ANTI-CORRUPTION

COMMITMENTS IN THE OPEN GOVERNMENT

PARTNERSHIP

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INTRODUCTION

When governments sign up to the Open Government Partnership (OGP) they adopt the Open Government Declaration, which includes the commitment to "hav[e] robust anti-corruption policies, mechanisms and practices, ensuring transparency in the management of public finances and government purchasing, and strengthening the rule of law"[1]. In addition, OGP commitments are to be structured around grand challenges, one of which is to increase public integrity[2]. Overall, while anti-corruption has featured in OGP commitments toward public integrity and other areas, there is considerable scope for promoting more specific, actionable and ambitious anti-corruption aims. The recent establishment of an OGP anti-corruption working group is one way to work with governments to make more relevant and ambitious commitments to tackle corruption.

This short paper presents a broad typology of the kinds of anti-corruption commitments that governments could take on as part of a holistic strategy to address corruption in OGP national action plans. It focuses on commitments made in the broad area of public integrity, recognising that this is one, but not the only, approach to anti-corruption efforts. The paper can therefore serve as a starting point for the OGP anti-corruption working group, as it assesses progress on anti-corruption and begins to work toward a more robust articulation and implementation of commitments that counter corruption.

The typology covers those commitments which have already been made under the OGP in the public integrity area as well as relevant areas which have not been covered to date but which are crucial in tackling corruption[3]. The paper includes some illustrative examples of ambitious but realistic government anti-corruption commitments that have come from within the framework of OGP and beyond. The aim is to provide concrete ideas to the newly formed OGP anti-corruption working group and aspiring governments on how they can ramp up their ambitions in tackling corruption.

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[1] http://goo.gl/R6oV68
[2] http://goo.gl/tY6HkJ
[3] See DFID's *Why corruption matters: understanding, causes, effects and how to address them. Evidence paper* on *corruption* for a recent review of areas crucial in tackling corruption. Accessible online at: https://goo.gl/pKWdT3

EXISTING ANTI-CORRUPTION COMMITMENTS IN THE OPEN GOVERNMENT PARTNERSHIP[4]

Commitments in numbers

In four years of OGP activities so far, there have been more than two thousand national commitments made. In total, there are approximately 175 commitments that fall under the category of 'public integrity measures'[5] which have been made by 47 out of 62 countries analysed.[6] Although this is a relatively small number of commitments, they are the ones identified (tagged) by the OGP as being directly related to public integrity measures. Additional commitments may be found which contribute to anti-corruption efforts; however, they have not been included in this initial scoping and should be assessed in the future.

Of the countries that have commitments on public integrity measures, each had on average three commitments. By taking the proportion of public integrity measures committed from the total commitments, we can get an idea of the relative importance of this type of commitment in each country. Public integrity measures, as a proportion of total commitments averages approximately 12% - indicating the modest importance of this issue afforded by the stakeholders elaborating the national action plans. The largest proportion of public integrity related commitments was found in Ghana and Serbia with 31% (4 out of 13 total commitments) each.

Types of commitments

As can be seen from the Table below, a significant number of commitments seek to tackle bureaucratic corruption. Such commitments tend to focus on executive agencies, ethics committees, and civil service administrations or on oversight institutions such as internal audit units and supreme audit institutions. The types of activities within this category of commitments can be largely broken down into regulatory reform and capacity or systems building.

In particular, there is a significant number of commitments that focus on regulatory reform with regards to conflicts of interest (9), asset disclosure (9) and general anti-corruption policy (9). Also notable is the number of commitments that seek to build capacities or systems to tackle bureaucratic corruption. This is particularly true in the case of conflict of interest (10) and general anti-corruption (13) commitments. The anti-corruption capacity and systems building commitments included establishing a unit/commission or a system to monitor effective implementation of anti-corruption policies and training of public officials. In contrast political corruption commitments, as well as those addressing prviate sector and cross border corruption are comparatively less prominent.

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[4] The analysis is based on the data made available by the OGP Explorer which covers all three national action plan cycles as of September 2015. Any more recent IRM reports or action plans may not be included in this analysis. Furthermore there are only 62 countries in the database of the 69 countries currently in OGP. The classifications (tags) of the commitments used in this analysis corresponds to the one proposed by OGP.

[5] Public integrity measures is the broad classification defined by the OGP Explorer. It includes the following sub-categories: anti-corruption, conflict of interest, asset disclosure, audits and control and whistleblower protection. Commitments that indirectly improve the level of public integrity are not considered here.

[6] Countries that did not have their commitments classified as a public integrity measure: Argentina, Bulgaria, Canada, Denmark, Finland, Indonesia, Israel, Kenya, Malta, Panama, Paraguay, Spain, Sweden, Tanzania, Uruguay

A key challenge in reviewing exisiting commitments, given the available information, is ascertaining the extent to which they represent a relatively high level of ambition (e.g. seek to enforce rules rather than put forward new rules/policies). For example, it is not clear to what extent commitments relating to asset declarations include procedures for how the disclosed information will be used and how non-compliance will be sanctioned. Further research is recommended to address this crucial question.

A TYPOLOGY OF ANTI-CORRUPTION COMMITMENTS

The following typology of commitments takes as a starting point the OGP's own classification of public integrity measures which includes the following areas: anti-corruption, conflict of interest, asset disclosure, audits and control, and whistleblower protection. Drawing on the existing anti-corruption policy literature, it then to expands on this classification to identify a broader set of actions that can be used to develop an ambitious anti-corruption commitments agenda. The typology is broken down as follows: (a) anti-corruption framework, (b) bureaucratic corruption, (c) political corruption, (d) private sector corruption, (e) cross-border corruption, (f) law enforcement. The table also identifies the extent to which each type of commitment is currently covered under exisiting OGP action plans across all countries.

Table: A typology of anti-corruption commitments

AREA ADDRESSED	TYPES OF COMMITMENT	COVERAGE IN EXISITING OGP ACTION PLANS
Key: ** = 5 or more commitments; * = 1-5 commitments; no stars = 0 commitments		
Anti-Corruption Framework	Developing anti-corruption strategies, policies and risk assessments	**
	Strengthening institutional capacity for prevention and investigation	**
	Implementing inter-institutional cooperation measures	*
Bureaucratic corruption	Training of public servants	*
	Strengthening/enforcing codes of ethics for public servants	*
	Strengthening/enforcing conflict of interest and asset disclosure regulations	**
	Strengthening internal and external auditing	**
	Strengthening whistleblower protection measures	**
	Strengthening procurement regulations	*
	Strengthening customs and tax administration	*

	Strengthening communication & public education measures	*
	Supporting social accountability and citizen oversight mechanisms	*
	Developing anti-corruption hotlines/citizen complaints mechanisms	*
Political corruption	Developing/enforcing lobbying regulations	*
	Developing/enforcing revolving doors regulations	*
	Developing/enforcing political finance regulations	*
	Developing and promoting standards on parliamentary ethics	
Private sector corruption	Supporting good corporate governance and corporate transparency	*
	Increasing market competition/reducing regulation	*
	Ensuring transparency of corporate bribery investigations	*
	Strengthening country-by-country reporting	*
	Strengthening beneficial ownership transparency requirements	*
	Strengthening anti-bribery legislation and its enforcement	
Cross-border corruption	Introducing/strengthening foreign bribery legislation	*
	Introducing/strengthening asset recovery measures	*
	Developing/strengthening due diligence requirements for financial institutions	
	Introducing/strengthening regulation of real estate and luxury good sectors	
	Introducing/strengthening denial of entry measures for corrupt individuals	*
	Supporting mutual legal assistance and automatic exchange of information	
Law enforcement and judiciary	Developing mechanisms for citizen assistance/legal aid for corruption issues	*
	Supporting proactive investigations by law enforcement	*
	Limiting immunities and statutes of limitations for corruption offences	
	Introducing/strengthening public interest litigation measures	
	Increasing the transparency of enforcement data	*

Enhancing rules-based approach to the appointment, promotion and secondment of judges
Introducing measures to strengthen the capacity/independence of judicial authorities
Increasing the transparency of judicial data, including on rationale for court decisions
Improving the system for and implementation of disciplinary liability and disciplinary proceedings of judges
Training of judges on issues of ethics, conflict of interests and corruption

ILLUSTRATIVE EXAMPLES OF AMBITIOUS GOVERNMENT ANTI-CORRUPTION COMMITMENTS

Below we present a selection of commitments from OGP action plans and beyond as an illustration of what governments can achieve with high levels of ambition. It draws on the Independent Reporting Mechanism (IRM) evaluations of OGP commitments as well as submissions from TI National Chapters. It also includes examples of national-level initiatives beyond the framework of the OGP.

As previously noted, defining what constitutes an ambitious commitment is challenging in the absence of a broader analysis of the national context in which each commitment is being implemented and given the limited information on many cases. Nevertheless criteria for inclusion included: (i) receiving a star rating from the IRM and/or; (ii) being recommended by TI National Chapters; and/or (iii) being considered unique/cutting edge and/or; (iv) aligning with current international policy discussions on anti-corruption.

Strengthening anti-corruption frameworks

- **Amending the Constitution to fight corruption (Mexico)**: In 2015 the Mexican Supreme Audit Institution was significantly strengthened thanks to constitutional amendments enabling it to conduct audits throughout the fiscal year, audit federal resources transferred to subnational entities, investigate public officials, and propose sanctions to the administrative court. Meanwhile a group of civil society actors in Mexico has drafted a legislative bill[7] proposing a number of additional 'innovative' anti-corruption features. These include: (a) the creation of a national public registry of sanctioned public servants to be consulted during all public sector selection or hiring processes; (b) a mechanism to share recovered assets with whistleblowers; (c) a system that allows legal entities to

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[7] TI Mexico participated in the drafting of the bill and this initiative. They are currently collecting signatures to make Congress consider the bill.

self-report cases of corruption in exchange for reduced sanctions; and (d) a process to allow the complainant/accuser to be kept informed about the case and to contest decisions.
Non-OGP initiative

- **Coodinating anti-corruption across the government (United Kingdom)**: As part of its second OGP national action plan, the UK government brought together all of the UK's anti-corruption efforts under one cross-government anti-corruption plan. This led to the creation of an anti-corruption unit in the Cabinet office and to sustained interagency coordination and communication on anti-corruption issues, linking up above all the domestic and international aspects of anti-corruption policy. This coordination of anti-corruption was supported by increased interface with civil society, which promoted the agenda.

  OGP status: Complete

Controlling bureaucratic corruption

- **Random asset disclosure testing (Slovenia)** The Integrity and Prevention of Corruption Act from 2010 made provision for asset declarations to be chosen for content verification through a random selection process to identify which cases reveal a disproportionate increase in wealth or a discrepancy between the contents of the declarations and information contained in external registries. In 2009, 33 percent of all declarations were selected to undergo verification[8].

  Non-OGP initiative

- **Supreme Audit Institutions engaging with civil society (Argentina and Ghana)**:. Argentina's General Audit Office (AGN) has conducted a Participatory Planning Programme to incorporate feedback from civil society into the audit plan and to address CSOs' challenges and demands[9]. Meanwhile, the Ghanaian Government plans to include CSO representatives and independent professionals in Audit Report Implementation Committees (ARICs) to more effectively implement the recommendations of audit reports. While this represents an innovative approach, officials cannot carry out this commitment until the government has amended the Audit Service Act, 2000.

  Non-OGP initiative (Argentina)
  OGP Status (Ghana): Not started

- **Ensuring transparency of public contracts (various countries)**: The Open Contracting Data Standard (OCDS) – developed by the Open Contracting Partnership - enables

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[8]
http://www.opengovguide.com/country-examples/slovenia-and-argentina-randomly-select-asset-disclosures-for-verification/
[9]
http://www.u4.no/publications/when-supreme-audit-institutions-engage-with-civil-society-exploring-lessons-from-the-latin-american-transparency-participation-and-accountability-initiative/

disclosure of data and documents at all stages of the contracting process through a common data model. To date, the following countries have made commitments to adopt the standard: Canada, Colombia, Mexico, Paraguay, Romania, Moldova, UK, Ukraine, Vietnam and Zambia.[10] Meanwhile, Slovakia's new procurement regulation requires all public contracts, with only limited exceptions, to be published online. To avoid secret contracts, any unpublished contracts are declared unenforceable[11].
Non-OGP initiatives

- **Using open data to curb corruption (G20, TI)**: The G20 Anti-Corruption Working Group (ACWG) established open data as a priority measure to tackle corruption. Accordingly they developed the G20 Open Data Principles[12] as a first step to leverage open data in enabling a culture of transparency and accountability to prevent corruption. In the same vein, TI UK along with other partners are currently exploring the best ways open data can be used to fight corruption[13]. Both initiatives provide a platform for countries to develop anti-corruption open data commitments.

  Non-OGP initiatives

- **Improving citizen oversight of public administration (Colombia)**: The Government of Colombia has committed to establish an anticorruption observatory to analyse government information on corruption prevention activities, administrative management, and complaints handling. It should be noted that, according to the IRM report, it is not clear whether citizens or CSOs with anticorruption experience are allowed to play an active role in the observatory[14].

  OGP Status: Substantial completion

- **Enabling citizens to report corruption (Albania):** The Government of Albania has established a standardized procedure for citizens to report corruption through a single portal[15]. Through the portal, which was launched in February 2015, citizens may choose to disclose their identity or submit claims anonymously. Complainants can trace progress of their report submitted at the portal, provided they are not anonymous. The number of reports reached close to 7,000 entries by the end of June 2015. However, there is limited information on the outcome of the reported cases and it has been suggested that the lack of information on concrete measures taken as a result of complaints may lead to public apathy and mistrust in the new system.
  OGP Status: Substantial compleiton

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[10]
https://d3n8a8pro7vhmx.cloudfront.net/opencontracting/pages/342/attachments/original/1445980672/BriefOpenContractingOGP.pdf?1445980672
[11] http://www.opengovguide.com/topics/public-contracting/
[12] http://goo.gl/wEoKEI
[13] http://www.tacod.eu/
[14] Colombia Action Plan 1: #2.6 (starred commitment)
[15] www.stopkorrupsionit.al

Controlling political corruption

- **Enforcing parliamentary ethics (UK, USA, EU):** The codes of conduct for MPs of the UK and the USA are often referred to as good practices as they cover most of the ethical issues concerning parliamentarians[16]. They also provide for clear sanctions and an independent authority/office responsible not only for overseeing the code but also for advising MPs on ethical issues. The recently approved Code of Conduct for Members of the European Parliament is also considered to be robust and comprehensive, although its effectiveness is still to be assessed[17].
  <u>Non-OGP initiatives</u>

- **Introducing the legislative footprint to track** lobbyists' influence on legislation **(Ireland):** Ireland has committed to introducing a 'legislative footprint'[18] in relation to current legislative initiatives, to be published on each Department's website, including details of general schemes, consultations, draft Bills, pre-legislative scrutiny by Committees, submissions received and meetings held with stakeholders, etc.[19] The legislative footprint allows civil society and others to better track and monitor the real level of influence of lobbyists on the decisions that are taken by democratically-elected representatives. From the civil society side, TI EU and TI France are advocating for introducing legislative footprints in EU Institutions and in France respectively, and have created online monitoring tools to bring this information to a wider public.
  <u>OGP Status</u>: Limited completion

- **Regulating political finance (Japan)**: Japan represents an example of a country which drastically changed its political finance regime in response to public pressure to tackle corruption. The introduction of public subsidies, stricter disclosure requirements and increased contribution and spending limits have strengthened political competition, cut electoral costs, and produced more party-centered campaigns[20][21].
  <u>Non-OGP Initiative</u>

- **Engaging citizens in the legislative process (Brazil)**: Brazil's e-Democracia platform, launched in 2009, allows citizens to interact with lawmakers on specific issues. Citizens can use the portal to mark-up legislation and propose and debate solutions to policy problems. The wiki legislation feature (<u>wikilegis</u>) allows citizens to track and comment on pending legislation, including anti-corruption legislation, article by article. Citizens can also suggest specific new text to be incorporated. The platform has facilitated cross-country dialogue among disparate groups and has thousands of active users. It has also improved legislative transparency[22].
  <u>Non-OGP initiative</u>

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[16] http://www.transparency.org/whatwedo/answer/the_effectiveness_of_codes_of_conduct_for_parliamentarians
[17] http://www.transparency.org/whatwedo/answer/the_effectiveness_of_codes_of_conduct_for_parliamentarians
[18] Defined as a comprehensive public record of lobbyists' influence on a piece of legislation
[19] Ireland Action Plan 1: # 3.2.
[20] http://moneypoliticstransparency.org/static/img/MPT_WEB_FINAL_spreads.pdf
[21] It is important to bear in mind that the extent to which increased political finance regulation is effective is highly dependent on local context. In Russia for example, the highly regulated system of political financing has led to the manipulation of access to, and control over, financial resources, thereby entrenching electoral authoritarianism.
[22] http://blog.openingparliament.org/post/60749859717/case-study-5-brazils-e-democracia-project

Controlling private sector corruption

- **Country by country corporate reporting (Norway):** The government of Norway has put forward a bill on country-by-country reporting to the parliament. Country-by-country reporting differs from standard financial reporting as it presents financial information for every country that a company operates in, rather than a single set of information at a global level[23]. Reporting, for example, taxes, royalties and bonuses that a multinational company pays to a host government makes it easier to spot irregular activity including cases of corruption and bribery.
  OGP Status: Complete

  NB: Currently there are discussions in the European Union about extending country-by-country reporting to all sectors.

- **Increasing beneficial ownership transparency (UK):** The use of shell companies to hide the identity of their true owners makes it easier for criminal networks and the corrupt to hide and launder illicit money. Public registers of beneficial ownership allow such ill-gotten gains to be more easily traced and make it more difficult and less attractive for people to benefit from the proceeds of corruption and crime. To this end, the UK government has committed to creating a publicly accessible central registry of company beneficial ownership information, containing information about who ultimately owns and controls UK companies[24]. One limitation of the initiative is that it only covers domestic law and not the beneficial ownership standards for legal entities and trusts incorporated in the British Overseas Territories and Crown Dependencies.[25]

  OGP Status: Substantial completion

  NB: There are a number of actors and fora that have committed to or are advocating for beneficial ownership transparency, including the G20, World Bank, B-Team and Open Contracting Partnership.

- **Regulating private-private bribery (Italy):** In 2013, Italy enacted a new anti-corruption law that introduced a new offence of private corruption. The new law includes individual liability, including for those who do not have managerial roles. It also allows for corporate liability in cases where a company has not adopted adequate preventive measures in its corporate compliance structures. It remains to be seen how the law will be implemented in practice. As of 2013, (the latest date for which information was available) only one case had been adjudicated[26].

  Non-OGP initiative

Controlling cross border corruption

- **Strengthening the regulation of luxury goods and real estate (Dubai, Switzerland, USA):** As part of its strategy to counter money laundering, Dubai requires all dealers in goods worth US$ 15,000 or more to be registered under Anti-Money Laundering rules.

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[23] Norway Action Plan 2: #4.24
[24] UK Action Plan 2: #7 (starred)
[25] http://www.transparency.org/whatwedo/publication/just_for_show_g20_promises
[26] http://www.transparency.org/files/content/corruptionqas/Regulating_private_to_private_corruption_2014.pdf

Switzerland, meanwhile, is planning to forbid cash payments of over US$112,000 for both immovable and movable properties. Transactions above this amount will have to be processed through a bank rather than in cash[27]. Most recently the US Department of Justice introduced a pilot requiring collection of beneficial ownership information for all high-end cash property purchases, especially those involving shell companies, in the New York and Miami metropolitan areas.

Non-OGP initiatives

- **Denying entry to corrupt individuals (USA):** The USA has committed to launching an interagency process to explore ways to strengthen efforts to deny safe haven to corrupt individuals. These efforts include the possibility of strengthening the Presidential Proclamation that denies safe haven in the USA to those who have committed, participated in, or were beneficiaries of, corrupt practices in performing public functions[28].

  OGP Status: Limited completion

  NB: G20 has committed to and are working towards developing principles on denial of entry.

- **Recovering stolen assets (UK, USA, Switzerland):** Despite the inherent challenges involved, asset recovery can have an important development impact when returns are used for development purposes. Asset recovery also helps to deter corruption by showing that corrupt officials can be deprived of their illicit gains. Switzerland, the United States, and the United Kingdom are three examples of countries that have developed high-level policies, a wide range of asset recovery tools, and dedicated teams working on asset recovery cases[29]. The Kleptocracy Initiative in the USA, for example, has achieved some notable wins including a recent settlement in which Teodoro Obiang, the son of the President of Equatorial Guinea was ordered to give $30 million from the sale of his American assets to a charity to benefit the people of Equatorial Guinea[30].
  Non-OGP initiatives

Strengthening law enforcement and judiciary

- **Creating international hybrid anti-corruption mechanisms to fight impunity (Guatemala and Honduras)**: The International Commission against Impunity in Guatemala (CICIG),was established in 2006 at the request of the Guatemalan government and with the support of the United Nations to help domestic institutions investigate and dismantle illegal groups and clandestine security structures. It has the mandate to both build up Guatemalan institutions, and engage in its own investigations, and has investigated more than 200 individuals and criminal networks since 2007, including several high-level corruption investigations. A similar mechanism was

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[27] http://www.transparency.org/whatwedo/publication/policy_brief_04_2014_regulating_luxury_investments
[28] USA (AP 2; #18):
[29] http://www.oecd.org/dac/governance-peace/governance/docs/Hard%20Facts%20Stolen%20Asset%20Recovery.pdf
[30]
http://www.nytimes.com/2016/02/17/business/wanted-by-the-us-the-stolen-millions-of-despots-and-crooked-elites.html?ref=topics&_r=1

established in Honduras in 2015, although with more limited (advisory) powers[31].
<u>Non-OGP initiatives</u>

- **Increasing the capacity of the Attorney General's Office to fight corruption (Brazil)**:
The Brazilian government has committed to strengthen procedures for preliminary
investigation and information gathering as well as to increase the number of attorneys
assigned to deal exclusively with cases related to corruption and public asset recovery[32].
It should be noted that the IRM suggests minor potential impact, because the activity
focuses on expanding government practices already underway.

  <u>OGP Status</u>: Substantial completion

- **Creating a specialised system for dealing with complex corruption cases (Peru)**: The
Government of Peru plans to strengthen the judicial anticorruption subsystem for
complex cases, cases with national impact, and crimes carrying penalties of more than
five years in jail[33].

  <u>OGP Status</u>: Substantial completion

- **Limiting the scope of statutes of limitation in corruption cases (Austria and others)**:
In most criminal cases, the limitation period after which an action can no longer be
brought against an alleged offender usually begins on the day on which the crime was
committed. However, many European countries (including Austria, Bulgaria and the
Czech Republic) have introduced mechanisms that account for the late discovery of
corruption cases. Moreover, in Austria, Statute of Limitation periods are suspended or
interrupted if an alleged offender commits another offence of a similar nature[34].
<u>Non-OGP initiatives</u>

- **Addressing risk in judiciary (Ukraine)**: The Ukrainian Government has committed to
developing, with the involvement of members of the public, methodological
recommendations on the identification of corruption risks in judicial officials' work and on
ways to counteract them. This risk-based approach to anti-corruption is a good practice
that has not been used in the Ukrainian public sector to date. However, it is not clear the
extent to which civil society was actually involved in the development of the methodology
[35].
  <u>OGP Status</u>: Substantial completion

- **Improving the transparency of judicial decisions** (Georgia) As part of its draft OGP
commitments for 2016-2017, the Government of Georgia is planning to develop a unified
standard for common court decisions, and to elaborate a methodology, criteria and
standards for the reasoning of court decisions. This is a positive step in the light of the

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[31]
https://www.wilsoncenter.org/sites/default/files/tackling_corruption_and_impunity-_honduras_guatemala_and_mexico_4.pdf
[32] Brazil Action Plan 2: # 1.1
[33] Peru Action Plan 1: #3.e (starred commitment)
[34]
https://www.transparency.de/fileadmin/pdfs/Themen/Justiz/Statutes%20of%20Limitation_report_TI-S_Nov%202010.pdf
[35] http://www.opengovpartnership.org/sites/default/files/Ukraine_Second_IRM_Report_PublicComment_ENG.pdf

Ombudsman's criticisms of the persistent problem of judges' failure to provide reasoned evidence and legal analysis behind their decisions[36]. The need to clearly and publically explain decisions is particularly important in corruption cases given the heightened risk of political interference often associated with cases.
OGP Status: N/A (draft commitment)

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[36] http://www.transparency.ge/sites/default/files/post_attachments/georgia_national_integrity_nis_assessment_2015.pdf