EXPORTING CORRUPTION 2022

Assessing enforcement of the OECD Anti-Bribery Convention

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Exporting Corruption 2022: Assessing Enforcement of the OECD Anti-Bribery Convention

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The country experts who contributed to the report are listed on pages 33 and 34. We would also like to thank Ropes & Gray and the International Lawyers Project for their support with the report.

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EXECUTIVE SUMMARY

Bribery of foreign public officials by multinational companies gives them illicit profits, with huge costs and consequences across the globe. Foreign bribery diverts resources, undermines democracy and the rule of law, and distorts markets. The OECD Anti-Bribery Convention requires parties to prohibit and enforce against foreign bribery. This report assesses the enforcement efforts of 47 leading export countries in the period 2018-2021.

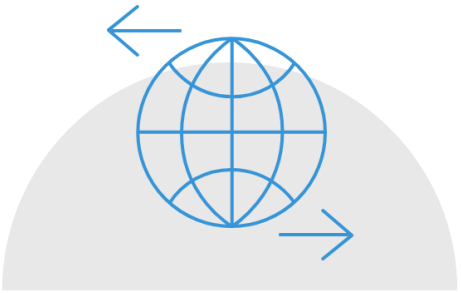
The changing global environment

The period covered by this report has seen an unstable and rapidly changing global economic environment. The COVID-19 pandemic brought major disruptions to economic activity, resulting in a sharp decline in foreign direct investment (FDI) and exports, combined with steep increases in government spending. Global exports and foreign direct investment rebounded in 2021, reaching or exceeding pre-pandemic levels, with US$837 billion in FDI flows going to developing countries and new highs in merchandise trade from major exporters. According to the UN Conference on Trade and Development (UNCTAD), however, the trend is unlikely to continue in 2022 as a consequence of ongoing global challenges.[1] In 2022, the catastrophic invasion of Ukraine, climate-related natural disasters, energy shortages and high inflation have generated geopolitical tensions, additional major increases in state expenditure, and crisis conditions in countries around the world.

IN A NUTSHELL

47

COUNTRIES ANALYSED



84%

OF GLOBAL EXPORTS AFFECTED

The present global environment carries risks of a declining commitment to foreign bribery enforcement. Yet the need for enforcement is stronger than ever to avoid a race to the bottom in the use of bribery in the contest for foreign markets. Foreign bribery has huge costs and consequences for countries and people around the globe. It undermines democracy and human rights, and thwarts achievement of the Sustainable Development Goals. Individually, countries may prefer to turn a blind eye to their companies' efforts to win markets by whatever means possible. However, any short-term illicit profits from foreign bribery are secured at the cost of instability, inequality and a poor environment for international trade and investment – to the detriment of all. This is why it is crucial for exporting countries to enforce collectively agreed prohibitions against foreign bribery.

Negative trend in enforcement

Twenty-five years after the adoption of the OECD Anti-Bribery Convention, most countries still fall far short of their obligations. The current report points to a continued decline in enforcement against foreign bribery in many countries, including some major exporters that were previously active enforcers. While the COVID-19 pandemic has undoubtedly posed a major hindrance to every stage of enforcement from investigation to prosecution,[2] in many countries the downward trend predates the pandemic, and the current picture raises significant concerns.

In almost every country, there are inadequacies in the legal framework and enforcement system that are yet to be addressed. The shortcomings include a wide range of issues from inadequate whistleblower protection to a lack of resources for enforcement authorities and the judiciary.

In most countries, there is a lack of transparency in data and case outcomes, and there are still very few examples of victims' compensation for foreign bribery – although there have been a number of positive developments in that regard.

An advance in international standards

At the international level, there has been some progress in the form of the 2021 OECD Anti-Bribery Recommendation adopted by the OECD Council in November 2021 with the aim of strengthening implementation of the OECD Anti-Bribery Convention.

The new Recommendation enhances and adds to provisions in the 2009 OECD Anti-Bribery Recommendation, which it supersedes, providing new reference norms that are already being used to assess countries on an ad hoc basis, pending approval of the revised Phase 4 questionnaire that will systematically address the provisions of the 2021 Recommendation.[3]

The Recommendation contains new sections on transparency of enforcement outcomes; steps to address the demand side of foreign bribery; enhancement of international cooperation; principles for the use of non-trial resolutions in foreign bribery cases; anti-corruption compliance by companies; and comprehensive protection for whistleblowers.[4]

The Political Declaration of the UN General Assembly Special Session (UNGASS) against Corruption,[5] adopted in June 2021, contains a range of commitments relevant for foreign bribery enforcement and compensation of victims:

+ to criminalise the bribery of foreign public officials and actively enforce these measures by 2030, in support of achievement of the Agenda for Sustainable Development (Political Declaration para 74)
+ to strengthen efforts to confiscate and return assets when using alternative legal mechanisms and non-trial resolutions in corruption proceedings with proceeds of crime for confiscation and return (para 50)
+ to allow the recognition of other states harmed by an offence through judicial orders for compensation or damages (para 46, which restates UNCAC Article 53[b])
+ to use the available tools for asset recovery and asset return, such as conviction-based and non-conviction-based confiscation (para 47)
+ to strive to ensure that the return and disposal of confiscated property is done in a transparent and accountable manner (para 48)
+ to consider using confiscated proceeds of offences to compensate the victims of crime, including through the social reuse of assets for the benefit of communities (para 49).

About this report

Our report, *Exporting Corruption,* is an independent review of the foreign bribery enforcement performance of 47 leading global exporters. This is the 14th edition of the report.

The report assesses foreign bribery enforcement in 43 of the 44 signatories to the OECD Anti-Bribery Convention as well as in China, Hong Kong SAR, India and Singapore.[6] While not parties to the OECD Convention, these four countries and territories[7] are major exporters, each with a share of over 2 per cent of world trade, with China being the world's leading exporter. The four countries are also signatories to the UN Convention against Corruption (UNCAC), which requires countries to criminalise foreign bribery. The analysis of Hong Kong SAR is separate from China, since it is an autonomous region with a different legal system whose export data are compiled separately.

The OECD Convention was adopted in 1997 to address the fact that:

> **"Bribery is a widespread phenomenon in international business transactions … which raises serious moral and political concerns, undermines good governance and distorts international political conditions.**
>
> OECD Convention preamble[8]

Together, the countries covered by the report account for almost 85 per cent of all global exports, with OECD Convention countries accounting for almost two-thirds.

In addition to analysing foreign bribery enforcement activity across 47 countries, the report identifies inadequacies in legal frameworks and enforcement systems – as well as progress in addressing them. The report further shines a spotlight on the critical issue of victims' compensation and identifies areas for improvement with respect to the transparency of foreign bribery enforcement data and case dispositions.

Country classification system

The report includes four enforcement categories: active, moderate, limited, and little or no enforcement.

Countries are scored based on enforcement performance at different stages – i.e., number of investigations commenced, charges filed, and cases concluded with sanctions – over a four-year period (2018-2021). Different weights are assigned according to the stages of enforcement and the significance of cases. Country share of world exports is factored in. Within bands, countries are listed in order of share of world exports.

The report is intended to complement the OECD Working Group on Bribery's (WGB) monitoring of country implementation of the OECD Anti-Bribery Convention in successive phases. The WGB is made up of representatives of the 44 signatories to the OECD Anti-Bribery Convention. Currently, country reviews also cover implementation of the 2021 OECD Anti-Bribery Recommendation, which supersedes the 2009 OECD Anti-Bribery Recommendation that was previously reviewed together with the Convention.

Key findings

1. **Enforcement continues to decline significantly.** Only two of the 47 countries (United States and Switzerland) are now in the category of active enforcement. Together, they represent 11.8 per cent of global exports. This is down from four countries in 2020, representing 16.5 per cent of global exports, and seven countries in the 2018 report, representing 27 per cent of global exports. The United Kingdom and Israel dropped from active to moderate enforcement this year. Overall, deterrence is on the decline, although this may be partly due to the impact of the COVID-19 pandemic during two years of the reporting period. Since 2020, nine countries have dropped in an enforcement level and only two (Latvia and Peru) have moved up a level. Major non-OECD Convention countries remain in the little to no enforcement category – including China, the world's top exporter, and India, which still has no legislation criminalising foreign bribery.
2. **No country is exempt from bribery by its nationals and related money laundering**. The cases in countries that do engage in enforcement reveal that companies, company employees, agents and facilitators involved in

foreign bribery transactions come from almost every country assessed in the report.

3. **Inadequacies remain in legal frameworks and enforcement systems**. Despite some improvements, nearly every country has serious inadequacies in laws and institutions that hamper enforcement results. These include problems related to whistleblower protection, the level of sanctions, a lack of training and resources, the underfunding of key enforcement agencies, poor inter-agency coordination, and – in some countries – the insufficient independence of prosecution services and the courts. The persistence of these problems points to the low priority currently given by national authorities to tackling foreign bribery.
4. **Most countries fail to publish adequate enforcement information.** In most countries, there continues to be a lack of transparency in data and case outcomes. By and large, statistics on foreign bribery enforcement are not publicly available, and not enough information is published on court judgements and non-trial resolutions. Currently, the OECD WGB publishes only very limited country enforcement data (sanctions or acquittals) in its annual enforcement reports, and the data is aggregated over the period since 1999.[9]
5. **Victims' compensation is rare but there are a few positive developments.** In the countries that enforce against foreign bribery, compensation is seldom made to the states, populations, groups, companies or individuals harmed by the bribery. As a general rule, any confiscated proceeds of corruption and disgorged profits in foreign bribery cases go into the treasury of the host states of multinationals. In a few recent cases, however, the payment of compensation has been ordered or is under consideration.
6. **International cooperation is increasing but still faces significant obstacles.** Foreign bribery cases are complex and often require extensive cross-border cooperation among national enforcement agencies. However, there are often challenges in international cooperation. The problems include insufficient or incompatible legal frameworks, limited resources and know-how, a lack of coordination, and long delays. There is also a lack of published statistics on mutual legal assistance requests made and received, which could otherwise be helpful in the analysis of country-level challenges.

Recommendations

The signatories to the OECD Anti-Bribery Convention and the four non-OECD Convention countries surveyed in this report must do more to enforce against foreign bribery. Key measures to improve enforcement include:

1. **Address weaknesses in laws and enforcement systems, and continue to publicly criticise ongoing non-compliance.** OECD Convention signatories and other leading exporting countries should address weaknesses in their legal frameworks and enforcement systems, and give higher priority to enforcement against foreign bribery as well as related money-laundering offences and accounting violations.

+ OECD WGB signatories should hold public meetings to discuss the results of OECD WGB reviews and explain country plans to address recommendations.
+ The OECD WGB should invite government and civil society representatives from the countries most harmed by foreign bribery to meet and discuss how to tackle the problem.
+ The OECD WGB should continue to make public statements, and conduct technical and high-level missions to express its concern as well as offer assistance when country enforcement is weak.
+ The OECD WGB should encourage China, Hong Kong, India and Singapore to enforce against foreign bribery and join the OECD Anti-Bribery Convention. It should also raise their lack of enforcement in forums of the UN Convention against Corruption (UNCAC).

2. **Ensure transparency of enforcement information.** OECD WGB member states should implement the 2021 Anti-Bribery Recommendation transparency provisions regarding court judgements and non-trial resolutions – and go beyond. Published enforcement information should also include up-to-date statistical data covering every stage of the foreign bribery enforcement process, in line with the data required in the OECD WGB Phase 4 review questionnaire.[10] This information is essential for accountability, awareness-raising, public debate and policy-making.

+ Court judgements should be published in full – and at a minimum should include the names of the defendants, the facts, the legal basis, the sanctions and the reasoning. Company names should always be published since companies do not enjoy a right to privacy.

+ Extensive information should also be published about non-trial resolutions, including the terms of the agreement, the reasons for the agreement, a statement of the facts, the persons concerned, and any sanctions and remediation measures.
+ The OECD WGB should carry out a horizontal assessment of the issue across all countries party to the Convention, develop guidance and provide technical assistance to members in this area.

4. **Expand the OECD WGB's annual report on enforcement, and create a public database of foreign bribery investigations and cases.** The OECD WGB's annual foreign bribery enforcement report should contain updated year-on-year data on foreign bribery enforcement, providing greater detail than current reports and covering new developments and challenges. In addition, the OECD WGB should create a publicly accessible database of international corruption cases and statistics drawing on information provided by OECD Convention parties, media reports and other public information.
5. **Introduce victims' compensation as a standard practice.** OECD Convention signatories should ensure that the harm to victims is compensated in foreign bribery proceedings. The OECD WGB and member countries should develop and apply guidelines for granting compensation to victims in those cases. The guidelines should provide for timely notice to the affected parties; confiscation of bribery proceeds for the benefit of victim populations; a range of other methods of compensation; and standing for victims' representatives in certain cases.

+ OECD WGB country reviews should evaluate the status of country arrangements for use of the confiscated proceeds of foreign bribery for the compensation of victims. The planned guidelines to be developed on confiscation of bribes and proceeds of bribery should include guidance on the disposition of confiscated amounts.
+ In making compensation payments, countries should follow global standards on the return of assets, such as the Global Forum on Asset Recovery Principles for Disposition and Return of Confiscated Stolen Assets in Corruption Cases (GFAR Principles).[11]

6. **Closely monitor the use of non-trial resolutions.** The use of non-trial resolutions is often opaque and unaccountable across member countries, to the detriment of public trust in the rule of law. The 2021 Anti-Bribery Recommendation requires countries to provide greater transparency and accountability. The OECD WGB should closely monitor the adequacy of national frameworks and the use of such resolutions across countries applying the new standards set out in the 2021 Recommendation. Monitoring should include assessments of transparency and the adequacy of oversight arrangements.
7. **Support stronger national systems for cross-border cooperation and explore the expansion of international structures.** The OECD WGB should continue to facilitate discussions on potential avenues to improve international cooperation.

+ The OECD WGB should survey its members about which countries fail to cooperate in international enforcement efforts and enter into discussions with those countries to improve cooperation.
+ OECD WGB members should explore increased use of joint investigation teams in foreign bribery cases.
+ The OECD WGB should discuss the possible expansion of the International Anti-Corruption Coordination Centre (IACCC) or the creation of new regional or international structures or bodies. The European Public Prosecutor's Office offers one model to consider. Such structures can enable the pooling of resources and know-how among countries, help to achieve economies of scale, and provide a basis for targeted technical assistance to national agencies.

ENFORCEMENT LEVELS AROUND THE WORLD

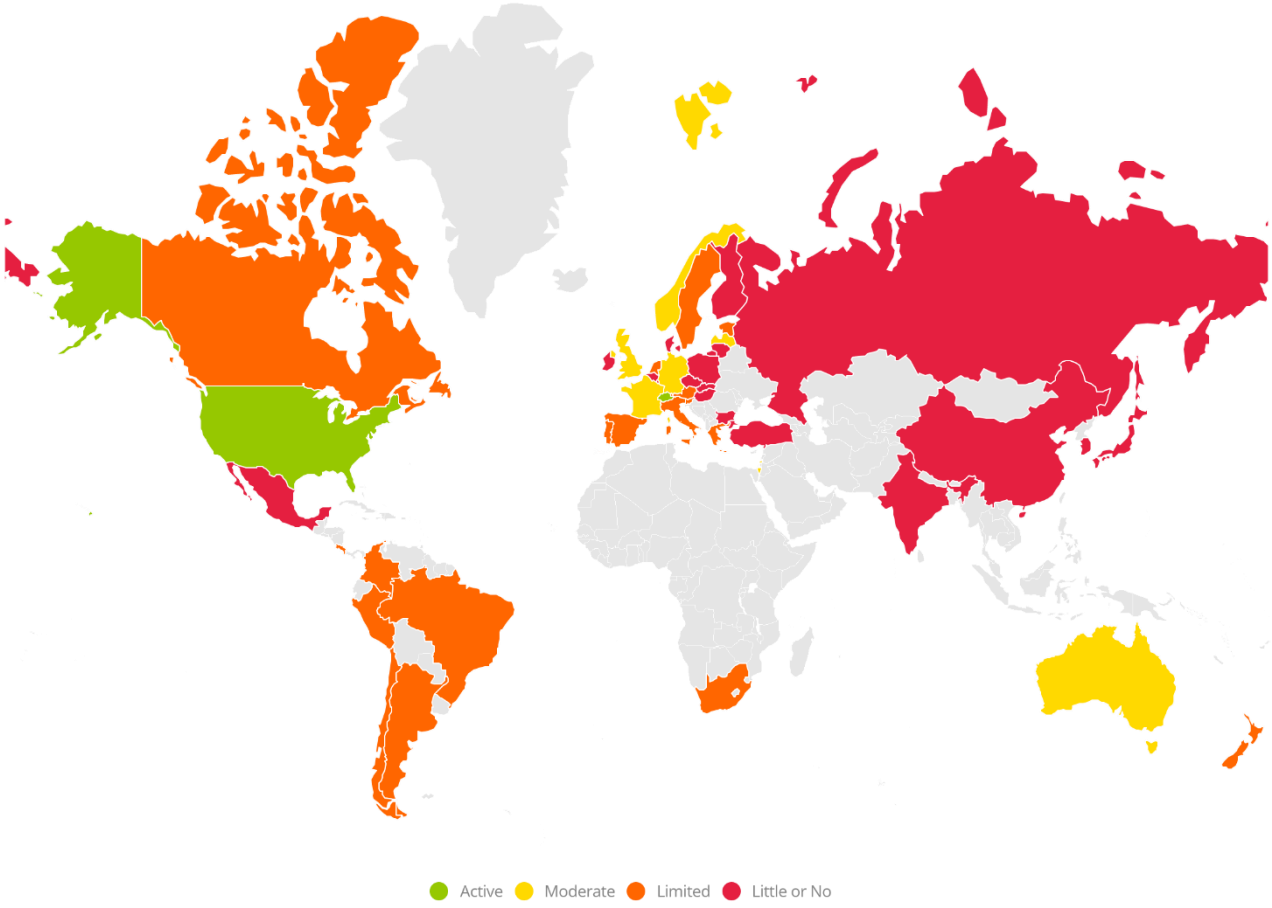


TABLE 1: INVESTIGATIONS AND CASES (2018-2021)

Country	% share of exports Average 2018-2021*	Investigations commenced (weight of 1) 2018	2019	2020	2021	Major cases commenced (weight of 4) 2018	2019	2020	2021	Other cases commenced (weight of 2) 2018	2019	2020	2021
Active enforcement (2 countries) 11.8% global exports													
United States	9.8	18	15	12	3	21	25	8	5	27	29	33	15
Switzerland	2.0	7	4	20	8	0	1	0	0	0	1	0	0
Moderate enforcement (7 countries) 16.9% global exports													
Germany	7.4	6	4	1	5	0	0	0	0	2	4	0	0
France	3.5	8	9	2	0	3	0	1	1	2	1	9	3
United Kingdom	3.4	8	2	4	5	0	1	1	1	1	1	4	1
Australia	1.4	3	3	1	1	1	0	2	2	1	0	1	0
Norway	0.6	1	0	1	1	0	0	0	0	0	0	0	0
Israel	0.5	2	1	1	0	0	0	0	0	0	0	0	0
Latvia**	0.1	1	2	3	2	0	0	1	0	0	0	0	0
Limited enforcement (18 countries) 15.5% global exports													
Netherlands	3.1	4	4	2	1	1	0	0	0	1	0	0	0
Canada	2.2	1	2	0	0	0	2	0	0	0	0	1	0
Italy	2.5	1	2	5	5	0	1	0	0	2	1	0	0
Spain	1.9	4	3	0	0	0	3	1	0	0	0	0	0
Brazil	1.1	1	3	1	0	0	0	0	1	0	0	0	0
Austria	1.0	1	1	1	0	0	1	0	0	1	0	0	0
Sweden	1.0	2	3	2	3	0	0	0	2	0	0	0	0
Portugal	0.4	0	2	0	0	0	0	0	1	0	0	0	0
South Africa**	0.4	3	3	0	1	0	0	0	0	0	1	0	0
Argentina	0.3	1	1	0	2	0	0	0	0	0	0	0	0
Chile**	0.3	1	1	2	0	0	0	0	0	0	0	0	0
Greece	0.3	0	0	0	1	0	0	0	0	1	0	0	0
Colombia**	0.2	2	0	1	0	0	0	0	0	0	1	0	0
New Zealand	0.2	1	2	0	0	0	0	0	0	0	0	0	0
Peru	0.2	0	0	1	2	0	0	0	0	0	0	0	0
Slovenia	0.2	1	1	0	0	0	0	0	0	0	0	0	0
Costa Rica**	0.1	0	2	2	0	0	0	0	0	0	0	0	0
Estonia**	0.1	0	0	0	0	0	0	0	0	1	0	0	0
Little or No enforcement (20 countries) 39.8% global exports													
China***	11.6	0	0	0	0	0	0	0	0	0	0	0	0
Japan	3.6	0	0	2	0	1	0	0	0	0	0	1	0
South Korea	2.8	0	0	2	2	0	0	0	0	1	0	1	1
Hong Kong***	2.7	0	0	0	0	0	0	0	0	0	0	0	0
Singapore***	2.7	0	0	0	0	0	0	0	0	0	0	0	0
India***	2.3	0	0	0	0	0	0	0	0	0	0	0	0
Mexico	1.9	3	0	0	0	0	0	0	0	0	0	0	0
Russia	1.9	0	1	0	0	0	0	0	0	0	0	0	0
Belgium	1.8	0	0	1	0	1	0	0	0	0	0	0	0
Ireland	2.2	1	0	0	1	0	0	0	0	0	0	0	0
Poland	1.4	1	0	0	0	0	0	0	0	0	0	0	0
Turkey	1.0	0	1	0	0	0	0	0	0	0	0	0	0
Czech Republic	0.8	1	0	0	0	0	0	0	0	1	0	0	0
Denmark	0.8	0	2	4	0	0	0	0	0	0	0	0	0
Luxembourg	0.6	0	0	0	0	0	0	0	0	0	0	0	0
Hungary	0.5	0	0	1	0	0	0	0	0	0	0	0	0
Slovakia	0.4	0	0	0	1	0	0	0	0	0	0	0	0
Finland	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Bulgaria	0.2	0	0	0	0	0	0	0	0	0	0	0	0
Lithuania	0.2	1	0	0	0	0	0	0	0	0	0	0	0

Country	Major cases concluded with substantial sanctions (weight of 10)				Other cases concluded with sanctions (weight of 4)				Total points	Minimum points required for enforcement levels depending on share of world exports		
	2018	2019	2020	2021	2018	2019	2020	2021	Past 4 years	Active	Moderate	Limited
Active enforcement (2 countries) 11.8% global exports												
United States	18	19	8	3	23	32	27	15	**1360**	392	196	98
Switzerland	0	2	0	0	1	3	3	2	**101**	80	40	20
Moderate enforcement (7 countries) 16.9% global exports												
Germany	2	1	0	0	10	12	7	8	**206**	296	148	74
France	2	2	0	0	2	4	1	0	**137**	140	70	35
United Kingdom	0	0	3	1	1	3	1	4	**121**	136	68	34
Australia	0	0	0	0	3	0	1	1	**52**	56	28	14
Norway	0	0	0	1	0	1	0	0	**17**	24	12	6
Israel	1	0	0	0	0	1	0	0	**18**	20	10	5
Latvia**	0	0	0	0	0	0	1	0	**16**	4	2	1
Limited enforcement (18 countries) 15.5% global exports												
Netherlands	1	0	1	0	0	0	0	1	**41**	124	62	31
Canada	1	2	0	0	0	0	0	0	**43**	88	44	22
Italy	0	0	0	0	0	1	0	1	**31**	100	50	25
Spain	0	0	0	0	0	0	0	0	**23**	76	38	19
Brazil	0	0	0	0	2	0	0	0	**17**	44	22	11
Austria	0	0	0	0	0	1	0	0	**13**	40	20	10
Sweden	0	0	0	0	0	0	0	0	**18**	40	20	10
Portugal	0	0	0	0	0	0	0	0	**6**	16	8	4
South Africa**	0	0	0	0	0	0	0	0	**9**	16	8	4
Argentina	0	0	0	0	0	0	0	0	**4**	12	6	3
Chile**	0	0	0	0	1	0	0	0	**8**	12	6	3
Greece	0	0	0	0	0	0	0	0	**3**	12	6	3
Colombia**	0	0	0	0	1	0	0	0	**9**	8	4	2
New Zealand	0	0	0	0	0	0	0	0	**3**	8	4	2
Peru	0	0	0	0	0	0	0	0	**3**	8	4	2
Slovenia	0	0	0	0	0	0	0	0	**2**	8	4	2
Costa Rica**	0	0	0	0	0	0	0	0	**4**	4	2	1
Estonia**	0	0	0	0	1	0	0	0	**6**	4	2	1
Little or No enforcement (20 countries) 39.8% global exports												
China***	0	0	0	0	0	0	0	0	**0**	464	232	116
Japan	0	1	0	0	0	0	1	0	**22**	144	72	36
South Korea	0	0	0	0	1	0	0	0	**14**	112	56	28
Hong Kong***	0	0	1	0	0	1	0	0	**14**	108	54	27
Singapore***	0	0	1	0	1	0	0	0	**14**	108	54	27
India***	0	0	0	0	0	0	0	0	**0**	92	46	23
Mexico	0	0	0	0	0	0	0	0	**3**	76	38	19
Russia	0	0	0	0	0	0	0	0	**1**	76	38	19
Belgium	0	0	0	0	0	0	0	2	**13**	72	36	18
Ireland	0	0	0	0	0	0	0	0	**2**	88	44	22
Poland	0	0	0	0	0	0	0	0	**1**	56	28	14
Turkey	0	0	0	0	0	0	0	0	**1**	40	20	10
Czech Republic	0	0	0	0	0	0	0	0	**3**	32	16	8
Denmark	0	0	0	0	0	0	0	0	**6**	32	16	8
Luxembourg	0	0	0	0	0	0	0	0	**0**	24	12	6
Hungary	0	0	0	0	0	0	0	0	**1**	20	10	5
Slovakia	0	0	0	0	0	0	0	0	**1**	16	8	4
Finland	0	0	0	0	0	0	0	0	**0**	16	8	4
Bulgaria	0	0	0	0	0	0	0	0	**0**	8	4	2
Lithuania	0	0	0	0	0	0	0	0	**1**	8	4	2

* OECD figures
**Without at least one major case concluded with substantial sanctions in the past four years, a country does not qualify as an active enforcer; without at least one major case commenced or concluded with substantial sanctions during the past four years, a country does not qualify as a moderate enforcer
***Non-OECD Convention country

GLOBAL HIGHLIGHTS

Each of the 47 countries covered in the report is classified in one of four enforcement categories: active, moderate, limited, and little or no enforcement. The results this year show a decline in enforcement and continued weaknesses in legal frameworks and enforcement systems.

Many decliners, few improvers

Our study shows a continued downward trend in enforcement that gained momentum in the two years of the COVID-19 pandemic. Assuming a connection with the pandemic, enforcement should rise again in 2022 or 2023, although this remains to be seen.

Only two of the 47 countries surveyed are now classified as actively enforcing against foreign bribery. Only six countries moderately enforce against companies that pay bribes abroad.

Most of the assessed countries have only limited or little to no enforcement against foreign bribery. Together, this group accounts for 55.5 per cent of all global exports, with OECD Convention countries accounting for almost two-thirds.

Active enforcement has significantly decreased since the 2020 report, with the **United States** and **Switzerland** now the only two countries in this category. Together, they account for 11.8 per cent of global exports. This compares to four active enforcers in 2020 (accounting for 16.5 per cent of global exports) and seven active enforcers in 2018 (accounting for 27 per cent of global exports).

ENFORCEMENT LEVELS

ACTIVE ENFORCEMENT

2 COUNTRIES

11.8% OF GLOBAL EXPORTS

United States, Switzerland

MODERATE ENFORCEMENT

7 COUNTRIES

16.9% OF GLOBAL EXPORTS

Germany, France, United Kingdom, Australia, Norway, Israel, Latvia

LIMITED ENFORCEMENT

18 COUNTRIES

15.5% OF GLOBAL EXPORTS

Netherlands, Canada, Italy, Spain, Brazil, Austria, Sweden, Portugal, South Africa, Argentina, Chile, Greece, Colombia, New Zealand, Peru, Slovenia, Costa Rica, Estonia

LITTLE OR NO ENFORCEMENT

20 COUNTRIES

39.8% OF GLOBAL EXPORTS

China, Japan, South Korea, Hong Kong, Singapore, India, Mexico, Russia, Belgium, Ireland, Poland, Turkey, Czech Republic, Denmark, Luxembourg, Hungary, Slovakia, Finland, Bulgaria, Lithuania

Even in the US, the world's strongest performer, there was a sharp decline in enforcement in 2021. A recent study found that the Foreign Corrupt Practices Act (FCPA) enforcement penalties peaked in 2020 at US$7.13 billion and dropped to US$461 million in 2021.[12] Preliminary data suggests that US enforcement is on the upswing again in 2022, but remains below pre-pandemic levels.[13]

Moderate enforcement is also down from nine countries in 2020 (representing 20.2 per cent of global exports) to seven countries in 2022 (accounting for 16.9 per cent of exports).

The **United Kingdom** – a major exporter and enforcer representing 3.4 per cent of global exports – moved down, together with **Israel**, from active enforcement in the 2020 report to moderate enforcement this year.

Five countries accounting for 5.9 per cent of global exports dropped from moderate to limited enforcement: **Italy** continued its decline, slipping from moderate enforcement; **Spain** reversed its previous advance to moderate enforcement in 2020; **Brazil**, **Sweden** and **Portugal** also dropped into the limited category.

Lastly, **Greece** and **Lithuania** declined in enforcement in 2022, falling to the lowest category of little or no enforcement.

Only two countries have improved their level of enforcement since our 2020 report: **Latvia**, which moved up from limited to moderate enforcement, and **Peru**, which rose to limited enforcement from the bottom rung of little or no enforcement.

Effect of the COVID-19 pandemic

In all likelihood, the COVID-19 pandemic had a significant impact on enforcement performance and company compliance. According to commentators, the pandemic posed a major hindrance to every stage of enforcement from investigation to prosecution.[14] Company self-reporting dwindled or faced delays because of obstacles to company internal investigations. Some enforcement agencies indicated that COVID-19 negatively affected their ability to investigate and prosecute white-collar crime because of the curtailment of in-person investigations and interviews, travel restrictions and quarantine conditions.[15] These constraints led to a dramatic reduction in the investigation of offshore misconduct.[16] According to one commentator, there is no question that the pandemic delayed larger investigations.[17]

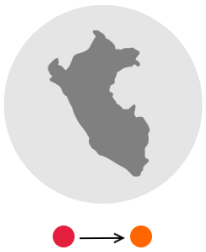
At the same time, company corruption risks appear to have grown, with compliance professionals reporting that pandemic working conditions made it difficult for them to effectively conduct due diligence, compliance and training.[18] Commentators also argue that disruption to supply chains increased the risk of bribery and corruption, as critical items became scarce.[19] In practice, enforcement agencies reported a sharp rise in white-collar crime in 2020 and 2021.[20]

IMPROVERS AND DECLINERS

2 COUNTRIES IMPROVED

LATVIA

PERU



9 COUNTRIES DECLINED

UNITED KINGDOM

ISRAEL

ITALY

BRAZIL

SPAIN

SWEDEN

PORTUGAL

DENMARK

LITHUANIA

TRANSPARENCY OF ENFORCEMENT INFORMATION

The 2021 Anti-Bribery Recommendation standards on the transparency of enforcement information have yet to be implemented. There remain major challenges to accessing enforcement information, as successive *Exporting Corruption* reports have highlighted.

Transparency of enforcement information is a critical part of the accountability of enforcement and justice institutions to the public, as well as to other states with which they have made joint international commitments on criminalisation and enforcement. Transparency is essential for trust in the justice system and also for victims to have access to information relevant for recourse.

This section considers new transparency standards in the OECD Anti-Bribery Convention and reviews the status of access to enforcement information in the countries covered in this report.

Public access to information is part of accountability

The compilation and publication of statistics on enforcement at every stage of criminal proceedings is essential to enable assessment of the performance of justice institutions, and has a special importance for corruption cases. The information should include statistics not only on investigations, charges filed and cases concluded, but also on sanctions and assets confiscated as well as mutual legal assistance requests made and received.

In country reviews, the OECD WGB has called on member countries to compile various categories of foreign bribery enforcement statistics at the national level. Such information should be regularly published.

OECD Convention parties are required to provide such data as part of the periodic OECD WGB country reviews. The OECD WGB also publishes an annual report with some enforcement data provided by its member countries.

In an oft-cited dictum in a 1924 case, the Lord Chief Justice of England wrote:

> **"It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. … Nothing is to be done which creates even a suspicion of improper interference with the course of justice."**
>
> Lord Chief Justice of England[21]

Similarly, public information about judgements and non-trial resolutions is crucial. The OECD WGB itself has stated that "expedient access to court judgements is necessary to ensure that sanctions for foreign bribery are effective, proportionate and

dissuasive as required by the Convention", and added that their publication is also necessary for raising awareness of the risks of foreign bribery and of measures to manage those risks.[22]

New OECD transparency requirements

The OECD's 2021 Anti-Bribery Recommendation codifies a minimum level of transparency for court judgements and non-trial resolutions. According to the Recommendation, OECD Convention parties must make public important elements of resolved cases, "including the main facts, the natural or legal persons sanctioned, the approved sanctions and the basis for applying the sanctions."[23]

The Recommendation reiterates this language in its section on non-trial resolutions, adding a requirement to publish the relevant considerations for having resolved a case with a non-trial resolution and the rationale for any sanctions imposed or internal remediation measures required.[24]

While these standards are relatively low, if implemented, they will provide more access to information on case dispositions than is currently available in many countries.

Accessing enforcement information remains difficult

Once again, this year it was difficult to obtain foreign bribery enforcement data and case information in most countries covered in the report – although the enforcement authorities and ministries of justice in many countries did strive to provide information on request. In some countries, it was necessary and possible to obtain enforcement information through the use of access to information requests; in others, information could be accessed from recent OECD WGB country review reports; and in some, a key source was media reports.

While all the countries surveyed in the report publish crime statistics, most still do not publish data on foreign bribery enforcement specifically. In many, foreign bribery is subsumed under bribery or even broader categories in their crime statistics or it is not included because their enforcement numbers are zero.

With regard to cases commenced through the filing of charges, in most countries access to information about the charges depends entirely on an announcement by the enforcement authority, media coverage or company public reporting. This is even more the case with regard to the negotiation of non-trial resolutions, which is generally cloaked in secrecy.

Even for concluded cases, gaining access to judgements and non-trial resolutions in foreign bribery cases is difficult in countries surveyed in the report. In most, only some courts are required to publish judgements – often only appeals courts – and in practice it can be very difficult to search specifically for foreign bribery cases.

Access to information about non-trial resolutions is even more difficult, although in a few countries they are published in full or via summaries. The OECD WGB has criticised a number of countries for the lack of transparency of their non-trial resolutions.[25]

Emerging good practices

In the **Czech Republic,** an amendment to the Act on Courts and Judges, that entered into force in July 2022, introduced an obligation for lower courts to publish their decisions – adding to the existing obligation for higher courts. District, regional and high courts are all now obliged to publish anonymised final judgements in a public database run by the Ministry of Justice. The publication of decisions issued by courts and bodies of the public administration in the Czech Republic is based on a constitutional right to access to information.

In **France**, gradual progress is now being made toward the comprehensive publication of court decisions. Currently, only 3 per cent of the three million court decisions handed down each year are accessible to the public.[26] To address the situation, the French government adopted the Law for a Digital Republic in 2016 in order to enable the public to consult all court decisions online by December 2025.

The first **Canadian** non-trial resolution – a remediation agreement – was concluded in 2022 and the court promptly published its own judgement approving it, together with the full text of the agreement.[27]

VICTIMS' COMPENSATION

Victims' compensation remains rare in foreign bribery cases. Since the *Exporting Corruption 2020* report, however, there have been a few positive new developments at international and national levels.

Foreign bribery often causes serious harm. The harm may be diffuse, indirect and widely shared as a result of the diversion or misallocation of state funds and the negative impact on state institutions.[28] States may suffer significant financial loss through bribery in government contracting due to paying higher prices, obtaining lower quality goods and services, or making unnecessary purchases.[29] States may also lose vital revenues from corruptly obtained business authorisations, licences or permits, or from bribery to secure favourable tax or customs treatment.[30] Illicitly obtained contracts, permits and licences may also cause loss of health, livelihood or housing, or result in damage to the environment. Companies that lose out in a corrupt procurement process may suffer direct financial losses, while consumers may experience indirect harm such as higher utility or telecoms prices.

These different types of harm – direct and indirect, specific and diffuse – should all be considered in compensation decisions in foreign bribery criminal proceedings, and a range of claimants should have rights and standing.

Victims' compensation has been rare in foreign bribery cases, with only a few small awards going to states in cases in the United Kingdom and the United States, for example. However, there are some signs that countries are slowly inching towards greater recognition of victims in foreign bribery cases.

International standards – more guidance needed

International standards laid down in the UN Convention against Corruption (UNCAC) and the Council of Europe Civil Law Convention on Corruption call for states to provide access to remedy to persons who have suffered damage as a result of acts of corruption.[31] This includes ensuring that the views of victims are considered in criminal proceedings and enabling those who have suffered damage from corruption to take legal action in pursuit of compensation.[32] UNCAC also requires each state party to ensure that its courts can award compensation or damages to a state party harmed by UNCAC offences, and calls for states parties to give "priority consideration" to returning confiscated proceeds of corruption to a State that requests it or its legitimate owners or to "compensating the victims of the crime" (Article 57 (3)(c).[33]

The UN Guiding Principles for Business and Human Rights have a pillar on victims' access to remedy, including compensation and restitution, which has application in relation to the negative human rights impacts of foreign bribery. In addition, the UN General Assembly's Declaration of Basic Principles for Victims of Crime and Abuse of Power provides some guidance on access to justice and fair treatment, restitution, compensation, and assistance to victims of abuse of power.[34]

However, there is no detailed international guidance on compensation of victims in foreign bribery cases.

During the OECD WGB discussions that led to the adoption of the new OECD Anti-Bribery Recommendation in 2021, some member states and NGOs argued for the inclusion of language on victims' rights and victims' compensation. Unfortunately, this was blocked by some WGB members.

Nevertheless, the 2021 Recommendation does include new language on confiscation that is relevant for compensation, since the confiscated proceeds of corruption can be used for the compensation of victims. It calls for OECD Convention parties to be "proactive in making full use of measures for the identification, freezing, seizure and confiscation of bribes and the proceeds of bribery of foreign public officials or property of equivalent value".[35] It also calls for them to consider developing, publishing and disseminating guidelines on the subject for law enforcement authorities.

The new text should be read together with the Commentary to the OECD Convention which clarifies that the proceeds of bribery are "the profits or other benefits derived by the briber from the transaction or other improper advantage from the bribery", and that the term "confiscation" means the permanent deprivation of property and is "without prejudice to the rights of victims".[36]

The Recommendation text should also be considered together with UNCAC Article 57(3)(c), mentioned above, regarding priority consideration to the return of confiscated property in international corruption cases. Additionally, Article 57(3)(b) calls for a state to return of confiscated proceeds when it recognises damage to the requested state party.

The 2021 Political Declaration of the UNGASS against Corruption adds a commitment by UN member states that "[w]hen employing alternative legal mechanisms and non-trial resolutions, including settlements, in corruption proceedings that have proceeds of crime for confiscation and return, we will strengthen our efforts to confiscate and return such assets in accordance with the [UNCAC]."

With respect to the use of confiscated proceeds of corruption, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism encourages the use of confiscated property to pay compensation to the victims of crime.[37] The European Union Directive 2014/42/EU requires that if, "[a]s a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure … Member States must ensure that confiscation measures do not prevent such victims from seeking compensation for their claims." In addition, it says that "Member States should consider taking measures allowing confiscated property to be used for public interest or social purposes".[38]

National frameworks for victims' compensation vary

The vast majority of countries covered in this report has some form of victims' rights framework, including the possibility for victims of crime to seek compensation – whether in civil or criminal proceedings, or both.[39]

However, in foreign bribery criminal proceedings, countries differ as to whether victims' compensation is available and, if so, in their procedures and conditions for making awards.

Availability of victims' compensation

In some countries, general rules on victims' compensation rights are not considered to apply in criminal proceedings against bribery. The legal interest protected by the criminal law in those cases is viewed as a public interest. This interest may be variously identified in different countries as the integrity of public office, the administration of justice, the public treasury and the free market, rather than any individually owned interests. This restriction may, however, allow for compensation of a foreign state and even – as in **the Netherlands** – a business harmed by a competitor's foreign bribery.

Many other countries allow compensation of victims in foreign bribery criminal proceedings, usually under general compensation frameworks.

The **United Kingdom** has general sentencing guidelines for corporate offenders that require the courts to consider a compensation order in foreign bribery cases, as well as general principles to compensate victims outside the UK that can be applied to the benefit of foreign victims.[40]

In the **United States**, compensation is possible under general victims' rights statutes. However, the doctrine of *in pari delicto* (in equal fault) may in some cases be an obstacle to compensation awards to states (and state agencies), where it is considered an accomplice – for example, due to corruption of senior officials. This was essentially the position taken by a US court with respect to a claim by the Costa Rican state-owned company ICE in a foreign

bribery case against Alcatel in 2011.[41] The concept of *in pari delicto* was explicitly cited by a US court when dismissing a civil suit for damages by Iraq against companies involved in the Oil-for-Food scandal.[42]

In such cases, special measures should be available, such as allowing non-state public interest representatives to bring a claim on behalf of a victim population.[43]

In many civil law countries – including **Belgium, France, Italy, Luxembourg, Spain** and **Switzerland** – compensation of foreign bribery victims is possible when those victims initiate or join a criminal case claiming civil party status. This status may be recognised for natural or legal persons, including states and relevant NGOs.[44]

In **Italy**, for example, Nigeria was granted civil party status in a major foreign bribery case against Eni and Shell concerning the purchase of rights to an oilfield and submitted a sizable compensation claim.[45] The two companies were acquitted.[46]

In a case in **Belgium**, a group of NGOs and individual Congolese claimants were granted civil party status in 2020 in a long-running foreign bribery investigation by Belgian prosecutors of Semlex – a passport printing company operating in several countries, including DRC.[47] The NGOs based their standing on an amendment to the Belgian Judicial Code allowing NGOs to file complaints in human rights cases.[48]

In **France**, anti-corruption associations can be granted civil party status and sue for damages in corruption-related cases.[49]

Other examples are provided in subsequent sections.

Types of harm recognised

Some of the countries that allow for victims' compensation in foreign bribery criminal proceedings require that they show a direct injury that is particular and concrete. Others take a broader view.

Under **United States** federal law, a crime victim is a person "directly and proximately harmed as a result of the commission of an offence for which restitution may be ordered".[50] In foreign bribery non-trial resolutions, prosecutors have construed the law narrowly and the few cases of awards in the US have been made to foreign states based on easily measurable harm. However, the Och-Ziff case – discussed below in the section on non-trial resolutions – has opened the door to a more expansive approach.

In **France**, both "moral" and material harm can be claimed by civil parties in criminal proceedings.[51] Moral damages are also allowed in other countries, but no such claims have been tested thus far in foreign bribery proceedings.

Under a provision in **Costa Rica**'s criminal procedure code, the public prosecutor is authorised to bring a civil action for social damage within the criminal process in the case of punishable acts that affect collective or diffuse interests.[52] This provision was applied in a domestic bribery case involving a foreign company.[53]

In other countries, there are definitions of crime victim that are worth considering – even if they may not apply in foreign bribery proceedings. These definitions point to broader notions of harm to victims, including consequential harm and harm to collective or diffuse interest.

For example, in **Peru**, a crime victim is defined broadly as anyone who is directly harmed by a crime or "affected by its consequences".[54] Moreover, Peruvian law provides that in the case of crimes that affect collective or diffuse interests – where an indeterminate number of people are injured or in case of international crimes – an association may exercise the rights and powers of the persons directly harmed by the crime, provided that the association's purpose is directly linked to those interests and was registered prior to the commission of the offence.[55]

Brazilian law allows for recovery of material and moral damages to collective rights and public property, including the harm caused by corruption, through civil class action lawsuits.[56]

Proposal for remediation in foreign bribery cases

One author has proposed a three-part framework for remediation in foreign bribery cases:[57]

+ compensation, a loss-based remedy applicable to identifiable victims who have suffered ascertainable loss
+ reparations, which respond to the widespread and diffuse harms suffered by populaces en masse
+ restitution, a gain-based form of remediation that strips ill-gotten gains from corrupt actors and awards them to victims.

It is also worth noting that in **Spain**, in criminal proceedings, a popular prosecutor or *acusador popular* can invoke the right to reparation in matters of public interest without the need to show direct, personal harm – but this is limited to Spanish citizens. Foreign citizens may only initiate cases as *acusador particular* or directly affected party or victim.

In several common law jurisdictions, it is possible for any person – legal or natural – to bring a private prosecution and seek compensation in that proceeding. In the **United Kingdom**, for example, under the Prosecution of Offences Act 1985, any person or company can do this.

Victims' procedural rights

Justice for crime victims depends on respect for certain procedural rights, which are extensively enumerated in some countries.

Slovakia's Code of Criminal Procedure, for example, has provisions on notification of victims about the progress of the case from the complaints stage onwards and requires the consent of a victim to a plea agreement.

In civil law countries, civil party status confers a wide range of rights. In **France**, for example, this status gives a victim the opportunity for active involvement during an investigation and trial. This includes access to documents during the instruction phase, the right to be heard during court proceedings and the right to appeal. In **Belgium**, civil parties' rights include the specific right to be heard concerning a conditional release of the accused.

The crime victim in **Estonia** also has extensive rights, including the right to file a civil action for compensation through an investigative body or the prosecutor's office; to obtain access to the criminal file; to give or refuse consent to settlement proceedings; and to present an opinion concerning the charges, the punishment and the damage set out in the charges and the civil action.

In the **United States**, the Crime Victims' Rights Act gives victims the rights to notice of court proceedings and plea bargains or DPAs, to be heard, and to full and timely restitution.[58]

Many possible paths to compensation

Compensation in foreign bribery proceedings may be made using several frameworks. This includes frameworks for non-trial resolutions, confiscation of the proceeds of foreign bribery, voluntary compensation arrangements, and penalty surcharges allocated to victims' funds. In case of compensation to states or non-state representatives of a class of victims, it is important to ensure transparent and accountable transfer of the funds.

Increase compensation in non-trial resolutions

Non-trial resolutions generally offer a flexible way of compensating victims, and many countries can use them for that purpose – although few do so.

In **Italy**, the law provides that, in foreign bribery cases, the conditional suspension of sentence is subject to the payment of an amount determined by way of reparations.[59]

Pursuant to the **French** 2016 law on judicial public interest agreements (CJIPs), a type of non-trial resolution, companies may be required to pay a public interest fine and to compensate victims.[60] However, to date, only a French state-owned company has asked for compensation following a CJIP, alleging that its subsidiaries' corrupt conduct caused it direct harm.[61] No victims were identified nor was compensation awarded in the Airbus CJIP in 2020, that imposed a public interest fine of approximately €2 billion – including disgorgement of profits of about €1 billion – in relation to allegations of bribery in several countries.[62]

Canada's more recent Remediation Agreement framework emphasises victims' compensation as part of the resolution process and specifies that foreign victims are eligible.[63] A victims' surcharge is also a possibility in foreign bribery cases. Despite this promising framework, in its first remediation agreement concluded in 2022 between SNC-Lavalin and Quebec prosecutors, only a small amount of compensation – roughly the amount of the alleged bribe – was awarded to a victim state-owned company. A victims' surcharge was also levied.[64] In approving the settlement, the court stated a significant restriction, namely that the compensation award had been contingent on the victim reaching an agreement with the defendant about the amount of the loss. The court reasoned that the criminal courts should not put themselves in the place of the civil courts.[65]

However, the French and Canadian frameworks are relatively new and remain to be further tested.

Canadian remediation agreements: Provisions on victims

The Canadian remediation agreement regime puts particular emphasis on victims' involvement in the process.[66] It requires:

+ an indication of any reparations, including restitution
+ a victim surcharge of 30 per cent of the penalty in domestic cases, with some exceptions. It is not required in foreign bribery cases[67]
+ a duty to inform victims or a statement of reasons for not doing so: the prosecutor must take reasonable steps to inform any victim, or any third party that is acting on a victim's behalf, that a remediation agreement may be entered into
+ the court has a duty to consider any victim or community impact statement provided
+ a third party may act on a victim's behalf when authorised to do so by the court, if the victim requests it or the prosecutor deems it appropriate.

The regime explicitly states that a victim can include a person outside Canada.

In the **United States**, where there had only been a few small compensation awards to states, there was a breakthrough in 2020 in a landmark federal district court decision on a compensation claim under the Mandatory Victims Restitution Act, in which the court went beyond the existing approach of US prosecutors to determining eligible victims and proximate harm. This potentially opens the door to future successful victims' claims. The court sentenced the African subsidiary (Och-Ziff Africa) of hedge fund Och-Ziff to pay US$135 million in damages to the former shareholders of Africo Resources Ltd – a Canadian mining company. Prior to the sentencing, the shareholders had filed a compensation claim alleging that Africo lost mining rights in southern DRC as a result of the hedge fund's bribery scheme and that they had suffered harm.[68] In 2016, Och-Ziff Africa had pleaded guilty to conspiracy to violate the FCPA and Och-Ziff had agreed to pay a total of US$412 million in penalties to resolve FCPA charges relating to allegations of bribery in the DRC.[69] The Africo compensation claim was opposed by both Och-Ziff and the US DoJ.[70]

In another recent development, in July 2021, compensation was included for the second time in a deferred prosecution agreement (DPA) in the **United Kingdom**. The DPA was reached between the UK Serious Fraud Office (SFO) and Amec Foster Wheeler. The company agreed to pay £210,610 (US$289,530) to Nigeria as compensation for the specific and quantifiable loss to the people of Nigeria through evasion of taxes by the company through bribes paid to Nigerian officials.[71] The allegations related to the use of corrupt agents in multiple countries, and the total UK DPA financial penalty of about US$141 million was part of a global settlement with the UK, US and Brazilian authorities.[72] The SFO stated that the compensation amount was to be transferred by the UK government and placed in Nigerian funds to support three key infrastructure projects that benefit the people of Nigeria.

Use confiscated proceeds of foreign bribery for compensation

The OECD's 2021 Anti-Bribery Recommendation encourages proactive confiscation of proceeds of corruption and these amounts can be used to compensate victims. It stands to reason that disgorged profits should be treated in the same way.

Other international frameworks also encourage the use of confiscated crime proceeds for compensation, and it is common for the **European Union** jurisdictions to use confiscation mechanisms as a means to provide restitution to the victims of crime generally. Priority is often given to victims over the general treasury or any special confiscation fund.[73]

In civil law countries like **Belgium** and **France**, allocation of confiscated assets for compensation can take place as part of the *partie civile* procedure.

In **Italy**, in case of conviction or plea bargain for the crime of foreign bribery, there is a specific provision for confiscation to be ordered of the assets constituting the profit or an amount corresponding to the profit. This may be used towards compensation.

France's landmark 2021 law on the restitution of ill-gotten gains in international corruption cases – whether proceeds of bribery or embezzled public funds – establishes a new model that makes an explicit link to foreign victims. [74] The law provides that, once confiscated by the French justice system, international corruption proceeds will no longer be

placed in the French general budget. They will instead be returned "as close as possible to the population of the foreign State concerned" (where the economic offences were committed) to finance "cooperation and development actions".[75] However, this law does not apply in the case of CJIPs.

One tested way confiscated funds have been used to remedy harm to communities is through the social reuse of funds or community restitution. This is an approach used selectively in relation to drugs and organised crime offences in countries like **Italy**, the **United Kingdom** and the **United States**. Such a model could be used in large-scale foreign bribery cases where the harm caused is diffuse and widespread.

Despite existing frameworks, confiscated proceeds of foreign bribery are not known to have been used to compensate foreign victims or companies harmed.

Consider voluntary compensation with safeguards

In some countries, an offender can benefit from preferential treatment if they voluntarily or separately compensate victims. This is another potential avenue to victims' compensation in foreign bribery cases.

Sentencing guidelines in the **United States** allow for taking into account whether the accused has made restitution or reparation to the victim. In other countries – such as **Czech Republic**, **Germany**, **Mexico** and **Spain** – any mitigation of damages by the offender may be considered a mitigating circumstance in relation to criminal liability.[76] This approach has been used in **Switzerland**, including in one case where the charges were dropped against a company in exchange for its payment of a sum to the International Red Cross for use in affected countries.[77]

In a 2021 global settlement with Credit Suisse in relation to allegations of bribery in Mozambique, the US, UK and Switzerland took into account the bank's forgiveness of some of Mozambique's debt in determining the bank's penalties.[78] However, this failed to consider that the entire debt was corruptly incurred and should have been cancelled, and that the consequential harm caused went beyond the amount of the debt. (See box.)

Voluntary mitigation approaches require procedural safeguards, including an opportunity for victims to be heard.

Credit Suisse debt forgiveness for Mozambique

In 2021, a coordinated global settlement was reached with the Credit Suisse Group by the US Department of Justice (DoJ) and SEC, the UK Financial Conduct Authority and the Swiss Financial Market Supervisory Authority. Alongside the settlement, Credit Suisse forgave debt owed by Mozambique in the amount of US$200 million.

The infamous "tuna bonds" case involved US$2 billion in bank loans and bond issues from Credit Suisse and the Russian bank VTB to Mozambican state-owned entities.[79] The loans and bonds were said to be for government-sponsored investment schemes, including maritime security and a state tuna fishery.[80] However, the arrangement was kept hidden and there were no associated services or products of benefit to the Mozambican people.[81]

At least US$200 million was allegedly misappropriated for bribes and kickbacks to the scheme's participants.[82] The consequential harm done to the people of Mozambique has been estimated at US$11 billion.[83]

Apply crime victims' surcharges and create funds

The crime victims' fund is another model used in some countries to provide compensation and assistance to victims. Although most examples are limited to domestic victims of crimes other than corruption, it is a model that could be used in foreign bribery cases.

In the **United States**, there is a fund financed by fines and penalties paid by federal offenders, where victims can apply for support and assistance, but it does not cover victims of bribery, whether domestic or foreign. In **South Africa**, money derived from confiscation orders may under some circumstances be allocated to a fund supporting victims.[84]

In **Canada,** a federal victim surcharge of 30 per cent of the fine is levied in many criminal cases and is possible in foreign bribery cases. To date, the victim surcharge helps to fund programmes, services and assistance to victims of crime within the Canadian provinces and territories – but in principle could also be used to assist victims outside Canada.[85]

Likewise, in **Australia**, a victims' levy is provided for in South Australia consisting of 20 per cent of fines

imposed and there is a similar system in Australian Capital Territory.

In **Colombia,** new legislation in 2022 provides for legislation for the creation of a fund for those affected by corruption, to be administered by the Office of the Inspector General.[86] It also explicitly allows for compensation for those affected by corruption, including pecuniary sanctions in criminal cases where the corruption has resulted in harm. While the new legislation is not intended for foreign bribery cases, the reasoning could easily be extended to such cases.

A related approach was taken in 2019 by the **Interamerican Development Bank**'s (IDB) Office of Institutional Integrity in connection with the debarment of CNO S.A. – a subsidiary of the Brazilian company Odebrecht S.A. – following an investigation of alleged bribery in two IDB-financed projects. As part of the sanctions, Odebrecht committed to making a total contribution of US$50 million, starting in 2024, directly to NGOs and charities that administer social projects whose purpose is to improve the quality of life of vulnerable communities in the IDB's developing member countries.[87]

Make arrangements for transfer of compensation

Where compensation is made, especially large awards, arrangements for transfer of the amounts should draw on the Global Forum on Asset Recovery Principles for Disposition and Transfer of Stolen Assets in Corruption Cases.[88] This outlines a range of principles to follow in such transfers, including transparency, accountability, civil society participation and that "[w]here possible, and without prejudice to identified victims, stolen assets recovered from corrupt officials should benefit the people of the nations harmed by the underlying corrupt conduct". This should apply equally to the proceeds of foreign bribery recovered from companies. Civil society groups have elaborated on these principles.[89]

By way of an example, in 2020, **Switzerland** concluded a Memorandum of Understanding with Uzbekistan to return US$130 million seized in criminal proceedings against Gulnara Karimova – daughter of the former president, who was alleged to have received bribes paid by telecommunications companies to facilitate their entry into the Uzbek market. The funds are earmarked for use "for the benefit of the people of Uzbekistan" and their restitution is subject to transparency requirements and the creation of a monitoring mechanism.[90] A Restitution Agreement was signed in August 2022.[91]

While the case does not concern proceeds of corruption from the supply side of foreign bribery, it does offer a model for such cases. However, although Switzerland makes use of confiscatory measures in the sentences of natural and legal persons found guilty of foreign bribery, it has not ordered any restitution in relation to the amounts confiscated to date.

In **France**, activists and NGOs have criticised the lack of adequate measures for the transfer of a damages award to Uzbekistan. Uzbekistan was granted civil party status in a case against Gulnara Karimova, who was accused of having laundered proceeds of corruption in the French real estate sector. French justice awarded Uzbekistan damages of €60 million, currently being recovered through the sale of three real estate properties confiscated from the convicted defendant.[92] The activists and NGOs have criticised the lack of transparency in the compensation process and the absence of information on the planned use of the recovered funds.[93]

TRENDS IN LEGAL FRAMEWORKS AND ENFORCEMENT SYSTEMS

Many countries still have key weaknesses in their legal frameworks and enforcement systems. But there have also been some improvements.

The section below describes some key aspects of country legal frameworks and enforcement systems where there continue to be weaknesses and where, in some cases, there have been improvements. The last part of the section discusses recent increases in enforcement against banks.

Foreign bribery offence, jurisdiction, limitation periods

Numerous countries have weaknesses in their legal frameworks for foreign bribery enforcement. In several of the OECD Convention countries, for instance, there are inadequacies in the definition of the offence, including in **Bulgaria, Costa Rica, Czech Republic, Greece, India, Latvia, New Zealand, Peru, Portugal** and **Slovenia**. As to non-OECD Conventions countries, in **India**, there is no legislation criminalising foreign bribery, while in **China**, **Hong Kong** and **Singapore** there are deficiencies in the definition of the offence.

Also, some countries have jurisdictional limitations that hamper enforcement – including in **France, Israel, Japan, New Zealand, Norway, Slovenia, Sweden, China** and **Singapore**. In Sweden, for example, the dual criminality requirement presents an obstacle.

In a number of countries – including **Estonia, Germany**, **Greece** and **South Korea** – inadequate statutes of limitations create barriers to enforcement. In Estonia, the limitations period is not suspended. In **France**, a 2021 law limited the duration of preliminary investigations for corruption-related offences to five years.

In **Norway**, the Norwegian Penal Code was amended in 2020 to remove the requirement of double criminality and expand the reach of Norwegian anti-corruption provisions on corruption offences committed abroad.

Beneficial ownership transparency

Neither the OECD Anti-Bribery Convention nor the Anti-Bribery Recommendation requires mechanisms for beneficial ownership transparency. While UNCAC does contain general language on the transparency of company ownership, it is now increasingly widely accepted that public registers of beneficial ownership are critical for detecting and enforcing against foreign bribery and other forms of international corruption.

In almost half of the surveyed countries, a key enforcement problem identified was the lack of public registers of beneficial ownership information of companies and trusts or inadequacies in existing registers. The countries include **Argentina, Australia, Chile, Finland, Hungary, Ireland, Italy, Israel, Lithuania, Mexico, New Zealand, Norway, Peru, Poland, Russia, Slovenia, South Korea, Spain, Switzerland, the UK Overseas Territories and Crown Dependencies**, **the United States** as well as **China** and **Hong Kong**.

In a few countries – including **Canada**, **the Czech Republic, Hungary, Luxembourg** and **the Netherlands** – there were improvements in the area of beneficial ownership transparency. In **Russia**, the level of corporate transparency has decreased.

Independence and resourcing of prosecution services and judiciary

Insufficient independence or funding of enforcement agencies can undermine foreign bribery enforcement. Both problems exist in a number of countries, including **France, Mexico, Latvia, Peru, Poland, South Africa, Russia, South Korea** and **Turkey**.

In some countries such as **Argentina, Austria, Brazil, Czech Republic** and **Hungary**, the main problem consists in the lack of full independence of prosecutors, with serious, targeted political interference reported in Brazil. In **Greece**, the OECD WGB called for stronger safeguards to protect foreign bribery proceedings from being subject to improper influence by concerns of a political nature.

In other countries such as **Belgium, Canada, Denmark, Finland, Luxembourg, Portugal**, **Spain**, **Sweden** and **the United Kingdom**, the key weakness is underfunding of enforcement bodies.

France, **Portugal** and the **United Kingdom**, among others, also face insufficient resourcing of their court systems, while **Italy** has a huge backlog in its courts. In 2021, a survey of judges in **Estonia** revealed their perceptions of potential detrimental effects on the quality of justice arising from excessive workloads.[94] In **Finland**, the police and the judiciary are chronically understaffed and justice system processes are therefore very slow.

In other countries such as **Hungary** and **Poland**, there are serious challenges to the judiciary's independence. There are also restrictions on the independence of the judiciary in **Argentina**.

In **Austria** and **Czech Republic**, improvements to the independence of the prosecutor's office are pending. , while in **Slovenia** they have been initiated.

Liability and sanctions for legal persons

The OECD Anti-Bribery Convention and UNCAC call for the liability of companies – but not for their criminal liability, which Transparency International has long argued is the most effective deterrent. The lack of criminal liability is identified as a deficiency in numerous countries covered in this report, in addition to other shortcomings.

Weaknesses in the legal frameworks covering the liability of legal persons were found in the following OECD Convention parties: **Argentina, Australia, Austria, Bulgaria, Chile (sanctions), Costa Rica (subsidiaries), Finland, Germany, Greece, Israel, Japan, Latvia, Lithuania, Luxembourg, Norway, Peru, Poland, Portugal, Russia, Slovenia, South Africa, South Korea, Sweden, Spain, Switzerland, Turkey**. There are also inadequacies in company liability in **Hong Kong** and **India**.

In Greece and Japan, there are inadequate sanctions for both natural and legal persons. In **Mexico**, the problem is that state-owned enterprises are exempt from corporate liability.

In **Colombia** and **Peru**, legislation was passed in 2022 strengthening the liability of corporations for corruption offences.

Whistleblower protection

Whistleblowers are crucial for the detection of foreign bribery and other crimes, and their effective protection must be part of any enforcement framework. The 2021 Anti-Bribery Recommendation contains an extensive section on this subject.

Lack of adequate whistleblower protection was reported as a key weakness in numerous countries, including **Argentina, Australia, Austria, Bulgaria, Canada, Chile, Costa Rica, Czech Republic, Estonia, Finland, Germany, Italy, Lithuania, Luxembourg, Mexico, the Netherlands, Peru, Poland, Russia, Slovenia, South Africa, South Korea, Spain, Switzerland, Turkey, the United States** and **Singapore**. In **Russia**, there is no legislation at all on the subject, while protection in Switzerland is completely inadequate.

In a few countries, there have been improvements in the area – notably in EU countries such as **Denmark**, **France**, **Portugal** and **Sweden** that have implemented the EU Whistleblower Protection Directive. In **Estonia** and **Lithuania**, legislation was introduced that improves existing whistleblower protection, while in the **Czech Republic**, **Germany**, **Luxembourg** and **Spain** legislation to bring the legal framework in line with the EU Directive is pending.

Non-trial resolutions/settlements

Non-trial resolutions are increasingly available and used in OECD Convention countries for foreign bribery cases. The 2021 Anti-Bribery Recommendation contains a section on this subject, establishing minimum standards for these resolutions.

Weaknesses in provisions for settlements or the lack of a framework were found in several countries, including **Bulgaria, Canada, Chile, France, Germany, Greece, Luxembourg, the Netherlands, Norway, Peru, Slovenia, South Africa, Spain, Switzerland, the United Kingdom** and **China**. In Norway, for example, there is inadequate information about the application of penalty notices and the use of mitigating factors. In Switzerland, there is insufficient transparency and predictability in the use of summary penalty orders and accelerated proceedings; no framework providing incentives for self-reporting by companies; and no guidance on adequate corporate preventive measures.

Enforcement against banks and insurance brokers

A notable development over the past few years is the increase in enforcement against financial institutions. In some cases, this is because of their direct involvement in foreign bribery and, in others, for their role in facilitating foreign bribery. However, despite numerous reports of how banks have enabled multinational companies to export corruption abroad, enforcement against banks facilitating foreign bribery and other financial crimes is still rather uncommon.

France's first CJIP for foreign bribery was concluded with **Société Générale** in 2018, as part of a coordinated resolution with US authorities. It related to the bank's alleged bribery to induce the Libyan Investment Authority (LIA) to enter into derivatives trades that harmed Libya financially. Prior to concluding the CJIP, Société Générale had entered into a separate agreement with LIA in 2017 to terminate a related civil lawsuit by paying LIA €963 million. As a result, the French authorities determined that the CJIP with Société Générale did not need to include any compensation measures. [95]

In two separate cases involving **Goldman Sachs** and **Credit Suisse**, the banks were accused of bribery in connection with massive corruption in Malaysia and Mozambique, respectively, and reached settlements with enforcement authorities.[96] In the Goldman Sachs case, the bank was accused of paying US$1.6 billion in bribes to secure business with 1Malaysia Development Bhd. (1MDB), a Malaysian state-owned development fund. (See the case study in the next section.) The charges against Credit Suisse and some of its employees – described in the previous section on victims' compensation – related to the bank's alleged role in the financing of a multi-million dollar loan for a tuna fishing project in Mozambique, which involved kickbacks and the diversion of funds.

In 2021, **Deutsche Bank** reached a settlement with the United States DoJ to resolve an investigation into alleged violations of the FCPA and an alleged commodities fraud scheme. According to the FCPA allegations, Deutsche Bank conspired to conceal payments to business development consultants that were actually bribes to obtain lucrative business for the bank in China, Italy, Saudi Arabia and UAE.[97]

In other cases, banks and other entities have been sanctioned for failure to prevent money laundering, sometimes with evidence of laundering of bribes to foreign public officials. For instance, the largest Norwegian bank **DNB** was fined almost US$50 million by the Norwegian Financial Authority in 2021 for "serious breaches" in the bank's compliance with anti-money laundering legislation.[98] The authority had conducted investigations, including into the bank's handling of transactions of selected companies linked to the Icelandic fishing company Samherji.[99] Samherji was alleged by investigative journalists to have bribed the Namibian government to gain access to fishing grounds.[100] The Financial Authority concluded that the offences it uncovered in connection with the Samherji case "mainly relate to matters that are time-barred or occurred under the former Anti-Money Laundering Act, in which there was no legal basis for imposing administrative sanctions."[101]

In the UK, the Financial Conduct Authority (FCA) fined insurance broker **JLT Specialty Limited** (JLTSL) almost £8 million (US$9.7 million) in 2022 for financial control failings which gave rise to an unacceptable risk of bribery and corruption. In its Final Notice, the FCA cited bribery in Colombia and credited the broker with the over US$29 million disgorgement of profit in the US from alleged corruptly obtained contracts in Ecuador, agreed in a declination letter concluded with the US DoJ.[102]

In the Netherlands, **ABN AMRO** reached a €480 million (US$575 million) settlement in 2021 with the Netherlands Public Prosecution Service to resolve money laundering charges. The agreed statement of

facts included the observation that "two Dutch companies suspected of being involved in one of the biggest international corruption cases held bank accounts at ABN AMRO. Payments worth tens of millions of euros were transferred through the accounts of these two clients between 2010 and 2017".[103]

This was preceded by a €775 million settlement with reached by Dutch prosecutors with **ING Groep NV** in 2018, also with findings that bribe payments were laundered through the bank.[104] The settlement was upheld on appeal in 2020, with the court also ordering a criminal investigation of the former ING CEO, now CEO of UBS.[105]

In July 2022, a collective of three civil society organisations – Public Eye, the Platform to Protect Whistleblowers in Africa (PPLAAF) and the association UNIS – filed a criminal complaint with the Swiss federal public prosecutor's office about possible laundering of Congolese public funds by the Zurich and Geneva branches of the Swiss bank **UBS**' in two banking transactions totalling US$19 million. Of the amount in question, the civil society groups allege that US$7 million was connected to bribes paid by Chinese companies to Congolese leaders in relation to a mining contract and that the remaining funds were embezzled during the years of Joseph Kabila's presidency.[106]

In cases without a specific foreign bribery nexus, the FCA imposed a record fine £37.8 million on **Commerzbank London** in 2020 for failing to institute adequate anti-money laundering controls from 2012 to 2017.[107] Several banks, including Commerzbank, have also paid large fines in the US in the past for failure to have adequate anti-money laundering systems and the French authorities fined **BNP Paribas** for the second time in 2021 for anti-money laundering violations, this time by its insurance arm.[108]

CASE STUDY: GOLDMAN SACHS

The charges and admissions

In October 2020, Goldman Sachs and its Malaysian subsidiary admitted to conspiring to violate the **United States** Foreign Corrupt Practices Act (FCPA) in connection with a scheme to pay over US$1.6 billion dollars in bribes to high-ranking government officials in Malaysia and Abu Dhabi.[109]

According to Goldman Sachs's admissions and court documents, the bribes were paid to influence the decisions of the Malaysian state-owned development fund 1MDB as well as Abu Dhabi's sovereign wealth fund, International Petroleum Investment Co (IPIC) and a unit of the fund, Aabar Investments PJS, in order obtain lucrative business.[110]

In its press release about the settlement, the US DoJ said the business obtained by Goldman Sachs included a role as an advisor on the acquisition of Malaysian energy assets, as an underwriter for approximately US$6.5 billion in three bond deals for 1MDB and a potential role in an even more lucrative initial public offering for 1MDB's energy assets.[111]

According to the DoJ, Goldman Sachs participated in this "sweeping international corruption scheme" for a period of five years, between 2009 and 2014, and earned US$600 million for its work with 1MDB.[112]

Malaysian and US authorities say that US$4.5 billion – including some of the money Goldman helped raise – was embezzled from 1MDB in an elaborate scheme that spanned the globe and implicated high-level officials of the fund, Prime Minister Najib Razak, Malaysian businesspeople and others.[113]

Goldman Sachs admitted that, in order to effectuate the scheme, former Asia partner Tim Leissner, head of investment banking in Malaysia Roger Ng, another former executive and others conspired with Malaysian businessman Low Taek Jho (also known as Jho Low) to promise and pay over US$1.6 billion in bribes to officials in the Malaysian government, 1MDB, IPIC and Aabar.[114] According to the DoJ, the co-conspirators paid these bribes using more than US$2.7 billion in funds that Low, Leissner and other parties to the conspiracy diverted and misappropriated from the bond offerings underwritten by Goldman Sachs.[115] Leissner, Ng and Low also allegedly retained a portion of the misappropriated funds for themselves and other co-conspirators.[116]

Settlements and other enforcement

Goldman Sachs has been investigated by at least 14 regulators for its role in the 1MDB scandal.[117]

In October 2020, Goldman Sachs and its Malaysian subsidiary reached a global settlement agreement with criminal and civil authorities in the **United States**, the **United Kingdom** and **Singapore**. They admitted to participating in a scheme and agreed to pay US$2.3 billion in penalties[118] and US$606 million in disgorgement.[119] The Malaysian subsidiary pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA.

Of the total amount, US$1 billion in penalties and disgorgement was to settle SEC charges, while US$126 million in penalties were to be paid in the UK and US$122 million in penalties in Singapore.[120]

In a separate enforcement action, the **Hong Kong** Securities and Futures Commission issued Goldman

Sachs a fine of US$350 million, which was credited towards the global resolution.[121]

In **Malaysia**, Goldman Sachs agreed in 2020 to a settlement with local prosecutors consisting of US$2.5 billion in fines and penalties together with the bank's guarantee that the government would receive at least US$1.4 billion from money recovered from the scheme. This followed charges brought against two of its subsidiaries. While substantial, the amount is significantly smaller than the initial request from the Malaysian government, which was US$7.5 billion.[122]

The bank and several of its top executives also settled a civil suit brought by its shareholders, agreeing to pay US$79.5 million, which will be spent on compliance measures at the bank.[123] In addition, civil forfeiture actions by the US DoJ's Kleptocracy Asset Recovery Initiative, with cooperation from authorities in Malaysia, Singapore and Luxembourg, have led to the return of US$1.2 billion in misappropriated funds to Malaysia.[124]

Concerning the criminal charges against Goldman Sachs employees, Tim Leissner pleaded guilty in 2018 to conspiring to violate the FCPA by bribing Malaysian and Abu Dhabi officials, circumventing internal accounting controls, and conspiring to launder money.

Approximately US$18.1 million of the total payments to officials was allegedly paid from accounts controlled by Leissner.[125] He was ordered to forfeit US$43.7 million as a result of his crimes, but has yet to be sentenced.[126] He has, however, already been banned for life by the SEC and the Monetary Authority of Singapore. The DoJ also indicted Roger Ng, a managing director at Goldman Sachs, on three counts: bribery, circumventing internal accounting controls and money laundering.[127] He was found guilty in April 2022 after a trial. In 2019, Malaysian prosecutors filed charges against 17 more directors and former directors at three Goldman Sachs subsidiaries, including the chief executive of Goldman Sachs International.[128]

In 2020, Abu Dhabi's International Petroleum Investment Co (IPIC) dropped a lawsuit against Goldman Sachs to recover losses suffered from the bank's dealings with 1MDB.[129] The lawsuit alleged that Goldman Sachs conspired with unidentified people from Malaysia to bribe two former IPIC executives to further their business at its expense.

METHODOLOGY

In *Exporting Corruption*, Transparency International places OECD Convention countries in one of four categories to show their level of enforcement of the Convention in the period 2016-2019 (the previous report covered 2014-2017):

+ **active enforcement**
+ **moderate enforcement**
+ **limited enforcement**
+ **little or no enforcement.**

"Active enforcement" reflects a major deterrent to foreign bribery. "Moderate enforcement" shows encouraging progress, but still insufficient deterrence, while "limited enforcement" indicates some progress, but only a little deterrence. Where there is "little or no enforcement", there is no deterrence.

Transparency International takes two factors into account when categorising the OECD Convention countries by enforcement level:

+ **different enforcement activities and point system weighting**
+ **share of world exports.**

Factor 1: Different enforcement activities and point system weighting

Each country is evaluated based on its enforcement activities in terms of effort and commitment to enforcement, as well as deterrent effect, via investigations, filing charges to commence cases and concluding cases with sanctions. Cases concluded without sanctions are not counted. Commencing or concluding a major case[130] is considered to involve more effort and deterrence. Concluding a major case with substantial sanctions[131] is considered to involve the most effort and deterrence.

The weighted scores for the different degrees of enforcement are as follows:

+ **for commencing investigations – 1 point**
+ **for commencing cases – 2 points**
+ **for commencing major cases – 4 points**
+ **for concluding cases with sanctions – 4 points**
+ **for concluding major cases with substantial sanctions – 10 points.**

The date of commencement of a case is when an indictment or a civil claim is received by the court. Prior to that, it is counted as an investigation.

The point system reflects two factors: 1) the level of effort required by different enforcement actions, and 2) their deterrent effect. Based on expert consultations, it was agreed that concluding a major case with substantial sanctions requires the greatest effort and has the greatest deterrent effect of any enforcement efforts. Likewise, commencing a case requires more effort and has greater deterrent effect than launching an investigation. Therefore, it was agreed to differentiate and give extra points to these different enforcement levels.

For the purposes of this report, foreign bribery cases and investigations include civil and criminal cases and investigations, whether brought under laws dealing with corruption, money laundering, tax

evasion, fraud, or violations of accounting and disclosure requirements. These cases and investigations concern active bribery of foreign public officials, not bribery of domestic officials by foreign companies.

Cases and investigations involving multiple corporate or individual defendants, or multiple charges, are counted as one if they are commenced as a single proceeding. If, during the course of a proceeding, cases against different defendants are separated, they may be counted as separate concluded cases.

Cases brought on behalf of European Union institutions or international organisations are not counted – for example, in Belgium and Luxembourg. These are cases identified and investigated by European Union bodies and referred to domestic authorities.

Factor 2: Share of world exports

The underlying presumption is that the prevalence of foreign bribery is roughly in proportion to export activities and that exporting countries can be compared. Transparency International recognises that the potential for foreign bribery could be affected by factors other than the level of world exports, such as foreign investment, a country's culture of business ethics, and corruption risks in specific industry sectors and economies. As reliable country-by-country information for most of these factors is not currently available, an inclusion of these variables in the weighting scheme was not deemed possible. However, Transparency International will continue to explore opportunities to improve the methodology.

Thresholds for enforcement categories are based on a country's average percentage of world exports over a four-year period, using annual data on the share of world exports provided by the OECD.

Calculation of enforcement category

Each country collects enforcement points through its enforcement actions. The sum of the points is then multiplied by the average of the country's share of world exports during the four-year period in question.

To enter the categories of "active enforcement", "moderate enforcement" or "limited enforcement", a country's result has to reach the predefined threshold of the particular enforcement category ("minimum points required for enforcement levels", indicated below in green). If the result is below the "limited enforcement" threshold, the country is classified in the "little or no enforcement" category.

The thresholds for each per cent share of world exports are as follows: 40 points for the "active enforcement" category, 20 points for the "moderate enforcement" category, and 10 points for the "limited enforcement" category. A country that has a 1 per cent share in world exports but collects less than 10 points through its enforcement activities is placed in the "little or no enforcement" category. The table below gives examples of thresholds of enforcement categories based on share of world exports.

In addition to the necessary point scores, for a country to be classified in the "active enforcement" category, at least one major case with substantial sanctions needs to have been concluded during the past four years. In the "moderate enforcement" category, at least one major case needs to have been commenced in the past four years.

For example, Argentina has a 0.3 per cent share of world exports. This percentage multiplied by 40, by 20 and by 10 renders the following thresholds: 12 points to be in the "active enforcement" category, 6 points for the "moderate enforcement" category, and 3 points for the "limited enforcement" category.

	Share of world exports			
Enforcement categories	**0.5%**	**1%**	**2%**	**4%**
Active enforcement	20	40	80	160
Moderate enforcement	10	20	40	80
Limited enforcement	5	10	20	40
Little or no enforcement	<5	<10	<20	<40

Differences between Transparency International and OECD Working Group on Bribery reports

Transparency International's report differs from the Working Group's report in several key respects. Transparency International's report is broader in scope than the Working Group's report as Transparency International covers investigations, commenced cases and convictions, settlements or other dispositions of cases that have become final and in which sanctions were imposed. However, the Working Group covers only convictions, plea agreements, settlements and sanctions in administrative and civil actions. In addition, Transparency International uses a broader definition of foreign bribery cases, covering cases where foreign bribery is the underlying issue, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud or violations of accounting or disclosure requirements. The Working Group, by contrast, covers only foreign bribery cases. Its report is based on data supplied directly by the government representatives who serve as members of the Working Group, whereas Transparency International uses data supplied to its experts by government representatives, as well as media reports.

Transparency International selects corporate or criminal lawyers who are experts in foreign bribery matters to assist in the preparation of the report. They are primarily local lawyers selected by Transparency International national chapters. The questionnaires are filled in by the experts and reviewed by lawyers in the Transparency International Secretariat. The Secretariat provides the country representatives of the OECD Working Group with an advanced draft of the full report for their comment. The draft is then reviewed again by the experts and the Transparency International Secretariat after the country representatives provide feedback.

To enable comparison between the results in 2020 and the results in this 2022 report, we include here the scoring results from the 2020 report.

TABLE 2: INVESTIGATIONS AND CASES (2016-2019)

Country	% share of exports Average 2016-2019*	Investigations commenced (weight of 1)				Major cases commenced (weight of 4)				Other cases commenced (weight of 2)			
		2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019
Active Enforcement (4 countries) 16.5% global exports													
United States	10.4	9	45	7	11	1	5	5	8	1	1	2	1
United Kingdom	3.6	7	12	9	7	2	1	1	1	1	0	1	0
Switzerland	2.0	14	14	7	4	0	0	0	1	0	1	0	1
Israel	0.5	3	5	2	0	1	0	0	0	0	0	0	0
Moderate Enforcement (9 countries) 20.2% global exports													
Germany	7.6	8	9	6	4	1	1	0	0	3	2	2	5
France	3.5	6	6	6	6	2	1	3	0	0	0	0	1
Italy	2.6	11	10	0	2	1	1	0	1	3	1	1	1
Spain	2.0	2	2	4	3	1	3	0	3	0	1	0	0
Australia	1.3	5	3	3	3	0	0	1	0	0	1	1	0
Brazil	1.1	3	3	9	9	0	0	0	0	0	0	0	0
Sweden	1.1	3	2	2	4	0	2	0	0	0	0	0	0
Norway	0.6	0	1	1	0	0	0	0	0	0	0	0	0
Portugal	0.4	3	0	0	1	0	1	0	0	0	0	0	0
Limited Enforcement (15 countries) 9.6% global exports													
Netherlands	3.1	4	4	4	4	0	0	0	0	1	1	0	0
Canada	2.3	0	0	0	2	0	0	0	0	1	0	0	0
Austria	1.0	0	1	1	0	0	0	0	1	1	1	0	0
Denmark	0.8	4	1	1	4	0	0	0	0	0	0	0	0
South Africa**	0.4	4	4	3	3	0	0	0	0	0	0	0	1
Argentina**	0.3	3	5	2	0	0	0	0	0	0	1	0	0
Chile**	0.3	3	7	1	0	0	0	0	0	0	0	0	0
Greece	0.3	0	1	0	0	0	0	0	0	1	0	0	0
Colombia**	0.2	5	5	5	5	0	0	0	0	0	0	0	0
Lithuania**	0.2	2	0	1	0	0	0	0	0	0	0	0	0
New Zealand**	0.2	4	1	2	0	0	0	0	0	0	0	0	0
Slovenia	0.2	0	0	1	1	0	0	0	0	0	0	0	0
Costa Rica**	0.1	0	0	0	2	0	0	0	0	0	0	0	0
Estonia**	0.1	0	1	0	0	0	0	0	0	0	0	1	0
Latvia**	0.1	3	0	1	2	0	0	0	0	0	0	0	0
Little or No Enforcement (19 countries) 36.5% global exports													
China***	10.7	0	0	0	0	0	0	0	0	0	0	0	0
Japan	3.8	0	0	0	1	0	0	0	0	0	0	1	0
Korea (South)	2.9	0	1	0	0	0	0	0	0	1	0	1	0
Hong Kong***	2.3	0	0	0	0	0	0	0	0	0	0	0	0
India***	2.1	0	0	0	0	0	0	0	0	0	0	0	0
Mexico	2.0	0	0	3	0	0	0	0	0	0	0	0	0
Ireland	1.9	0	0	1	0	0	0	0	0	0	0	0	0
Russia	1.9	0	0	0	1	0	0	0	0	0	0	0	0
Belgium	1.8	1	4	0	0	0	0	0	0	0	0	0	0
Singapore***	1.8	0	1	0	0	0	0	0	0	0	0	0	0
Poland	1.3	1	1	1	0	0	0	0	0	0	0	0	0
Turkey	0.9	0	0	0	1	0	0	0	0	0	0	0	0
Czech Republic	0.8	0	0	1	0	0	0	0	0	0	0	1	0
Luxembourg	0.6	0	0	0	0	0	0	0	0	0	0	0	0
Hungary	0.5	0	0	0	0	0	0	0	0	0	0	0	0
Finland	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Slovakia	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Bulgaria	0.2	0	0	0	0	0	0	0	0	0	0	0	0
Peru	0.2	0	0	0	0	0	0	0	0	0	0	0	0

Country	Major cases concluded with subst. sanctions (weight of 10)				Other cases concluded with sanctions (weight of 4)				Total points	Min. points required depending on % of world exports		
	2016	2017	2018	2019	2016	2017	2018	2019	Past 4 years	Active	Moderate	Limited
Active Enforcement (4 countries) 16.5% global exports												
United States	30	15	22	26	10	8	10	9	**1236**	416	208	104
United Kingdom	3	2	1	2	1	0	0	1	**147**	144	72	36
Switzerland	2	1	0	2	1	2	1	3	**125**	80	40	20
Israel	1	0	1	0	0	0	0	1	**38**	20	10	5
Moderate Enforcement (9 countries) 20.2% global exports												
Germany	1	1	2	1	9	10	10	12	**273**	304	152	76
France	0	0	1	2	0	0	2	4	**104**	140	70	35
Italy	1	0	0	0	1	1	0	1	**69**	104	52	26
Spain	0	0	0	0	0	1	0	0	**45**	80	40	20
Australia	0	0	0	0	0	1	1	1	**34**	52	26	13
Brazil	1	0	0	0	0	0	2	0	**42**	44	22	11
Sweden	0	0	0	0	1	0	0	0	**23**	44	22	11
Norway	0	1	0	0	0	0	0	1	**16**	24	12	6
Portugal	0	0	0	0	0	0	0	0	**8**	16	8	4
Limited Enforcement (15 countries) 9.6% global exports												
Netherlands	1	1	0	0	1	0	0	0	**44**	124	62	31
Canada	0	0	1	2	0	0	0	1	**38**	92	46	23
Austria	0	0	0	0	1	0	0	1	**18**	40	20	10
Denmark	0	0	0	0	0	0	0	0	**10**	32	16	8
South Africa**	0	0	0	0	0	0	0	0	**16**	16	8	4
Argentina**	0	0	0	0	0	0	0	0	**12**	12	6	3
Chile**	0	0	0	0	0	0	1	0	**15**	12	6	3
Greece	0	0	0	0	0	0	0	0	**3**	12	6	3
Colombia**	0	0	0	0	0	0	1	0	**24**	8	4	2
Lithuania**	0	0	0	0	0	0	0	0	**3**	8	4	2
New Zealand**	0	0	0	0	0	0	0	0	**7**	8	4	2
Slovenia	0	0	0	0	0	0	0	0	**2**	8	4	2
Costa Rica**	0	0	0	0	0	0	0	0	**2**	4	2	1
Estonia**	0	0	0	0	0	0	1	0	**7**	4	2	1
Latvia**	0	0	0	0	0	0	0	0	**6**	4	2	1
Little or No Enforcement (19 countries) 36.5% global exports												
China***	0	0	0	0	0	0	0	0	**0**	428	214	107
Japan	0	0	0	0	0	0	0	1	**7**	152	76	38
Korea (South)	0	0	0	0	3	1	1	0	**25**	116	58	29
Hong Kong***	0	0	0	0	0	0	0	0	**0**	92	46	23
India***	0	0	0	0	0	0	0	0	**0**	84	42	21
Mexico	0	0	0	0	0	0	0	0	**3**	80	40	20
Ireland	0	0	0	0	0	0	0	0	**1**	76	38	19
Russia	0	0	0	0	0	0	0	0	**1**	76	38	19
Belgium	0	0	0	0	0	0	0	0	**5**	72	36	18
Singapore***	0	1	0	0	0	0	0	0	**11**	72	36	18
Poland	0	0	0	0	0	0	0	0	**3**	52	26	13
Turkey	0	0	0	0	0	0	0	0	**1**	36	18	9
Czech Republic	0	0	0	0	0	0	0	0	**3**	32	16	8
Luxembourg	0	0	0	0	1	0	0	0	**4**	24	12	6
Hungary	0	0	0	0	0	0	0	0	**0**	20	10	5
Finland	0	0	0	0	0	0	0	0	**0**	16	8	4
Slovakia	0	0	0	0	0	0	0	0	**0**	16	8	4
Bulgaria	0	0	0	0	0	0	0	0	**0**	8	4	2
Peru	0	0	0	0	0	0	0	0	**0**	8	4	2

* OECD figures ; **Without any major case commenced during the past four years, a country does not qualify as a moderate enforcer; without a major case with substantial sanctions being concluded in the past four years, a country does not qualify as an active enforcer; ***Non-OECD Convention country

COUNTRY/REGIONAL EXPERTS

Country/region	National experts
Argentina	Alejandra Bauer, Transparency and Anti-Corruption Coordinator, Poder Ciudadano (Transparency International Argentina)
Australia	Serena Lillywhite, former CEO, Transparency International Australia Alexandra Lamb, Policy and Communications Coordinator, Transparency International Australia
Brazil	Guilherme France, Lawyer
Bulgaria	Ecaterina Camenscic, Lawyer
Canada	Jennifer Quaid, Professor, University of Ottawa James Cohen, Executive Director, Transparency International Canada Amee Sandhu, Lawyer, Lex Integra
Chile	Michel Figueroa Mardones, Research Director, Chile Transparente (Transparency International Chile) David Zavala, Project Coordinator, Chile Transparente (Transparency International Chile)
Colombia	Andres Hernandez, Executive Director, Corporación Transparencia por Colombia (Transparency International Colombia)
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Greece	Antonis Baltas, Lawyer
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Netherlands	Lotte Rooijendijk, Transparency International Netherlands
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Norway	Guro Slettemark, Secretary General, Transparency International Norway
Peru	Samuel Rotta, Executive Director, Proética (Transparency International Peru)
Poland	Maria Kozlowska, Advocat, Wardynski & Partners
Portugal	João Oliveira, Communications Officer, Transparência & Integridade (Transparency International Portugal)
Russia	Grigory Mashanov, Senior Lawyer, Transparency International Russia
South Africa	Nicki Van 't Riet, Head of Legal and Investigations, Corruption Watch (Transparency International South Africa)
Spain	David Martinez, Executive Director, Transparency International Spain
Sweden	Lotta Rydstrom, Transparency International Sweden Klara Edenmo, Transparency International Sweden
Switzerland	Walter Mäder, Member of Advisory Board, Transparency International Switzerland
Turkey	Gizem Sema, Researcher, Transparency International Turkey
United Kingdom	Angus Sargent, Senior Research Analyst, Transparency International UK Steve Goodrich, Head of Research and Investigations, Transparency International UK
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ENDNOTES

[1] UNCTAD, World Investment Report 2022: https://unctad.org/press-material/global-foreign-direct-investment-recovered-pre-pandemic-levels-2021-uncertainty; https://www.oecd.org/trade/morenews/international-trade-statistics-trends-in-fourth-quarter-2021.htm

[2] https://www.crowell.com/files/2020-Fall-Gap-Year-hanusik-zelenko-aviad-schwartz.pdf

[3] The full name is the "Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions complements the Anti-Bribery Convention". See: https://www.oecd.org/corruption/2021-oecd-anti-bribery-recommendation.htm

[4] OECD website: https://www.oecd.org/corruption/2021-oecd-anti-bribery-recommendation.htm

[5] Annex to resolution of the UN General Assembly adopted on 2 June 2021, "Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation" (Political Declaration): https://undocs.org/A/S-32/2/ADD.1

[6] Iceland is not included because of its small share of international trade.

[7] For the sake of convenience, they will all be referred in the report as "countries".

[8] OECD Convention on Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention, 1997), Preamble

[9] https://www.oecd.org/daf/anti-bribery/OECD-Anti-Bribery-Convention-Enforcement-Data-2021.pdf

[10] http://www.oecd.org/daf/anti-bribery/Phase-4-Guide-ENG.pdf, pp. 45 et seq. The questionnaire calls for detailed data on investigations, prosecutions, court proceedings and civil or administrative proceedings and their outcomes.

[11] https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf

[12] https://fcpa.stanford.edu/enforcement-actions.html

[13] https://fcpa.stanford.edu/fcpac-reports/2022-fcpa-q2-report.pdf

[14] https://www.crowell.com/files/2020-Fall-Gap-Year-hanusik-zelenko-aviad-schwartz.pdf

[15] See, for example: https://www.financierworldwide.com/white-collar-crime-in-the-post-covid-19-landscape

[16] https://www.crowell.com/files/2020-Fall-Gap-Year-hanusik-zelenko-aviad-schwartz.pdf

[17] Ibid.

[18] https://abmagazine.accaglobal.com/global/articles/2020/specials/cpd-special-edition-2020/in-business/white-collar-crime-on-the-rise.html

[19] https://abmagazine.accaglobal.com/global/articles/2020/specials/cpd-special-edition-2020/in-business/white-collar-crime-on-the-rise.html; https://www.crowell.com/files/2020-Fall-Gap-Year-hanusik-zelenko-aviad-schwartz.pdf

[20] See, for example: https://www.financierworldwide.com/white-collar-crime-in-the-post-COVID-19-landscape#.YuWv3BxBw2w; https://www.eastnets.com/newsroom/anti-pandemic-financial-crime-how-COVID-19-has-affected-aml-and-cdd

[21] https://www.iclr.co.uk/wp-content/uploads/media/vote/1915-1945/McCarthy_kb1924-1-256.pdf

[22] See, for example, OECD WGB Phase 4 report on Czech Republic (June 2017).

[23] https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378, Sanctions and confiscation XV. (iii)

[24] 2021 Anti-Bribery Recommendation

[25] See, for example, OECD WGB Phase 3 Report on Belgium (2017); Phase 4 Report on Germany (2018); Phase 4 Report on Switzerland (2018).

[26] https://www.lemonde.fr/les-decodeurs/article/2018/06/28/l-ouverture-des-donnees-judiciaires-ouvre-un-marche-ou-s-agitent-de-nouveaux-acteurs_5322679_4355770.html

[27] https://www.canlii.org/fr/qc/qccs/doc/2022/2022qccs1967/2022qccs1967.html

[28]International Council on Human Rights Policy, 2009, Integrating Human Rights in the Anti-Corruption Agenda: https://assets.publishing.service.gov.uk/media/57a08b6540f0b64974000b10/humanrights-corruption.pdf

[29] OECD-StAR, 2012, "Identification and Quantification of the Proceeds of Bribery: A joint OECD-StAR analysis": https://www.oecd.org/corruption/anti-bribery/50057547.pdf

[30] *SERAP v Nigeria*, 2011, http://serap-nigeria.org/ecowas-court-orders-nigeria-to-provide-free-and-compulsory-education-to-everychild.ngo/

[31] UNCAC Articles 32(5) and 35; Council of Europe Civil Law Convention on Corruption: https://www.coe.int/en/web/impact-convention-human-rights/civil-law-convention-on-corruption; the UN Guiding Principles on Business and Human Rights, Pillar III also calls for victims' remedies and is applicable in foreign bribery cases: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

[32] UNCAC Articles 32 and 35

[33] UNCAC Article 53: "Each state party shall in accordance with its domestic law … (b) take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another state party that has been harmed by such offences."

[34] https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse

[35] Recommendation XVI (i) and (ii)

[36] Commentaries adopted by the Negotiating Conference (1997), paras. 21 and 22: https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

[37] https://rm.coe.int/168008371f

[38] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0042&rid=9

[39] https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf

[40] https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/corporate-offenders-fraud-bribery-and-money-laundering/; https://www.cps.gov.uk/sites/default/files/documents/publications/General-Principles-to-compensate-overseas-victims-December-2017.pdf; https://www.sfo.gov.uk/publications/information-victims-witnesses-whistleblowers/compensation-principles-to-victims-outside-the-uk/

[41] https://fcpablog.com/2011/06/18/ice-loses-victim-claim-in-eleventh-circuit/; https://fcpablog.com/2011/05/05/costa-rican-victim-objects-to-alcatel-lucent-settlement/

[42] https://www.reuters.com/article/us-iraq-oil-un-idUSL2969467520080701; https://www.casemine.com/judgement/us/5914f52aadd7b04934989392; https://www.reuters.com/article/iraq-oilforfood-lawsuit-idUSL1N0B69WG20130206

[43] Sometimes even *ultra vires* acts (i.e., beyond the scope of their power) of an official are attributed to the state, under Article 7 of the International Law Commission's 2001 Articles on Responsibility of States for Internationally Wrongful Acts (the "ILC Articles"). However, the Commentary to the ILC Articles states: *Cases where officials acted in their capacity as such, albeit unlawfully or contrary to instructions, must be distinguished from cases where the conduct is so removed from the scope of their official functions that it should be assimilated to that of private individuals, not attributable to the State*. *In the words of the Iran-United States Claims Tribunal, the question is whether the conduct has been "carried out by persons cloaked with governmental* authority."

[44] https://www.service-public.fr/particuliers/vosdroits/F1454

[45] Shell plc and Eni SpA were prosecuted in Italy over allegations of corruption in connection with their acquisition of the OPL 245 oilfield for US$1.3 billion in 2011. Prosecutors had alleged that just under US$1.1 billion of the total amount was siphoned

off to politicians and middlemen. Nigeria's compensation claim was filed after it joined the case as a civil party in 2018, based on its assessment of the true value of the licence purchased by Shell and Eni. See: https://news.bloomberglaw.com/environment-and-energy/nigeria-to-pursue-3-5-billion-civil-claim-against-eni-and-shell; https://www.reuters.com/business/energy/italy-court-confirms-acquittal-eni-shell-nigeria-case-2022-07-19; https://punchng.com/fg-continues-3-5bn-eni-shell-suit-italy-drops-charges/

[46] https://www.reuters.com/business/energy/italy-court-confirms-acquittal-eni-shell-nigeria-case-2022-07-19/

[47] https://www.reuters.com/article/us-congo-passports-belgium-idUSKBN22P2ZB

[48] The lawyers will have to demonstrate that corruption results in – or is in and of itself – a human rights violation.

[49] Cour de cassation, 9 November 2010, no. J 09-88.272 F-D ; Loi n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique

[50] https://www.law.cornell.edu/uscode/text/18/3663 The MVRA does not apply if "the court finds, from facts on the record, that ... (A) the number of identifiable victims is so large as to make restitution impracticable; or (B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process." Id. § 3663A(c)(3). https://www.law.cornell.edu/uscode/text/18/3663A

[51] https://www.service-public.fr/particuliers/vosdroits/F1454

[52] https://www.pgr.go.cr/servicios/procuraduria-de-la-etica-publica-pep/temas-de-interes-pep/dano-social/forma-de-reclamar-el-dano-social; Costa Rica has defined social damages as "the impairment, impact, detriment or loss of social welfare (within the context of the right to live under a healthy environment) caused by an act of corruption and suffered by a plurality of individuals without any justification, whereby their material or immaterial diffuse or collective interests are affected, and so giving rise to the obligation to repair". The Conference of Ministers of Justice of the Ibero-American countries held in Madrid in 2011 agreed to use Costa Rica's proposal to create a concept of social damage. https://www.unodc.org/documents/treaties/UNCAC/COSP/session4/V1186372s.pdf

[53] https://ticotimes.net/2015/08/05/alcatel-lucent-indemnifies-costa-ricas-ice-10-million-settlement-corruption-case

[54] Code of Criminal Procedure Article 94: https://wipolex.wipo.int/en/text/202824

[55] Code of Criminal Procedure Article 94(d)

[56] Law No. 7,347 enacted in 1985 (Class Action Law). See: https://uk.practicallaw.thomsonreuters.com/9-617-6649?transitionType=Default&contextData=(sc.Default)&firstPage=true. The Class Action Law is mentioned in Article 21 of the Anti-Corruption Law establishing the rules for the civil and administrative liability of legal entities that carry out acts against national or foreign governments, but its application remains to be tested. http://extwprlegs1.fao.org/docs/pdf/bra208353E.pdf; http://extwprlegs1.fao.org/docs/pdf/bra208353E.pdf

[57] https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1790&context=cjil

[58] 18 U.S.C. § 3771. In a recent case against commodities trading firm Glencore Ltd, a victim state entity has been given the opportunity to present a compensation claim in relation to an oil price-rigging scheme following a Glencore guilty plea on charges of foreign bribery and market manipulation. A United States federal district court delayed sentencing from June to September 2022 to allow the Mexican state oil company Petroleos Mexicanos (Pemex) time to submit a crime victim statement in relation to financial losses it allegedly suffered from Glencore's oil price-rigging scheme. The same kind of opportunity should be provided to victims of foreign bribery. https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes; https://news.bloomberglaw.com/securities-law/glencore-sentencing-delayed-as-pemex-seeks-restitution-for-fraud. In the FCPA part of the case, the US DOJ charged that Glencore, acting through its employees and agents, had engaged in a scheme for over a decade to pay more than US$100 million to third-party intermediaries, while intending that a significant portion of the payments would be used to pay bribes to officials in Nigeria, Cameroon, Ivory Coast, Equatorial Guinea, Brazil, Venezuela and the Democratic Republic of the Congo (DRC).

[59] See Italian Penal Code Articles 165 and 322.

[60] https://www.oecd.org/daf/anti-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf; https://www.agence-francaise-anticorruption.gouv.fr/files/files/Lignes%20directrices%20PNF%20CJIP.pdf under Article 41-1-2 of the Code of Criminal Procedure, the amount of the public interest fine is determined in proportion to the benefits derived from the wrongdoing, capped at 30 per cent of the company's average annual turnover, and calculated on the basis of the turnover of the last three years available on the date the wrongdoing is recognised.

[61] https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033202746/

[62] https://www.agence-francaise-anticorruption.gouv.fr/files/files/CJIP%20AIRBUS_English%20version.pdf ; https://www.ropesgray.com/en/newsroom/alerts/2020/01/Four-Years-and-Almost-4-Billion-Airbus-Corruption-Investigations-End-with-Sky-High-Fine; https://www.clearygottlieb.com/news-and-insights/publication-listing/airbus-enters-into-a-coordinated-resolution-of-foreign-bribery-investigation; https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case

[63] https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p3/ch21.html

[64] While it was a domestic bribery case, some similarities in approach can be expected for settlements in foreign bribery cases, though the latter cases are handled by federal prosecutors from the Public Prosecution Service of Canada.

[65] SNC Lavalin was required to pay CAD3.5 million (US$ XX million) – the amount of the bribe paid plus interest - as compensation to the corporation with which it contracted, as well as a CAD5.4 million (US$XX million) victim surcharge. It also paid a penalty of approximately CAD18.1 million (US$ XX million) and CAD2.5 million (US$XX million) was confiscated as proceeds of crime: https://www.dwpv.com/en/Insights/Publications/2022/First-Remediation-Agreement-under-Canadian-Criminal-Code; https://mcmillan.ca/insights/we-have-a-dpa-prosecutors-agree-to-deferred-prosecution-agreement-with-snc-lavalin/; https://www.thestar.com/business/2022/05/06/snc-lavalin-to-pay-30m-under-agreement-with-quebec-over-bridge-bribes.html

[66] Criminal Code Part XXII.1 715.3(1) et seq.

[67] Since there is no requirement for a victim surcharge to be imposed for offences under the Corruption of Foreign Public Officials Act, the RA regime provides that no victim surcharge is required in cases under the CFPOA. Despite this, in two earlier cases of foreign bribery, Niko Resources (2011) and Griffiths Energy (2013), settled through plea agreements before the RA regime existed, a victim surcharge amount of 15% of the fine was imposed. No explanation was provided for deviating from the default rate of 30% set out in the Criminal Code section 737(2)

[68] https://casetext.com/case/united-states-v-oz-africa-mgmt-gp-llc; https://www.reuters.com/article/securities-ochziff-corruption-idUSL1N2HR02P; https://www.raid-uk.org/blog/us-court-orders-135-million-shareholders-stolen-dr-congo-mine-local-communities-left-out; https://globalanticorruptionblog.com/2020/12/17/a-breaththrough-in-recognizing-who-is-a-corruption-victim/

[69] https://www.justice.gov/opa/pr/och-ziff-capital-management-admits-role-africa-bribery-conspiracies-and-agrees-pay-213

[70] https://globalanticorruptionblog.com/2020/12/17/a-breaththrough-in-recognizing-who-is-a-corruption-victim/

[71] https://www.sfo.gov.uk/2022/02/21/sfo-investigation-delivers-over-200000-compensation-for-the-people-of-nigeria/

[72] https://www.sfo.gov.uk/2021/07/02/sfo-enters-into-103m-dpa-with-amec-foster-wheeler-energy-limited-as-part-of-global-resolution-with-us-and-brazilian-authorities/

[73] https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2017-August-24-25/V1705952e.pdf

[74] https://www.transparency.org/en/press/france-a dopts-new-provision-for-returning-stolen-assets-and-proceeds-of-crime-a-step-forward-with-room-for-improvement ; https://www.diplomatie.gouv.fr/en/french-foreign-policy/development-assistance/france-has-a-new-recovery-mechanism-for-illicit-assets/; however, this mechanism is not available in the context of non-trial resolutions.

[75] https://www.diplomatie.gouv.fr/en/french-foreign-policy/development-assistance/france-has-a-new-recovery-mechanism-for-illicit-assets/

[76] In the Czech Republic, this is conceived of as an “effort to restore damage or eliminate other harmful effects of the criminal act”, https://rm.coe.int/16806d11e6. In Mexico pursuant to Article 256 of the Criminal Procedures National Code, once an investigation begins, the offender can request that the prosecution authorities refrain from instituting a criminal prosecution based on the application of “opportunity criteria”, as long as the damage caused to the victims has been repaired or guaranteed, https://www.lexology.com/library/detail.aspx?g=62df2f53-c23e-4118-84c1-fc8f7b409b5d. In Spain, it is defined as the “mitigation of damages caused as a consequence of the offence before the trial hearing takes place”, https://globalcompliancenews.com/anti-corruption/anti-corruption-in-spain/. In the United States, the principles of federal prosecution of organisations and sentencing guidelines allow for credit given for restitution or other forms of remediation, under US Justice Manual Title 9 and US Sentencing Guidelines, https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.1000; and https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2012/05/deferred-prosecution-agreements-and-us-approaches-to-resolving-criminal-and-civil-enforcement-actions.pdf

[77] In 2011 the Attorney General's Office issued a summary penalty order against Alstom Network Schweiz in a case involving the payment of bribes in Latvia, Malaysia and Tunisia, but the charges were dropped against the parent company Alstom S.A. on four grounds, one of which was that it had paid voluntary reparations under Article 53 of the Swiss Criminal Code, in the amount of CHF1 million transferred to the International Committee of the Red Cross (ICRC) for its projects in Latvia, Malaysia and Tunisia. In another Swiss case concerning bribery in Haiti, the defendants found guilty at trial were issued an order to pay restitution to the Haitian government, pp. 107 and 114 at https://star.worldbank.org/sites/star/files/9781464800863.pdf

[78] To resolve the SEC's charges of fraud and FCPA violations, Credit Suisse also paid disgorgement of US$34 million to the SEC plus a US$65 million civil penalty. To resolve the criminal investigation involving allegations of fraud, it agreed to pay US$175 million to the DOJ, which is reduced from a larger amount that included US$10.34 million in criminal forfeiture. It also paid US$200 million to the UK Financial Conduct Authority (FCA) in a related resolution, https://www.reuters.com/legal/transactional/credit-suisse-units-sentencing-delayed-tally-victim-claims-2022-04-29/. An interesting aspect of the settlement was that Credit Suisse also agreed to a methodology to calculate the proximate loss for international investors who were victims of its criminal fraud, with the amount of restitution payable to victims to be determined in a future proceeding.

[79] https://www.sec.gov/news/press-release/2021-213; https://www.dw.com/en/mozambique-hidden-debt-trial-exposes-depth-of-corruption/a-59052690

[80] https://www.theguardian.com/business/2021/oct/19/credit-suisse-fined-350m-over-mozambique-tuna-bonds-loan-scandal

[81] https://www.cmi.no/news/2793-mozambique-hidden-debt-scandal

[82] https://www.gibsondunn.com/2021-year-end-fcpa-update/

[83] https://www.cmi.no/news/2793-mozambique-hidden-debt-scandal

[84] https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2017-August-24-25/V1705952e.pdf

[85] https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr16_vic/p1.html

[86] Law 2195/2022, https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=175606

[87] https://www.iadb.org/en/news/odebrecht-reaches-settlement-agreement-idb-group-resulting-sanctions-0

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[130] The definition of "major case" includes the bribing of senior public officials by major companies, including state-owned enterprises. In determining whether a case is "major", additional factors to be considered include whether the defendant is a large multinational corporation or an individual acting for a major company; whether the allegations involve bribery of a senior public official; whether the amount of the contract and of the alleged payment(s) is large (regardless of whether it was paid in a single transaction or in a scheme involving multiple payments, even if only to lower-level officials) and whether the case and sanctions constitute a major precedent and deterrent. Several indicative guidelines can also be used to help decide whether a case is major. A company could be considered major if its revenue represents more than 0.01 per cent of a country's GDP. The seniority of public officials could be defined in terms of their remoteness from the highest public official (prime minister, for example). If they are less than five steps removed from the prime minister, they can be considered senior. Seniority of public officials would depend, inter alia, on their ability to influence decisions. For a case to be defined as "major", its details would have to be available in the public domain or published in an official legal journal. Where relevant, the Global Investigations Review's Enforcement Scorecard can be used as a barometer for defining a major case. If a case appears in the global top 100 according to the scorecard, it should be classified as major regardless of jurisdiction, https://globalinvestigationsreview.com/edition/1000012/the-enforcement-scorecard. The characterisation as "major" should be exercised narrowly. In case of doubt, a case is not characterised as "major".

[131] "Substantial" sanctions include deterrent prison sentences, large fines and disgorgement of profits, appointment of a compliance monitor, and disqualification from future business. The ratio between the maximum sentence for a crime in question and the actual sentence in a given case could be used as an indicator of the severity of the sanctions imposed. Disgorgement of profits alone should not count as a substantial sanction, but should be considered only in combination with other sanctions.

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