



## Corruption risks in the criminal justice chain and tools for assessment

Edited by Richard E. Messick  
and Sofie A. Schütte

Justice sector series editor: Sofie A. Schütte

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## Abstract

This U4 issue paper provides policymakers in developing nations, their citizens, and U4's partners in the donor community with an overview of where corruption is most likely to arise in the investigation, prosecution, trial, and incarceration stages of the criminal justice process. Each chapter focuses on a specific stage, providing a summary of the principal decision makers involved, the tasks they perform, the most common types of corruption risk, the tools available to assess the risks, and, where sufficient experience exists, an evaluation of the usefulness of these assessment tools. While some basic risk management approaches are noted, the emphasis is on analysis and assessment of problems.

Following an introduction to the issue in chapter 1, chapter 2 summarizes the common types of risks during the investigation phase and discusses three kinds of risk assessment tools for application in the field. These include: (a) Tools to assess citizens' experiences with police corruption. The International Crime Victims Survey is perhaps the most well-known instrument of this type. It provides an established measure of police corruption over time in many locations, both cities and countries, and could usefully be extended to additional settings. (b) Tools to assess police officers' attitudes toward misconduct. A police integrity survey has been used in various countries and could be applied even more widely. (c) Tools to evaluate operations and integrity for jurisdictions seeking to assess their entire police service. The South African Police Service and the United Nations Office on Drugs and Crime (UNODC) have published detailed guides on how to use this kind of tool.

Chapter 3 gives a general overview of the basic activities and responsibilities in prosecution offices and the most common risks of corruption in prosecution. Attention to corruption risks in the prosecution service is a recent development, and most examples of good practices in addressing these risks come from developed countries. Only a few cross-country assessments, including evaluations by the Council of Europe and the Organization of American States, have been conducted to date. Nonetheless, the chapter shows that a basic assessment of corruption risks – followed by appropriate adjustments to policies and processes – can be carried out with limited resources, making use of external expert advice if needed.

Chapter 4 summarizes the responsibilities of judges, lawyers, and court staff at the trial and appellate levels and analyzes the risks of corruption they face in executing their responsibilities. It focuses on points where officials exercise discretion and the effectiveness of oversight mechanisms. Available assessment tools for measuring corruption risks during a criminal trial and appeal include the UNODC's Criminal Justice Assessment Toolkit and country-level assessments of judicial integrity and capacity; the Implementation Guide and Evaluative Framework for the United Nations Convention Against Corruption (UNCAC) Article 11; GIZ's Judicial Integrity Scan and Bangalore Principles implementation measures; and Transparency International's diagnostic checklist. Given the limitations of these tools, new tools and techniques for conducting an integrated analysis across all institutional players along the criminal justice chain are needed.

Chapter 5 provides a general overview of corruption risks in the detention and corrections phase of the criminal justice process. Many jails and prisons operate without meaningful public scrutiny. Together with the subservient position of prisoners, the discretion correctional officers enjoy, and the anxiety of inmates' families and friends, this creates an environment in which corruption risks are high. While there is extensive literature on the management of correctional institutions from the perspective of efficiency, only a few assessments of corruption risks in specific correctional systems, notably those in the Philippines and South Africa, have been conducted.

Much of what is known about corruption at the different stages of the criminal justice system comes from developed country experiences. In many cases, however, the drivers of corruption are the same

across all countries. In using the available set of tools to assess corruption risks in criminal trials and appeals, the greatest challenge for practitioners is finding the relevant parts of general assessment tools that assess the particular corruption risks. The paper concludes with an appeal for integrated corruption risk assessment tools and accessible reporting. Only a sector-wide lens will allow identification of the linkages and dependencies within the criminal justice chain, providing a basis for targeted reform efforts and a comprehensive anti-corruption strategy.

## Contributors

**Jay S. Albanese** is a professor and criminologist in the Wilder School of Government and Public Affairs at Virginia Commonwealth University. He served as chief of the International Center at the National Institute of Justice, the research arm of the US Department of Justice. His work has focused on organized crime, transnational crime, comparative criminal justice, and professional ethics. He is the author of *Transnational Crime and the 21st Century: Criminal Enterprise, Corruption, and Opportunity* (2011) and editor of *The Encyclopedia of Criminology and Criminal Justice* (2014). He is a member of the Executive Board of the American Society of Criminology and a founding member of Criminologists without Borders.

**Heike Gramckow** is lead counsel and acting practice manager with the Justice and Legal Institutions Group in the Governance Global Practice of the World Bank in Washington, DC, where she advises on justice reform issues, directs justice reform projects, and conducts related research. She has been working with prosecutors and other criminal justice agencies in different capacities in the United States and internationally for almost 25 years. Before joining the World Bank, she was deputy director of the International Division of the National Center for State Courts and director of research and development for the American Prosecutors Research Institute. She has worked on justice reform programs in Argentina, Bosnia-Herzegovina, Bulgaria, Egypt, Haiti, Indonesia, Kenya, Mali, Mexico, Mongolia, Morocco, Nigeria, Papua New Guinea, Romania, Serbia, Syria, and the United Arab Emirates.

**Gary Hill** is president of Contact Center, Inc., a private, nonprofit, international information and referral clearinghouse working in the areas of human services, criminal justice, and illiteracy. He is also director of the International Corrections and Prisons Association Staff Training and Development Group and serves as corrections specialist for several international associations and universities. For the United Nations Department of Peacekeeping Operations, he developed a guidance manual for mission personnel working with corrections. He has worked with corrections since 1964 and has provided in-country consultation and helped write training manuals for correctional workers in more than 40 nations. He was recognized by the American Correctional Association with its highest award.

**Victoria Jennett** is an independent consultant who specializes in justice sector reform, anti-corruption, and human rights compliance. She has worked with international organizations, nongovernmental organizations, and research centers to investigate corruption, design anti-corruption strategies, train judges and lawyers in human rights and anti-corruption approaches, and implement human rights compliance programs in legal systems. She was chief of the property rights section of the Kosovo mission of the Organization for Security and Cooperation in Europe and has worked in the research department of Transparency International.

**Richard E. Messick** consults for international organizations, development agencies, and nongovernmental organizations on legal development and anti-corruption issues. As an attorney in the United States, he advised political parties, office holders, corporations, and political committees on campaign finance and ethics issues and represented individuals and corporations in state and federal matters involving fraud and corruption. After serving as chief counsel of the Senate Committee on Foreign Relations, he joined the World Bank, where he worked until his retirement on legal and judicial reform and anti-corruption projects. His writings have appeared in scholarly publications and major newspapers, including the *American Political Science Review*, the *World Bank Research Observer*, the *Wall Street Journal*, and the *Washington Post*. He is also a senior contributor to the Global Anticorruption Blog.

**Sofie Arjon Schütte** is a program advisor at the U4 Anti-Corruption Resource Centre in Bergen, Norway, where she conducts and commissions research, provides policy advice, and delivers training for U4 partners and broader audiences. She leads U4's thematic work on the justice sector and anti-corruption agencies. From 2004 to 2008 she worked as an advisor to the Partnership for Governance Reform in Indonesia (United Nations Development Programme) and as an integrated expert for the Indonesian Corruption Eradication Commission in Jakarta, the subject of her PhD thesis and several published papers. Her short-term country work experiences include Benin, Bhutan, Cambodia, Malawi, and Zambia.

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# 1. Introduction

Richard E. Messick and Sofie A. Schütte

Criminal justice, the bright essence of majesty.

– The Laws of Manu, ca. 200 BCE

Justice being taken away, then, what are kingdoms but great robberies?

– Augustine of Hippo, *The City of God*, ca. 420 CE

Few responsibilities are as central to governing as enforcing laws against murder, theft, and other offenses that violate the safety of citizens or the security of their property – and few can be so thoroughly subverted by corruption as law enforcement. When criminals pay police to “look the other way”, or prosecutors to dismiss their cases, or judges to find them not guilty, or prison officials to let them roam free, the very essence of the criminal justice system has been destroyed. For how can the term “justice” apply to a system where justice itself is for sale? The consequences of failing to keep corruption from distorting the system are severe, for governments that cannot justly enforce their criminal laws forfeit their “bright essence of majesty,” becoming nothing more than “great robberies.”

Preventing corruption from affecting law enforcement is especially important for developing countries. “A functioning law and justice system is essential for . . . maintaining social order,” observes the United Nations Development Programme (2012, 56). A system that fails to deliver justice threatens the social order, making the challenge of development all the greater. This issue paper is meant to help developing countries identify and prevent corruption in the investigation, arrest, pretrial detention, prosecution, trial, and incarceration of those suspected of violating criminal law. It provides policymakers in developing nations, their citizens, and U4’s partners in the donor community with an overview of where corruption is most likely to arise in each stage of the criminal justice process and the tools available to measure corruption along the criminal justice chain.

The four chapters that follow identify common corruption risks at the main stages of the criminal justice chain: investigation, prosecution, trial, and detention. Each chapter provides a summary of the principal decision makers involved, the tasks they perform, the tools available to assess corruption risks at that stage, and, where possible, an evaluation of the usefulness of these assessment tools. Some basic risk management approaches are presented, but the emphasis is on analysis and assessment of problems. For a list of questions that guided the development of the chapters, see the Annex.

## 1.1 Common decision points in the criminal justice chain

Due to history, culture, religion, and colonial heritage, the criminal justice systems of developing states display a bewildering variety of institutional arrangements, the divide between common and civil law being only one of many. Despite this diversity, all perform the same basic functions, and a corruption risk assessment by function thus allows for a common approach across countries. Figure 1 illustrates these functions, from the opening of an investigation all the way to incarceration, diagramming for each stage when and how a case can terminate short of incarceration.

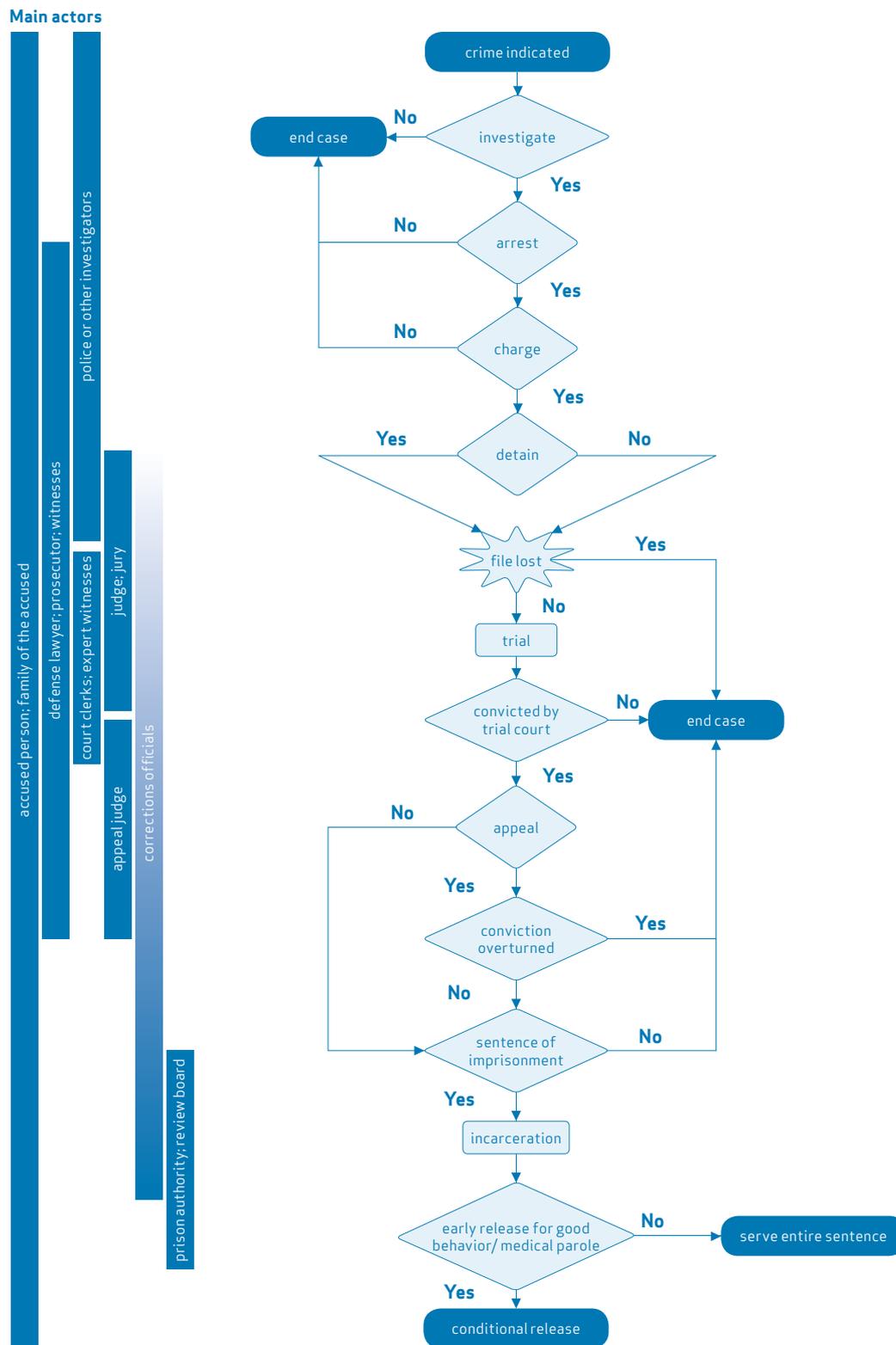
As the figure shows, the criminal justice process begins when, through direct observation or reports by victims or witnesses, the police or other investigators learn of a possible violation of penal law.

The first step in the process is the decision whether to investigate. If, for whatever reason, that decision is “no,” the case ends. If, however, an investigation is opened, then a series of decisions confront investigators, prosecutors, judges, and corrections officials, beginning with whether there is sufficient evidence to warrant the arrest of one or more suspects.

Arrest in itself is rarely enough to warrant bringing a suspect to trial. A decision must be made whether or not to indict, or lay formal charges, based on the facts gathered at the time of the arrest, perhaps supplemented by pre- or post-arrest investigation. Again, as the figure illustrates, a decision not to charge ends the case, while an indictment or formal charge leads to the next decision point in the system: whether to hold the suspect in jail pending trial or release him or her on bail. In either case, a trial or formal proceeding follows, where a judge, jury, or some combination decides whether the suspect committed the acts he or she is accused of, and if so, whether those acts constitute a violation of law. If the suspect is convicted of one or more crimes, a judge will decide what punishment to impose: probation, a fine, or imprisonment. In the event incarceration is ordered, the prison system will take custody of the defendant for the duration of the sentence.

Each of these decision points is shown as a diamond-shaped box in figure 1. No matter the system, they have one thing in common: at each point, those with the power to decide whether to advance or end the case are subject to few constraints on the exercise of their power. The reason is simple: overseeing or monitoring their decisions is expensive, time-consuming, and sometimes not even possible. Police on patrol can demand a bribe in lieu of arresting an individual; if the suspect has committed a crime, he or she will have no incentive to complain. If no crime has been committed and the threatened arrest is merely a shakedown, the innocent person will still face the challenge of persuading a reviewing body to believe his or her story over the officers’ denial. Similar factors are at work with the decision to charge, to hold without bail, to convict, to sentence, to incarcerate: those with the power to decide are subject to little oversight. As the chapters that follow explain, even where formal oversight mechanisms exist, they can be corrupted.

Figure 1 Main actors and decision points in the criminal justice chain



## 1.2 Common risks across countries and institutions

Only recently have policymakers in developing countries and their development partners turned their attention to corruption in the criminal justice system. Hence, much of what is known about corruption at the different stages in the process comes from developed country experiences. The chapters that follow thus draw heavily on the learning from wealthier countries, but as the analyses show, corruption risks in developing countries are often similar if not identical. Where circumstances particular to developing countries could give rise to different types or levels of risk, they are noted. The authors hope that this paper will stimulate more analysis of the corruption risks specific to developing nations' criminal justice systems.

The developed country experience shows that many forms of corruption are common across all stages of the process. Bribery is the most often reported. There is an ever-present risk that individual police officers, prosecutors, judges, or corrections officials will put their decisions up for sale, and the chapters identify the factors – low pay, poor morale, weak leadership – that exacerbate this risk. The developed country experience also shows that the risk of corruption grows as the threat of incarceration grows. As the individual moves through the criminal justice process, he or she faces increasing likelihood of losing freedom, and the motive to corrupt becomes all the stronger.

Not only individuals but entire organizations and even the state may be corrupted, and the chapters describe the conditions that heighten this risk. Political interference – as when the ruling party pressures enforcers to prosecute certain individuals or groups, such as those associated with the opposition, and to ignore violations by others – is one such condition. Organizational corruption can also arise from the enforcement of laws against gambling, personal drug use, and other vices. A lack of consensus that such “victimless” crimes cause harm, coupled with the enormous profits they generate, creates a risk that whole police departments or prosecution agencies will be paid to look the other way.

One risk found in all justice sector institutions is favoritism, bias, or discrimination in the selection, promotion, and discharge of employees. Individuals may be hired as police or corrections officers because of their race or ethnicity. Senior officers, judges, and prosecutors may be selected because of their political leanings or party affiliation. Pressure in the form of the threat of termination or denial of promotion may be used to bias their decisions. It is thus critical in any assessment to determine whether the procedures by which individuals working in the system are selected, promoted, and disciplined have been corrupted.

The focus on the appointment and removal of criminal justice personnel highlights an issue critical to the operation of the criminal justice system: freedom from improper influence. All systems contain provisions to insulate those who work in them, particularly judges and prosecutors, from pressure by the powerful or from the passions of the moment. For however difficult it may be to specify what constitutes a “just” result in a particular case, the laws of all countries recognize that decisions regarding charges or adjudication of guilt or innocence must be in accordance with the law – not with the dictates of politics or popular sentiment.

At the same time, the argument of “improper influence” has sometimes been used to shield justice operators from scrutiny and thus from accountability for their actions. Especially with decisions involving whether to charge an individual with a crime or to convict or acquit, prosecutors and judges have argued that permitting another entity to review these decisions could allow that entity to exercise inappropriate influence over the outcomes. The dilemma has traditionally been resolved by placing the accountability agent within the entity being overseen. Oversight of judicial decisions has thus been realized through appeal to a higher court, and the actions of prosecutors and police have been subject to review by internal affairs units within each agency. But as the chapters that follow explain, the risks of corruption increase when internal review is the only oversight method. Thus policymakers

have recognized the need to augment internal review with external review, such as civilian oversight of the police, a judicial council, citizen advisory committees, or parliamentary hearings.

### 1.3 Risks excluded from the discussion

This issue paper is about the risks of corruption particular to the criminal justice system. It does not consider other risks that may affect agencies in the criminal justice system simply because they are in the public sector. Examples of these generic risks are those associated with the purchase of vehicles, computer hardware and software, and other goods and services that criminal justice agencies need for their daily operations. Another risk excluded from the discussion is the embezzlement of funds and property by personnel within police departments, prosecution services, courts, or prison systems in the course of their day-to-day operations. There are a number of tools for assessing risks associated with procurement and other generic corruption risks in the public sector (see, for example, Fazekas and Tóth 2014; Heggstad and Frøystad 2011; Martini 2012).

Most of those employed in the criminal justice system are career government employees. As a result, they are typically subject to the many rules of government employment: conflict of interest laws, asset disclosure reporting, freedom of information legislation, whistleblower protection regulations, and audits by internal and external agencies. The risks that arise from absence of such rules or noncompliance with them are excluded from the analysis as well, but it is of course true that where compliance with these rules is weak, the risk of corruption is all the greater.

A risk particular to the justice sector that is, nonetheless, excluded from our analysis is what is sometimes termed “noble corruption.” These are actions that corrupt the system’s means to achieve its (worthy) ends. The fabrication of evidence to convict a suspect who is surely guilty is the perhaps the most widely recognized example, but there are other instances as well in which a suspect’s rights are violated out of a desire to keep the streets safe or, more recently, to prevent acts of terror.

Excluding these forms of corruption is not meant to suggest that bribery, extortion, and other forms of venal corruption are more harmful or more deserving of attention. Rather, the exclusions arise from the need to focus on specific topics given the limitations of space.

### 1.4 Country-level assessments

A variety of indexes that compare levels of corruption across countries or rate the quality of different nations’ legal or justice systems contain data that can be useful for developing an assessment of risks in the criminal justice system. Afrobarometer asked citizens in 34 African states how often they had to bribe a police officer to “avoid a problem . . . like passing a check point or paying a fine or being arrested.” The Bertelsmann Transformation Index rates countries on how independent their courts are and whether prosecutors face constraints to charging public officials with a crime. The American Bar Association’s Judicial Reform Index includes an evaluation of the effectiveness of judicial ethics codes and the mechanisms available to citizens to register complaints of judicial misconduct.

Listed below are country-level measures with data particularly useful for developing corruption risk assessments of the criminal justice system. They include surveys based on either direct experience or perceptions and expert assessments. As none of them focus particularly on corruption in the justice sector, they cannot replace a sector-focused risk assessment. Taken together, however, they can help identify areas particularly vulnerable to corruption, and strengths and weaknesses in the institutional framework.

## Experience and perception-based surveys of corruption in the justice sector

- Bertelsmann Transformation Index, Bertelsmann Foundation, <http://bit.ly/1BvSwY3>
- Doing Business project, World Bank, <http://bit.ly/1AfiagV>
- Enterprise Surveys, World Bank, <http://bit.ly/1Ezf6mc>
- Countries at the Crossroads (2004–2012), Freedom House, <http://bit.ly/1FKjeNq>
- Global Corruption Barometer, Transparency International, <http://bit.ly/1b1xmbH>
- Global Integrity Report, Global Integrity, <http://bit.ly/1GE5GGG>
- Vera-Altus Justice Indicators Project, Vera Institute of Justice, <http://bit.ly/1AfirQM>
- World Governance Assessment, Overseas Development Institute, <http://bit.ly/1b1xzeR>

## Expert assessments of the justice sector

- Detention Procedure Assessment Tool, American Bar Association, <http://bit.ly/1E51wBT>
- Judicial Reform Index, American Bar Association, <http://bit.ly/1HAqSLy>
- Prosecutorial Reform Index, American Bar Association, <http://bit.ly/1BvTvY0>
- Rule of Law Index, World Justice Project, <http://bit.ly/1EaY1fC>
- European Commission for the Efficiency of Justice, Council of Europe, <http://bit.ly/1C4kWKk>

## 1.5 References

Fazekas, M., and I. J. Tóth. *New Ways to Measure Institutionalised Grand Corruption in Public Procurement*. U4 Brief 2014:9. Bergen, Norway: U4 Anti-Corruption Resource Centre.

Heggstad, K., and M. Frøystad. *The Basics of Integrity in Procurement*. U4 Issue 2011:10. Bergen, Norway: U4 Anti-Corruption Resource Centre.

Martini, M. 2012. *Overview of Integrity Assessment Tools*. U4 Expert Answer 340. Bergen, Norway: U4 Anti-Corruption Resource Centre.

United Nations Development Programme. 2012. *Governance for Peace: Securing the Social Contract*. New York.

## 2. Investigation

Jay S. Albanese

### 2.1 Basic steps in the investigation process

At minimum, police in a democratic society are responsible for three tasks: the prevention and detection of crime, the maintenance of public order, and the provision of assistance to the public (UNODC 2011, 5; Bayley 2006). While oversight of police operations is needed to reduce corruption as well as other abuses of authority, it must be designed so that it is compatible with the objectives of policing.

A typical criminal investigation process is led by the police or another investigative body, such as an anti-corruption commission, and includes the following steps: (1) An initial investigation assesses witnesses, scenes, and all other available evidence, such as forensic samples. (2) This material is evaluated and a decision is made on whether to conduct further investigation, based on the seriousness of the offense, the availability of evidence, and the level of resources required. The investigation is then either (3a) closed or (3b) continued by taking statements from any witnesses, arresting and detaining any identified suspects, and formally interviewing them. (4a) After such interviews, the suspect(s) may be charged with a crime. If charged, they may be released on bail or kept in pretrial detention. (4b) If there is insufficient evidence to charge or caution a suspect, no further action will be taken.

Corruption risks can occur before, during, or after the investigation of a crime. They arise from the actions of individual police officers and their police departments, but the degree of risk is affected by the actions of supervisory government agencies, the media, nongovernmental groups, and civil society. The following sections examine corruption risks in the three stages of a criminal investigation. A final section reviews three types of tools to measure both the risk and the incidence of police corruption.

### 2.2 Corruption risks prior to investigation

#### 2.2.1 Environmental and administrative threats to the police mission

Corruption risks sometimes arise from the external political climate of the jurisdiction, particularly political interference in police department operations (Gardiner 1970; Chambliss and Seidman 1971; Knapp Commission 1972; Kposowa 2006). A study of police corruption in three US cities found that corruption was made possible by informal systems that allowed politicians to influence personnel decisions within the police department. “By determining who will occupy key positions of power within a police department, and by making as many members of the police department as possible obligated to the politicians, political leaders can impose their own goals on the department – including protection of vice for the financial benefit of the political party in power or of the party leaders themselves” (Sherman 1978, 35; see also Eaton 2008).

In Russia, police were found to “direct their main efforts to earning money while they perform their official duties in a slipshod manner, not registering ‘inconvenient’ crimes and devoting special attention to cases that interest the authorities” (Dubova and Kosal 2013, 56). Analyses of police corruption in Kosovo, Chechnya, and other locations have reported similar conclusions (Zabyelina and Arsovska 2013; Ivković 2003).

The enforcement of laws banning prostitution, gambling, and other vices, often considered “victimless” crimes, creates particularly severe corruption risks (Gardiner 1970; Chambliss and Seidman 1971; Knapp Commission 1972; Kposowa 2006). Those involved with vice have every reason to offer a bribe if police discover them engaged in the prohibited activities. Indeed, the income generated by these services is often so substantial that providers can afford to offer entire police departments significant sums to allow bordellos and gaming establishments to operate unimpeded.

## 2.2.2 Recruitment of unsuitable police officer candidates

A second type of corruption risk occurs prior to criminal investigation, when unsuitable candidates become police officers. The recruitment process itself can be corrupted or biased, resulting in the hiring of unqualified candidates. Moreover, even a “clean” recruitment process can lead to unsuitable candidates becoming officers if selection criteria are inadequate. Educational requirements should ensure that officers are prepared to learn and correctly apply the law and departmental policies. Entry-level testing, interviews, and background checks should attempt to weed out candidates of “low moral caliber” who might be willing to engage in unprofessional or corrupt activity. If these individuals become officers, they may misuse authority for selfish ends and justify this based on complaints of low pay or lack of recognition (Goldstein 1977; Peterson 1960; Cohen and Feldberg 1991; Delattre 1994; Herbert 1996).

Such officers are often labeled as “rotten apples,” implying that these are flawed individuals in an otherwise upright department. Although corruption assessments that focus on the individual officer are common, most experts reject this rotten-apple approach to police corruption. A focus on bad individuals does not explain why police corruption is apparently so widespread, nor does it explain differences between departments or within a particular department over time (Walker and Katz 2010, 181). Blaming a few rotten apples can become an excuse for commanding officers to deny that a more systemic problem exists (Knapp Commission 1972, 6; Manning 2009).

## 2.3 Basic steps in the investigation process

Encounters between a police officer and a citizen typically involve a decision. When a suspected offense is serious enough, the officer usually arrests the suspect. In most cases, however, the officer has discretion in choosing a course of action: take no formal action, issue a warning, or make an arrest. This individual discretion poses an inherent risk of abuse.

A second type of risk reflects group dynamics within the police department. Group corruption suggests the existence of a deviant subculture within the department that condones illegal behavior (Aspinall and van Klinken 2011). This may arise when a group of officers within the department are not committed to the job or feel that they are not supported by their superiors. Sharing of these complaints may lead to a culture of secrecy and cynicism, in which loyalty to fellow officers is valued above loyalty to the police mission. This in turn opens the door to corruption (Kleinig 1996), increasing officers’ propensity to accept bribes, use their influence to prevent or halt investigations, or cover up known instances of wrongdoing.

A questionnaire administered by sociologist William Westley (1970) to police in a Midwestern city in the United States revealed that three-quarters of the officers surveyed said they would not report partners who engaged in a corrupt activity. Moreover, officers would perjure themselves rather than testify against their partners. Westley found that an officer who violated the unwritten code of secrecy within the police organization was regarded as a “stool pigeon,” “rat,” or “outcast,” even if the behavior reported was illegal.

Several studies have investigated departmental risks, showing that certain conditions within a department can be conducive to corruption: these include peer tolerance of corrupt activity and a failure of police leadership to take action (Prenzler, Beckley, and Bronitt 2013; Porter and Warrender 2009; Reiss 1971; Roebuck and Barker 1974; Stoddard 1968). Following an investigation of the Philadelphia Police Department in 1974, the Pennsylvania Crime Commission concluded that “systematic corruption does not occur in a vacuum. Officers succumb to pressures within the department.” Such pressures may include illegal conduct by fellow officers and failure by superiors to take action against “open and widespread violations” of the law and of department policy (Pennsylvania Crime Commission 1974; see also Lee et al. 2013).

Corruption risks can be reduced by stressing ethical and legal content in periodic in-service training and by ensuring that promotions are based on qualifications, rather than on personal connections.

## 2.4 Corruption risks affecting the legitimacy of investigations

Corruption risks that affect the legitimacy of investigations arise from lack of transparency in reporting on crimes, absence of an explicit process for handling public complaints against police, and lack of transparency in reporting the outcomes of such complaints.

Police have monopoly power over the use of force by government to enforce laws, by stopping, investigating, and arresting citizens. Corruption risk increases when accountability for this use of power is lacking. Therefore, it is imperative that citizens have accessible channels for bringing complaints against police; that clear administrative processes exist for taking action on these complaints, with citizen input into these processes; and that the outcomes of these processes are publicized widely. When citizens are regularly informed through the media about the performance of their police, they can be assured that complaints are handled seriously. This enhances the legitimacy of the police.

The failure of police to handle citizen complaints through an explicit process with publicized outcomes has reduced police legitimacy in many cities and countries, sometimes leading to public unrest (New York Times 2002, 2011; Kocieniewski 1999; Miller 2008; Prenzler, Beckley, and Bronitt 2013; Rowe 2009; Stolyarova 2008). A review of police oversight models involving civilians illustrates that there are different structural approaches to achieving credible oversight of police conduct and that these can operate effectively to build public confidence and reduce the risk of police misconduct (Ferdik, Rojek, and Alpert 2013).

## 2.5 Reducing the risk of police corruption

The four major corruption risks discussed above are summarized in table 2.1, along with common risk reduction approaches for each.

Reducing the risks of corruption in criminal investigation requires specific actions that target these risks. An analysis of 32 special commissions on police conduct in 58 English-speaking countries over the last 100 years found common themes. To reduce police corruption, the commissions recommended creating external oversight over the police with a focus on integrity, improving recruitment and training, ensuring that police supervisors provide leadership on integrity, holding all commanders responsible for the misbehavior of subordinates, and changing the organization’s culture to become more intolerant of misbehavior (Bayley and Perito 2011; see also Pyman et al. 2012). These findings overlap with some of the corruption risks listed above, suggesting that the risks for corruption involving police display remarkable similarities across jurisdictions and nations.

**Table 1 Police corruption risks and approaches to reduction**

Major police corruption risks	Risk reduction approaches
Environmental and administrative threats to the police mission	Eliminate political interference in department law enforcement decisions (institutional independence). Reduce police involvement in responding to minor “victimless” crimes, encounters prone to corruption.
Recruitment of unsuitable police officer candidates	Conduct rigorous employment screening of recruits with special attention to character, background, and minimum educational and training requirements
Deviant police subculture	Provide periodic in-service training throughout a police officer’s career to enhance professionalism. Promotions must be based only on individual qualifications and performance, without political or external bias or interference.
Lack of a clear process for handling complaints against police and publicizing outcomes	Establish an explicit procedure for handling complaints against police, with civilian participation, to ensure accountability. There should be systematic data collection and reporting procedures for crimes and for complaints against police, with results publicized in the media.

## 2.6 Assessment tools for police corruption risks

Most assessments of the risks of police corruption have been conducted in countries of the Organisation for Economic Co-operation and Development (OECD), and thus much of the learning on the nature of the risks and how to mitigate them is based on experience in these countries. Only in recent years has work been undertaken on police corruption in less developed countries. These studies tend to target specific aspects of the investigation process, such as individual officer conduct, departmental problems, and influences external to the department such as political pressure (Ivković et al. 2002; Ivković and Shelley 2007; Khruakham and Lee 2013; Pogrebin and Atkins 1976; Punch 2000; Walker and Katz 2010).

The following sections present examples of three types of tools used to measure both the risk and incidence of police corruption.

### 2.6.1 Tool to assess citizens’ experiences with police corruption: International Crime Victims Survey

One existing measure of police corruption is provided by the International Crime Victims Survey (ICVS), which asks representative samples of citizens about their experiences of victimization by several crimes involving assault and theft. The survey includes a question on corruption: “During the past year, has any government official such as a customs officer, police officer, or inspector asked you or expected you to pay a bribe?” This question provides a direct measure of “street-level” corruption.

The ICVS was developed by a group of European criminologists in order to generate international comparative data on crime and victimization. The survey began in 1989 and has been repeated five times since then. The ICVS has been funded sporadically by individual nations, the European Union, and other groups, and as a result it has not been administered regularly. Country participation varies,

although 80 countries and cities in all have participated (van Dijk 2012). Those reported as seekers or receivers of bribes are most often police officers, followed by government officials, customs officers, and inspectors. Very few of these incidents are reported to police or other officials (van Dijk 2008, 183–84). Therefore, the ICVS provides a direct measure of police corruption based on reports by anonymous citizens to interviewers, as well as providing a measure of general crime victimization in the survey locations. Since the survey has been repeated in different countries, it provides data over both time and space. The information it provides is critical because, as a study of police in Mexico found, “direct experience with bribery has the single largest impact on dissatisfaction with the police” (Sabet 2012, 22). If administered more regularly in more cities and countries, the ICVS could become a standard measure of the incidence of street-level corruption.

## 2.6.2 Tool to assess police officers’ attitudes toward misconduct: Police integrity surveys

A second tool for assessing risks during investigation is to ask police themselves to report their likely responses to various scenarios. Such responses can provide insights into corruption risks within specific police agencies as well as across a sample of agencies. A police integrity survey described by Klockars et al. (2000) used 11 hypothetical scenarios depicting various types of police misconduct, from routinely accepting free meals to stealing from a burglary scene (box 1). Officers were asked to rank the seriousness of each behavior, say what they believe should be the appropriate penalty for each behavior (ranging from none to dismissal from the police force), and say whether or not they would report a fellow officer who engaged in the behavior.

The survey initially was administered to 3,235 officers from 30 police agencies in the United States. Those results showed general agreement among respondents regarding inappropriate behavior and expected penalties. Scenarios describing behaviors regarded as less serious were much more likely to be tolerated. Most officers said they would not report a fellow officer who engaged in conduct such as accepting free gifts, meals, or discounts, or having a minor accident while driving under the influence of alcohol. On the other hand, most said they would report a colleague who stole from the scene of a burglary, accepted a bribe, or used excessive force. However, the survey also found “substantial differences in the environment of integrity” across the police agencies studied (Klockars et al. 2000, 9).

The same survey has been administered in more than 15 countries across Asia, Europe, and the Middle East (Ivković and Shelley 2007; Ivković et al. 2002; Klockars, Ivković, and Haberfeld 2004). It is a promising finding that while there are wide variations in culture, values, procedures, and government structures, there is a great deal of agreement among police on what constitutes acceptable and unacceptable conduct, and that those acts punished most severely are those regarded as most serious. Therefore, this assessment tool has been found to be useful across police departments of different types and across nations with different legal systems.

When the police integrity survey was administered to 160 officers of the South African Police Service, about 20 percent reported that they did not see theft and bribery as serious violations. By contrast, a sample of students from the same area overwhelmingly saw such acts as serious or very serious violations. On the other hand, the police respondents were much more likely than the students to see accepting gifts and gratuities as serious (Meyer, Steyn, and Gopal 2013). In another administration of the survey, to 379 South African police supervisors, a “strong code of silence” was discovered, as officers were generally unwilling to report known instances of police misconduct (Ivkovich and Sauerman 2013, 191). In Thailand, a survey of police cadets found that almost all cases of misconduct were seen as more tolerable in Thailand than in Finland, Sweden, the Netherlands, and the United States (Khruakham and Lee 2013).

These cases show that a police integrity survey can be used to assess specific corruption risks arising from police attitudes toward corrupt behavior. Responses can reveal differences in officer attitudes

between different police agencies, as well as differences between the attitudes of officers and of citizens in the communities they serve. Survey responses can be used to target corruption prevention strategies to particular areas of misconduct revealed by the survey and can be used as a baseline against which to measure developments over time.

### Box 1 Police integrity survey

- Case 1** A police officer runs his own private business in which he sells and installs security devices, such as alarms, special locks, etc. He does this work during his off-- -duty hours.
- Case 2** A police officer routinely accepts free meals, cigarettes, and other items of small value from merchants on his beat. He does not solicit these gifts and is careful not to abuse the generosity of those who give gifts to him.
- Case 3** A police officer stops a motorist for speeding. The officer agrees to accept a personal gift of half of the amount of the fine in exchange for not issuing a citation.
- Case 4** A police officer is widely liked in the community, and on holidays local merchants and restaurant and bar owners show their appreciation for his attention by giving him gifts of food and liquor.
- Case 5** A police officer discovers a burglary of a jewellery shop. The display cases are smashed, and it is obvious that many items have been taken. While searching the shop, he takes a watch, worth about two days' pay for that officer. He reports that the watch had been stolen during the burglary.
- Case 6** A police officer has a private arrangement with a local auto body shop to refer the owners of cars damaged in accidents to the shop. In exchange for each referral, he receives payment of 5 percent of the repair bill from the shop owner.
- Case 7** A police officer, who happens to be a very good auto mechanic, is scheduled to work during coming holidays. A supervisor offers to give him these days off, if he agrees to tune up his supervisor's personal car. Evaluate the supervisor's behavior.
- Case 8** At 2:00 a.m., a police officer, who is on duty, is driving his patrol car on a deserted road. He sees a vehicle that has been driven off the road and is stuck in a ditch. He approaches the vehicle and observes that the driver is not hurt but is obviously intoxicated. He also finds that the driver is a police officer. Instead of reporting this accident and offense, he transports the driver to his home.
- Case 9** A police officer finds a bar on his beat that is still serving drinks a half- $\frac{1}{2}$ -hour past its legal closing time. Instead of reporting this violation, the police officer agrees to accept a couple of free drinks from the owner.
- Case 10** Two police officers on foot patrol surprise a man who is attempting to break into an automobile. The man flees. They chase him for about two blocks before apprehending him by tackling him and wrestling him to the ground. After he is under control, both officers punch him a couple of times in the stomach as punishment for fleeing and resisting.
- Case 11** A police officer finds a wallet in a parking lot. It contains an amount of money equivalent to a full day's pay for that officer. He reports the wallet as lost property but keeps the money for himself.

Source: Klockars et al. 2000, 4.

### 2.6.3 Toolboxes to evaluate operation and integrity for jurisdictions seeking to assess their entire police service

A third kind of risk assessment tool is broader in nature, designed to assess the entire structure and operation of a police service to determine its independence from political influence, its transparency in operation, the accountability of its officers and leadership, and its responsiveness to the public it serves. The leading example is the one developed by the South African Centre for the Study of Violence and Reconciliation and the Open Society Foundation. A total of 39 key measures were identified in five areas of police operations and investigations: (1) protection of democratic political life; (2) governance, accountability, and transparency; (3) service delivery for safety, security, and justice; (4) proper police conduct; and (5) police as citizens (Bruce and Neild 2005; Palmer 2012).

Key measures in the area of “proper police conduct” include expectations that police forces will:

- Support principles of integrity, respect for human dignity and rights, nondiscrimination, fairness, and professionalism in their policies and operations; clearly articulate these principles to their members; and actively promote adherence to them.
- Have effective systems for receiving complaints against police officers, internal investigation and discipline.
- Cooperate with oversight bodies responsible for monitoring or investigating alleged police misconduct (Bruce and Neild 2005).

A broader effort sponsored by the United Nations Office on Drugs and Crime (UNODC) seeks to establish a framework for police oversight and accountability in order to strengthen integrity in policing. This framework is based on 17 key elements. The goal is to support both developed and developing countries in implementation of the rule of law and the development of criminal justice reform (UNODC 2011). An example of an emerging effort is in Vietnam, where a police integrity workshop was held recently under UNODC auspices. It included police experts from multiple countries who discussed the benefit of specific standards and measures to enhance police integrity and thereby reduce corruption risks (UNODC 2014).

Like the South African initiative, the UNODC effort provides a toolbox delineating all the considerations to be addressed in reforming police organizations, rather than a specific assessment of particular risks. Nevertheless, a government or police service that implements these standards, and measures compliance with them over time, should be able to identify progress made against corruption risks.

In sum, the risks of police corruption can be most accurately measured through:

- *Citizens’ experiences with police corruption.* The ICVS offers an established measure of this over time in many locations, both cities and countries that could be expanded.
- *Police officers’ attitudes toward misconduct.* The police integrity survey has been used in various countries and could be applied even more widely.
- *Toolboxes to evaluate operations and integrity* for jurisdictions seeking to assess their entire police service. The South African Police Service and UNODC have published detailed guides to assist in this process.

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## 3. Prosecution

Heike Gramckow

### 3.1 Basic activities and responsibilities of prosecution offices

In most countries, the principal responsibilities of prosecutors in the criminal justice system are to provide legal guidance to investigations conducted by the police, to review the results in order to determine whether the evidence is sufficient to support a charge, to file a case in court or request further investigations, and, finally, to prosecute criminal cases in court on behalf of the state. In carrying out these responsibilities, prosecutors are exercising the sovereign power of the state and are expected to represent the best interests of the community, which includes honoring the rights of the accused (Williams and Hsiao 2010). Prosecutors are essential to keeping communities safe and holding citizens, companies, and government officials accountable (Gramckow 2011).

When there is prosecutorial corruption, suspects may be able to flee, evade serious charges, or intimidate witnesses. Conversely, they may be held in pretrial detention for prolonged periods of time, required to pay excessive bail amounts, or charged with more serious crimes than warranted. The consequences can be severe both for communities, in cases where criminals go free as a result of irregularities in prosecutions and trials, and for the accused, if they are wrongfully tried and convicted. Cases of corruption also can damage the reputation of prosecution offices and undermine citizen trust in the justice system as a whole. And they may have serious financial consequences for governments (and thus for taxpayers) if cases have to be retried and/or compensation has to be paid to the wrongfully convicted.

Prosecutors in different countries have different roles and responsibilities in the investigation, prosecution, adjudication, and post-adjudication stages. In some countries, they may conduct their own investigations or have responsibilities for supervising the execution of sentences, which may extend to supervision of prisons (UNODC 2006). They may also represent the state in cases filed against the government, including civil cases involving government-owned companies.

Countries also vary significantly in the degree of flexibility allowed to prosecutors in criminal cases. Prosecutors in most common law countries traditionally have a large margin of discretion to dismiss cases and negotiate charges. In civil law countries, on the other hand, the traditional approach is based on the legality principle, which requires prosecutors to pursue every criminal case brought to them unless the evidence to support the case is insufficient. They have no official authority to decide to drop a case or negotiate charges (Gramckow and Monge, forthcoming). In practice, however, prosecutors in civil law countries have often found ways to adjust charges by omitting lesser violations or multiple offense counts. In both sets of countries, therefore, there is some flexibility. This may be desirable from the standpoint of system efficiency, as well as being in the interests of the accused. But it can also provide opportunities for misconduct or for concealment of corruption.

The chief prosecutor, who may be a career public servant, political appointee, or elected official, is most commonly the one who sets policies on when to pursue prosecution, when to drop a charge or the entire case, when to allow plea negotiations, and when to seek other alternatives, such as deferred prosecution. Having broad scope for discretion means greater control over the prosecutorial workload and flexibility to adjust decisions depending on resource availability and changing policy needs (Kyprianou 2008). If the policies guiding discretionary decisions are unclear, require little

transparency, and allow only limited reviews, however, they may provide opportunities for corruption.

Broad unregulated discretion seems to make the prosecution process in common law systems an easy target for corruption. As indicated above, however, civil law systems also provide corruption opportunities. As legal systems have evolved over time, the traditional differences in the degree of discretion between the two legal systems have become less pronounced. Currently many civil law systems provide rules for limiting charges, and more civil law countries are also allowing negotiations with the defense on charges. On the other hand, discretion in common law countries is increasingly regulated by detailed agency rules. These trends are a reflection of experiences indicating the need for balance. Flexibility may help prosecution agencies manage their resources without compromising justice, but this requires clear and transparent rules for decision making as well as a system for periodic reviews and audits.

The position of the prosecution office in the political system of a country also influences the potential scope, incentives, and opportunities for political capture and corruption. For example, in most countries of the former Soviet bloc, the procurator general was one of the most powerful government officials, and the prosecutors working in that office dominated the criminal process and decisions. In some post-Soviet states, this system still prevails (Anyshchenko 2010). In such a system, clearly defined agency rules are likely to be limited and decisions nontransparent, with questionable results for accountability.

Internationally, it is now widely recognized that irrespective of their position within the overall government structure, prosecution agencies should have the status of independent institutions in order to insulate prosecutors from undue political and executive branch influence. This helps ensure fair and impartial criminal trials (Gramckow 2011). In some countries, the prosecutor's office is part of the executive branch, often under the Ministry of Justice. In this case the office must comply with guidelines and rules that apply to all agencies of this branch, and it is subject to review by the relevant accountability institutions, such as independent audit and internal review agencies. Where the prosecution service is considered a quasi-judicial branch entity with independent budget, review, and reporting authorities, these administrative functions and similar accountability systems have to be available for the prosecution service. No one institutional system is in itself superior or more or less prone to corruption. Rather, any system requires clear rules and accountability structures to minimize opportunities for corruption in prosecutorial decision making.

### 3.2 Common corruption risks and the most common known forms of corruption in prosecution

The wide variation between prosecution agencies in terms of their institutional arrangements and responsibilities means that opportunities for corruption vary significantly across countries. A prosecutor can be bribed or promised other benefits, including promotions. Criminal elements may bring threats against prosecutors and their families, and there may be political pressures or interference in the prosecution process. Such bribery, threats, or political interference can happen at any point of interaction between prosecutors and investigators, suspects, offenders, victims, witnesses, judges, or corrections officers. For example:

- *During the investigation process*, prosecutors may be bribed or pressured to interfere with the investigation of a case. They may try to undermine the investigation by deliberately providing incorrect legal advice to investigators to discredit or delay the investigation. They may collude with investigators to fabricate or hide evidence.

- *During the charging and filing process*, they may delay or accelerate the filing and prosecution of a case. They may alter police records or investigative reports, lose documents, or accept bribes in exchange for dropping or altering charges.
- *During the pretrial phase*, they may inappropriately accept or deny plea offers, falsify evidence to support or drop pretrial detention and bail requirements, rig the jury selection, not disclose exculpatory evidence, intimidate witnesses, or unduly influence other prosecutors and even judges.
- *The selection of a particular prosecutor to handle a case* may also be influenced by corruption to achieve a specific outcome. If no clear, objective, and systematic process exists for case assignment, the head of a prosecution unit or agency may pick a preferred trial attorney who is more inclined to follow instructions or who may have received a share of the bribe.
- *During trial and sentencing*, corruption may take the form of concealing evidence, excluding exculpatory evidence, coercing offenders or witnesses, or making misleading statements in court.

Since systematic studies of prosecutorial corruption are limited, information is not available on the relative frequency of corruption at different stages of the prosecution process. However, studies of wrongful convictions in the United States have indicated that hiding evidence is the most common form of prosecutorial misconduct, and there is a high likelihood that the same holds for corruption (Balko 2013). Similarly, studies in Nigeria and Venezuela have found that corruption most commonly involves prosecutors tampering with evidence, often in concert with the investigating police officer (Buscaglia and Ruiz 2002; on risks during investigation, see chapter 2 of this issue paper). This finding is also supported by a United Nations–financed study that reviewed complex crimes in 64 member countries (Buscaglia and van Dijk 2003).

In most countries, the majority of prosecutors are ethical, but those who are not are likely to be easy to corrupt. They know that their risk of being detected is generally low and that if detected, they are unlikely to face serious punishment. In addition, in most countries prosecutors rightfully have immunity from civil liability for noncriminal misbehavior. This means that responsibility falls on the agency itself to provide effective systems to detect and pursue willful misconduct.

Since no prosecution system is completely free of corruption, reports of serious corruption cases involving prosecutors come from around the globe (see, for example, Neil 2014; Kutner 2014; Sengupta 1998). Systematic studies of corruption in prosecutors' offices, however, are rare or at least difficult to find. Most international indicators and regularly conducted surveys tend to focus on corruption in the judiciary or police rather than in the prosecution service. There is thus a paucity of data for assessing the scope and trend of corruption in prosecution services.

### 3.3 What tools are available to detect and reduce corruption risks in prosecution agencies?

Effective mechanisms to identify and reduce, if not eliminate, corruption risks in prosecution services are similar to those applicable to other government agencies. The starting point is to have publicly available policies that state clearly when, how, and by whom prosecutorial decisions across all functions are to be made: how cases are assigned, when prosecutors may drop charges, offer a plea bargain or not, and so on. Similarly, professional standards and standards for prosecutorial processes should be in place and made public, so that unusual decisions, processes, and delays can be detected easily. Such policies and standards must be reflected in all agency systems, including in case management systems that track assignments and decisions, internal and external review systems, and performance management systems. Having clearly defined policies and standards in place helps prosecutors adhere to them and enables managers and external reviewers to detect deviations.

Good examples of such professional standards and detailed agency policies exist for many larger prosecution agencies in the developed world; see, for example, the guidelines developed by the Office of the Director of Public Prosecutions in New South Wales, Australia (ODPP 2014). International standards and rules are available from professional organizations such as the International Association of Prosecutors and can be adapted to specific national or local contexts.

### 3.3.1 Creation of a system of transparent and detailed professional standards, operational and decision-making policies, and operational guidelines

Without clear standards for professional behavior and decision making and explicit case-processing rules, prosecutors and their support staff cannot understand exactly what is expected of them. This makes efforts to identify corruption difficult and vulnerable to subjective interpretation, except in the few cases where there is clear evidence that someone has solicited or accepted a bribe. Detailed standards must set the baseline against which to assess deviations. They thus constitute one set of tools for assessing risk and detecting corruption and other misconduct.

Studies have shown that strict and uniform prosecutorial criteria for archiving or dropping criminal indictments, subject to supervisors' control, reduce the frequency of bribes offered to prosecutors (Buscaglia and Ruiz 2002). Furthermore, professional standards, or codes of ethics, outline what conduct is acceptable under what conditions. They should be made public, as well as being included in staff training and performance reviews. The International Association of Prosecutors (IAP) has adopted *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*, and this document, available on the IAP's website, provides a basis for creating specific standards for prosecutors' offices worldwide (IAP 1999). IAP members include prosecution agencies on every continent, representing all legal systems and countries at all levels of development, including conflict-prone states. Member agencies of the IAP that have adopted these guidelines also make their expertise available to other member agencies. As a result, IAP standards and similar ones have been widely adopted, but detailed information about their application in practice is not available.

Detailed guidelines and protocols for decision making and operations also set clear expectations and benchmarks. They specify such details as the types of actions and decisions that may be taken; whether, when, and how a certain action and decision should be taken; and who should be consulted or review actions. In addition to providing guidance for prosecutorial staff, publication of such guidelines enables others to understand what is expected and thus to observe when decisions or processes, including timelines for different processes, deviate from the norm. This provides a basis for assessments of compliance. Such detailed guidelines for the United Kingdom, for example, can be found on the website of the Crown Prosecution Service (2015).

### 3.3.2 Implementation of effective management and internal review systems

Even the most detailed guidelines and standards for prosecutorial processing and decision making are only as good as the systems available to verify compliance and detect deviation from the norm. Reports from the United States, the United Kingdom, New Zealand, and other countries indicate that even where appropriate standards and guidelines exist, the enforcement structures – that is, effective review and reporting systems to ensure compliance and enable early detection of corruption – are underdeveloped (see, for example, Wright and Miller 2010; Ridolfi and Possley 2010; Kutner 2014; HMCPSI 2014).

These experiences also show that regular assessments of general and specific corruption risks throughout the prosecution process, which are needed in order to design new anti-corruption tools and structures, are not commonly conducted. Furthermore, there is no systematic international framework that assists prosecution agencies in creating the policies, processes, and management structures they need to assess corruption risks across all agency functions and develop appropriate prevention, detection, and enforcement mechanisms specific to the agency (Gramckow 2011).

Nevertheless, a number of prosecution units or departments, especially those that handle more serious or politically sensitive cases, have had specific review policies in place for years. Such detailed prosecution guidelines define precisely who has to review a file and who must be consulted before decisions are made. More complex or sensitive cases may also be handled by a prosecution team to provide for peer review and checks on decision making. In well-managed prosecution agencies – especially those responsible for cases involving large sums of money or very serious crimes, or cases involving organized crime or political crimes – common practices include creating teams to handle cases, requiring senior prosecutor review at every major decision point, and conducting regular assessments of decision-making patterns and the networks staff are engaging with. Well-designed case management systems that track such information are essential. Although there are no published case studies evaluating their use, one well-regarded system is goCase, developed by the United Nations Office on Drugs and Crime (UNODC 2014).

### 3.4 Use of existing assessment tools in prosecutors' offices

Comprehensive efforts to assess corruption risks and identify corruption throughout the prosecution process are rare and continue to evolve. Most available reports of comprehensive systems come from common law countries, mainly the United Kingdom, Australia, New Zealand, and the United States, most likely because of the more independent and autonomous structure of prosecution agencies in these countries. Also of interest are reports from the Netherlands, the Organization of American States, and the Council of Europe.

One prominent example is the Public Prosecution Service for Northern Ireland, which conducted a fraud and corruption risk assessment in 2013 and is currently monitoring initial implementation activities. The anti-corruption policy and risk management assessment tool of this agency are available on its website (PPS 2012, 2013). While this assessment did not identify specific adjustments needed to detect corruption risks in all prosecution processes, results from the test period should be helpful in identifying how such a tool can be improved to better meet the needs of the prosecution service.

Another interesting example of stocktaking comes from the Netherlands, a civil law country. There the Court of Audit (Algemene Rekenkamer) conducts a review approximately every five years of the status of integrity systems, including those of the prosecution service, which is part of the Ministry of Justice. The review uses a standard assessment questionnaire, available on the court's website. It focuses on what are considered the key elements of integrity management and policy: code of conduct, policy evaluation, risk analyses, internal controls, integrity audits, registration of reports of violations, registration of violations, registration of investigation protocols, reporting of suspected violations, and registration of disciplinary sanctions. The report on the 2009 audit indicated that the Ministry of Justice had made progress in instituting the desired elements since the initial baseline review conducted in 2004. But it also noted that the implementation of an integrity policy and integrity controls was incomplete and that no risk assessments were being conducted (Algemene Rekenkamer 2010).

The Organization of American States (OAS) from time to time reports on corruption risks in prosecutors' offices as part of its reports on the implementation of the Inter-American Convention against Corruption in various countries. A recent example is the report on implementation in Panama, which assesses the existence, adequacy, and results of the legal framework. Based on the evaluation, a number of far-reaching recommendations are made, such as to strengthen the internal oversight body in the Office of the Attorney General (the Control and Oversight Secretariat), guaranteeing it a permanent place in the organizational structure of the institution. Other recommended measures are immediate and tangible, such as to "check the website of the Office of the Attorney General and ensure that all the links in the 'complaints' and 'transparency' sections are working and are constantly updated" (OAS 2013).

The Council of Europe's Group of States Against Corruption (GRECO) is reviewing corruption prevention in the prosecution services of member countries as part of its Fourth Evaluation Round, launched in 2012. These reviews include qualitative assessments of prosecution agencies (and of judges and members of Parliament) based on a questionnaire derived from GRECO's Guiding Principles, as well as on other data, including information received from civil society. In addition, a GRECO evaluation team carries out on-site visits. While the reviews give a helpful overview of integrity systems in these agencies, and some include information on public perceptions of agency corruption, they do not provide quantitative data or detailed reviews of specific agencies. See, for example, an excerpt from the questionnaire used by the Fourth Evaluation Round (box 2) and the evaluation report on the United Kingdom (GRECO 2012a).

The Council of Europe has also supported some country risk assessments that focus on the prosecution services of selected Eastern Partnership countries, such as Georgia (see Hoppe 2013). However, these assessments are based only on interviews with key counterparts within and outside the prosecution agency and a review of the legal framework; they do not constitute actual reviews of agency operations based on internal files and data.

Experience shows that to obtain a complete picture of risks it is important to go beyond mere legal reviews and look at the actual implementation and available resources, and to draw on internal and well as external sources.

**Box 2 Excerpt from GRECO questionnaire on corruption prevention in respect of prosecutors****24 Prohibition or restriction of certain activities**

24.1 Please provide the text of the relevant rules in English or French and describe the measures in place, if any, prohibiting or restricting the possibility for prosecutors to:

- a) act in a particular case in which they have a private interest;
- b) accept gifts (including the definition of gifts, possible value thresholds per item/per donor/per year and the procedures for disposing of or returning unacceptable gifts);
- c) hold posts/functions or engage in accessory activities outside the courts, whether in the private or public sector, whether remunerated or not;
- d) hold financial interests ;
- e) be employed in certain posts/functions or engage in other paid or non-paid activities after exercising a prosecutorial function.

24.2 Please describe the specific rules in place, if any, regarding communication outside the official procedures of a prosecutor with a third party who has approached him/her about a case under his/her purview.

24.3 Please describe specific rules in place on the (mis)use of confidential information by prosecutors. Provide the text of the relevant rules in English or French.

**25 Declaration of assets, income, liabilities and interests**

25.1 Please provide the text of the relevant rules in English or French and describe the measures in place, if any, requiring prosecutors to declare the following:

- a) assets and the holding of financial interests ;
- b) sources of income (earned income, income from investments, etc.);
- c) liabilities (loans from others, debts owed to others, etc.);
- d) the acceptance of gifts;
- e) the holding of posts and functions or engagement in accessory activities (e.g., consultancy), whether in the private or public sector, whether remunerated or not;
- f) offers of remunerated or non-remunerated activities (including employment, consultancies, etc.) and agreements for future such activities;
- g) any other interest or relationship that may or does create a conflict of interest.

25.2 Please indicate for each of the items in the previous question:

- a) if the information to be declared is also required for prosecutors' family members and/or relatives and who is to be considered a family member/relative for this purpose;
- b) when declarations are required and what time period they cover;
- c) to whom / what body the information is to be declared;
- d) if a register is kept of the declarations – both as regards ad hoc and regular declarations – and, if so, what information is contained in this register;
- e) if the declarations are made public and in which way.

25.3 If there are no specific written rules applicable to prosecutors concerning the declarations referred to in question 25.1, please describe whether unwritten rules (conventional rules, standing practices etc.) for this purpose exist and how they are applied.

Source: GRECO 2012b.

### 3.5 Conclusions

The development and implementation of sophisticated systems to assess corruption risks and detect or prevent corruption incidents in real time holds great promise for curbing corruption in prosecutions. Well-designed, automated case and document management systems are already being deployed in some developed countries: examples include the increasingly comprehensive control and review systems established in the UK. Such systems, however, require high levels of resources and expertise and are well beyond the reach of most prosecution agencies, especially those in developing countries.

As this chapter shows, attention to corruption risks in the prosecution service is a recent development, and examples of good practices in addressing these risks are limited by and large to experiences in developed countries. But there is still much that less developed countries can take from these efforts.

A basic assessment of corruption risks, followed by appropriate adjustments to policies and processes, can be done with limited resources, with external expert advice if needed. The key factor in the success of such an approach is leadership commitment. Agency leaders need to protect their staff from exposure to corruption opportunities, identify corruption risks in all operations and decision-making processes, and use the results to establish clear policies, guidelines, and performance standards, as well as systems for internal review. They must also take appropriate actions if corruption is detected (Gramckow 2011). Such leadership commitment includes openness to regular audit processes and the willingness to be accountable and transparent by providing information about agency operations and decisions in a manner that does not compromise processes or the rights of persons.

All this points to the prime importance of a system for selection and management of prosecution leadership and staff. In addition to seeking out the best legal minds, the system should place ethics, integrity, character, and “people skills” at the top of the list of qualifications. Investments must be made in training and evaluating all staff, and especially all managers, accordingly.

This is not to downplay the challenges facing prosecution agencies in poorer countries. Prosecutors in developing nations, generally speaking, face higher threats from organized crime and more frequent political interference. The temptation to accept favors and bribes is all the greater when salaries are insufficient. The critical element in any corruption risk reduction program, therefore, is even more important in developing states: a commitment by the service’s leadership to take corruption risks in their agency seriously and to develop and implement measures to reduce if not eliminate these risks. Without such commitment, even the best systems, policies, and processes will have little impact on keeping corruption within the organization at bay.

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## 4. Trials

Victoria Jennett

### 4.1 Basic steps in the resolution or trial of a criminal case

Although the procedures for determining the guilt or innocence of a person charged with a crime vary greatly by country, there are common steps and decisions to be made in a criminal trial and appeal process. Table 2 provides a general overview of the responsibilities of actors at the trial and appellate levels. It is followed, in section 4.2, by an analysis of the forms and risks of corruption that actors face in executing their responsibilities, focusing on points where officials exercise discretion and on the effectiveness of oversight mechanisms. Sections 4.3 and 4.4 review available assessment tools for measuring corruption risks during a criminal trial and appeal and consider whether these tools are appropriate for gauging the corruption risks identified earlier.

**Table 2 Activities, actors, and their responsibilities in a criminal trial and appeal**

Activity	Responsibilities of actors
Notification of trial	Once a prosecutor decides to proceed with charges against an accused person, police or court staff inform the accused of the date and location of the trial.
Court operations and criminal case management	Court managers, administrators, or clerks assist judges with running court operations and with case flow management, overseeing the progress of a case from registration to conclusion. A country's Ministry of Justice may be involved in budget allocation or official appointments.
Court assistance projects	Court assistance provides, for example, legal advice or protection to victims, witnesses, and the accused.
Bail hearing	In many countries, individuals charged with particularly serious crimes remain in custody until their case is resolved. For lesser crimes, a judge or other court officer will decide whether to release the accused or detain him or her until trial. Release may be conditioned on the posting of a money bond, restrictions on movement, the wearing of a location tracking device, a prohibition on contacting victims or witnesses, or other conditions as permitted by law.

Establishing who sits in judgment	A criminal trial requires decisions of two kinds: (a) Did the accused do the acts alleged in the charging document? (b) Do the acts constitute a violation of the law? The responsibility for answering the first question, that is, determining the facts, may be assigned to a jury of lay people, a judge or panel of judges, or a judge assisted by one or more lay assessors who are non-lawyers, often with specialized training. Judges – not juries – typically decide on the application of the law to the facts. In some systems different judges are assigned to different phases of the case. For example, the judge assigned to the preliminary hearing stage to decide whether there is enough evidence to go to trial will be different from the judge assigned to the trial phase (California Judicial Council 1974).
Preliminary proceedings	Most systems provide an opportunity to determine, prior to a full trial, whether there is enough evidence to justify a trial for the defendant. The prosecution presents its case. If there is sufficient evidence to show a crime has been committed, the judge sets a trial date. If there is not, the judge discharges the accused and the case is closed.
Plea negotiations	In many systems, the prosecution and the defense may negotiate a resolution of the case. The defendant may admit guilt in exchange for the prosecution recommending a sentence less than what the defendant could receive if the case were tried. Systems differ in the degree of formality attached to such plea bargains. In some systems plea agreements are closely overseen by the judge; in others the judge has the power to ignore or alter deals made earlier.
The trial or proceeding	The prosecutor and the defense present their evidence, examine witnesses, including expert witnesses, and sum up their cases. Court reporters, most often using recording devices, record the proceedings in order to produce transcripts, and court clerks assist the judge. A jury, a single judge, or a panel of judges, sitting alone or advised by assessors, decides the verdict. The media may be admitted to the court to report on the trial. Families of the accused and of victims may also be present, along with members of the public.
Sentencing	In many systems, the judge alone decides the sentence. In a few systems the jury or lay assessors may have a say. The prosecutor and the defense may make recommendations, which in some systems are binding on the judge.
Appealing the verdict	The defense may appeal a verdict or a sentence to a higher court, and in some systems the prosecution may also appeal. Depending on the system, appeals may or may not be limited to errors of law only. An appeal court judge or judges hear such appeals.

## 4.2 Corruption risks and forms of corruption: Who exercises discretion, and what oversight exists?

Four main forms of corruption can manifest themselves in the criminal trial and appeal process: (a) political interference to influence the outcome of a trial – indeed, more insidiously, the threat of socio-political backlash to court decisions may pressure judges to ‘self-censor’, that is make a decision in compliance with the perceived wishes of elites or criminal gangs to avoid any political opprobrium or retaliation (b) extortion of victims and witnesses, as well as pressure on officials themselves to act corruptly under threat of violence or release of damaging information; (c) nepotism, in which officials enable close contacts or family members to benefit (for example, judges may appoint favored lawyers as defense counsel, or court staff may select firms with which they have personal connections to provide services such as security); and (d) misuse of public funds and resources intended for the

courts, which may result in trials being delayed or collapsing (Transparency International 2007b; UNODC 2004).

The remainder of this section outlines common corruption risks, that is, opportunities for these four forms of corruption to affect the behavior of actors in a trial and appeal process. The focus of the discussion is on points where officials exercise discretion and on the effectiveness or limitations of any oversight mechanisms. Prosecutors are not included in the analysis here as they were discussed in depth in chapter 3.

## 4.2.1 Judges

This section discusses two sets of risks: those pertaining to the behavior and decision making of judges as they exercise their judicial functions during criminal trials and appeals, and those connected to the more general organizational issues of the judiciary.

### 4.2.1.1 Risks during trials and appeals and oversight mechanisms to mitigate the risks

Judges make decisions affecting the life and sometimes the property of the accused before and during the trial. For example, the judge rules on whether the accused will be released on bail or remain in prison until and during the trial, and on whether his or her property will be forfeited to the state upon conviction. The judge may have discretion to appoint a defense lawyer for an unrepresented defendant. The judge may rule on pretrial motions that can terminate the case or make conviction easier as well as rule on questions that arise during trial that can affect the outcome. In some legal systems, the judge may have the sole say in whether the defendant is guilty, and in many systems the judge is the one who determines the sentence upon conviction.

At all these points there is a risk that judges may be corrupted to make decisions favorable to private interests or to engineer delays. Such decisions can range from the obvious, such as issuing a judgment of acquittal, to the more subtle, such as preventing a critical piece of evidence from being considered. Judges might be induced to postpone the trial until the time limits within which proceedings must be brought have expired, or witnesses or victims have moved or otherwise become unavailable.

There are a variety of potential oversight mechanisms for monitoring the appropriateness of a judge's discretionary decisions. For example:

- A “public defender” institution with procedures for appointment of defense lawyers or a legal aid service can limit or make unnecessary a judge's involvement in appointing defense counsel.
- Judges can provide written and reasoned opinions for decisions, which can be appealed to higher courts. As an oversight mechanism, however, appeals can be ineffective when they are subject to lengthy delays or when judges do not have adequate time or resources to write decisions.
- Conflict of interest statements can enable oversight of situations where judges should recuse themselves from cases. Asset declarations, by the judge and sometimes also by her/his family, can provoke questions about the sources of a judge's assets. Such oversight mechanisms are effective only if they are available for review by appropriate decision makers (Hoppe 2014).

More generally, statistics may be collected on, for example, numbers of cases assigned to each judge as well as the time frame in which a judge reaches a decision. “Court user committees” and public surveys can inform judges about public perceptions of their performance and areas in need of reform. Courts can facilitate access to information about criminal trial and appeal processes as well as about cases. Such data and access to information can allow oversight of judicial performance and compel judges to manage their cases and decision making in an appropriate and timely manner (UNODC 2006d).

Some accountability and transparency tools may not, however, be appropriate for the judiciary. Sometimes closed courts are necessary to protect the identity of victims or witnesses or the details of ongoing investigations. Similarly, privacy rights, or in some cases national security arguments, may trump demands for the disclosure of information.

#### 4.2.1.2 Risks in the organizational structures of the judiciary and oversight mechanisms to mitigate the risks

In addition to the discretion judges enjoy in criminal trials and appeals, organizational issues in the judiciary may also pose corruption risks. Appointments and promotions, terms of service and remuneration, assignment of cases, and complaint mechanisms all may be manipulated by political elites to induce judges in criminal trials to perform in the interests of the powerful.

If dominant political forces control the *selection, appointment, and placement* of judges in certain courts, there is a heightened risk that judges can be corrupted to manage and decide cases in the interests of the powerful. Independent judges who refuse to be improperly influenced may be penalized by being placed in remote courts or denied promotions or salary increases.

The existence of a judicial appointments body that includes not only those from judicial, legal, and political circles but also members of civil society can mitigate the risk of judges being appointed by political actors. Lay members can, of course, themselves be corrupted or influenced to appoint certain judges, but many systems that involve lay members in appointments do so on the assumption that they reduce the risk of political interference in the appointments process. Nonetheless, consideration must be given to how lay members are appointed and how representative they are (Bell 2005, 43).

Corruption risks vary depending upon how judges are selected. In countries that follow the civil law tradition, the selection of judges is based on examinations, and candidates may bribe examiners to provide them with a copy of the test in advance or to “pass” them regardless of their score. In common law countries, a judicial services commission or other body often recommends candidates for appointment by the executive, the legislature, or both, and recommendations can be put up for sale.

Laws or regulations should determine the *terms of service and remuneration* for judges. Where the executive has the discretion to terminate or extend a judge’s service, there is the risk that “cooperative” judges will be rewarded while those who do not rule in accordance with the executive’s preferences will be sanctioned. If the judiciary does not manage its own budget, there is a greater risk that political actors can manipulate the actions of judges by withholding salaries or court funds.

A law that details how the court system is funded – including who plans the budget for courts, who determines judicial salaries, who allocates the budget, and who manages the budget – provides a basis for oversight of the *judicial budget process* and judicial remuneration. Parliamentary judicial oversight committees, judicial management authorities such as judicial councils, as well as civil society organizations, the media, and multilateral and bilateral donors can provide further oversight by implementing budget-tracking tools and/or questioning the authorities about failures to follow laws and regulations on judicial budgets and salaries.

The *assignment of cases* to judges should be done transparently. Cases can be assigned randomly, either electronically or manually through some form of lottery or drawing. This helps avoid the risk that judges may request specific cases in which they or their family have an interest or cases where they have been approached about issuing a particular ruling.

There should be a *complaint mechanism* to handle allegations of misconduct against judges. It is true that there is a risk that such mechanisms can be used by powerful elites or aggrieved citizens to harass judges. To mitigate the risk to judges' security, the disciplinary system should precisely define the types of judicial misbehavior that it investigates.

#### 4.2.2 Defense lawyers

Defense lawyers have the duty to present a case on behalf of the accused. National laws and ethics codes prescribe the content of those duties. Lawyers may be bribed or pressured to present a substandard case, compromising their representation of their clients; alternatively, lawyers may seek to improperly influence court officials to favor their clients' interests. In some cases they may seek additional fees from clients ostensibly to bribe court officials but instead keep the money themselves.

Higher courts can provide oversight of defense counsels' conduct through petitions for habeas corpus and other procedures that allow courts to review the adequacy and competence of the counsel's representation. Bar associations can also play a role in checking the behavior and integrity of defense lawyers by enhancing lawyers' ethics through training, providing mechanisms to handle complaints against lawyers, and imposing sanctions on members who act corruptly or unprofessionally.

#### 4.2.3 Court staff

Court staff are particularly at risk of corruption, given their direct interaction with many actors in a criminal trial or appeal. Court staff may act as middlemen, demanding bribes to secure a fair trial and sharing the bribe with a complicit judge. They can solicit or receive bribes to release privileged information or even to give parties information about the trial that they are obliged to provide anyway. Court staff can grant measures in exchange for money or deliberately delay or fail to transmit orders made by the court concerning a criminal trial, for example detention orders or orders to freeze or seize assets (Jennett 2013).

There is the risk that court clerks and other administrative staff may invent or inflate fees for court users. They may accept bribes or may be influenced by powerful interests to misinform court users about court procedures in order to sabotage cases. To counter such risks, court costs and court procedures should be published and readily available so that users know what to expect when they come to court.

In some systems, clerks may make or assist with orders to expedite criminal trials, as well as manage the expedition schedule. To enable oversight of the expedition process, orders should be made public and all parties should be informed. Transparent rules should clarify the clerk's role and the circumstances in which a case may be expedited.

Court staff may be bribed to lose, steal, or tamper with evidence held by the court for criminal trials. A secure evidence room, sealed evidence, and a well-maintained registry with records of who enters and handles evidence can guard against such risks.

Court documents, such as court orders, summonses, subpoenas, and warrants of arrest, must be served on time; otherwise cases risk collapse or delay. To facilitate oversight, the body responsible for serving documents (court or law enforcement agency) should maintain records. Statistics should be kept on the reasons for trial delay or collapse, such as witnesses not being served on time. Many systems have automated court records that collect case information as well as receipt of filings, schedules, and summaries of proceedings and verdicts (World Bank 2002). These can be effective accountability mechanisms provided there are adequate resources, including trained and supervised staff, to maintain them.

As in the case of judges, many corruption risks for court staff are not directly related to their responsibilities during criminal trial and appeal but are connected to organizational structures. These can, nonetheless, affect the outcome of a criminal trial or appeal.

If the Ministry of Justice has a role in the hiring and firing of court staff, this may pose a risk of corruption because political actors can influence the hiring of staff who are susceptible to influence by those in power. The consensus is that the court should have the lead role – or ideally the sole role – in hiring and firing its own staff. Salaries should be adequate: a “living wage” should be paid so that staff can cover costs of living for themselves and their families.

The training of court staff, including ethics training, should be well resourced, adequate, and ongoing so that staff have the skills to handle new legal and procedural developments that affect their work. Independent bodies or the judiciary itself should provide training, rather than the Ministry of Justice, to avoid actual or perceived political influence on court staff.

A complaints mechanism and a disciplinary body for court staff can also act as checks on corrupt or unethical behavior. An ethics code or similar written document can provide clear guidance on what is expected of staff. Applying conflict of interest and asset disclosure policies to those in key court administration positions, similar to the policies governing judges, may also help maintain the integrity of court staff.

Regular audits and freedom of information legislation can provide oversight of the completeness and accuracy of records. Statistical data on the management of cases, surveys on the public perception of court staff, and court user committees can provide oversight of the behavior of court staff.

#### 4.2.4 Juries and lay or legally qualified assessors

Like judges, juries and assessors may be bribed, threatened, or unlawfully influenced to decide cases in the interests of a private party. Oversight of juries and assessors begins with a transparent appointment process based on written protocols. The process of notifying them to report for duty should be monitored to prevent summonses being lost. The lists or bodies from which jury members and assessors are selected should be clearly specified. For example, juries might be drawn from voter registration lists, as in the United States, the United Kingdom, and Japan. Assessors could be nominated by trade unions, public authorities, or companies, as in Germany.

Jury members and assessors should have security arrangements to protect against intimidation and threats. Sequestration of juries is one mechanism sometimes used to protect juries in high-profile criminal cases. Sequestered jurors are isolated without access to news media or the public (including their families) so that they are not exposed to outside opinions or information about the trial – or to threats.

## 4.2.5 Victims, witnesses, and their families

Victims and witnesses may be bribed, intimidated, or improperly influenced to withhold evidence or to change or invent evidence. “Protective measures” are designed to protect victims, witnesses, and their families from intimidation and retaliation (UNGA 1985, Principle 6.d). For example, victims or witnesses should be able to request anonymity (including being concealed during testimony) and nondisclosure of court records. This may require closed sessions or temporary removal of the accused from the courtroom (O’Connor and Rausch 2008). There may also be witness protection programs. The effectiveness of these measures in protecting victims and witnesses must be weighed in each case against the risk of reducing the transparency of court activity.

## 4.3 What tools exist to measure the extent and prevalence of corruption risks in a criminal trial and appeal process?

None of the available tools assesses all the corruption risks associated with the trial and appeal phases of a criminal case. Below is an overview of several assessment tools that measure aspects of corruption risks within the criminal trial and appeal process, with particular focus on tools developed by the United Nations Office on Drugs and Crime (UNODC).

### 4.3.1 UNODC Criminal Justice Assessment Toolkit

The Criminal Justice Assessment Toolkit developed by UNODC consists of a set of detailed questions about different sectors of the criminal justice system. The assessment tool dealing with the courts (UNODC 2006c) includes questions about the risks of corruption and the existence and effectiveness of oversight mechanisms in a criminal trial and appeal process. Implementation of this toolkit requires substantial time and resources. A major strength is that the tool reflects understanding of the differences between and within common law and civil law systems, as well as hybrid systems and traditional or customary law systems. It is therefore appropriate for use in many different countries.

It should be noted, however, that many of the questions included do not relate specifically to corruption risks. Since the toolkit is comprehensive and is not tailored for corruption risk assessment, corruption risk assessors need to exercise judgment in identifying the most relevant portions for their purposes. The toolkit has been applied in part or in its entirety in at least 29 countries, in exercises led by the UNODC as well as other donors.

The toolkit includes references to a large number of other documents, from the United Nations and other sources, laying out standards, guidelines, and norms concerning the responsibilities of official actors and the rights of victims, witnesses, and the accused in the criminal justice system. These references are an invaluable resource for assessing the commitments that countries have made or should make.

### 4.3.2 UNCAC Article 11 Implementation Guide and Evaluative Framework

UNODC has developed an implementation guide and evaluative framework to help states assess their compliance with the United Nations Convention Against Corruption (UNCAC) Article 11, which sets forth measures relating to the judiciary and prosecution services. The document provides two tools. The implementation guide summarizes international standards and best practices and outlines measures states could adopt in order to implement Article 11. The evaluative framework is a set of questions that can be used to highlight gaps and potential risks of corruption. These tools, made available in 2014, are still too new for there to be information available documenting their use in practice.

### 4.3.3 GIZ Judicial Integrity Scan and Bangalore Principles implementation measures

The Judicial Integrity Scan is an assessment tool devised by GIZ that draws on the measures for effective implementation of the Bangalore Principles of Judicial Conduct developed by the Judicial Integrity Group (2002, 2010). The implementation measures enable a state to determine whether it has mechanisms within its judiciary and state structures that fulfill the Bangalore Principles.

Integrity scans are based on desk research and on interviews with stakeholders. Interview questions draw on the implementation measures and focus only on the role of judges and court staff. Although not specifically designed to assess the criminal trial and appeal process, the scans do assess the ability of judges and court staff to cope with a variety of corruption risks. They are relatively inexpensive and do not involve a lengthy process. To date, integrity scans have been carried out in Georgia and Côte d'Ivoire (BMZ 2013).

### 4.3.4 Country-level assessments of judicial integrity and capacity

UNODC has developed an assessment tool for understanding the levels of integrity and the capacity of justice sector institutions. To date, working in collaboration with actors in the countries' justice systems, they or other donor agencies have carried out two assessments in Nigeria, an assessment in two provinces of Indonesia, as well as an assessment in Montenegro and one in Kosovo (UNODC 2006a, 2006b, 2007; DACI 2008; UNDP/UNODC 2014).

The parts of the assessments dealing with the criminal justice system are based on desk research, on criminal laws and analyses of judgments and rulings in a variety of cases, and, most significantly, on questionnaires administered by trained field staff. The questionnaires ask about corruption risks and experiences as well as about perceptions of corruption (see box 3). The substance of the questions is the same from country to country, despite minor differences in wording. Respondents include official court actors (judges, lawyers), court users, defendants awaiting trial, and business people, although not every question is applicable to all actors.

### 4.3.5 Transparency International diagnostic checklist

Transparency International (2007a), working with a group of judges, lawyers, and academics from around the world, has developed a diagnostic checklist for assessing safeguards against judicial corruption. Part of an advocacy toolkit for combating corruption in judicial systems, the checklist provides a snapshot of corruption risks, as well as weaknesses in integrity or oversight systems, in a country's justice sector. The focus is on the system requirements for a clean judiciary and on the responsibilities of actors involved in the judicial system. The checklist is an inexpensive and quickly implemented assessment tool. However, no information about its use in countries where Transparency International has chapters could be found on the organization's website.

**Box 3 Sample questions on corruption in UNODC's Nigeria assessment**

The following were among ten questions asking about perceptions and experience of corruption in the questionnaire administered by UNODC in three Nigerian states:

- Are excessive unofficial payments to judges and the courts the main obstacle to using the courts?
- Are you aware of anyone being asked to pay unofficial money to judges, lawyers, court staff or police?
- Have you or another person on your behalf made any unofficial payment in connection with this case to judges, lawyers, court staff or police?
- On how many occasions have you made such payments?
- Would you attribute any delays you experienced to corruption?

Source: UNODC 2006b.

#### 4.4 Conclusion: Do the assessment tools assess common risks of corruption?

Taken together, the tools outlined above address many of the corruption risks that arise during the trial and appeal of a criminal case, as summarized in table 3. It is important to note that while each tool covers some of the relevant risks, no single tool covers all of them. There are also gaps, that is, areas covered by none of the tools. For example, no tool gives adequate attention to the role of nongovernmental organizations, which may provide court assistance to victims, witnesses, and their families. Another neglected issue is corruption risks associated with the role of the media in investigating and reporting on trials and appeals. Further research is also needed on corruption risks associated with specific activities such as notification of trials and court assistance for court users.

Lessons learned from experiences in implementing these tools include the importance of involving the targets of reform in the assessment. For example, judges should be involved in carrying out an integrity scan to increase the chances that they will feel ownership of the results and of subsequent interventions that may be recommended by the assessment (U4 2014).

In using the available set of tools to assess corruption risks in criminal trials and appeals, the greatest challenge for practitioners is finding the *relevant parts of tools* that assess the risks particular to these processes. Locating these relevant parts is a time-consuming challenge. This implies that a consolidated corruption risk assessment tool specifically designed for the criminal trial and appeal phase would be useful.

**Table 3 Summary of risk assessment tools for trial and appeal phases**

Activity	Stakeholders	Method	Focus (criminal trial and appeal phase)
UNODC Criminal Justice Assessment Toolkit: Access to Justice: The Courts	Official court actors, court users	Research on country, its legal system and laws; questionnaires	Covers many functions of judges, prosecutors, defense lawyers, and court staff during criminal trial and appeal phases. Role of victims and witnesses covered. Does not focus solely on corruption issues.
UNCAC Article 11 Implementation Guide and Evaluative Framework	Governments, official court actors	Questionnaires	Covers judges and prosecutors but not their functions during a criminal trial or appeal.
GIZ Judicial Integrity Scans	Judges, court staff	Research on existing integrity and anti-corruption policies; questionnaires based on Bangalore Principles	Covers judges and prosecutors but not their functions during a criminal trial or appeal.
UNODC country-level assessments	Judges, court staff, court users, defendants awaiting trial, business community, civil society	Research on country's laws; case analyses; questionnaire	Focuses on functions of judges and court staff during criminal trial and appeal, as well as perceptions and experiences of corruption among official actors and court users.
Transparency International Diagnostic Checklist	Judges, judiciary, politicians, judges' associations, prosecutors, lawyers, court users including business entities, media, civil society, donors	Checklist of best practices and standards that should be in place to protect against corruption and promote integrity	Does not focus specifically on functions of actors in criminal trial and appeal phase.

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## 5. Detention and corrections

Gary Hill

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.<sup>1</sup> 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 to 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.<sup>2</sup> 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.

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<sup>1</sup> The word *correction* and *prison* are used interchangeably in this chapter 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.

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

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 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.

## 5.1 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.

## 5.2 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.

### 5.2.1 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.

### 5.2.2 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.

### 5.2.3 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.

## 5.3 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 whistleblowers. 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.<sup>3</sup>

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 4).

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<sup>3</sup> UK Ministry of Justice, Freedom of Information Request 79199, November 2012.

**Box 4 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

## 5.4 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.

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## 6. Conclusion

Sofie A. Schütte and Richard E. Messick

### 6.1 Needed: An integrated analysis of corruption risks in the criminal justice chain

When justice can be bought, it is worthless. Equality before the law should not be for sale to the highest bidder; rather, it is a living principle that is implemented by designated institutions and must be subject to continuous oversight and scrutiny. When those who serve in the justice sector bend the law in exchange for monetary bribes or favors in kind – by losing case files, evidence, or even suspects, delaying proceedings, issuing questionable sentences, or providing prisoners with preferential treatment – public trust in the institutions of justice is eroded. Citizens may then turn to informal justice mechanisms, sometimes run by insurgents or terrorists, vigilantes, or mafia-like structures, to resolve conflicts and secure their rights. Ultimately, the legitimacy of the state is undermined.

As the state's enforcers of justice, those in justice sector institutions are crucial to the effective implementation of anti-corruption legislation and strategies. But when justice sector institutions themselves succumb to corruption, no anti-corruption strategy is likely to be successful. Unfortunately, international indexes such as Transparency International's Global Corruption Barometer and the World Justice Project's Rule of Law Index regularly point to poor public perceptions of the integrity of justice sector institutions. In fact, in many countries the police and judiciary lead the list of those perceived to be corrupt.

Systematic evidence of the extent of corruption, however, is difficult to find. Experience-based surveys may reveal whether respondents have paid a bribe within the last year or so, but they do not tell who solicited the bribe and who benefited from it. Was it the lawyer, the court clerk, the judge? A specific instance of bribery may involve a few low-level clerks supplementing their meager salaries or a wide network of corrupt, highly placed officials.

In addition, such surveys are usually confined to straightforward bribery; they do not assess trading of influence, conflict of interest, nepotism, extortion, and other forms of corruption. These crimes are more difficult to observe. Occasionally a scandal comes to light, allowing a glimpse of these more insidious forms of corruption. While such revelations do not provide a complete picture of the corruption within a jurisdiction and offer no systematic data on changes over time, they may nonetheless point to systemic weaknesses and corruption risks.

The previous chapters focused on mapping the risks for corruption during various stages of the criminal justice chain, based on available studies, cases, and anecdotal evidence, and on the logic of corruption: opportunity plus incentive, constrained by the risk of detection. Since existing research literature, surveys, and assessment tools focus largely on particular institutions within the criminal justice system, this publication is also organized along these lines. Nevertheless, there are commonalities as well as differences among the different institutional settings and groups of actors with respect to the risks they face and the assessment tools that are applicable at each stage.

## 6.1.1 Commonalities in risks and assessment tools

As in other areas of the public sector, appointments and recruitments in criminal justice are particularly vulnerable to undue influence and favoritism. Heightened scrutiny in the selection of judges and prosecutors is required, because once they are selected, guarantees of independence make removal particularly difficult. A peculiarity of the criminal justice system, common to all its phases, is the high degree of discretion given to personnel and the limited external oversight, given the need for security and confidentiality: the walls of prisons that keep prisoners in also keep the public out. The technical language in court proceedings constitutes an additional barrier to public oversight. Formal avenues for complaints are often not clearly defined, and results are not published.

Common tools that can be used to assess the degree of vulnerability of these institutions and processes include surveys of citizens' experiences as well as general institutional evaluations, although they often do not target corruption risks specifically. These are frequently based on reviews of legislation and on qualitative assessments through interviews and focus group discussions with officials of the organization under scrutiny. Assessments that include the perspectives of a range of stakeholders are rare. There are, however, several tools specifically for the courts that involve various stakeholders both within and outside the institution (see table 3 in chapter 4, Trials).

## 6.1.2 Differences in risks and assessment tools

The most important difference between the principal actors discussed in this issue paper has to do with their position in the state's accountability structure. Investigation, prosecution, and corrections commonly fall under the executive branch of government, whereas the judiciary and some prosecution agencies are independent.

Like corrections officers and administrators, the police are under direct control of the government and therefore vulnerable to political interference. There are both vertical and horizontal accountability mechanisms for oversight. Nevertheless, the police force often has a strong *esprit de corps* and in-group culture that makes oversight difficult, including oversight by internal superiors.

The need for prosecutorial and judicial independence limits the existence of formal horizontal accountability mechanisms, although it is most often the lack of independence from outside interference that coincides with systemic corruption in these institutions. The upholding of independence is sometimes abused as an argument against external accountability mechanisms. In addition, these institutions require a high degree of professionalization, recruit from a comparatively small pool of candidates, and use professional terminology that is not readily accessible to everyone.

Whereas the insulation of law enforcement and judicial institutions may be primarily based on culture, knowledge, and formal independence, detention and corrections institutions are literally locked away from the public eye. This makes external assessments and public oversight more difficult to conduct. There is very little systematic research on corruption in prisons. It may be that a bias against prison inmates as criminals has played a role in the low level of interest in this issue shown by researchers, donors and the population at large.

Most assessment tools analyze either the police or the judiciary, most likely because these are the sectors with the greatest public visibility. The police have the most direct and immediate contact with citizens, and the judiciary garners the most media attention. But there is no reason why the techniques used to assess these two sectors could not also be used to assess prosecution services and corrections. Attitudinal surveys on corruption, now almost exclusively applied to police forces, could offer important insights into the values and opinions of personnel in other parts of the system.

### 6.1.3 An appeal for integrated corruption risk assessment tools and accessible reporting

There is very little integrated analysis of corruption in the criminal justice chain as a whole. Several studies of police corruption or judicial corruption exist, but they do not look at the interdependence of the actors. The formal organizations that constitute the system are the natural starting points for analysis. But when it comes to reform efforts and a comprehensive anti-corruption strategy, only a sector-wide lens will allow identification of the linkages and dependencies within the criminal justice chain.

This applies to studies of actual corruption as well as to risk assessments. As donors move away from a focus on single organizations and toward more integrated support to justice sector reform, new and overarching corruption risk assessment tools are needed, including those based on combinations of several smaller tools. One place to start would be the UNODC's Criminal Justice Assessment Toolkit. Among available instruments, this comes closest to an integrated assessment of the entire judicial system and provides useful contextual information. It could be adapted to identify corruption risks at every stage in the chain. Such tools could also be adjusted and applied to the civil justice system.

This issue paper has highlighted the challenge of evaluating existing corruption risk assessments. Methodologies and tools have been developed, but there have been only limited reports on the results of their application. More open, accessible information about the actual use of these tools would help to demonstrate their adequacy or gaps. Methodologies could then be adjusted and studies replicated in additional locations or in the same location to provide data on changes.

## Annex: Guiding questions for the chapter authors

- What are the basic activities and responsibilities under this function, and which actors take part in its execution?
- What are common corruption risks under this function, based on available literature, assessments or surveys, and media coverage? Sub-questions to be considered were: At what points do officials exercise discretion? What oversight is there at these points? At which points is discretion most significant and oversight difficult or lacking? What are common known forms of corruption? In this section the authors could comment on differences in legal systems and scope of discretion of specific actors.
- What are the available assessment tools to measure the extent and prevalence of corruption risks in a specific function? Describe each one briefly, naming the organization who developed the tool, where it has been applied, and its basic workings. Also included can be innovative one-off assessments that have not yet been replicated elsewhere.
- Pick one or two tools, and for each, provide an analysis of its strengths and weaknesses: how thoroughly it covers the specific function and how costly and time-consuming it is to use. Who is involved in the assessment process? Include a brief description of the experience using it. If there are no tools, outline what an assessment tool might look like.
- Write a short summary on whether the existing assessment tools have been able to assess the common risks outlined in the first part. Are there risks that have been neglected by these tools? Should they be adjusted? Have results fed into a reform process? Do new tools need to be developed?

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:  
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This U4 issue paper provides policymakers in developing nations, their citizens, and U4's partners in the donor community with an overview of where corruption is most likely to arise in the investigation, prosecution, trial, and incarceration stages of the criminal justice process. Each chapter focuses on a specific stage, providing a summary of the principal decision makers involved, the tasks they perform, the most common types of corruption risk, the tools available to assess the risks, and, where sufficient experience exists, an evaluation of the usefulness of these assessment tools. While some basic risk management approaches are noted, the emphasis is on analysis and assessment of problems.

Much of what is known about corruption at the different stages of the criminal justice system comes from developed country experiences. In many cases, however, the drivers of corruption are the same across all countries. In using the available set of tools to assess corruption risks in criminal trials and appeals, the greatest challenge for practitioners is finding the relevant parts of general assessment tools that assess the particular corruption risks. The paper concludes with an appeal for integrated corruption risk assessment tools and accessible reporting. Only a sector-wide lens will allow identification of the linkages and dependencies within the criminal justice chain, providing a basis for targeted reform efforts and a comprehensive anti-corruption strategy.