



Corruption risks in the criminal justice chain and tools for assessment

Chapter 5: Detention and corrections

Gary Hill

This is the fifth chapter of this U4 ISSUE.
We release the chapters one by one.

Join U4's linked-in group for updates, and to
interact with the authors. They will answer
your comments and questions in these weeks:

- Investigations (12-16 Jan.)
- Prosecutions (19-23 Jan.)
- Trials (26-30 Jan.)
- Detention and corrections (2-6 Feb.)

U4 is a web-based resource centre for development practitioners who wish to effectively address corruption challenges in their work.

U4 is operated by the Chr. Michelsen Institute (CMI) – an independent centre for research on international development and policy – and is funded by the Australian Department of Foreign Affairs and Trade, FPS Foreign Affairs, Foreign Trade and Development Cooperation/ BTC (Belgium), Danida (Denmark), DFID (UK), GIZ (Germany), Norad (Norway), Sida (Sweden) and the Ministry for Foreign Affairs of Finland.

All views expressed in this Issue are those of the author(s), and do not necessarily reflect the opinions of the U4 Partner Agencies or CMI/ U4. (Copyright 2015 - CMI/U4)

Corruption risks in the criminal justice chain and tools for assessment

Chapter 5: Detention and corrections

This is part five of a six-part issue paper examining tools for assessment of corruption risks in criminal investigation, prosecution, trials, and detention.

Gary Hill

U4 Issue

January 2015 No 4



All criminal justice systems have provisions for detaining individuals suspected of committing a crime until their cases are resolved, and for imprisoning them if they are found guilty. In analyzing the potential for corruption within the criminal justice system it is important to consider the interrelationship of police, courts, and prosecution with the detention/correctional component.¹ The prospect of losing freedom creates powerful incentives for defendants to resort to bribery, and for those holding power over their fates to engage in extortion. The incentives for bribery and extortion rise as the threat of incarceration grows, reaching their peak when an individual is actually placed behind bars. Many prisoners will be willing to pay whatever it takes to win their freedom, or at least gain extra privileges within the prison setting, and some prison personnel will be willing to sell freedom or privileges. This leads to considerable risks of corruption in the detention/incarceration phase of the criminal justice system in every country.

Unlike other dimensions of the criminal justice system (investigation, prosecution, trials), corrections is a continuous process rather than a series of distinct steps that offer different opportunities for corruption. Thus the identification of risks applies to the overall institutional environment of detention or incarceration.

This institutional environment includes jails, that is, detention facilities for persons awaiting trial, and prisons, for incarceration after conviction. Both types of facilities are guarded 24 hours a day, seven days a week. The personnel responsible for these facilities are expected to prevent inmates from escaping, to maintain order among the inmate population, to protect weaker inmates from assault, and to restrict inmates' unauthorized communications with others such as victims or potential criminals. Each facility is overseen by a small group of administrators who oversee the work of administrative staff and of a large number of correctional officers.² Administrators are normally better paid and have more education than correctional officers. Indeed, in many jurisdictions correctional officers are poorly paid, poorly trained, and not well respected in their communities. In some countries, a military force – the national guard, *guardia civil*, or similar organization – may be employed to guard prison perimeters and reimpose order in the event of a riot or a hostage-taking incident. In some jurisdictions, jails and even prisons may be operated by the police. In other countries, notably in the United States, private corporations operate some correctional facilities.

Although there is great diversity in the way prison systems are organized and managed, the current trend is away from control by the police or military. The Council of Europe, for example, urges all countries seeking membership to transfer responsibility for managing prisons from ministries of interior, traditionally close to the security forces, to ministries of justice (Coyle 2007, 516). There is increasing acceptance of international standards mandating more transparency and staff professionalization.

The operation of jails exhibits even greater diversity than that of prisons. There are always far more jails than prisons, given that jails must be located near the courts where cases will be resolved. In some

¹ The word *correction* and *prison* are used interchangeably in this article and mean the same thing and prisoner refers to convicted and sentenced individuals. *Detention*, called *remand* in some jurisdictions, refers to pre-trial or pre-sentenced individuals.

² In most nations, the term “guard” has been replaced with “correctional officer” (or “corrections officer”).

countries this means they are the responsibility of local governments. In others, responsibility lies with regional governments, and in a few very small countries the central government runs the jails. Although international standards call for jails to be managed and staffed by a civilian cadre separate from the police, they are still run by the police in many countries.

Responsibility for deciding the length of incarceration usually rests with the courts, while prison administrations may decide the type of facility to which a convicted person will be sent. But laws vary from country to country. In some, if the sentence is short, the court may order the person to be placed under home confinement (in some cases wearing an electronic tracking device) or sent to an open, modern facility with access to some amenities. Courts may also have the power to order that the prisoner be incarcerated in a high-security prison. In most cases, though, the prison administration has the final say on the place of incarceration, and the administration will almost always decide the conditions of confinement, such whether the prisoner will be isolated from other inmates as protection or punishment. Those with the discretionary authority to impose harsh conditions of confinement or to offer more agreeable ones are in a position to extort bribes from prisoners.

1. Types of corruption risks in jails and prisons and the conditions that create them

The subservient position of prisoners, the discretion correctional officers enjoy, and the anxiety of inmates' families and friends create an environment in which corruption risks are high. These risks may involve either systemic corruption, requiring the cooperation of a number of correctional officers and perhaps even high-level administrators, or idiosyncratic corruption, arising from the personality of a particular correctional officer or other employee and the specific opportunities at hand.

In situations of systemic corruption, prison officials may allow inmates to conduct criminal activities or even administer criminal organizations from inside the prison in exchange for bribes, sexual or other favors, or a share of the illicit profits. In other cases the officials themselves may provide inmate labor to private business or to individuals for a profit. Examples have been reported in:

- Bolivia. According to a book written by a former prisoner, the San Pedro Prison housed a thriving cocaine production and distribution operation operated by inmates and drug cartels and involving corrupt prison officials (Calderón 2009; Gilbert 2014).
- The Philippines. Inmates in the Bilibid Prison obtained drugs, sex, and other unlawful privileges in exchange for bribes (Cook 2014; Morella 2014).
- Indonesia. Reports have described Indonesia's prisons as a complex business ecosystem characterized by corruption, overcrowding, mismanagement, and poor resources (Sudaryono 2013; VOA 2013).

Much idiosyncratic corruption risk arises from the power that individual correctional officers or employees have over inmates. Their power is twofold: to punish and to grant privileges. Officers may put

inmates in solitary confinement or limit their access to mail, visitors, or even food and water. On the other hand, they may grant them extra privileges, such as more time in the TV or exercise room or increased visits, or write favorable reports on the prisoner. They may help inmates smuggle unauthorized communications out of the institution or contraband items in, or provide alcohol or illegal drugs directly. In exchange, officers may elicit bribes, kickbacks, sexual favors, or other goods or favors from inmates or their family members or friends.

Identifying signs of potential corruption within a prison environment, understanding its causes, and planning measures to reduce it are essential tasks for well-run detention/correctional operations. Whether this happens depends in large part on the will, capacity, and integrity of higher-level prison administrators. When those in control of the political system, the prison administration, the facility, or the particular shift or area within the facility are known to accept or tolerate payoffs, kickbacks, favoritism, graft, or bribes, this sets the tone and makes corruption at lower levels both acceptable and expected. For example, if a prison administrator himself provides inmates as unpaid labor to friends or colleagues, this sends a clear message to all staff that exploitation of inmates for personal gain is acceptable.

The risks of both systemic and idiosyncratic corruption are a function of the nature of jails and prisons themselves. As one scholar has observed with respect to prisons, they are in effect mini-governments, and as in any government their managers must have sufficient power to control those they govern. “At the same time, however, prison managers must be subject to a vigorous system of internal and external controls on their behavior, including judicial and legislative oversight, media scrutiny, occupational norms and standards, rigorous internal supervision and inspections, ongoing intradepartmental evaluations, and openness to outside researchers” (DiIulio 1987, 235–36). But external oversight is difficult, as the lack of public interest in prison issues and conditions means that public accountability mechanisms that could ensure effective oversight are not present. It is easy to ignore what goes on in prisons because “what prisons workers do is hidden physically from public view” (DiIulio 1987, 245).

There are several reasons for this lack of transparency. Pretrial detainees, like all non-convicted citizens in most nations, retain some right to privacy, so sharing of their personal information with the public is restricted. Prisoners lose some privacy rights after conviction, but their information may still be shielded to some extent, depending on the jurisdiction and the nature of the offense. In particular, in the case of offenders whose convictions relate to gang activities or terrorism, many aspects of the conditions of confinement are not made public. In general, given the expanding concern over terrorist and gang-related activities, prison administrators are often reluctant to disclose techniques, security procedures, and reports of investigations. Taken together, these precautions produce an atmosphere in which the prison walls, in addition to keeping inmates in, keep the public out. Controlling the lives of individuals without transparency increases the chance of corruption.

Lack of resources, manifested in overcrowded facilities, staff shortages, and low staff pay, can also foster corruption. Short staffing and overcrowding create opportunities for corruption by reducing supervision of both inmates and staff. Poorly paid officers may find it nearly impossible to support themselves or their families without a source of supplementary income. There are many correctional systems around the world that provide food, housing, medical care, education, and recreation to prisoners but whose staff

cannot afford similar benefits on their wages. Interviews by the author with correctional officers in Haiti, Sierra Leone, and other jurisdictions found that under this financial burden, officers can begin to feel that inmates are given more rights and resources than the officers themselves receive. Overcrowding, short staffing, low pay, and lack of respect combine to keep officers in a state of chronic stress and foster animosity toward the prisoners and/or the prison administration.

These conditions are exacerbated by poor management, and in some cases a lack of written operational policies defining appropriate behaviors and rules for the treatment of prisoners. Officers do not always understand that the purpose of pretrial detention is not to punish but to ensure that people will be present for trial. Pretrial detainees, by legal definition, are not guilty of any crime and should be treated like normal citizens to the extent that security allows. Once convicted, individuals are sent to prison *as* punishment and not *for* punishment. When staff members do not understand the legal, philosophical, and operational constraints of their work, then what some of them might consider appropriate action could actually fall into the category of unethical or corrupt practice.

Lack of training places officers in a position of feeling alone and vulnerable, as well as not knowing what is right or wrong in the context of prison work. Learning how to use force is not particularly difficult, but learning when to use force and how much to use takes great skill and long practice. Inappropriate use of force is a consistent concern within jails and prisons, and by demonstrating the officers' total control over prisoners, can facilitate corruption. Acceptable behavior should be defined by laws, procedures, institutional values, and a code of conduct, and training should be provided to familiarize officers with their content and application.

When prison administrators and the public accept the excessive use of force, this can contribute to the acceptance of corrupt practices by implying that whatever happens to prisoners is justified because they deserve it or asked for it. Law enforcement and military heroes on television and in the movies often use excessive force and are rewarded for it by solving the crime or taking down the "bad guys." Correctional officers see the same media, cheer for the same heroes, and tell their own stories with similar themes.

Lack of monitoring, investigating, or reporting systems within a detention or correctional facility creates both the impression and the reality that unethical practice by staff will go unnoticed and/or unpunished. A system without checks and balances within the organization or from outside sources is a system vulnerable to corrupt practices. If inmates do not have a way to safely report abuse, or if officers are not protected by some type of whistle-blower legislation, then they are likely to remain victims of or unwilling participants in corrupt activities.

2. Reducing the risk of corruption in detention/corrections

Although a detention/correctional system by definition places some individuals in positions of exerting nearly total control over others, corruption need not be the inevitable result. Reducing the risk of corruption in detention/corrections depends in part on individual character and on the initial selection of personnel, but there are several kinds of measures that an institution can take to reduce incentives for corruption and encourage honest behavior.

2.1. Set clear definitions of what is expected of correctional personnel

- Develop a mission statement, set of core values, and code of ethics for the institution, and circulate them widely to staff and to the public.
- Develop and circulate written definitions of graft and corruption within the correctional context and specify what sanctions can be imposed.
- Develop clear policies on personal contact with inmates and their families, acceptance of gratuities or gifts, confidentiality, use of force, and inmate discipline.
- Develop written policies and procedures indicating how inmates and staff can appeal decisions or actions that may affect them negatively.

2.2. Provide training

- Include instruction on the institution's code of ethics in pre-service and in-service training provided to correctional staff. Such training should include self-assessment techniques in which personnel examine their own actions in relation to the code.
- Expose staff to documents from the United Nations, the Council of Europe, and other relevant international organizations, such as the *Standard Minimum Rules for the Treatment of Prisoners*, the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, and *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, indicating how they relate to national laws and procedures.
- Train staff and inmates in the use of complaint mechanisms.

2.3. Establish transparency mechanisms

- Establish an independent ombudsman at the highest administrative jurisdiction (i.e. a department of corrections) available to inmates, staff, and the public.
- Establish an independent inspection process. This can be overseen by an entity totally separate from the prison services, such as the United Kingdom's HM Inspectorate of Prisons, or by an industry-wide body such as the American Correctional Association Commission on Accreditation.
- Facilitate access to prisons by the International Committee of the Red Cross, Amnesty International, Human Rights Watch, and national human rights agencies.
- Provide civilian oversight. Jurisdictions in Australia, Canada, and other nations have "independent prison visitors" who regularly visit the prisons and talk with inmates, staff, and visitors. They provide recommendations to the minister responsible for corrections.
- Allow private and uncensored mail, visits, and telephone communications between prisoners and their attorneys or judicial authorities so that inmates have ways to report corrupt or inhumane practices.
- Establish independent employee assistance programs to help correctional personnel deal with personal, family, or financial problems before they fall into corrupt practices. The staff of such programs can also identify institutional situations and weaknesses that may facilitate corruption and report them to officials without violating the confidentiality of individual employees.

3. Assessments of corruption risks in detention/ correctional facilities

At present, few tools are available for assessing corruption and corruption risk in detention and corrections. Those that exist focus primarily on whether a particular facility has policies in place to help prevent corruption rather than on identifying individuals who may be susceptible to or actively involved in corrupt practices. Similarly, few comprehensive, system-wide assessments of corruption risk in specific correctional systems have been attempted. The two most useful models to date are country-specific, system-wide reports from the Philippines and South Africa.

The Development Academy of the Philippines (2007), in collaboration with the Office of the Ombudsman, the Commission on Audit, the Department of Budget and Management, and the Civil Service Commission, produced an extensive assessment of corruption vulnerability in the Philippine correctional system. The report identified weaknesses in areas such as financial management and business activities conducted by correctional authorities, especially in the agricultural programs of the correctional service. In terms of staff-inmate corruption, the main concern was the potential for unsupervised staff contact with prisoners.

Apart from management procedures that should apply to all government offices and private businesses, the majority of the recommendations in the Philippine report were in line with other findings in this paper. The report emphasized the need for correctional leadership to proactively discourage corruption, establish and promote a code of conduct, establish policies for officers to follow when offered gifts, and establish procedures on internal reporting for protecting whistle-blowers. Procedures to deter staff from abusing their positions for personal gain included establishing staff rotation schemes and removing inmates from positions of power or control over other inmates. The study also included a review of prisons in other countries, but apparently little of a practical nature was found that could be helpful in the Philippine correctional service.

A report for the South African Civil Society Prison Reform Initiative examined corruption in South Africa's prisons (Muntingh 2006). It outlined the different kinds of relationships operating in the prison environment and the various categories of corrupt activities found in the country's prisons. In particular, it identified features of the correctional system that make corruption in this context different from corruption in other sectors of public service. A key factor is the very close relationship that often develops between staff and prisoners. Correctional staff control every aspect of prisoners' daily lives, including their access to basic necessities as well as to luxury goods and even illegal goods and activities. This effectively creates a market situation in which rewards are offered for the supply of scarce goods in high demand. Second, the state as the controller establishes a highly unequal power relationship between the prison bureaucracy and the prison population. Third, the closed nature of prisons, and the fact that they are largely shielded from the public eye and excluded from political discourse, limits the potential for greater transparency. Against this backdrop, poor management, weak leadership, or organized crime can have a devastating impact on the overall operation of a prison system and, ultimately, on the human rights of prisoners.

In addition to these two assessments, the activities of two units in the United Kingdom can provide insights into typical corruption risks in prisons and jails. A dedicated London Prisons Anti-Corruption Team (LPACT) is based at New Scotland Yard to combat staff corruption in London prisons. The team includes prison service representatives and police officers and is managed within the London Region. The unit focuses on the key individuals allegedly involved in corrupt activity and their links to criminal associates in the community.³

The research department of the Scottish Prison Service conducts an annual inmate survey in all prisons. It covers all aspects of prison life, including treatment of inmates by staff and other inmates. Each inmate fills out the questionnaire in private, places the completed survey in an envelope, seals it, and personally hands it to a member of the survey team. The entire survey is given to prison management within 20 working days and key results are posted in the main inmate living areas.

Across countries and correctional systems, each individual jail or prison houses a community of administrators, staff, and inmates that is relatively small and close-knit. Given leadership and the will to act, it should not be difficult to implement basic policies and procedures in such a setting to detect signs of corruption risk. Prison staff are trained to observe inmates and detect changes in behavior or signs of potential problems, and these skills are honed through experience. These same skills are also available to help identify those staff members who may be moving toward, or engaged in, inappropriate or unethical behaviors that may point to an increased corruption risk (Box 1).

BOX 1. INAPPROPRIATE BEHAVIOR OF CORRECTIONAL STAFF THAT SERVE AS WARNING SIGNS OF CORRUPTION RISK

- Drinking or use of drugs on or off duty
- Increased use of profanity on the job and displays of uncontrolled anger
- Constant complaints about the stress of the job or the unfairness of management
- Overemphasis on the need for officers to stick together and back each other up when dealing with inmate complaints or with management
- Wearing gang-related tattoos or using gang signs
- Exhibiting special protection of or interest in particular inmates
- Casual touching of particular inmates or allowing inmates to use suggestive or personal references
- Significant increase or decrease in the filing of disciplinary or incident reports
- Increase in violence or contraband during a particular officer's shift
- Changes in income and/or lifestyle

³ UK Ministry of Justice, Freedom of Information Request 79199, November 2012.

4. The need for accurate assessment tools

As this review indicates, a major obstacle to the establishment of a comprehensive anti-corruption strategy for prisons and detention facilities is a lack of assessment tools. Investigations, commissions, and independent reviews of specific cases are after-the-fact activities rather than tools to identify pervasive, long-term risks throughout a facility or system. The risks identified in this paper are based on professional opinions but have not been affirmed by scientifically developed assessment tools. While there is extensive literature on the management of correctional institutions from the perspective of efficiency, there has been little systematic evaluation of corruption risks, especially the risk arising from interactions between inmates and staff.

Both new case-study research and meta-analysis of a range of studies are needed to develop systematic tools for assessment of corruption risk. Long-term research on officer behaviors and perceptions of inmates, for example, could help improve vetting procedures, training programs, and situational awareness of corruption risk affecting individual officers, specific correctional units or facilities, and entire correctional systems. Tracking of incidents and their connections to particular shifts, officers, and locations within a facility, with this information compiled in a database, can help identify problem areas. Controlled research is needed on the impact of shift length, assignment rotation, facility design, and staff benefits. Focus groups, surveys, and exit interviews with current and recently released inmates could also contribute to the knowledge base needed for development of assessment tools.

Such an ambitious research agenda is undoubtedly daunting, but it is an essential precondition for effective assessment of corruption risks. Hypotheses from professional opinions such as those cited in this paper are empirically testable, and results could be quickly incorporated into useful advice for correctional administrators.

The author would like to thank members of Staff Training and Development Committee of the International Corrections and Prisons Association, who provided information, insights, and suggestions for this chapter.

References

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990.

<http://bit.ly/1dtR5f7>.

Calderón, Verónica. 2009. “La cárcel más singular del mundo.” *El País*, 24 April. <http://bit.ly/1yVtaTA>.

Cook, Helen. 2014. “Drugs, Sex and Corruption in Philippines’ Largest Prison.” Indo-Asian News Service, 7 June. <http://bit.ly/1wxSvx1>.

Coyle, Andrew. 2007. “Governing, Leadership and Change.” In http://www.ombudsman.gov.ph/docs/statistics/2007_bucor.pdf *Handbook on Prisons*, edited by Yvonne Jewkes. Cullompton, UK: Willan.

Development Academy of the Philippines. 2007. *Pursuing Reform through Integrity Development in the Bureau of Corrections*. Manila. <http://bit.ly/1EMD2zs>.

DiIulio, J. J. 1987. *Governing Prisons: A Comparative Study of Correctional Management*. New York: Free Press.

Gilbert, Jack. 2014. “Meet the Man Who Thrived in Bolivia’s Cocaine Prison.” *Vice News*, 15 June. <http://bit.ly/1lpwhxn>.

Morella, Cecil. 2014. “Prison Sex and Drugs Scandal Shocks Philippines.” Agence France-Presse, 16 December. <http://bit.ly/15Lilby>.

Muntingh, L. M. 2006. *Corruption in the Prison Context*. Cape Town: Civil Society Prison Reform Initiative. <http://bit.ly/1uvi8Po>.

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted by the United Nations General Assembly in 2002 and entered into force in 2006. <http://bit.ly/1tpwDsN>.

Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955, and approved by the Economic and Social Council in 1957 and 1977. <http://bit.ly/1Lh78Q0>.

Sudaryono, Leopold. 2013. “Overcrowding Crisis: A Disintegrating Justice System Is Causing Rampant Prison Overcrowding.” *Inside Indonesia* 113 (July–September). <http://bit.ly/1zi3QJd>.

VOA (Voice of America). 2013. “Drugs, Corruption Rampant in Indonesian Prisons.” 31 July. <http://bit.ly/1DauUb2>.

U4 Anti-Corruption Resource Centre
Chr. Michelsen Institute (CMI)

Phone: +47 47 93 80 00

Fax: +47 47 93 80 01

u4@u4.no

www.U4.no

P.O.Box 6033 Bedriftssenteret

N-5892 Bergen, Norway

Visiting address:

Jekteviksbakken 31, Bergen

This U4 Issue is also available at:

www.u4.no/publications

INDEXING TERMS:

Criminal justice, judiciary, investigation,
police, prosecution, trial, detention,
corrections, corruption, assessment

FOTO

mayu** on flickr.com

