



Around the world, millions of people are locked up in pretrial detention because of corruption. Despite the prohibition of corruption under international law—as enshrined in the UN Convention against Corruption (UNCAC) and other treaties and laws—criminal justice systems are often warped by bribery and other forms of corruption. The pretrial stage (from arrest to trial) of the criminal justice process is particularly vulnerable to corrupt practices, and this corruption hits the poor and disenfranchised hardest.

Corruption flourishes in the pretrial phase because it receives less scrutiny and is subject to more discretion than subsequent stages of the justice process, and often involves the lower paid and most junior actors in the system. Unhindered by scrutiny or accountability, police, prosecutors, and judges are able to arrest, detain, and release individuals based on their ability to pay bribes. Those caught at the nexus of pretrial detention and corruption suffer, and society as a whole also pays a high price.

Corruption, of course, is itself a bad outcome. But when mixed with pretrial detention, it leads to other bad outcomes:

- arbitrary arrests and unnecessary detention,
- increased public health costs,
- wasted resources,
- stunted development, and
- increased poverty.

The justice system’s credibility suffers when the innocent are arrested and even convicted because they cannot pay, and the guilty go free because they can.

A Vicious Cycle

Corruption and excessive pretrial detention are mutually reinforcing: a criminal justice system that overuses pretrial detention is susceptible to corruption, and an environment marked by corruption will likely lead to over-reliance on pretrial

detention. Both corruption and excessive pretrial detention flourish under the same circumstances. The two form a vicious cycle: a dysfunctional justice system leads to corruption, and that corruption further twists the justice system.

Indonesia: Abdul was 22 when he was arrested and detained in 2008 for buying a packet of marijuana. After his arrest, the police informed him that he had no rights. They stripped him and began beating him, offering to stop punching and kicking if he paid them \$1,000. He was held without charge for the next 50 days, during which he was told that for another \$10,000 he could obtain release. Abdul’s mother had to pay the police \$500 to prevent them from inflating the charge against her son. She then had to pay the prosecutors \$2,000 to have them reduce their sentence request. She also had to pay court officials a \$200 appointment fee so that her son could meet with the judge. After this experience, Abdul concluded that the “police, the judges, the courts; they are all the same, it’s all about money...[T]hey are criminals in uniform.”

“The poor need legal aid, not pressure to pay bribes. They need proof that everyone is equal before the law.”

— Council of Europe Commissioner for Human Rights Thomas Hammarberg

Who Pays?

All over the world, poor people are arrested because they cannot pay a bribe to a police officer, denied access to counsel because they cannot bribe a guard or prosecutor, held indefinitely—or found guilty—because they cannot bribe a judge. The ability to put cash in the right hands often makes the difference between freedom and detention.

Pretrial detention centers are populated almost entirely by poor people. Once in custody, pretrial detainees are wholly at the mercy of the detaining authorities. They or their families are often forced to pay for access to services and treatment to which they are entitled under national and international law, including food,

drinking water, medication, or contact with family members. Additionally, they are forced to pay to “prevent” torture or other mistreatment, and demands for bribes are often combined with the threat or actual use of torture.

Conversely, corruption is furthered by those who have power and money, and wield them to avoid arrest, detention, and prosecution for themselves or their family members and friends. They use their influence and/or financial resources to seek a specific outcome and, in many instances, deliberately pervert the course of justice. For example a wealthy individual accused of a crime may pay off the police to drop charges or to arrest someone else.

Who Gets Paid?

A multitude of people are involved in the criminal justice system, ranging from lawmakers and government officials to senior judges and lawyers to low level clerks and junior police officers. At the arrest and investigation stage, police officers are the main actors. During the first appearance before a court and the bail application stage, prosecutors, lawyers, legal officers, and court clerks are added to the mix. Once someone is placed in detention awaiting trial, the prison officers and guards become significant

players, particularly because they provide basic necessities for detainees. Any and all of these actors may demand bribes or yield to political interference. Without greater transparency and accountability in the pretrial phase, the list of potential bribe seekers is nearly unlimited.

Although monetary bribes are most common, corrupt practices also involve other forms of extortion and pressure such as demand for sexual favors or threat of demotion.

Recommendations

- Pretrial detention should be used only when no reasonable alternative can address genuine risks of flight or danger to the community. Reducing the use of pretrial detention will reduce corruption by limiting opportunities and incentives for paying and seeking bribes.
- Access to legal aid should be increased, especially at the earliest stages of the criminal justice process. Defendants with representation are much less likely to be caught at the nexus of pretrial detention and corruption.
- Detained persons should receive basic necessities—nutritious food, clothing, toiletries, and medication—free of charge from the prison authorities.
- States, donors, and NGOs should foster and facilitate documentation of the extent of corruption in criminal justice and oversight of those points in the system found to be most vulnerable to corruption.
- Officials found guilty of engaging in corrupt practices should be punished to the fullest extent of the law.

This summary draws on the briefing paper, “Pretrial Detention and Corruption,” by Keith Henderson (American University) and Nathaniel Heller (Global Integrity).

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Bangladesh: The Rezzak family recorded the number of occasions on which they were forced to pay bribes following their son’s arrest. Over the course of four months (2008-9), the family paid a total of 159,660 Taka (US \$2,262) through a total of 34 corrupt transactions. The most significant proportion of this amount (a total of 75,000 Taka) was to detaining officers, to prevent torture and the fabrication of more charges against their relative. Other significant bribes were to lawyers and legal clerks. The remainder was for items that should have been provided by the state, including access to legal documents and food for the detained family member.

“Disconnected Policing and the Justice Trade in Bangladesh,” *Article 2: Special Edition: Use of Police Powers for Profit*, Vol. 8 (1), March 2009

Kyrgyzstan: in 2006, Mr. A. was driving his taxi at night when he saw an expensive sports car, approach and then accelerate away. Mr. A. then saw a man lying in the middle of the road, so he stopped and called the police. He provided a witness statement, which was corroborated by other witnesses. However, when the autopsy report was released it stated that Mr. A.’s taxi had hit the man. Mr. A. was taken into custody and only after four days was provided with a defense lawyer. Later, the lawyer withdrew from the case. It emerged that the driver of the sports car was a high ranking official, and with the victim’s family demanding justice, Mr. A. became the scapegoat. During his 11 months in pretrial detention, Mr. A. was told repeatedly that he could make the case go away by “paying off” the victim’s family and the judge. Mr. A. refused, and eventually a new lawyer was able to win his release.