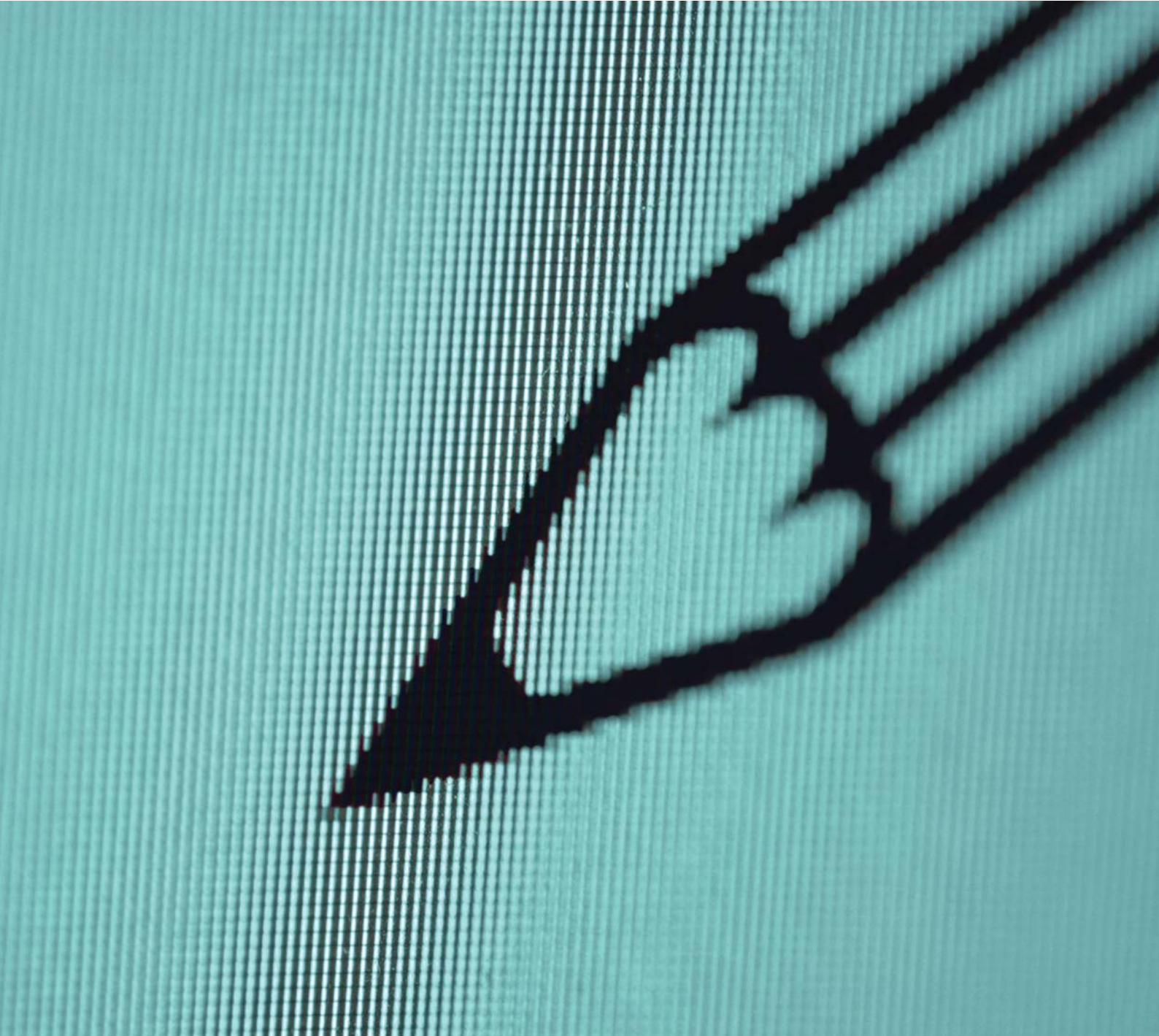


# THE ROLE OF THE MEDIA AND INVESTIGATIVE JOURNALISM IN COMBATING CORRUPTION



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## *Foreword*

The media and investigative journalism play a crucial role in bringing allegations of corruption to light and fighting against impunity. International consortiums of investigative journalists are an example of an international cooperation that leads to tangible results in bringing financial and economic crime to the attention of the public and law enforcement authorities. Media reporting is an essential—albeit untapped—source of detection in corruption cases. This is highlighted in Chapter 4 of the OECD study on *The Detection of Foreign Bribery* published in December 2017.

This report expands on Chapter 4 from the study by including further information collected from countries Party to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention). It also explores good practices and challenges in the detection of international corruption cases via media reporting and investigative journalism.

This report and Chapter 4 from the study were drafted by Leah Ambler, Daisy Pelham and Simone Rivabella under the coordination of France Chain, Senior Legal Analyst, from the Anti-Corruption Division of the OECD Directorate for Financial and Enterprise Affairs. The authors acknowledge the contributions of country mentors from Australia (Tom Sharp, Criminal Law Reform Section, Attorney-General's Department) and Sweden (Alf Johansson, Chief Public Prosecutor), and Spencer Wilson of the OECD Public Affairs and Communications Directorate.

This report uses material collected through country reviews undertaken by the OECD Working Group on Bribery in International Business Transactions (OECD WGB) and through responses to the OECD Survey on Investigative Journalism (OECD Survey). Box 1 describes the methodology used to conduct the OECD Survey.

### **Box 1. Scope and methodology of the OECD Survey on Investigative Journalism**

The OECD Survey was conducted between 12 April and 26 May 2017 and received a total of 101 responses from 43 countries. The main objective of the OECD Survey was to find out how investigative journalists uncover and investigate corruption stories and obtain their perspectives on interacting with law enforcement in foreign bribery cases. Some survey questions were optional and some allowed multiple responses, percentages have therefore been calculated for each question based on the percentage of respondents who answered that question. This explains the variations in the number of responses per question and why the percentages in some questions do not add up to 100%. Percentages have been rounded to the nearest whole number. The authors wish to express their gratitude to the International Consortium of Investigative Journalists (ICIJ), the Organised Crime and Corruption Reporting Project (OCCRP), and the Global Investigative Journalism Network (GIJN) for disseminating the OECD Survey to their membership. The Secretariat further conducted interviews with three journalists, which form the basis for some of the case studies in this publication.

## Introduction

Media reporting in general, and especially investigative journalism by affiliated or independent journalists, or indeed non-governmental organisations (NGOs), are among the most important sources of public awareness-raising on corruption. Media reporting is an essential source of detection in corruption cases, either for law enforcement authorities that investigate allegations contained in the press, or indeed for companies that decide to conduct internal investigations or self-report, or anti-money laundering reporting entities that make suspicious transaction reports, following queries from the media or published articles.

Between the entry into force of the OECD Anti-Bribery Convention in 1999 and 1 June 2017, 2% of foreign bribery schemes resulting in sanctions, amounting to a total of 6 schemes, were initiated following media reports on the alleged corruption. In addition to helping to initiate cases, media reporting may also assist with the evaluation of known matters for potential investigation.

The fourth estate should be respected as a free eye investigating misconduct and a free voice reporting it to citizens. While recent technologies such as digital currencies, blockchain and data mining are providing criminals with new means to commit crimes, encrypted communications provide sources with greater confidence to bring their concerns to the attention of the media, without fear of surveillance or reprisals. Open data is allowing investigative journalists access to an enormous amount of previously unattainable information and transnational networks and consortiums of news professionals facilitate investigations that were unimaginable ten years ago.

The Panama Papers investigation, which was awarded the Pulitzer Prize for Explanatory Reporting in April 2017, grew out of a five-year reporting push by the International Consortium of Investigative Journalists (ICIJ) that dug into financial secrecy havens and published figures for the top ten countries where intermediaries operate: Hong Kong (China), United Kingdom, Switzerland, United States, Panama, Guatemala, Luxembourg, Brazil, Ecuador and Uruguay.<sup>1</sup> Similarly, in April 2016, after a six-month investigation, two major media outlets reported on the Unaoil scandal, an alleged transnational bribery scheme involving bribes paid on behalf of companies in countries across the globe, including those from Parties to the OECD Anti-Bribery Convention. More recently, the ICIJ's Paradise Papers investigations have resulted in global reporting on the use of offshore financial centres by more than 100 multinational companies to conceal certain transactions.<sup>2</sup> The ICIJ's investigations have involved more than 380 journalists working on six continents in 30 languages highlighting the importance of collaborative networks for investigative journalists working on complex cross-border investigations.

# 2%

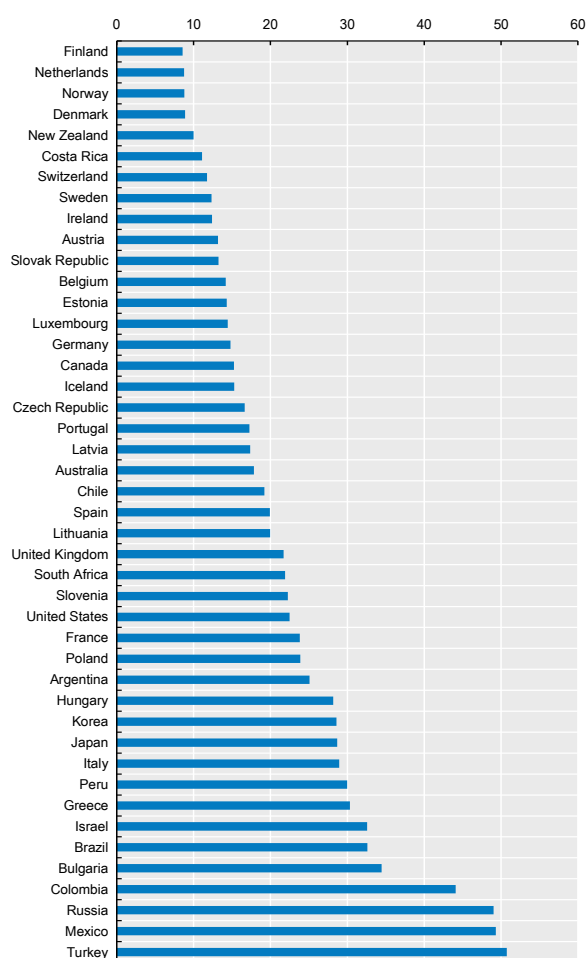
**The percentage of  
foreign bribery  
cases detected via  
media reports**

OECD (2017), The Detection of Foreign Bribery

<sup>1</sup> Explore the Panama Papers Key Figures, <https://panamapapers.icij.org/graphs/>.

<sup>2</sup> ICIJ, Paradise Papers: Secrets of the Global Elite, [www.icij.org/investigations/paradise-papers/](http://www.icij.org/investigations/paradise-papers/).

Figure 1. States party to the Anti-Bribery Convention in the 2017 World Press Freedom Index



*Note:* Countries have been given scores ranging from 0 to 100, with 0 being the best possible score and 100 the worst. Peru is included as a full member of the OECD WGB.

*Source:* Reporters Without Borders, 2017 World Press Freedom Index, <https://rsf.org/en/ranking>

administrations and efficient judicial systems that keep journalists away from unfounded lawsuits. Investigative journalism would not exist without sources. Protection of sources, or whistleblowers (the terms will be used interchangeably in this report), is also

Sixteen out of the 41<sup>3</sup> Parties to the Anti-Bribery Convention that have completed a Phase 3 evaluation confirmed detecting at least one case of foreign bribery through either national or international media reports.<sup>4</sup> Six countries received recommendations for law enforcement authorities to routinely assess credible foreign bribery allegations that are reported in the media; for overseas missions to monitor local media and report allegations to the appropriate authorities; or to raise awareness in national media about international corruption issues.<sup>5</sup> The OECD WGB, which brings together the 43 Parties to the OECD Anti-Bribery Convention, maintains a “Matrix” of allegations of foreign bribery, which is prepared by the OECD Secretariat based on public sources and mainly on media reporting. The Matrix is used by the Working Group to track case progress, and is sometimes used as a source of detection by member countries.<sup>6</sup>

The role of media in detecting bribery cases is enhanced by legal frameworks protecting freedom, plurality and independence of the press, laws allowing journalists to access information from public

<sup>3</sup> Lithuania and Costa Rica became the 42nd and 43rd Parties to the OECD Anti-Bribery Convention in July 2017.

<sup>4</sup> Argentina, Australia, Brazil, Czech Republic, Finland, Greece, Ireland, Israel, Latvia, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain and Turkey.

<sup>5</sup> Argentina, Australia, Greece, Israel, Portugal and Turkey.

<sup>6</sup> The OECD WGB has noted in its evaluations that the Matrix should not be relied on as the sole or even primary detection source, as countries are expected to maintain their own proactive detection efforts.



fundamental to ensuring that corruption cases can be brought to light in the media.

## Freedom of the press – a pre-condition to reporting on corruption

Freedom of the press is a fundamental human right and several international treaties recognise its importance in the protection of democratic principles.<sup>7</sup> The UNCAC (2003)<sup>8</sup> acknowledges the critical role of media in fighting corruption. Art. 13(d) asks States Parties to strengthen the participation of society in the fight against corruption by “respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption” subject to certain restrictions as necessary and provided by law, to respect the rights and reputation of others and to protect national security, *ordre public*, or public health and morals. The Group of States against Corruption (GRECO)<sup>9</sup> considers the level of freedom of press as an indicator of compliance with the rules established by the Council of Europe (CoE) for fighting corruption. Point 16 of Resolution (97)24 of the CoE explicitly included the enhancement of freedom of media among the twenty “Guiding Principles for the Fight against Corruption”. Figure 1 sets out the ranking of Parties to the OECD Anti-Bribery Convention on the 2017 World Press Freedom Index. While press freedom is not specifically within the scope of the OECD Anti-Bribery Convention and its related instruments, the OECD WGB has considered constraints on freedom of the press and information in its evaluations.

The OECD Survey on Investigative Journalism (Survey) asked journalists to rate how safe they felt reporting on corruption cases, most respondents (35%) indicated that they felt moderately safe. Journalists were most concerned about threatened or actual legal action, in the form of civil suits for libel, or criminal prosecution for defamation or publishing classified information. Some referred to baseless legal actions being launched to intimidate journalists, which nevertheless took time to resolve and involved significant legal

and psychological cost. One journalist stated that large companies had threatened to sue colleagues and as a result, decisions had to be made as to whether it was worth taking the risk to publish the story. Another journalist had been prosecuted, and acquitted, twice for reporting on corruption cases: “I can say how tediously [sic], costly and time consuming it is to be under pressure just for doing my job.” Other concerns included attacks on professional credibility and political retaliation. Some journalists had received death threats and mentioned colleagues who had been killed for their work investigating and reporting on

**“Exposing corruption means disturbing powerful and ruthless people, a risk one must be aware of”**

Anonymous respondent to the OECD Survey on Investigative Journalism, 2017.

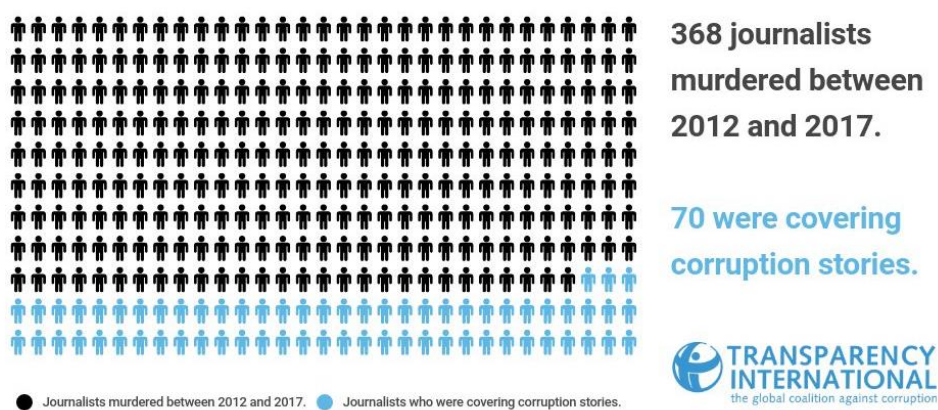
<sup>7</sup> Several international and regional instruments seek to guarantee freedom of the press. See e.g. Art. 19 of both the UN Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), Art. 10 of the European Convention on Human Rights (1950), Art. 13-14 of the American Convention on Human Rights (1969), and the African (Banjul) Charter on Human and Peoples’ Rights (1981).

<sup>8</sup> All Parties to the Anti-Bribery Convention have ratified the UNCAC.

<sup>9</sup> Among Parties, Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherland, Norway, Poland, Portugal, Russia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States of America are members of GRECO.

corruption. Freelance or independent journalists were most exposed; those who worked in large media outlets or in large cities felt more protected. The 16 October 2017 murder of Maltese investigative journalist Daphne Caruana Galizia, known for her uncompromising investigations into corruption and organised crime in her small European country, sent shockwaves through Europe and the world.<sup>10</sup> More recently, Slovak investigative journalist Ján Kuciak and his partner Martina Kušnírová were found murdered on 25 February 2018. The president of the Slovakian police Tibor Gaspar said that the murders were likely related to Kuciak's investigative work which often focused on corruption.<sup>11</sup> According to Transparency International's Corruption Perception Index 2017, 368 journalists have been killed since 2012 while pursuing stories. Of those 368 journalists, one in five killed worldwide were investigating corruption-related stories. Analysis from the 2017 Index also indicates that countries with the lowest protection for press and NGOs tend to have the worst rates of corruption.<sup>12</sup>

Figure 2. Journalists covering corruption stories murdered between 2012 and 2017



Source: Transparency International Corruption Perception Index 2017:  
<https://twitter.com/anticorruption/status/968063207066750979>

<sup>10</sup> NY Times, "Investigative journalist in Malta is killed in car bombing" 16 October 2017, <https://www.nytimes.com/2017/10/16/world/europe/daphne-caruana-galizia-journalist-malta.html>.

<sup>11</sup> The Guardian, "Slovakian journalist investigating claims of tax fraud linked to ruling party shot dead" 26 February 2018, <https://www.theguardian.com/world/2018/feb/26/slovakian-journalist-investigating-claims-of-tax-linked-to-ruling-party-shot-dead>

<sup>12</sup> Transparency International, "Digging deeper into corruption, violence against journalists and active civil society" 21 February 2018, [https://www.transparency.org/news/feature/digging\\_deeper\\_into\\_corruption\\_violence\\_against\\_journalists](https://www.transparency.org/news/feature/digging_deeper_into_corruption_violence_against_journalists).

### Country practice: Framework for Press Freedom

#### Canada

The open court principle is connected to freedom of the press, as the media are an important means by which the public receives information about what transpires in court. In appropriate circumstances, s. 2(b) may provide a way to obtain access to court documents. However, s. 2(b) does not protect all techniques of “news gathering”. Freedom of expression and freedom of the press do not encompass a broad immunity for journalists from either the production of physical evidence relevant to a criminal offence or against disclosure of confidential sources. Therefore, a journalist may be compelled by a judge to disclose information regarding a secret source. A qualified journalist-source privilege exists in the common law and a test that is informed by Charter values is used to determine the existence of privilege on a case by case basis. The recently-enacted Journalistic Sources Protection Act amended the Canada Evidence Act and Criminal Code to confer further protection for the confidentiality of journalistic sources. Specifically, the amendments to the *Canada Evidence Act* enable a journalist to object to the compelled disclosure of information or documents on the grounds that it identifies or is likely to identify a confidential journalistic source. The objection can be raised with any court, person or body with the authority to compel the disclosure of information and the burden is on the person seeking disclosure to demonstrate that the test has been met (under the common law, the burden was on the journalist to demonstrate the existence of the privilege). As to the *Criminal Code* amendments, they provide a new process for the issuance of investigative tools (such as search warrants and production orders) when they relate to a journalist, including a triage procedure that requires the sealing of the evidence collected and a review by a court before the information is disclosed to police.

### Whistleblowers and protection of sources

The Survey indicated that whistleblowers are often the first source of information for journalists reporting on corruption stories. Whistleblowers turn to journalists for various reasons including to protect their identity, to bring issues of concern to the attention of the public or government, or in the absence of effective responses by law enforcement or employers. One journalist noted that reporting to the media can be more effective for a whistleblower than reporting to law enforcement. While criminal proceedings can take years to reach a conclusion, a journalist can draft and publish a story within days that can reach a global readership through social media platforms. New technology means that journalists can communicate with their sources via encrypted communication platforms (e.g. Signal), which can protect the whistleblower’s identity. However, journalists acknowledged the significant risks to sources as a result of non-existent or vastly inadequate whistleblower protection frameworks in many countries. Even in countries with whistleblower protection laws, protection rarely extends to whistleblowers who report directly to the media.<sup>13</sup> 54% of respondents considered protection of sources a concern when interacting

# 63%

**consider whistleblower protection most valuable support for journalists investigating corruption**

Respondents to the OECD Survey on Investigative Journalism, 2017.

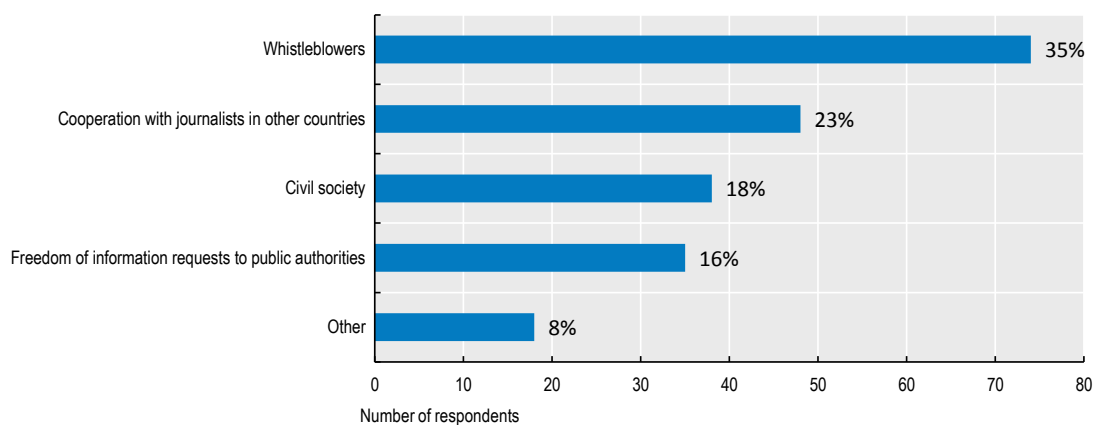
<sup>13</sup> For example, Sweden’s new Act on special protection against victimisation of workers who are sounding the alarm about serious wrongdoings allows whistleblowers to report to the media or



with law enforcement authorities in corruption cases. One journalist referred to an ongoing administrative case between the media outlet and tax authorities, where the tax authorities were compelling production of Panama Papers documents and editorial material which, if disclosed, would reveal sources. For this journalist, the case highlighted the lack of seriousness with which the authorities treated the protection of sources. Some journalists were concerned about government surveillance or other attempts to seek the identity of their sources; others approached law enforcement for assistance with source protection, presumably in criminal cases where sources were receiving physical threats from other perpetrators.

Whistleblower protection was considered the second most valuable support for journalists investigating corruption (63%), behind strong editorial board backing (77%). Journalists also noted that their sources can also work for law enforcement agencies, and considered that these sources should be protected as any other whistleblower. The media plays a potentially vital role in de-stigmatising whistleblower reporting. For example, referring to a “leak” when breaking a story based on information provided by a whistleblower (particularly an insider), can serve to reinforce perceptions that the whistleblower was acting unethically or illegally in providing such information. The role of whistleblowers and whistleblower protection in detecting foreign bribery cases is discussed in Chapter 2 of *The Detection of Foreign Bribery* (OECD, 2017).

Figure 3. **First sources of information for journalists reporting on corruption**



Source: OECD Survey of Investigative Journalists (88 responses)

authorities if no action is taken following an initial internal report within their organisation or if there are justified reasons to disclose the information externally, for example if there is an emergency situation, if the wrongdoings are of particularly serious nature, if the employee has a specific reason to expect retaliation or if the employer is responsible for the wrongdoings.

### Country practice: Constitutional rules on Freedom of the Press and Freedom of Expression in other media

#### Sweden

Sweden has specific rules on freedom of the press (Freedom of the Press Act 1949) and freedom of expression in other media (Fundamental Law on Freedom of Expression 1991). The Swedish constitutional rules have some distinctive features of historical origin, springing from the fundamental principle that freedom of expression is a guarantee for the free influence of public opinion. These constitutional rules apply to various means of expression such as through newspapers and magazines, television and other media including, to some extent, the Internet. The purpose of these constitutional rules is, inter alia, to secure the free exchange of opinion but it is also a way for the public to exercise control over the public administration. These characteristics have evolved over the centuries since the first Freedom of the Press Act in 1766 and provide particularly strong protection for freedom of expression in the media.

The provisions in the Constitution are based on some fundamental principles such as the right of free establishment of, for example, printing presses and newspaper and magazine undertakings and an absolute ban on censorship. The Constitution is furthermore based on the following principles.

The principle of sole responsibility means that only one person can be held responsible for the content in, for example, a newspaper. The usual penal rules on liability for complicity do not apply. The principle of sole responsibility guarantees that there is always a designated person who is responsible for the publication. This person cannot evade responsibility by alleging that he or she did not know about the content or did not consent to the publication. It is therefore not necessary to undertake any investigative measures to the question of establishing responsibility of that person.

The principle of freedom to communicate with the media entails a right, without penal consequences, to provide information, including confidential information, to newspapers and magazines, the radio and TV for publication. The provider of the information has the right to anonymity and journalists may not disclose the source of their information. Authorities and other public bodies may not investigate who has provided the information, if the provider has chosen to be anonymous, and may not undertake any negative measures, such as investigative measures against the provider.

However, the freedom of expression is not absolute. Responsibility for the content of a published statement may come into question for certain crimes listed in the Swedish Constitution. These include certain serious crimes against the safety of the realm, agitation against ethnic groups, unlawful threat and defamation. This list is exhaustive. If a crime is not included in the list, publication of a statement can consequently not lead to criminal or civil liability, and nor can it be subject to any investigative measures.

Finally, the constitutional provisions also provide procedural guarantees in the case of actions against abuse of the freedom of the press and the freedom of expression in other media. These rules differ to some extent from ordinary penal procedural rules. The Chancellor of Justice is the only public prosecutor in those cases.

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## Freedom of information and open data

Freedom of information (FOI) laws govern the right of citizens to access information held by government agencies. These laws are designed to promote transparency in government by making government records available to the public to the greatest extent possible. Journalists considered inadequate FOI legislation to be one of the two main obstacles to investigating and reporting on corruption cases, the other one being confidentiality of law enforcement proceedings. One journalist noted that even in countries with effective FOI legislation, “most freedom of information laws exclude the private sector from their jurisdiction and in many cases access to this kind of information held by the private sector is illegal. This limitation has serious implications because the private sector performs many functions which were previously the domain of the public sector.” The important role of state-owned enterprises (SOEs) on both the giving and receiving end of bribery in international business makes this observation all the more relevant to reporting on bribery in international business transactions.<sup>14</sup> Another limitation relates to the time taken to fulfil FOI requests. By the time a journalist receives the information, it is often too late and the window of opportunity to break the story may have passed. The recent murders of Slovak investigative journalist Ján Kuciak and his partner Martina Kušnírová also highlight a disturbing issue with regard to FOI requests. Before Kuciak's murder, he was working in cooperation with the Organized Crime and Corruption Reporting Project (OCCRP) and his outlet, Aktuality.sk, the leading news portal in Slovakia, on an investigation about corruption and organised crime. The OCCRP recently stated that they believed those responsible for the killing of Kuciak may have learned he was working on a story about them as a result of his FOI requests. Furthermore, the OCCRP note that this is part of a larger general problem in Europe and neighbouring countries and that most FOI laws in the EU do not specifically address the issue of protecting the requester.<sup>15</sup>

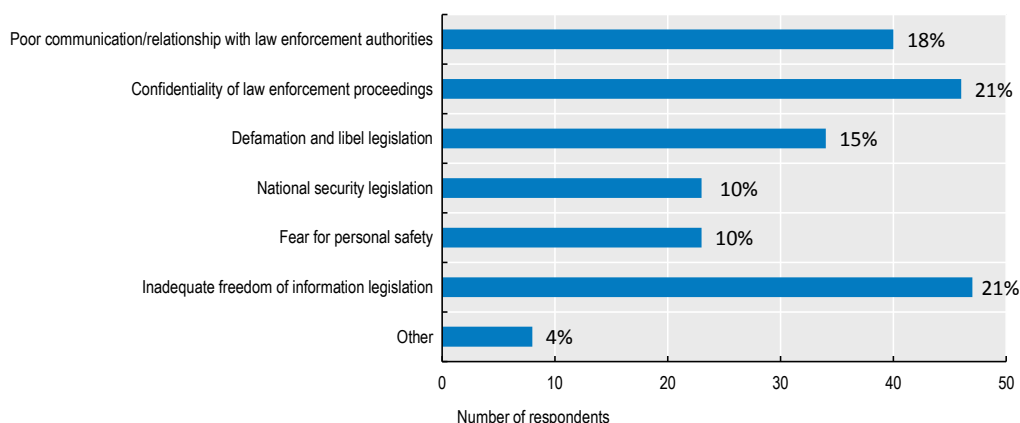
Open data is digital data that is made available with the technical and legal characteristics necessary for it to be freely used, re-used, and redistributed by anyone, anytime, anywhere (G20, 2015). Open data is key to the fight against corruption; it enables transparency, accountability and access to information which can help detect and address this crime. The G20/OECD Compendium of Good Practices on the Use of Open Data for Anti-Corruption is a useful resource for countries to assess and improve their open data frameworks (OECD, 2017b). One journalist noted the importance of digital education for reporters: “Open data can be a boon to democracy – but only if there are professionals capable and motivated to transform that data into information for the public.” Transparency of beneficial ownership can be another important resource for journalists investigating corruption cases. The TeliaSonera/Vimpelcom case study illustrates the importance of transparency of beneficial ownership for investigative journalism in corruption cases.

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<sup>14</sup> The 2014 OECD Foreign Bribery Report noted that SOE officials received bribes in 27% of concluded cases.

<sup>15</sup> Organized Crime and Corruption Reporting Project (OCCRP), "Freedom of Information Law: Reporter's Best Friend or Killer?", 12 March 2018, <https://www.occrp.org/en/amurderedjournalistslastinvestigation/freedom-of-information-law-reporters-best-friend-or-killer>

Figure 4. Main obstacles to investigating and reporting on corruption



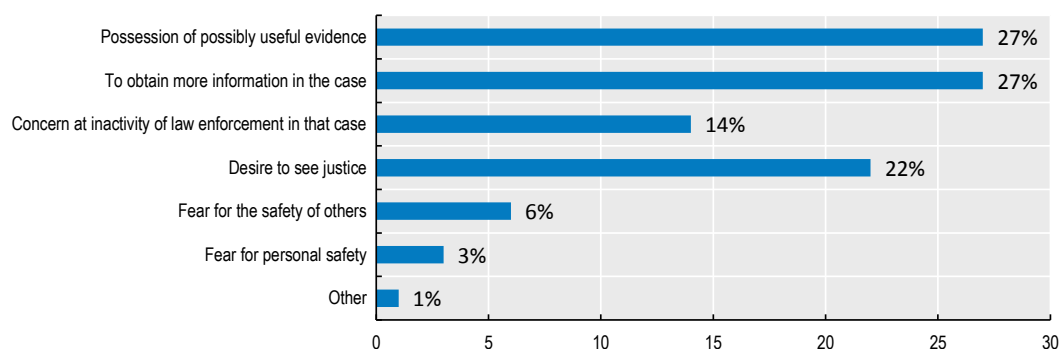
Source: OECD Survey of Investigative Journalists (84 responses)

In 2016 Argentina enacted the Public Information Access Act, No. 27 275, to grant access to public information and to foster citizenship participation and transparency in public management. The Act aims to enable people to search, access, request, receive, copy, analyse, reprocess, reuse and freely redistribute information. This law has a wide scope of application including the three branches of government, companies in which the national administration is a majority or minority shareholder, concessionaires and licensees of public services, business organisations, political parties, unions, universities and any other private entities to which public funds have been granted, trusts established with public funds and cooperating entities with which the National Administration has concluded agreements, among others. The Act requires officers to facilitate the search and access to public information through its official website in a clear, structured and understandable way for any interested party. In addition, an Executive Decree passed in January 2016 mandates central ministries to develop institutional open data plans. The Decree defines categories of public sector information to be prioritised by the central government for their publication as open data to fight corruption in the country, including structural information, asset disclosure, budgetary credits, procurement procedures, lobbying meetings, etc.

### Interaction between journalists and law enforcement authorities in practice

In investigating corruption cases – whether in the context of criminal proceedings or investigative journalism – law enforcement and the media have a common mission: to expose and bring justice for abuses of power for private gain. Journalists considered a poor relationship or communication with law enforcement authorities the third greatest obstacle to investigating and reporting on corruption. 54% of respondents had contacted law enforcement authorities with information on corruption. Those who reported to law enforcement mainly did so in order to obtain more information in the case or because they knew that information they had could be useful. The next most common reason for reporting was because of a desire to see justice done, followed by concern at the inactivity of law enforcement in the case.

Figure 5. Factors that led journalists to report to law enforcement



Source: OECD Survey of Investigative Journalists (40 responses).

The kind of information journalists shared with law enforcement authorities ranged from “undecipherable financial documents” to documents and information on corruption that the journalist knew would be useful and that had not yet come to the attention of authorities. Survey responses indicate asymmetry in the interaction between journalists and law enforcement: while reporters often sought to obtain further details through authorities, 62% did not receive follow-up in response to their report. On the other hand, 58% of respondents had been contacted by law enforcement authorities in relation to a corruption investigation, and 45% indicated that they had declined to provide information. One journalist noted that reporters can often acquire more information in a shorter period of time, through international associations of investigative journalists and because they are not constrained by protocols, mutual legal assistance requests and procedural requirements. However, information obtained by journalists through such networks may not be useful or admissible in subsequent criminal proceedings.

The vast majority of respondents considered a constructive relationship with law enforcement as essential or very important (78%). In reality, over a third of journalists categorised their interaction with law enforcement as either unsatisfactory or poor (38%), and roughly the same proportion as satisfactory (35%). Journalists emphasised, however, the need to draw a line between the respective missions of the media and law enforcement and to respect the integrity of each: “Reporters can’t become tools of the State. Law enforcement authorities ought to conduct fair investigations and trials.” One journalist described the ethical dilemma for journalists:

– “We are not supposed to collaborate with authorities at all. It could affect our credibility if we did that. People should trust that if they are speaking with media, they are speaking with independent journalists, not with an institution working with government or police institutions. On the other hand, to get the information we need, we can talk to anyone. We have sources everywhere, including police or prosecutors ... which means that they know they are working on a story just by listening to questions. They need help from us but we need help from them ... to

# 38%

of journalists who  
categorised relationship  
with law enforcement as  
unsatisfactory or poor

Respondents to the OECD Survey on Investigative Journalism, 2017.



*help analyse complicated documents. We need their knowledge to complete the story. On the other hand, we have to stay independent from them ... How far can we go? It is a crucial ethical question. We have to make sure that nobody can blame media for working in partnership with the police."*

Journalists emphasised the need for a constructive relationship of mutual respect, and for finalised cases to be made public. Some respondents noted that in jurisdictions where there may be undue political influence in corruption cases, media reporting can maintain public pressure to continue with the investigation and prosecution of these cases. Journalists want a reaction to their stories and an impact on society. They can make sure that prosecutors open up an investigation, for example by publishing a story with so much evidence that authorities have no excuse for not investigating it, and by seeking a reaction or comment on the story from the authorities. Journalists emphasised the importance of not contacting authorities before publication of the story, to avoid being accused of bias or lack of independence in reporting. While law enforcement and the media have shared goals of exposing corruption and ensuring that those responsible are brought to account, there can be challenges in the relationship. From a law enforcement perspective, these challenges can include managing journalists' expectations and the limits on information that can be shared about investigations. Law enforcement authorities must operate in accordance with laws governing the admissibility of evidence, and collect sufficient evidence to support an effective prosecution of responsible individuals and/or legal persons. However, there are strong benefits in developing a productive relationship. For example, from a law enforcement perspective, contact from journalists before a story goes to print can be extremely valuable to ensure that the report will not adversely affect an investigation. In some cases, journalists will agree to delay publishing a story to allow law enforcement to undertake necessary investigative steps before the matter becomes public and the suspect (and other involved parties) are alerted. That being said, law enforcement authorities cannot make any undertakings to journalists in relation to how the information they provide will be used. They should, however, never ask journalists to reveal the nature of their sources. A constructive relationship with the media can also have benefits for law enforcement: exchanges in advance of publication or requests for comment can enable law enforcement authorities to be prepared to respond to the story once it is made public. Drew Sullivan, founder, editor, and director of OCCRP highlighted the importance of enhancing cooperation between journalists, activist and law enforcement: "You have reporters investigate a problem. Then activists. Then police. In three different investigations information is lost and knowledge is not passed through. It's insufficient. We need to share information better."<sup>16</sup>

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<sup>16</sup> Anne Koch (2017), "Investigative Journalism and Advocacy: Natural Allies?", in *Global Teamwork: The Rise of Collaboration in Investigative Journalism*, Reuters Institute for the Study of Journalism, Oxford, [http://reutersinstitute.politics.ox.ac.uk/sites/default/files/2018-03/sambrook\\_e-ISBN\\_1802.pdf](http://reutersinstitute.politics.ox.ac.uk/sites/default/files/2018-03/sambrook_e-ISBN_1802.pdf)

**Box 2. Interview: Paolo Biondani, L'Espresso (Italy)**

The main factors which allow journalists to investigate foreign bribery are having easy and reliable access to documents in the possession of public administration and effective protection from baseless accusations of libel. Until 2016 Italy did not have an FOI law which consistently regulated access to documents kept by the administration. The only act regarding public transparency was a law from 1990 which was often misapplied and resulted in frequent claims to administrative courts, which were long and costly. The new legal framework follows the general principle of a free access to information and the possibility of appealing a negative response from the administration with a fast and free procedure. Nevertheless, concerns remain as exceptions to access to information foreseen by the law are very general and could be broadly interpreted. As a consequence, so far Italian journalists mainly rely on procedural acts from trials and investigations in reporting.

Baseless civil suits or charges for defamation can deeply affect a journalist's work, as they are costly and time consuming and can therefore prevent the follow-up to an investigation. The lack of any effective sanction for baseless allegations and the length of proceedings put journalists in an extremely vulnerable situation. It is important to avoid publishing misleading information, but at the same time it is necessary to find a new and fair balance between the protection of journalists' freedom and the proliferation of fake news through efficient proceedings and effective sanctions.

International professional cooperation and whistle-blowers are often essential tools for investigative journalists to detect a case or expand research. Whistle-blowers often contact media following inaction from law enforcement or because journalists can better protect their identity. In fact, according to Italian procedural law there is no possibility for witnesses to testify anonymously. Their protection is crucial to boost their will to inform media and authorities and to prevent them from being punished for speaking out.

Recent experience shows that investigating and reporting on international corruption is becoming easier, and sometimes more accessible than working on domestic bribery. This is thanks to the cooperation within networks such as ICIJ, which leads to results that were unthinkable until a short time ago. The Panama Papers case, for instance, required research into millions of documents that could not be carried out by one newspaper alone, while the international teamwork through ICIJ afforded a quicker and more comprehensive outcome which focused on many different countries.

## How to detect foreign bribery reported in the media

One of the easiest ways to monitor media reporting on corruption is to use internet search engines and media alerts. It is important for law enforcement authorities to monitor media in their own country as well as media in principal export or investment destinations. The network of overseas embassies can be tasked with monitoring local media in their respective countries of accreditation (in local languages), and translating and reporting any credible foreign bribery allegations they come across. As mentioned above, the OECD WGB has made several recommendations that law enforcement authorities routinely and systematically assess credible foreign bribery allegations that are reported in the media, and that Ministries of Foreign Affairs raise awareness among diplomats of the need to search local media and report allegations to national law enforcement authorities.

The more challenging aspect of detection through media reporting is determining whether the story is credible. The issue of “fake news” and the serious impact it can have has recently come to the fore and law enforcement authorities should be alert to the possibility of false or fabricated news stories. If a media report is corroborated across various news outlets, in various countries, this can suggest authenticity. The same applies to stories run by well-established news outlets and journalists with a strong reputation for reliable reporting. Media may also report on a domestic case involving the bribe recipient, which could, in turn, alert to the possibility that a bribe payer from one of the OECD Anti-Bribery Convention countries may be liable for a foreign bribery offence in his/her home jurisdiction.

### Box 3. Canada Case Study: Niko Resources (2011)

Niko Resources, a Canadian publicly traded oil and gas company, in 2005 was engaged in explorations in Bangladesh. In June of that year the Bangladesh newspaper The Daily Star published a mail correspondence between the then Niko vice-president, Brian J Adolph, and the State Minister for Energy Mosharraf Hossain. The letters regarded the delivery of a luxury SUV and the text read “I take this opportunity on behalf of Niko management to thank you all for the support you have given us in the past and hope to receive the same in coming days”. The bribery was apparently linked to explosions that occurred the same year in one of the company’s natural gas fields and which sparked protests in a nearby village for complaints of environmental contamination.

The investigation was triggered in part by this media report and it was the first case to be investigated following the establishment of dedicated RCMP units to combat foreign bribery. In 2011 Niko Resources pleaded guilty to bribing the Bangladeshi minister with a luxury SUV and a trip to New York and Calgary, and was sentenced to pay a fine of CAD 9.5 million and to serve three years of probation. No individuals were charged.

**Box 4. Netherlands, Sweden and United States Case Study:  
“Mission Investigate,” TeliaSonera and VimpelCom (2016)**

In 2012, thanks to anonymous informants “Mission Investigate”, a Swedish TV programme edited by Mr Nils Hanson, started investigating a bribery case regarding a Swedish-Finnish partly state-owned telecommunication company, Telia Sonera, and its links with Gulnara Karimova, the daughter of the Uzbek president. The story had already attracted attention in Sweden, however Mission Investigate decided to investigate further.

Journalists identified payments in Telia Sonera’s annual report to a company called Takilant, based in Gibraltar. They went to Gibraltar and were able to obtain information on the company from the business registry authority, including limited financial information and the name of the director who turned out to be the acting personal assistant to Karimova. The journalists’ investigation was made possible by open data in Sweden and other countries, which allowed for either online or in-person consultation of companies’ registers and provided journalists with firms’ annual reports. In addition, the story was made possible through collaboration via the Organised Crime and Corruption Reporting Project (OCCRP), a network of investigative journalists, and in particular, its members in Uzbekistan.

Aiming at taking pressure off reporters, before publishing the documentary Mr Hanson himself informed Gulnara Karimova of the release, showing there was a whole institution backing them; an example of strong editorial board support. After the release of the TV documentary, Swedish prosecutors started an investigation and contacted, *inter alia*, US authorities. The Swedish investigation resulted in a prosecution in September 2017 against three persons belonging to TeliaSonera’s previous management for gross giving of bribes and a claim against the company for confiscation of USD 280 million. The Swedish investigation is still ongoing concerning confiscation of the bribes that Gulnara Karimova is suspected of having received.

The Swedish journalists from “Mission Investigate” also discovered the Amsterdam-based VimpelCom Ltd., the world’s sixth largest telecommunications company with shares publicly traded in the United States, was involved in a wide trans-national bribery case, hidden behind massive amounts of money paid to “consultants” and “local partners” operating in a high-risk country that performed no discernible service. VimpelCom conspired with others, including its Uzbek subsidiary Unitel LLC, to pay bribes of over US D114 million to Gulnara in order to enter and continue operating in the Uzbek telecom marketplace between 2006 and 2012, obtaining 3G and 4G licences that generated more than USD 2.5 billion in revenue. The bribery scheme lasted six years and involved multiple shell companies that laundered the money through accounts in Latvia, United Kingdom, Hong Kong (China), Belgium, Ireland, Luxembourg and Switzerland. Unitel entered a guilty plea and VimpelCom entered into a three-year deferred prosecution agreement with the DOJ, as part of a global resolution with the US SEC and the Dutch Public Prosecutor and, to pay over USD 795 million in total fines and disgorgement, reform its compliance system, and adhere to a three-year corporate monitor. This case highlights how media reporting can be a vital source of detection in foreign bribery cases and how fostering mutually respectful relationships between the media and law enforcement can reinforce the fight against foreign bribery.

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## Conclusion

Corruption is a complex crime, made possible by inconsistencies and gaps in legal frameworks, and insufficient co-operation across jurisdictions. Media reporting and investigative journalism, including by NGOs, is a vastly useful, but possibly underexploited, source of information for allegations of transnational corruption. The exposure of recent scandals through effective international cooperation by transnational networks of journalists as well as NGOs has amplified the impact of investigative reporting and significantly raised awareness of cross-border financial crime.

While the OECD Secretariat regularly monitors global press for foreign bribery allegations and brings these to the attention of law enforcement officials in Parties to the OECD Anti-Bribery Convention, the OECD WGB will, in turn, continue to ensure that countries allocate appropriate human resources, expertise, foreign-language skills, training and software, to monitor and act upon media reports of bribery in international business. A constructive relationship between the media, civil society and law enforcement could also be further strengthened while ensuring the independence and integrity of the different actors.

Effective press freedom, open data, access to information and whistleblower protection frameworks are essential to enable free and credible reporting. Nevertheless, the number of journalists killed while reporting, many on corruption stories, is alarming. Governments must make press freedom and the protection of journalists, and their sources, a priority. Two-thirds of Parties to the OECD Anti-Bribery Convention still do not provide satisfactory whistleblower protection despite significant progress made by several countries in recent years.<sup>17</sup> Given the importance of whistleblowers and the protection of sources in bringing allegations of corruption to light, the OECD will continue to work with countries to establish effective legislative frameworks for the protection of both public and private sector whistleblowers.

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<sup>17</sup> OECD (2017), "Whistleblowers and whistleblower protection", in *The Detection of Foreign Bribery*, OECD Publishing, Paris, [www.oecd.org/corruption/the-detection-of-foreign-bribery.htm](http://www.oecd.org/corruption/the-detection-of-foreign-bribery.htm).





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