Yes, there is a decree, so what? It is written that it is possible to check the papers of suspicious individuals. You can say: "you look suspicious to me." That's it! The life goes on![136]

As these quotes show, Pronin's order of 2003 proved ineffective at curbing the arbitrary abuse by police of their power to stop individuals and search for administrative violations. Yet in August 2005, the Minister of the Interior endorsed the same message in his address to all police forces under the Ministry of the Interior, instructing them to

"give up arbitrary and ungrounded checks of passports, migration cards or other documents, vehicle or load inspections, unsanctioned searches. . . unless there is a legal reason to do so."[137] The Moscow Metro Monitoring Study conducted during and after this statement was made reveals that the Minister's words have indeed rung hollow.

A Corrupt and Inept Police Force

Pervasive ethnic profiling and abuse of power by police are occurring in the context of a police system in crisis. A permissive legal framework places too much discretion in the hands of individual police in spite of legal guarantees protecting against discrimination. In the absence of any effective complaints or disciplinary mechanisms, the police know they can act with impunity.

As a result, today's Russian police forces are ineffective in achieving their true mission: protecting public safety. Police are held accountable only for meeting centrally designated targets for arrests and referrals for prosecution. Under a new reporting system adopted in 2002,[138] superiors review the "dynamics of indicators," meaning that whereas good policing should result in an environment of safety in which fewer crimes occur and fewer criminals are arrested, the current system in fact encourages police to report an increase in arrests, investigations, and referrals for prosecution. A recent study by the Russian organization Demos reported that many police officers meet their targets through arbitrary arrests and even by falsifying data.[139] One officer described his frustration at his inability to spend time investigating serious crimes:

> There is a lot of evidence, the damage is high, but [the investigation] will take time. . . At the end of the month, however, what you need is detection rates, the points. So you get down to catching small fry, such as bus drivers who fail to give out tickets [when they receive the fare from passengers]. You deal with little things, while serious crimes lose priority.[140]

Arbitrary police practices and the acceptance of racist and discriminatory policing are perpetuated when new recruits adopt the policing habits and attitudes of their superiors.[141] Polls reveal that police officers' acceptance of the use of force is high, and their negative attitudes towards ethnic minorities, particularly those from the Caucasus, run deep. Regarding use of force, a recent poll revealed that 63% of police officers believed that it is acceptable to use physical force against criminal suspects.[142] This same poll provides interesting insight into ethnic prejudice by the police. On the one hand, the attitude of police toward slogans like "Russia for [ethnic] Russians" is less popular among police officers than amongst the general Russian public. (Whereas 51% of police officers condemn such attitudes, only 23% of Russians do and while 39% of police offi-

cers support that attitude, 53% of Russians do.) The poll reveals, however, that the police have stronger negative attitudes towards "Caucasians" than the Russian public: 67% of police officers polled said they are suspicious, irritated, and fearful of Caucasians, while 47% of Russians polled expressed similar attitudes.[143]

As of January 1, 2006, salaries for the police increased by 15% so that a police officer now receives a salary of $350 a month, while a rank-and-file policeman receives $265 a month.[144] A poll by the Levada Center yielded interesting results regarding corruption in the police. Of the police officers polled, 90% believed that their salaries are insufficient and 80% admitted that they supplemented their police salaries through other means. When the poll asked the officers to describe the various ways they supplemented their income, 28% declined to answer. Other answers yielded the following list: 58% serving as security guards, 36% giving lifts, 18% "informal" services, 17% "informal fines," 14% bribes and "presents." The polling agency commented that these results might be underreporting the prevalence of corruption either because of respondents' fear of self incrimination or because corruption is so mundane and accepted, respondents would not feel compelled to report it. On the other hand, the agency commented that their data might exaggerate the prevalence of corruption if police officers ascribe corruption to their superior.[145]

Unsurprisingly, public trust in the police is low and recent polls indicate that it is falling further. The recent Demos study cites various polls indicating that about 40% of the population has consistently held a negative view of police performance over the past 10 years.[146] A poll conducted in September 2005, however, revealed that 65% of the Russian population does not trust the police. According to that same poll, Russians fear the police almost as much as they fear terrorists and criminals: 33% of respondents fear attacks of street gangsters; 29% fear terrorist attacks; 28% fear falling victim to interethnic conflicts and mass slaughter; and 26% fear police abuse. Three out of four Russians polled expressed fear that they would fall victim to abuse by police forces.[147] One year after the tragic Beslan school hostage-crisis, 65% of Russians polled believed that the authorities are unable to protect them from terrorist attacks.[148]

In sum, a permissive legal framework allows police officers to conduct stops at their discretion based on any suspicion of a crime or administrative violation. Random stops to uncover administrative violations of improper residence registration are a prime area of police abuse. Ethnic minorities are the prime suspects and victims of this policy and the situation has only worsened for them since 1999 when the Moscow government took a stronger counter-terrorist stance.

VII.   Conclusion

Ethnic profiling by police in Moscow has long been recognized, yet until now its perva-
siveness has not been quantified.

The goal of the Moscow Metro Monitoring Study was to scientifically determine
whether and to what extent ethnic profiling occurs. This survey confirms conventional
wisdom and anecdotal reports of the incidence of ethnic profiling. The study documents
the highest odds ratio proving the disproportionate targeting of ethnic minorities by
police ever detected through similar studies. While non-Slavs make up only 4.6% of
the riders on the Metro system, they are on average 21.8 times more likely to be stopped
by the police than Slavs. This discrepancy is so high that it is unlikely that it can be
explained on non-discriminatory, legitimate law enforcement grounds.

Yet the study results also prove that the current discriminatory stop practice is
ineffective at detecting and preventing crime. The study revealed a 3% hit rate in which
the greatest offense that the police uncovered was the administrative violation of main-
taining improper residence or immigration registration. In light of the serious concerns
regarding crime and terrorism in Moscow today, the Ministry of the Interior can ill
afford to turn a blind eye to these results and allow the police to continue their current
practices.

The structure, organization, and policy directives of the federal police in general
and the Moscow police (the Chief Moscow GUVD and the separate UVDs) in particular
are untransparent. The federal and Moscow police have failed to provide any public

safety rationale for the police forces' discriminatory and disproportionate targeting of ethnic minorities. Ethnic profiling is doubly destructive: not only does it undermine the rule of law, but as the study documents, it interferes with legitimate investigations and the prevention of serious crime.

Furthermore, the legal framework governing the authority that police officers have to conduct stops and document checks must be refined. The current ambiguous standards provide a veneer of legality to abuse by police officers. Objective criteria must be developed to provide police officers with clear guidelines that define the circumstances in which suspicion is reasonable. The development of more precise rules should also be accompanied by the creation of review mechanisms that can govern the standardization of objective decision-making regarding police stops and investigations.

The study reveals the public's ambivalence toward the police. Of the individuals monitored, a large percentage agreed to be interviewed, thereby providing valuable insights into the attitudes of Moscow Metro riders. Surprisingly, 89% of the respondents commented that the police treated them courteously during their stops. Respondents were evenly split between those who believed that the police were doing their job in stopping them and those who described the stops in negative terms. Perhaps because the Moscow Metro Monitoring Study was not designed to measure corruption, the study failed to detect widespread corruption. This area merits further research. Despite polls and extensive documentation of the public's negative attitudes towards the police, the study yielded ambiguous findings, which mirror those of a recent independent poll.[149]

The Moscow Metro Monitoring Study proves beyond a reasonable doubt that non-Slavs are treated differently from Slavs and that the Moscow police are engaging in unlawful discrimination in violation of the Russian Constitution and Russia's international legal obligations. Russian NGOs and the international community must engage the Russian authorities to amend legislation and reform the police to end this odious and illegal practice.

Notes

1.   Throughout this report, the terms "ethnicity," "nationality," and "race" are used interchangeably in the sense of Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

2.   The SOVA Center has conducted a multi-year study of hate speech and racist violence reported in the Russian media. Its findings are available at http://xeno.sova-center.ru/213716E/ 21728E3/63371DF.

3.   *See* European Court of Human Rights, *Timishev v. Russia*, Applications Nos. 55762/00 and 55974/00 (13 December 2005).

4.   *Timishev v. Russia*, para. 54.

5.   In reaching its decision, the European Court recalled two foundational definitions of discrimination in international norms. It cited Article 1 of the International Convention on the Elimination of All Forms of Discrimination:

> [T]he term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

It also cited the Council of Europe's European Commission against Racism and Intolerance (ECRI) General Policy Recommendation no. 7, defining "racial discrimination" as:

(b) 'direct racial discrimination' shall mean any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification . . .

(c) 'indirect racial discrimination' shall mean cases where an apparently neutral factor such as a provision, criterion or practice cannot be as easily complied with by, or disadvantages, persons belonging to a group designated by a ground such as race, colour, language, religion, nationality or national or ethnic origin, unless this factor has an objective and reasonable justification . . .

By virtue of Article 15 of the Constitution of the Russian Federation, all duly ratified international treaties are binding law in Russia.

6.   Founded in 2003, JURIX, or "Jurists for Constitutional Rights and Freedoms," is a nonprofit, nonpartisan organization of lawyers specializing in constitutional and public interest law. Its programs focus on strategic litigation, legal education and research, and capacity-building. An overview of its programs can be found in Russian at http://www.jurix.ru and in English at http://www.jurix. ru/en/index_eng.htm#.

7.   The Justice Initiative is an operational program of the Open Society Institute that promotes rights-based law reform and strengthens legal capacity worldwide. Justice Initiative projects shape policy and achieve concrete results through hands-on technical assistance, litigation, advocacy, knowledge-dissemination and network-building. In its Equality & Citizenship program, the Justice Initiative addresses the shared vulnerabilities of racial/ethnic minorities and non-citizens. An overview of its programs can be found at http://www.justiceinitiative.org.

8.   Lamberth Consulting is the recognized leader in conducting studies of profiling. Its technical expert, Dr. John Lamberth, designed the methodology employed in profiling cases described in Section III. An overview of the work of Lamberth Consulting can be found at http://www.lamberth-consulting.com.

9.   Because there were so few "others" observed when the population of the Moscow Metro was assessed (0.5%), their numbers were combined with those in the category of "minorities" and the results were used to calculate the difference in treatment between "Slavs" and "non-Slavs." It should be noted that 3.9% of those stopped by the police were classified as "others," indicating that they were overstopped by the police, but not as egregiously as "minorities."

10.   In the United States, for example, police officers are allowed to stop and perform a limited search of individuals by patting them down outside their clothing, known as a "frisk," when they have reasonable, fact-based, articulable suspicion that the suspect is engaged in a crime and may be armed and dangerous. *See Terry v. Ohio*, 368 U.S. 1 (1968). In the United Kingdom, the Police and Criminal Evidence Act of 1984 gives police officers the power to stop and search anyone in public when they have a reasonable suspicion that the suspect possesses stolen or criminal articles. *See* U.K. Home Office (2003) Police and Criminal Evidence Act 1984 (s.66) Code of Practice A on Stop and Search; *see also* Richard Keenan, *Stop and Search: the Leicestershire Experience, in* JUSTICE INITIATIVES, at 82 (June 2005).

11.   C. Willis, THE USE, EFFECTIVENESS AND IMPACT OF POLICE STOP AND SEARCH POWERS, RPUP 15, at 22 (London Home Office 1983).

12.   According to the study, although blacks and Asians were more likely to be subject to stops and searches than whites, the arrest rate for these groups were 11.1% for whites, 11.7% for blacks, and 9.4% for Asians. *See* Marian FitzGerald, Stop and Search: Interim Report (London Metropolitan Police 1999).

13.   A judicial inquiry into this investigation concluded that London's Metropolitan police force was "institutionally racist." Report of an Inquiry by Sir William Macpherson of Cluny, Cmd 4262-I (London HMSO 1999).

14.   Section 19B(I) of the 1976 Race Relations (Amendment) Act, as amended in 2000, now provides: "It is unlawful for a public authority in carrying out any functions of the authority to do any act which constitutes public discrimination." The Preamble of the Act makes clear that the purpose of the 2000 amendment was to "extend further the application of the Race Relations Act of 1976 to the police and other public authorities. . . " *See id*, *available at* http://www.hmso.gov.uk/acts/acts2000/00034-a.htm#I. For an overview of ethnic profiling measures in the United Kingdom, *see* Joel Miller, *Measuring and Understanding Minority Experiences of Stop and Search in the UK*, in Justice Initiatives, at 53 (June 2005).

15.   *See* David A. Harris, Driving While Black: Racial Profiling on our Nation's Highways, at 23 (ACLU June 1999). A related study of the New York City police department revealed that from 1997 to 1998, its officers engaged in nearly 40,000 stops and brief searches—which civil rights groups confirmed were conducted on African Americans and Latinos—that failed to reveal any criminal activity or contraband. *See* David Kocieniewski, *Success of Elite Police Unit Exacts a Toll on the Streets*, N.Y. Times, Feb. 15, 1999, at A1; Benjamin Weiser, *Frisking Policy of the Police Faces Scrutiny*, N.Y. Times, Mar. 19, 1999, at B1.

16.   *State v. Soto*, 734 A.2d 350 (N.J. Super. Ct. Law Div. 1996).

17.   *Soto*, 734 A.2d at 353. The ratio of the chance of an individual's being stopped if they are a member of a certain minority to their chance of being stopped if they are not a member of a minority is called the "odds ratio." A higher odds ratio signifies greater evidence of racial or ethnic profiling. *See also* John Lamberth, *Driving While Black: A Statistician Proves that Prejudice Still Rules the Road*, Wash. Post, Aug. 16, 1998, at C1.

18.   *See Soto,* 734 A.2d at 360.

19.   The benchmark analysis and observational monitoring method was accepted in the court case of *Wilkins v. Maryland State Police*, Civil Action No. CCV-93-461 (D.Md. 1994) and has been used in official studies commissioned by local police forces in the United States such as *Racial Profiling Data Analysis Study: Final Report for the San Antonio Police Department* (Dec. 2003), *available at* http://www.lamberthconsulting.com/about-racial-profiling/documents/SanAntonioReport10804FinalVersion.pdf. Additional reports using the benchmark and observational monitoring method can be accessed at http://www.lamberthconsulting.com/about-racial-profiling/research-articles.asp.

20.   *See e.g.*, S. Hallworth & M. McGuire, Examining Stop and Search Patterns in the City of London (2005); Joel Miller, Profiling Populations Available for Stops and Searches (London Home Office 2004); P.A.J. Waddington, et al., *In Proportion: Race and Police Stop and Search*, 44 British J. of Criminology, at 889-914 (2004).

21.   Eliot Spitzer, Attorney General of the State of New York, *The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York*, at 94 (Dec. 1, 1999), *available at* http://www.oag.state.ny.us/press/reports/stop_frisk/stp_frsk.pdf.

22.   *See id.* III, table I.B.I.

23.   Frank Newport, *Racial Profiling Seen as Widespread, Particularly Among Young Black Men*, Gallup Poll (Dec. 9, 1999).

24.   David A. Harris, *Confronting Ethnic Profiling in the United States, in* Justice Initiatives at 71 (June 2005).

25.   Albert W. Alschuler, *Racial Profiling and the Constitution*, 2002 U.Chi.Legal F. 163, 163-64 (2002).

26.   *UK: Anti-Terrorist Stop and Searches Double Official Figures*, 13 Statewatch 6, at 16-17 (2003).

27.   Samuel R. Gross and Debra Livingston, *Racial Profiling Under Attack*, 102 Colum. L.Rev. 1413, 1413 (2002).

28.   American Civil Liberties Union, Sanctioned Bias: Racial Profiling Since 9/11, at 4 (2004).

29.   David Cole, *Are We Safer?*, 53 N.Y. Rev. of Books 4, Mar. 9, 2006, *available at* http://www.nybooks.com/articles/18752.

30.   Malcolm Gladwell, *Troublemakers: What Pit Bulls Can Teach us About Profiling*, New Yorker, at 39 (Feb. 6, 2006).

31.   *Id.* (quoting Raymond Kelly).

32.   David A. Harris, Driving While Black: Racial Profiling on our Nation's Highways, at 3 (ACLU June 1999).

33.   *See* D.J. Smith, *Ethnic Origins, Crime and Criminal Justice in England and Wales, in* Ethnicity, Crime and Immigration: Comparative and Cross-National Perspectives. Crime and Justice: A Review of Research, Vol. XXI (M. Tonry ed. 1997).

34.   Commissioner of U.S. Customs Raymond Kelly: Speech to the National Press Club (Mar. 17, 2000), *available at* http://www.cbp.gov/xp/cgov/newsroom/commissioner/speeches_statements/archives/2000/mar172000.xml.

35.   The United States Bureau of Justice Statistics conducted a study of national stops and searches in 1999 in which out of 1.3 million searches performed in the United States in 1999, blacks and Hispanics were more than twice as likely to be searched as whites, yet the hit rates of crime detection resulting from these searches were 17% for whites, 8% for blacks, and 10% for Hispanics. *See* U.S. Department of Justice Bureau of Justice Statistics, *Contacts between Police and the Public: Findings from the 1999 National Survey*, at 22 & Table 14 (Feb. 2001).

36.   American Civil Liberties Union, Sanctioned Bias: Racial Profiling Since 9/11, at 11 (2004).

37.   *Id.*

38.   For an overview of the international legal norms prohibiting racial and ethnic profiling, *see generally* James A. Goldston, *Toward a Europe Without Racial Profiling, in* JUSTICE INITIATIVES, at 9-11 (June 2005).

39.   International Convention for the Elimination of all Forms of Racial Discrimination (ICERD), Art. 5(d)(i).

40.   ICERD, Art 5(a).

41.   ICCPR, Art. 26.

42.   ICCPR, Arts. 2(1), 9(1), and 14(1).

43.   Durban Declaration against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Sept. 8, 2001), para. 72.

44.   *See* European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 E.T.S. 222, entered into force September 3, 1953, as amended by Protocol Nos. 3,5,8, and 11 (ECHR), Art. 14 together with Arts. 5(1) and 6(1). Additionally, Protocol No. 12 to the ECHR, which prohibits discrimination "by any public authority" on all grounds (Art. 1(2)), entered into force in January 2005.

45.   See *Timishev v .Russia, supra.* In *Hugh Jordan v. the United Kingdom*, the European Court held that where members of a minority group suffered disproportionate killings by security forces, "it [was] not excluded that this may be considered as discriminatory notwithstanding that it is not specifically aimed or directed at that group." *Hugh Jordan v. United Kingdom* (Eur. Ct. Hum. Rts.) Judgment of 4 May 2001, para. 154. The court relied on statistical data to reach its conclusion of discrimination. In another landmark judgment, *Nachova v. Bulgaria*, the Grand Chamber held that the failure to vigorously investigate the racially-motivated shooting of two Roma by Bulgarian soldiers violated the nondiscrimination guarantee of Article 14 of the European Convention. Pertinent to ethnic profiling, the *Nachova* Court underscored the importance of thoroughly investigating racist crime "[i]n order to maintain public confidence in [States'] law enforcement machinery...." *Nachova and others v. Bulgaria*, (Eur. Ct. Hum. Rts.) Judgment of 6 July 2005, para.160.

46.   ECRI, *General Policy Recommendation No. 8 on Combating Racism while Fighting Terrorism*, at 11 (Mar. 17, 2004), *available at* http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/3-General_themes/1-Policy_Recommendations/Recommendation_N%B08/recommendation_N%B0_8_eng.pdf.

47.   Code of Conduct for Law Enforcement Officials, Adopted by General Assembly Resolution 34/169 (17 December 1979), *available at* http://www.un.org/documents/ga/res/34/a34res169.pdf.

48.   *Id.,* Arts. 2, 2(a).

49.   Council of Europe, Committee of Ministers Recommendation (2001) 10, *European Code of Police Ethics*, Appendix, Art. 40, *available at* http://cm.coe.int/ta/rec/2001/2001r10.htm.

50.   The Council of Europe's Commission against Racism and Intolerance has identified ethnic profiling as an offensive practice in several European countries. See Misti Duvall, *Ethnic Profiling by Police in Europe, in* JUSTICE INITIATIVES, at 14-25 (June 2005).

51.   There were 165 functioning Moscow Metro stations at the time of the Moscow Metro Monitoring Study, but data on daily ridership was available for only 154 stations. As a result, the study

selected 15 stations for monitoring, comprising 10% of the 154 stations for which ridership data was available. Observational monitoring conducted during a preparatory stage of the study confirmed that the stations selected had adequate police presence to justify their selection for monitoring.

52.	The following 15 Moscow Metro stations were included in the study: (1) Belorusskaya (railway) Brown Line; (2) Komsomolskaya (railway) Red Line; (3) Savelovskaya (railway) Grey Line; (4) Cherkizoskaya (open air market) Red Line; (5) VDNH (bus terminal) Orange Line; (6) Schelkovskaya (bus terminal) Dark Blue Line; (7) Rechnoi vokzal (bus terminal) Dark Green Line; (8) Arbatskaya (downtown) Dark Blue Line; (9) Okhotnyi riad (downtown) Red Line; (10) Kitai-gorod (downtown) Orange Line; (11) Proletarskaya (downtown) Cherry Line; (12) Chertanovskaya (residential) Grey Line; (13) Tushinskaya (residential) Cherry Line; (14) Medvedkovo (residential) Orange Line; (15) Tioplyi Stan (residential) Orange Line.

53.	John Lamberth, Traffic Observations: the what, how and the why, in New Challenges in Confronting Racial Profiling in the 21st Century. Learning from Research and Practice (2003), *available at* http://www.racialprofilinganalysis.neu.edu/IRJ_docs/Report_NewChallenges21.pdf.

54.	The station with the lowest percentage of Slav riders was Cherizoskaya (open-air market) with 92% of the riders being Slav and the station with the highest percentage of Slav riders was Proletarskaya where 97.6% of the riders were Slavs.

55.	The odds ratio is calculated by dividing the likelihood that non-Slavs are stopped (measured as a percentage) by the likelihood that Slavs are stopped.

56.	In addition, there were eight individuals who did not speak Russian or English and thus could not be interviewed, and 20 individuals whom the interviewers saw stopped and taken to the police post who were detained long enough that they could not be interviewed. These numbers suggest that there are relatively few people taken to police posts.

57.	Three respondents did not answer that question.

58.	Terry Martin, The Affirmative Action Empire: Nations and Nationalism in the Soviet Union, *1923–1939*, at 312 (2001).

59.	David Laitin, Identity in Formation: The Russian-Speaking Populations in the Near Abroad, at 70–82 (1998). In the 1930s and through the Second World War, Stalin pursued policies of wholesale deportation and forcible displacement of peoples perceived as enemies of the Soviet Union, namely ethnic and national minorities.

60.	*See generally*, Marc Garcelon, *Colonizing the Subject: The Genealogy and Legacy of the Soviet Internal Passport, in* Documenting Individual Identity, at 94 (Jane Caplan & John Torpey eds., 2001). Residence permits had been required since the Tsarist times for law enforcement purposes and to restrict movement between the countryside and towns.

61.	The word "passport" in Russian signifies an internal identity card. An individual's "nationality" was listed on the internal Soviet passports, in addition to his name, gender, date of birth, and place of birth. Foreign passports of the U.S.S.R. did not denote an individual's nationality, although nationality was listed on military identity cards. In cases of inter-ethnic marriages, children were required to choose the nationality of either their mother or father to be listed on their internal passports.

62.   In 1990, prior to the dissolution of the Soviet Union, the U.S.S.R. Committee of Constitutional Supervision ruled the *propiska* system illegal. *See* Conclusion of the Committee of the Constitutional Review of the U.S.S.R. of October 26, 1990 entitled *On Legislation Governing Propiska of Citizens. See also* Amnesty International, *Rough Justice: The Law and Human Rights in the Russian Federation*, 36 (AI Index: EUR 46/054/2003) (hereinafter *Rough Justice*).

63.   *See* Law on Freedom of Movement, Law No. 5242-1 adopted on June 25, 1993 (amended Nov. 4, 2004).

64.   *See* Law on Freedom of Movement, Art. 3.

65.   *See Regulations Concerning Registration and Deregistration of Citizens of the Russian Federation,* adopted by Decree No. 713 (July 17, 1995) (amended Dec. 22, 2004), Art. 16.

66.   *See id.*, Art. 6.

67.   *See Federal Law on the Legal Status of Foreign Citizens in the Russian Federation*, No. 115-FZ adopted 25 July 2002 (amended Nov. 2, 2004), Art. 20(1).

68.   *See* Administrative Code, Art. 19.15.

69.   Article 18.8 of the Administrative Code mandates that foreigners maintain legal immigration status to establish their right to reside in Russia. This provision also applies to stateless persons.

70.   *See* On the Main Document Certifying the Identity of the Citizen of the Russian Federation on the Territory of the Russian Federation, adopted by Presidential Decree No. 232, Art. 1(2) (Mar. 13, 1997).

71.   *See* Law on the Freedom of Movement, Art. 6.

72.   Chapter 3 of the Russian Constitution establishes the state's Federal Structure. Article 65 lists the regional Subjects that constitute the Russian Federation. Today, there are about 88 Subjects of the Russian state. Regarding Moscow, the Constitution establishes one Subject comprising the Moscow Region and another Subject comprising Moscow City. St. Petersburg and Moscow are the only two cities recognized by the Constitution as independent Subjects known as "cities of federal importance."

73.   An individual wishing to register must go in person to the local housing authority, where they may be asked for a list of documents including proof of payment of utilities for months in advance and a stamp of approval from the district police inspector who will ask the individual where they work and why they came to Moscow.

74.   *See* Amnesty International, *Dokumenty! Discrimination on Grounds of Race in the Russian Federation*, at 11 (AI Index EUR 46/001/2003) (hereinafter *Dokumenty!*).

75.   The Soviet Housing Code effectively prohibited eviction of anyone from living quarters once registered permanently there, even if the residents did not have property rights to live there, unless they were provided with another place to live. *See* Art. 98 Housing Code of the RSFSR (adopted June 24, 1983). The 1983 Code was amended in 2004 and the new Code that came into force in March 2005 can no longer be interpreted as linking registration with rights of residence in a given living quarters.

76.   Registration has even become a *de facto* requirement for obtaining Russian citizenship. The 1991 Citizenship Law of the new Russian Federation stipulates in Article 13(1) that "[a]ll citizens of the former USSR permanently residing on the territory of the Russian Federation on November 28, 1991," are entitled to citizenship. The key provision of this law has turned out to be the notion of *permanently residing*. The law does not define what constitutes proof of permanent residence, and officials applying the law have insisted on the *propiska* stamp as the only valid form of proof. As mentioned, many individuals do not have any form of permanent registration, primarily because the authorities would not register them at any place of residence so as not to grant them a right to this abode under the Housing Code of 1983. Yet the Constitutional Court ruled in 2000 that place of residence can be established through various forms of evidence, including witness testimony, not just a stamp in the passport, as the Ministry of the Interior officials used to view it. *See* Ruling of the Russian Constitutional Court, No. 199-0 (Oct. 5, 2000).

77.   *See* Russian Constitutional Court Judgment No. 4-P (Feb. 2, 1998).

78.   *See Rough Justice* at 36. In other rulings, the Constitutional Court held that the *propiska* requirements unconstitutionally restricted electoral rights and violated the right to property but it has generally affirmed the law's constitutionality in requiring individuals to inform local authorities of their permanent residence and temporary stays. *See id*. at 97 n. 57.

79.   *See* Human Rights Watch, *Moscow: Open Season, Closed City* (1997), *available at* http://www.hrw.org/reports/1997/russia (hereinafter *"Moscow: Open Season"*).

80.   *See* Marc Garcelon, *Colonizing the Subject: The Genealogy and Legacy of the Soviet Internal Passport*, *in* Documenting Individual Identity, at 97 (Jane Caplan & John Torpey eds., 2001).

81.   *See Moscow: Open Season*.

82.   The Law on the Police lists the various police forces that are divided into criminal forces and public security forces. *See* Law on the Police, Law No. 1026-1 of April 18, 1991 (amended May 2005).

83.   Ministry of the Interior Order No. 730, *On approving a Standard Statute about the Ministry of Internal Affairs, Head Administration, Administration of Internal Affairs of the Subject of the Russian Federation* (Sept. 15, 2003).

84.   A full list of departments and police forces that fall under the authority of the Ministry of Interior is *available at* http://www.mvd.ru/?docid=16. According to the President's order from October 31, 2005, the budget for 2006 authorizes staff levels for the Ministry of the Interior to comprise 821,268 people, including 661,275 police officers and 159,993 civilians.

85.   A map of the 10 District Administrations (UVDs) of the Moscow police force is *available at* http://www.petrovka38.ru/rus/map/index.wbp.

86.   *See generally* http://www.mosmetro.ru.

87.   Informal Justice Initiative translation from the original Russian of the description of the functions of the Moscow Metro UVD *available at* http://www.mosMetro.ru/pages/page_0/php?id_page=382.

88.   *See id.*

89.   Law on the Police, Law No. 1026-1 of April 18, 1991 (amended May 2005).

90.   *See* Law on the Police, Article 1(2).

91.   *See* Patrol Police Statute, Appendix to the Ministry of Interior Order No. 17 of Jan. 18, 1993 (amended 1997).

92.   *See id.* Art. 1(2).

93.   *See id.* Art. 100(3).

94.   Criminal Procedure Code of the Russian Federation of Dec. 18, 2001, No. 174-FZ (amended June 1, 2005).

95.   Furthermore, according to Article 92 of the Criminal Procedure Code, officers must fill out a "protocol," or a report recording the reasons for detention after a criminal suspect has been detained for three hours. *See* Criminal Procedure Code of the Russian Federation, No. 174-FZ (amended June 1, 2005).

96.   *See* Article 27.5(2) of the Administrative Code.

97.   Article 23.3 of the Administrative Code and Ministry of Interior Executive Order No. 444, Appendix 1, *On the Authority of Ministry of Interior Officials in Filling out Protocols on Cases of Administrative Offenses and Administrative Detention* (June 2, 2005). Additionally, in the context of violations of Article 19.15, Ministry of Interior Executive Order No. 900 (Sept. 2, 2002) allows district plenipotentiary police officers to fill out protocols, fine citizens who committed administrative offenses, as well as executive administrative detention and search the person and belongings of individuals. District plenipotentiary police officers do not conduct patrols and are therefore not in a position to effectuate stops of individuals in public.

98.   *See* Article 32.2(1)-(4).

99.   The procedures for investigation and issuing protocols for violations of Article 18.8 are set out in Administrative Code Articles 23.1, part 2 and 23.3, part 2 par. 2.

100.   *See also* Ministry of Interior Executive Order No. 444, Appendix II, *The List of Federal Migration Service Officials Authorized to Fill out Protocols of Administrative Offenses*, (June 2, 2005).

101.   Article 19(2) of the constitution of the Russian Federation of 1993 guarantees equality: "The State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations on human rights on social, racial, national, linguistic or religious grounds shall be banned." Furthermore, Article 136 of the Russian Criminal Code makes it a criminal offense punishable by fines to violate the equality of rights and freedoms of persons and citizens on the basis of sex, race, ethnic origin, language, religion, and other grounds.

102.   In 1995, the United Nations Human Rights Committee expressed concern "at reports of harassment shown towards persons belonging to minority groups from the Caucasian region taking the form of search, beatings, arrests and deportation." United Nations Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Russian Federation*, UN Doc. CCPR/C/79/Add.54, at par. 23 (July 26, 1995).

103.   *Families of Muscovites Killed in Tu-134 and Tu-154 Crashes will get RUR100,000 each*, Aug. 24, 2004, *available at* http://www.newsru.com/russia/28aug2004/kom9.html.

104.   *Prosecution Denies Reports That 174 People Perished as a Result of the Dubrovka Terrorist Attack*, Mar. 16, 2005, *available at* http://www.newsru.com/russia/16mar2005/nord_ost.html.

105.   *A suicide Bomber Blew Herself up at the Rizhskaya Metro station in Moscow: 10 killed, More than 50 Wounded*, Sept. 2, 2004, *available at* http://www.newsru.com/russia/31aug2004/rizhskaya.html.

106.   *At Least 41 People Died in the Explosion in the Metro*, Feb. 12, 2004, *available at* http://www.newsru.com/arch/russia/12feb2004/new.html.

107.   *Offenders of the Terrorist Attack at the 'McDonald's' Restaurant were Sentenced to Lengthy Jail Time*, Feb. 27, 2004, *available at* www.lenta.ru/terror/2004/04/27/mcdonalds.

108.   *A bomb exploded in Moscow on 'Belorusskaya' Metro Station, Feb. 5, 2001, available at* http://www.newsru.com/russia/05Feb2001/belorusskaya.html

109.   *A Memorial Plate Opened at Pushkin Square in Memory of Victims of the Terrorist Attack of August 8, 2000*, Aug. 8, 2002, *available at* http://www.newsru.com/russia/08Aug2002/push_print.html.

110.   According to the last census conducted in 2002, from 1989 to 2002, Russia received a net inflow of 6.8 million migrants from the former Soviet Republics. *See* Valery Tishkov, Zhanna Zayinchkovskaya, and Galina Vitkovskaya, *Migration in the Countries of the Former Soviet Union: A Paper Prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration*, p. 10 (September 2005), *available at* www.gcim.org/attachments/RS3.pdf. After the dissolution of the Soviet Union, political unrest, ethnic conflict, and economic hardship sparked migration among the newly independent states. Most migrants to the Russian Federation since independence have been ethnic Russians. See id. at 2. Russia has also received refugees and displaced persons from former republics undergoing conflict and war, such as Tajikistan, as well as a number of asylum-seekers from Asia and Africa.

111.   *See* Russian Census 2002, *available at* http://www.perepis2002.ru/ct/html/TOM_01_04_1.htm.

112.   According to the Russian State Statistical Committee in 2003, the death rate exceeded the birth rate by an average of 60% in Russia. *See* http://www.afin.ru/news/newstext.asp?id=1906. The death rate of males in the Russian Federation rose in the 1990s. *See* http://penguin.kurgan.ru/cgibin/fido_new.pl?group=fido7.mo.economics&article=4968.

113.   *See Press Release of Natalia Vlasova, Representative of the Russian Federal Migration Service*, RIA-Novosti Russian News Wire (Feb. 28, 2006), *available at* http://www.rian.ru/society/20060228/43828135.html; *see also* C.J. Chivers, *Moscow Journal: Strange City, Thankless Job, Heartless Russian Winter*, N.Y. Times, Mar. 3, 2006, at A4.

114.   *See Moscow: Open Season.*

115.   *See* the survey conducted by the SOVA center, *available at* http://xeno.sova-center.ru/213716E/21728E3/63371DF.

116.   An example of a newspaper quote is the following: "Gypsy camps, Tajik guest workers... Marginal people. They got their own laws. They dwell in some layer close to bottom, closer to animals than to humans." Justice Initiative translation of the following: *Cyganskie tabory, tadzhikskie gastarbaitery... Marginaly. U nih svoi zakony. Oni obitayut gde-to v pridonnom sloe — blizhe k zhivotnym, chem k lyudyam.* Natalia Panasenko & Julia Kalinina, *Don't want to study, want to procreate!,*

Moskovskiy Komsomolets, Aug 1, 2005, *available at* http://xeno.sova-center.ru/213716E/213988B/5D6FB9D?pub_copy=on.

117.   *See Dokumenty!*, at 34.

118.   *See Moscow: Open Season.*

119.   *Dokumenty*!*,* at 34.

120.   *See* Patrick Jackson*, Living with Race Hate in Russia*, BBC News, Feb. 24, 2006, *available at* http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/4737468.stm.

121.   *See generally Dokumenty!*

122.   The minimum wage in Russia has been set at 800 rubles (U.S.$28)/month by law since Sept 1, 2005. It was 600 rubles/month prior to this date. In Moscow it is nearly impossible to live on this amount. The average wage on construction sites for migrant workers is U.S.$200. Justice Initiative interview with Ilona Grianznova, lawyer with the NGO Fond Tajikistan.

123.   *See Snow in Russia*, The Economist, Feb. 18, 2006, at 23.

124.   *See Moscow: Open Season, available at* http://www.hrw.org/reports/1997/russia/Russia-05.htm.

125.   *See id.* This campaign also included discriminatory targeting and rounding up of the homeless and prostitutes.

126.   The order entitled *On urgent measures to ensure the registration of citizens temporarily residing in Moscow,* No. 1007-RM (Sept. 13, 1999) is referred to in Amnesty International, *Russian Federation: Chechnya – For the Motherland*, at 26 (AI Index: EUR/46/46/1999).

127.   *See id.* at 24.

128.   *See id.*

129.   *Orderlies of the Ethnic Field*, Novaya Gazeta, Mar. 5, 2001, *available at* http://2001.novayagazeta.ru/nomer/2001/16n/n16n-s00.shtml.

130.   Human Rights Committee, *Concluding Observations: Russian Federation*, UN Doc. CCPR/CP/79/RUS (Nov. 6, 2003).

131.   Committee on the Elimination of Racial Discrimination, *Concluding Observations: Russian Federation*, UN Doc. CERD/C/62/CO/7 (Mar. 21, 2003).

132.   Order of GUVD of Moscow of Feb. 22 2003, No. 98, On measures of strengthening control over adherence by the officers to the [norms of] professional culture, polite and attentive treatment of citizens, (emphasis added). Police chief Pronin reissued these instructions via a signed wire to his police forces. It was reported that "he flatly prohibited passport regime checks by those Moscow units and services of the Ministry of Interior that are not entitled to exercise such kind of duties. This kind of work is only to be done by the officers of the passport-and-visa authorities, migration units, and district police." Wire of the Chief of the Moscow Main City Police Authority (30 August 2005), *available at* http://lenta.ru/news/2005/08/30/passport.

133.   *Request Stop 1, Novaya Gazeta*, Apr. 17, 2003, *available at* http://2003.novayagazeta.ru/nomer/2003/27n/n27n-s28.shtml

134.   *See id.* Another victim described the impact of Pronin's 2003 order as follows: "[It] has not affected the frequency of visits of local policemen to us. Only their reason has changed . . . Earlier the police were interested in visas and residential permits, now licenses and permissions of local utilities and other paperwork. After introduction of the license for the labor activity it became another excellent source of gain." *Id.*

135.   Request Stop 2, NOVAYA GAZETA, *available at* http://2003.novayagazeta.ru/nomer/2003/32n/n32n-s14.shtml, *May 8, 2003, No. 32.*

136.   *Id.*

137.   *Minister of the Interior of the Russian Federation Addresses the Interior Agencies' Staff and Interior Troops' Personnel, available in English* at http://eng.mvdrf.ru/index.php?docid=369.

138.   Order of the Ministry of Interior No. 1150, *On introduction of systems of evaluation of organs of internal affairs activities, as well as of some subdivisions of criminal police, public security police and organs of pretrial investigation* (Nov. 23, 2002).

139.   Demos, REFORMING LAW ENFORCEMENT: OVERCOMING ARBITRARY WORK PRACTICES, at 11 (English Edition 2006).

140.   *Id.*

141.   *Id.* at 9.

142.   Of the 63% of police officers who believe that physical violence against criminal suspects is permissible, 55% said that it is permissible "in some cases" and 8% said it is definitely permissible all the time. *See* Levada Center, *Poll: Police on Police Problems: Police Abuse and Police-Community Relations, available at* http://www.publicverdict.org/ru/articles/research/ppl2.html (Feb. 13, 2006).

143.   *See id.*

144.   *See* ROSSIYSKAYA GAZETA No. 74(4040), at 9 (April 11, 2006).

145.   *See* Levada Center, *Poll: Police on Police Problems: Police Abuse and Police-Community Relations, available at* http://www.publicverdict.org/ru/articles/research/ppl2.html (Feb. 13, 2006).

146.   *See* Demos Report, at 5 (citing polls from the Levada Center, Public Opinion Foundation, BTSIOM and ROMIR centers, all of whom confirm this estimate).

147.   Levada Center, *Poll: Police on Police Problems: Police Abuse and Police-Community Relations, available at* http://www.publicverdict.org/ru/articles/research/ppl.html (Feb. 13, 2006).

148.   *See* WTSIOM PRESS-RELEASE No. 281, *Fight Terror: A Year After Beslan, available at* http://www.wciom.ru/?pt=45&article=1650.

149.   *See* discussion *supra* in Section VI and accompanying poll: Levada Center, *Poll: Police on Police Problems: Police Abuse and Police-Community Relations, available at* http://www.publicverdict.org/ru/articles/research/ppl.html (Feb. 13, 2006).

JURIX is governed by a Board composed of the following members: Alexei Simonov [Chairman] (Glasnost Defence Foundation, President, Russia), Henri Reznik (Moscow Chamber of Trial Lawyers, President, Russia), Suren Avakyan (Moscow State University, Head of the Chair of Constitutional Law, Russia), Leo Ivanov (Constitutional Court, Legal Advisor, Russia), Natasha Lisman (Sugarman, Rogers, Barshak & Cohen, partner, USA), Inga Mikhailovskaya (State Institute for State and Law, Moscow).

The staff includes Anita Soboleva, Executive Director; Victor Monahov, Tatyana Zayukova, and Alexander Lapidus, staff attorneys; Vera Mishina, administrative manager.

E-mail: jurix@jurix.ru
125464, Moscow, P.O. box 64
Phone: +7 495 981-13-18
Fax: +7 495 981-13-19

Open Society Institute

The Open Society Institute works to build vibrant and tolerant democracies whose governments are accountable to their citizens. To achieve its mission, OSI seeks to shape public policies that assure greater fairness in political, legal, and economic systems and safeguard fundamental rights. On a local level, OSI implements a range of initiatives to advance justice, education, public health, and independent media. At the same time, OSI builds alliances across borders and continents on issues such as corruption and freedom of information. OSI places a high priority on protecting and improving the lives of marginalized people and communities.

Investor and philanthropist George Soros in 1993 created OSI as a private operating and grantmaking foundation to support his foundations in Central and Eastern Europe and the former Soviet Union. Those foundations were established, starting in 1984, to help countries make the transition from communism. OSI has expanded the activities of the Soros foundations network to encompass the United States and more than 60 countries in Europe, Asia, Africa, and Latin America. Each Soros foundation relies on the expertise of boards composed of eminent citizens who determine individual agendas based on local priorities.

www.soros.org

Less than 5 percent of riders on the Moscow Metro can be described as non-Slavic in appearance. Yet more than half of all people stopped by Metro police are non-Slavic looking.

This stunning disparity lies at the heart of *Ethnic Profiling in the Moscow Metro*, the first report to quantify discriminatory policing in Russia. Using the rigorous statistical methodology known as observational benchmarking, researchers for the Open Society Justice Initiative compiled proof that Moscow Metro riders who look non-Slavic are over 20 times more likely to be stopped by police than riders who look Slavic. The study further finds that these stops do not prevent crime and only rarely unearth minor administrative infractions, let alone deter major crime or acts of terrorism.

Ethnic Profiling in the Moscow Metro provides a detailed, statistically supported examination of discrimination by Moscow police. It also looks behind the numbers at current police practices and places them in the context of law enforcement challenges in multiethnic Moscow today.