INDEPENDENT REPORTING MECHANISM:

KENYA
PROGRESS REPORT
2012-13

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Independent Researcher
First Progress Report

Open
Government
Partnership

INDEPENDENT
REPORTING MECHANISM

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KENYA
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EXECUTIVE SUMMARY

INDEPENDENT REPORTING MECHANISM (IRM):
KENYA
PROGRESS REPORT 2012-2013

Kenya's action plan contained a number of interesting and ambitious commitments. As part of OGP, the country continued several ongoing initiatives towards open government that have strong potential in the coming years. Going forward, the government needs to make efforts to engage multiple stakeholders in order to make the OGP process in Kenya inclusive and participatory.

The Open Government Partnership (OGP) is a voluntary international initiative that aims to secure commitments from governments to their citizenry to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. The Independent Reporting Mechanism (IRM) carries out a biannual review of the activities of each OGP participating country.

Kenya officially began participating in OGP in August 2011, when the Minister for Foreign Affairs, Moses Wetangula, declared the government's intent to join.

Kenya's draft action plan was prepared by the Kenya Information and Communications Technology (ICT) Board, which is the agency under the Ministry of Information and Communications tasked with supporting Kenya's commitment to the Open Government Partnership. The first step was the formation of an Open Government Working Group comprising government agencies, development partners (notably the World Bank), civil society organizations, and the private sector.

OGP PROCESS

Countries participating in OGP follow a process for consultation during the development of their OGP action plan and its implementation.

Overall, the government of Kenya endeavoured to organise broad consultations to develop its OGP action plan. While the government established web- and mobile phone-based channels for citizen engagement and interaction during the drafting of the action plan, the government did not provide advanced notice for consultations; nor did it ensure adequate stakeholder participation in the consultation process to develop Kenya's OGP action plan. The IRM researcher was unable to independently assess whether different stakeholders considered the consultation process meaningful.

After adopting the national action plan in March 2012, CSOs and other stakeholders organised an open government symposium on the implementation of the action plan. In order to enhance the participatory process, government and CSOs agreed to diversify the tools and platforms for engagement and feedback. For example, the implementation status of the commitments in the national action plan were shared through an OGP-CSO listserve.

The government did not provide the two-week public comment period on the draft self-assessment reports and, as a result, no public comments were received except through the regional meeting held in Mombasa in May 2013.

AT A GLANCE

PARTICIPATING SINCE: 2011
NUMBER OF COMMITMENTS: 9

LEVEL OF COMPLETION

COMPLETED:	0 OF 9
SUBSTANTIAL:	2 OF 9
LIMITED:	2 OF 9
NOT STARTED:	5 OF 9

TIMING

ON SCHEDULE:	1 OF 9

COMMITMENT EMPHASIS

ACCESS TO INFORMATION:	6 OF 9
PARTICIPATION:	6 OF 9
ACCOUNTABILITY:	6 OF 9
TECH & INNOVATION FOR TRANSPARENCY & ACCOUNTABILITY:	6 OF 9

NUMBER OF COMMITMENTS WITH

CLEAR RELEVANCE TO AN OGP VALUE:	9 OF 9
MODERATE OR TRANSFORMATIVE POTENTIAL IMPACT:	9 OF 9
SUBSTANTIAL OR COMPLETE IMPLEMENTATION:	2 OF 9
ALL THREE (✪):	**2 OF 9**

COMMITMENT IMPLEMENTATION

As part of OGP, countries are required to make commitments towards a two-year action plan. Table 1 summarises each commitment, its level of completion, its ambition, and whether it falls within Kenya's planned schedule, and the key next steps for the commitment in future OGP action plans. Table 2 summarises the IRM assessment of progress on each commitment. This report has organised Kenya's nine action plan commitments under four themes or sectors for easier use by government and civil society: A) Improving Transparency in Electoral Processes; B) Promoting Public Participation; C) Improving Transparency in the Judiciary; and D) Open Budgets.

Table 1 | Assessment of Progress by Commitment

COMMITMENT SHORT NAME	POTENTIAL IMPACT				LEVEL OF COMPLETION				TIMING	NEXT STEPS
✪ COMMITMENT IS CLEARLY RELEVANT TO OGP VALUES AS WRITTEN, HAS SIGNIFICANT POTENTIAL IMPACT, AND IS SUBSTANTIALLY OR COMPLETELY IMPLEMENTED.	NONE	MINOR	MODERATE	TRANSFORMATIVE	NOT STARTED	LIMITED	SUBSTANTIAL	COMPLETE		
A. Improving Transparency in Electoral Processes										
✪ 1.a. Definition of Electoral Boundaries and Name.	■	■	■	■	■	■	■		Behind schedule	**Maintenance and monitoring** of completed implementation
2.b. Voting Information Online.	■	■	■	■	■	■			Behind schedule	Maintenance and monitoring
B. Promoting Public Participation										
Open Government for Improving Public Services. — 1.b. End-to-End Service Delivery Portal	■	■	■	■	■				Behind schedule	**Further work** on basic implementation
1.c. Open Data Portal	■	■	■	■	■	■			Behind schedule	Further work
1.d. Public Complaints Portal	■	■	■	■	■				Behind schedule	Further work
2.c. Kenya Action Plan Online.	■	■	■	■	■				Behind schedule	Further work
C. Improving Transparency in the Judiciary										
✪ 2.a. Public Vetting of Judges and Case Allocation System.	■	■	■	■	■	■	■		On schedule	Further work
D. Open Budgets										
3.a. Improve Kenya's OBI Index.	■	■	■		■				Behind schedule	Further work
3.b. Increase Public Participation in Budgetary Processes.	■	■	■	■	■				Behind schedule	

Table 2 | Summary of Progress by Commitment

NAME OF COMMITMENT	SUMMARY OF RESULTS
✪ COMMITMENT IS CLEARLY RELEVANT TO OGP VALUES AS WRITTEN, HAS SIGNIFICANT POTENTIAL IMPACT, AND IS SUBSTANTIALLY OR COMPLETELY IMPLEMENTED.	
A. Improving Transparency in Electoral Processes	
✪ **1.a. Definition of Electoral Boundaries and Name.** • OGP Value Relevance: Clear • Potential impact: Transformative • Completion: Substantial	This commitment existed prior to OGP. After joining OGP in 2012 after a four-month review exercise, according to an IEBC report, 80 more constituencies were created, raising the number of constitutencies from 210 to 290. The new boundaries and names were developed and gazetted through a consultative process spearheaded by the IEBC.
2.b. Voting Information Online. • OGP Value Relevance: Clear • Potential impact: Transformative • Completion: Limited	The second element of this commitment focused on enhancing transparency and accountability in electoral processes, as well as parliamentary proceedings. The government made the recruitment process for the members of the IEBC transparent, and public scrutiny of Elector's Register was made possible online through the IEBC election portal. The government also carried out live broadcasts on radio and TV to publicise the voting information and where to access information related to parliamentary proceedings; and, the *Hansard*, an official record of the Kenyan National Assembly, was put online. Serious technological challenges – such as the electonic transmission system's failure in the 2013 Generla Elections – need to be addressed to ensure better implementation.
B. Promoting Public Participation	
Open Government for Improving Public Services.	**1.b. End-to-End Service Delivery Portal:** • OGP value relevance: Clear • Potential impact: Transformative • Completion: Not started	The open data portal was launched by President Kibaki on 8 July 2011. Some databases – such as the 2009 Census, national and regional expenditures and information on health facilities across the country – in PDF and open datat formats (CSV) could be found on the open data portal. The launch of the open data portal also spurred efforts from outside the government, mainly from civil society, to strengthen the open government data space. At the time of writing this report, data on the End-to-End initiative (government-shared services or Shirikiana) was not available on Kenya's open data portal, but through an external link to a PowerPoint presentation that reported on the current state of services as of September 2011. Furthermore, it is unclear whether the online portal to share information on the OGP process – the Kenya Action Plan Online – was created. According to the government progress report, some progess has been made on commitments 1.b and 1.d. For example, the report states that the services of the Ombudsman are online; however, the specific complaint portals on health and education (commitment 1.d) are pending.

	1.c. Open Data Portal: • OGP value relevance: Clear • Potential impact: Transformative • Completion: Limited	
	1.d. Public Complaints Portal: • OGP value relevance: Clear • Potential impact: Transformative • Completion: Not started	
2.c. Kenya Action Plan Online • OGP Value Relevance: Clear • Potential impact: Transformative • Completion: Not started	

NAME OF COMMITMENT	SUMMARY OF RESULTS
✪ COMMITMENT IS CLEARLY RELEVANT TO OGP VALUES AS WRITTEN, HAS SIGNIFICANT POTENTIAL IMPACT, AND IS SUBSTANTIALLY OR COMPLETELY IMPLEMENTED.	
C. Improving Transparency in the Judiciary	
✪ 2.a. Public Vetting of Judges and Case Allocation System. • OGP Value Relevance: Clear • Potential impact: Transformative • Completion: Substantial	The commitment on ensuring transparency in the judicary and the justice system focused on establishing a process for: publicly-vetting judges, integrating new technologies within the judiciary to improve the justice delivery system, and ensuring transparency in the case allocation system. The first element of this commitment: public vetting of judges had never been done in Kenya until the inclusion of this commitment in the OGP action plan. In October 2012, the government of Kenya enacted a bill for discussion in the National Assembly, titled the Vetting of Judges and Magistrates (Amendment), Bill 2012. Furthermore, for the first time, Kenyans can access and download cases and judgements online. While progress has been made with publicly-vetting judges and ensuring public access (online) to cases and judgements, the introduction of a system to enable random allocation of cases among judges by the Chief Justice is still pending.
D. Open Budgets	
3.a. Improve Kenya's OBI Index: • OGP value relevance: Clear • Potential impact: Moderate • Completion: Not started	With this commitment, the government intended to improve the management of public resources, improve citizen participation in budget processes, and increase Kenya's ranking in the Open Budget Index (OBI) by providing "significant information" rather than "more information." The IRM researcher finds that this commitment has been substantial completed in this regard. The second element promised to improve public participation in the budget process. It committed to do this through technology and through the publication of proposed and approved budgets in machine-readable format. As far as publication through technology is concerned, there is no evidence available on public websites about progress made on open budgets. Other actions related to open budgets were taken, but cannot be counted as fulfillment of this commitment. Given that this commitment has not started, no preliminary results can be assessed.
3.b. Increase Public Participation in Budgetary Processes: • OGP value relevance: Clear • Potential impact: Transformative • Completion: Not started	

RECOMMENDATIONS

In developing the next action plan, the government should take a more proactive approach to include the wider public once a multi-stakeholder consultative forum on OGP implementation is established. This would increase transparency and public participation in action plan development as well as future self-assessment and post-implementation processes and activities. After more work is done for fuller implementation of the four initial commitments, the next action plan should focus on the following three areas:

1. Increasing corporate accountability

2. Enacting a comprehensive access to information (ATI) law

3. Implementing the new constitution, which embodies the principles on which the first action plan commitments are built.

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Open Government Partnership
INDEPENDENT REPORTING MECHANISM

The Open Government Partnership (OGP) aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. OGP's Independent Reporting Mechanism assesses development and implementation of national action plans to foster dialogue among stakeholders and improve accountability.

I | BACKGROUND

The Open Government Partnership (OGP) is a voluntary, multi-stakeholder international initiative that aims to secure concrete commitments from governments to their citizenry to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In pursuit of these goals, OGP provides an international forum for dialogue and sharing among governments, civil society organizations, and the private sector, all of which contribute to a common pursuit of open government. OGP stakeholders include participating governments as well as civil society and private sector entities that support the principles and mission of OGP.

INTRODUCTION

Kenya officially began participating in OGP in August 2011 when the Minister for Foreign Affairs, Moses Wetangula, declared the government's intent to join.

To participate in OGP, governments must exhibit a demonstrated commitment to open government by meeting a set of minimum performance criteria on key dimensions of open government that are particularly consequential for increasing government responsiveness, strengthening citizen engagement, and fighting corruption. Indicators produced by organizations other than OGP to determine the extent of country progress on each of the dimensions, with points awarded as described below. Kenya entered into the Partnership meeting the minimal requirements for eligibility. At the time of joining, the country had a high score of 4 out of a possible 4 for Open Budgets,[1] 4 out of a possible 4 on the principle of access to information embodied in its constitution,[2] 2 out of a possible 4 based on limited disclosure of assets of Politicians to Congress,[3] and 5.29 out of a possible 10 on the Economist Intelligence Unit's Democracy Index Civil Liberties sub score.[4]

All OGP participating governments must develop OGP country action plans that elaborate concrete commitments over an initial two-year period. Governments should begin their action plans by sharing existing efforts related to a set of five "grand challenges," including specific open government strategies and ongoing programs (see Section IV for a list of grand challenge areas.) Action plans should

then set out each government's OGP commitments, which stretch government practice beyond its current baseline with respect to the relevant grand challenge. These commitments may build on existing efforts, identify new steps to complete ongoing reforms, or initiate action in an entirely new area.

Along with the other 2nd cohort OGP countries, Kenya developed its national action plan from November 2011 through February 2012. The effective start date for the action plan submitted in April 2012 was officially 1 July 2012 for implementation through 30 June 2013. The government published its self-assessment in May 2013. According to the OGP schedule,[5] officials and civil society members are to revise the first plan or develop a new plan by April 2014, with consultation beginning January 2014.

Pursuant to OGP requirements, the Independent Reporting Mechanism (IRM) of OGP partnered with an experienced, independent local researcher to carry out an evaluation of the development and implementation of the country's first action plan. In Kenya the IRM partnered with Geoffrey Runji Njeru an independent researcher based at the Institute for Development Studies (IDS) of the University of Nairobi. Through his expertise in governance, he is the researcher and author of this progress report. It is the aim of the IRM to inform ongoing dialogue around development and implementation of future commitments in each OGP participating country.

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INSTITUTIONAL CONTEXT

Upon entry into the OGP, the government undertook commitments in three main areas: improving public services, improving public integrity, and more effectively managing public resources. It is upon these commitments that the government of Kenya drew up its national action plan in February 2012 after deliberations at the ministerial level from November 2011 to January 2012.

Kenya's draft action plan was written by the government of Kenya, through the Kenya Information and Communications Technology (ICT) Board, which is the agency under the Ministry of Information and Communications tasked with supporting Kenya's commitment to the Open Government Partnership. The first step was the formation of an Open Government Working Group comprising government agencies, development partners (notably the World Bank), civil society organizations, and the private sector. The ICT Board, in collaboration with the Open Government Working Group, prepared the draft action plan. In light of its revised constitution that demands an active engagement of citizens, Kenya recognizes the importance of an inclusive governance process for the development and implementation of its national open government action plan. The Working Group helped to galvanize public participation and support in the drafting of the OGP national action plan.

An open government symposium was organized by Civil Society Organizations (CSOs) in March 2012. This symposium was a culmination of the consultative process on the national draft action plan (discussed in detail in Section II). Also in 2012, a workshop of Permanent Secretaries was held to engage other government ministries. The then Permanent Secretary for the Ministry of Information and Communications, Dr. Bitange Ndemo, himself a champion of open data and open government, submitted a cabinet memo on OGP. Finally, the Kenyan government – along with the government of South Africa – held the first Africa Regional Conference on OGP from 29-30 May 2013 in Mombasa to encourage other African states to adopt open government principles.

METHODOLOGICAL NOTE

The IRM report builds on existing work by government and civil society in assessing and carrying out OGP activities. The IRM researcher reviewed the government's first national action plan,[6] its self-assessment of the action plan process,[7] its Vision 2030,[8] Kenya's Employment Policy, the Constitution of Kenya,[9] and other sources referred to in this report. Numerous references are made to these documents for context. OGP staff and a panel of experts reviewed the report, and the government was also given an opportunity to comment, provide additional information, and identify factual errors prior to publication.

To gather the voices of multiple stakeholders, the IRM researcher organized one stakeholder forum in Nairobi, which was conducted according to the OGP focus group model.

Methods and sources are dealt with more completely in the Annex of this report.

[1] Open Budget Partnership, *Open Budgets Change Lives* (Washington, DC: Open Budget Partnership, 2012). http://bit.ly/1eBIabX

[2] http://bit.ly/1ejbxOc

[3] Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, "Disclosure by Politicians," (Tuck School of Business Working Paper 2009-60, 2009): http://bit.ly/19nDEfK; Organization for Economic Cooperation and Development (OECD), "Types of Information Decision Makers Are Required to Formally Disclose, and Level Of Transparency," in *Government at a Glance* 2009, (OECD, 2009). http://bit.ly/13vGtqS; Ricard Messick, "Income and Asset Disclosure by World Bank Client Countries" (Washington, DC: World Bank, 2009). http://bit.ly/1cIokyf

[4] Economist Intelligence Unit, "Democracy Index 2010: Democracy in Retreat" (London: Economist, 2010). Available at: http://bit.ly/eLC1rE

[5] http://www.opengovpartnership.org/sites/default/files/attachments/OGP%20Calendar%20For%20All%20Countries.docx

[6] The Open Government Partnership. Draft National Action Plan for the Republic of Kenya. February 2012. http://bit.ly/1boXGf8

[7] Open Government Partnership. Kenya Nation Action Plan Progress Report 2013 [sic] http://bit.ly/1lCZr9b

[8] http://www.vision2030.go.ke/

[9] http://bit.ly/1liygmt

II | PROCESS: DEVELOPMENT OF ACTION PLAN

The government was neither able to ensure participation of all relevant stakeholders, nor organise meaningful consultation to develop its action plan.

Countries participating in OGP follow a set process for consultation during the development of their OGP action plan. According to the OGP Articles of Governance, countries must:

Make the details of their public consultation process and timeline available (online at minimum) prior to the consultation

- Consult widely with the national community, including civil society and the private sector; seek out a diverse range of views; and, make a summary of the public consultation and all individual written comment submissions available online

- Undertake OGP awareness-raising activities to enhance public participation in the consultation

- Consult the population with sufficient forewarning and through a variety of mechanisms—including

online and in-person meetings—to ensure the accessibility of opportunities for citizens to engage.

A fifth requirement, during the consultation, is set out in the OGP Articles of Governance. This requirement is dealt with in the section "III: Consultation during implementation":

Countries are to identify a forum to enable regular multi-stakeholder consultation on OGP implementation, which can be an existing or new entity. This is dealt with in the next section; however, evidence for consultation both before and during implementation is included here and in Table 1 for ease of reference.

Table 1 | Action Plan Consultation Process

PHASE OF ACTION PLAN	OGP PROCESS REQUIREMENT (ARTICLES OF GOVERNANCE SECTION)	DID THE GOVERNMENT MEET THIS REQUIREMENT
During development	Timeline and process: prior availability	No
	Advance notice	No
	Awareness-raising activities	Yes
	Online consultations	No
	In-person consultations	Yes
	Summary of comments	No
During Implementation	Regular forum	Yes

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Consultation Process

The government of Kenya made some efforts to organize broad consultations. The Permanent Secretaries' Workshop in 2012 discussed a Cabinet Memorandum on OGP that sought – through the Permanent Secretaries – to sensitize the entire government on the need for opening data to the public. Dr. Bitange Ndemo tabled the Cabinet Memorandum.

While the government also undertook some awareness-raising activities at the regional level (as discussed in section III), it did not provide advanced notice for consultations, nor did it ensure adequate stakeholder participation in the consultation process to develop Kenya's OGP action plan.

Through the OGP initiative, the government established web- and mobile phone-based channels for citizen engagement and interaction during the drafting of the action plan. However, the IRM researcher was unable to independently assess whether different stakeholders considered the consultation process meaningful.

The draft action plan was posted on Kenya's OGP portal, which led to discussions online and on mobile phones. These discussions, however, involved mainly educated, urban-based Kenyans, while the majority of rural dwellers who have little or no access to these mechanisms were excluded. Although government and civil society deliberated over important issues to include in the action plan, the final decision on the action plan rested with the government.

While Transparency International, the Open Institute, the International Commission of Jurists-Kenya Chapter, and private universities, among others, participated in the consultations, there is little evidence of private sector participation in the consultation process or development of the action plan.

III | PROCESS: CONSULTATION DURING IMPLEMENTATION

After adopting the national action plan, CSOs and other stakeholders organized an open government symposium on the implementation of the action plan in March 2012.

As part of their participation in OGP, governments commit to identify a forum to enable regular multi-stakeholder consultation on OGP implementation, which can be an existing or new entity. This section summarizes that information.

CONSULTATION DURING IMPLEMENTATION

Kenya has been implementing significant reforms to make government transparent and more accountable to its citizens. After drafting the OGP national action plan, the government of Kenya adopted an inclusive consultative approach to the process. In March 2012, CSOs and other stakeholders organized an open government symposium. This symposium was part of a consultative process to discuss the implementation of the national action plan. In order to enhance the participatory process, government and CSOs agreed to diversify the tools and platforms for engagement and feedback. For example, the implementation status of the commitments in the national action plan were shared through an OGP-CSO listserve.

Furthermore, the government of Kenya co-hosted – with the government of South Africa – the first Africa regional conference on OGP in May 2013 in Mombasa.[1] The objectives of the conference were to outline an Africa agenda for open government, promote OGP in Africa, and share experiences in open governance from different parts of the continent and beyond. The conference was seen as preparation for the 2013 OGP Summit in London. The conference attracted over 100 government and civil society leaders from 10 African countries. Also represented were the OGP Support Unit, the Independent OGP civil society coordinator, Transparency International, the World Bank Institute, the African Commission on Human and People's Rights, the United Nations Educational Scientific and Cultural Organization (UNESCO), and the African Peer Review Mechanism (APRM) Support Unit. At the conference, the OGP eligibility status of Botswana, Ethiopia, Malawi, Namibia, Nigeria, Senegal, Sierra Leone, Uganda and Zambia was discussed. Other issues deliberated included OGP progress on the continent, OGP relations with APRM and other governance processes, and how to integrate the OGP agenda into regional economic communities such as the East African Community (EAC), the Economic Community of West African States (ECWOAS), and the Southern African Development Community (SADC). A significant outcome of the conference was the creation of a new working relationship between government and civil society in Kenya, and the agreement that open data is an essential component of promoting good governance.[2]

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[1] Kenya ICT Board, 2013. Taking OGP Forward in Africa. Nairobi: ICT Board
[2] During the first Africa Regional Meeting on OGP, the Kenyan civil society challenged African countries to organize open and forthright debate on OGP as a tool for accelerating good governance and citizen empowerment. This forum demonstrated beyond doubt that the gulf between government and civil society can be successfully bridged after all and that the two entities do not have to remain natural enemies.

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IV | IMPLEMENTATION OF COMMITMENTS

All OGP participating governments develop OGP country action plans that elaborate concrete commitments for an initial two-year period. Governments begin their OGP country action plans by sharing existing efforts related to their chosen grand challenge(s), including specific open government strategies and ongoing programs. Action plans then set out governments' OGP commitments, which stretch government practice beyond its current baseline with respect to the relevant policy area. These commitments may build on existing efforts, identify new steps to complete on-going reforms, or initiate action in an entirely new area.

OGP commitments are to be structured around a set of five "grand challenges" that governments face. OGP recognizes that all countries are starting from different baselines. Countries are charged with selecting their grand challenges and related concrete commitments that best fit with their unique country contexts. No action plan, standard, or specific commitments are to be forced on any country.

The five OGP grand challenges are:

1. Improving Public Services: measures that address the full spectrum of citizen services including health, education, criminal justice, water, electricity, telecommunications, and any other relevant service areas by fostering public service improvement or private sector innovation.

2. Increasing Public Integrity: measures that address corruption and public ethics, access to information, campaign finance reform, and media and civil society freedom.

3. More Effectively Managing Public Resources: measures that address budgets, procurement, natural resources, and foreign assistance.

4. Creating Safer Communities: measures that address public safety, the security sector, disaster and crisis response, and environmental threats.

5. Increasing Corporate Accountability: measures that address corporate responsibility on issues such as the environment, anti-corruption, consumer protection, and community engagement.

While the nature of concrete commitments under any grand challenge area should be flexible and allow for each country's unique circumstances, OGP commitments should be relevant to OGP values laid out in the OGP Articles of Governance and Open Government Declaration signed by all OGP participating countries. The IRM uses the following guidance to evaluate relevance to core open government values:

- Access to Information. These commitments:
  - pertain to government-held information;
  - are not restricted to data but pertains to all information;
  - may cover proactive or reactive releases of information;
  - may pertain to strengthen the right to information; and,
  - must provide open access to information (it should not be privileged or internal only to government).

- Citizen Participation. Governments seek to mobilize citizens to engage in public debate, provide input, and make contributions that lead to more responsive, innovative and effective governance. Commitments around access to information:
  - open up decision-making to all interested members of the public – such forums are usually "top-down" in that they are created by

government (or actors empowered by government) to inform decision-making;

- o often include elements of access to information to ensure meaningful input of interested members of the public into decisions;

- o often include the enhancing citizens' right to be heard, but do not necessarily include the right to be heeded.

- Accountability. There are rules, regulations, and mechanisms in place that call upon government actors to justify their actions, act upon criticisms or requirements made of them, and accept responsibility for failure to perform with respect to laws or commitments.

  - o As part of open government, such commitments have an "open" element, meaning that they are not purely internal systems of accountability without a public face.

- Technology and Innovation. Commitments for technology and innovation:

  - o promote new technologies offer opportunities for information sharing, public participation, and collaboration;

  - o should make more information public in ways that enable people to both understand what their governments do and to influence decisions;

  - o may commit to supporting the ability of governments and citizens to use tech for openness and accountability; and,

  - o may support the use of technology by government employees and citizens alike.

Countries may focus their commitments at the national, local and/or sub-national level—wherever they believe their open government efforts are to have the greatest impact.

Recognizing that achieving open government commitments often involves a multiyear process, governments should attach timeframes and benchmarks to their commitments that indicate what is to be accomplished each year, wherever possible.

This section details each of the commitments Kenya included in its initial action plan. Kenya's action plan had nine commitments that were clustered under three OGP grand challenges:

1. Improving Public Services

2. Improving Public Integrity

3. More effectively managing public resources.

For this report, the nine commitments have been organized by theme or sector for easier use by government and civil society. The four themes or sectors are:

A. Improving Transparency in Electoral Processes

B. Promoting Public Participation

C. Improving Transparency in the Judiciary

D. Open Budgets.

The commitment numbers are the same as those in the Kenya OGP national action plan.

A number of the commitments have a single milestone, while others have multiple milestones. In these latter cases, the milestones have been evaluated together on a single fact sheet in order to avoid repetition and make reading easier for OGP stakeholders. While most indicators given on each commitment fact sheet are self-explanatory, a number of indicators for each commitment require further explanation.

- Relevance: the IRM researcher evaluated each commitment for its relevance to OGP values and grand challenges.

  - o *OGP values:* some OGP commitments are unclear in their relationship to OGP values. In order to identify such cases, the IRM researcher made a judgment based on a close reading of the commitment text. This identifies commitments that can better articulate their relationship to fundamental issues of openness.

  - o *Grand challenges:* while some commitments may be relevant to more than one grand challenge, the reviewer only marked those that had been identified by government (as almost all commitments address a grand challenge).

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- Ambition:
  - *Potential impact:* OGP countries are expected to make ambitious commitments (with new or pre-existing activities) that stretch government practice beyond an existing baseline. To contribute to a broad definition of ambition, the IRM researcher judged how potentially transformative commitments might be in the policy area. This is based on the researcher's findings and experience as a public policy expert.
  - New or pre-existing: the IRM researcher also recorded, in a non-judgmental fashion, whether a commitment was based on an action that pre-dated the action plan.
- Timing:
  - *Projected completion:* the OGP Articles of Governance encourage countries to put forth commitments with clear deliverables and suggested annual milestones. In cases where such information is not available, the IRM researcher made a best judgment, based on the evidence of how far the commitment could possibly be at the end of the period assessed.

A. Improving Transparency in Electoral Processes

1.a. Definition of Electoral Boundaries and Names

Improving service delivery by government, both National and Devolved Government by engaging public in defining County and Constituency Electoral boundaries (including Parliamentary Constituency names) as a means of bringing government closer to citizens. Public participation has to be inclusive through available channels: web, mobile, radio, TV and public hearings.

2.b. Voting Information Online

Promote transparency and accountability in the management of elections by making available voter register, constituency and boundary information in electronic format online, improving the transmission of election results through technology and making them available in open data format.

COMMITMENT DESCRIPTION		
ANSWERABILITY	LEAD INSTITUTION	Independent Electoral and Boundaries Commission (IEBC)
	SUPPORTING INSTITUTIONS	The Judiciary; Ministry of Justice, National Cohesion and Constitutional Affairs.
	POINT OF CONTACT SPECIFIED?	Yes
SPECIFICITY AND MEASURABILITY		High (Commitment language provides clear, measurable, verifiable milestones for achievement of the goal)
RELEVANCE	OGP GRAND CHALLENGES	Improving public services. Increasing public integrity

	OGP VALUES				
MILESTONE	**ACCESS TO INFORMATION**	**CIVIC PARTICIPATION**	**ACCOUNTABILITY**	**TECH & INNO- VATION FOR TRANS. & ACC.**	**NONE**
1.a. Define Electoral Boundaries and Names	✗	✗	✗	✗	
2.b. Publish Voter Information Online	✗	✗	✗	✗	

AMBITION		
NEW VS. PRE-EXISTING		**POTENTIAL IMPACT**
1.a. Define Electoral Boundaries and Names	Pre-existing	Transformative (the commitment entails a reform that could potentially transform "business as usual" in the relevant policy area)
2.b. Publish Voter Information Online	New	Transformative (the commitment entails a reform that could potentially transform "business as usual" in the relevant policy area)

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LEVEL OF COMPLETION						
1.a. Define Electoral Boundaries and Names						
START DATE: The start date predates OGP entry	**END DATE:** June 2012	Actual completion Projected completion	NOT STARTED	LIMITED	SUBSTANTIAL ▼	COMPLETE ▲
2.b. Publish Voter Information Online						
START DATE: 2012	**END DATE:** March 2013	Actual completion Projected completion	NOT STARTED	LIMITED ▼	SUBSTANTIAL	COMPLETE ▲

NEXT STEPS	
1.a. Define Electoral Boundaries and Names	Maintenance and monitoring of completed implementation
2.b. Publish Voter Information Online	Maintenance and monitoring of completed implementation

What Happened?

The first element of this commitment predates Kenya's entry into the OGP, and is part of the larger democratization process that began in 1991.

After joining OGP, in 2012, the Independent Electoral and Boundaries Commission (IEBC) began demarcating electoral, and not-administrative boundaries or other boundaries.[1] After approval by the parliament, the IEBC went around the country soliciting public views to define elctoral boundaries for counties and constituencies. After collecting public views, the IEBC published the names of all the constituencies and county assembly wards following a review of electoral boundaries, which included their populations and size (in square kilometres). In March 2012, the names and boundaries of 290 constituencies and 1,450 county wards were published on the IEBC website.[2]

Since 2012, voters have the right to know where they will register and/or cast their votes.

The second element of this commitment focused on enhancing transparency and accountability in electoral processes, as well as parliamentary proceedings. The government made the recruitment process for the members of the IEBC transparent, and public scrutiny of Elector's Register was made possible online through the IEBC election portal.[3]

Furthermore, the government carried out live broadcasts on radio and TV to publicize the voting information and where to access information related to parliamentary proceedings. Finally, *the Hansard*, an official record of the Kenyan National Assembly, was put online.

Did it Matter?

This cluster of commitments on enhancing transparency in electoral processes and institutions could have potentially transformative impact on the electoral process. In particular, the possibilities of promoting public participation through radio, TV, and public hearings.

The commitment exisited prior to OGP and, in 2012, after a four-month review exercise, according to an IEBC report,[4] 80 more constiuencies were created, raising the number of constitutencies from 210 to 290.

Most county and constituency boundaries and names in Kenya carry ethnic connotations and the public hearings gave citizens a chance to review these boundaries and names. The new boundaries and names were developed and gazetted through a consultative process spearheaded by the IEBC. As a result, on the one hand, public confidence in Kenya's electoral and parliamentary processes could increase; and on the other, reduced dissent or acrimony in electoral politics could be observed, since the

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boundaries and names were decided by consensus. The process also helps to legitimize national elections and portray the IEBC as the custodian of free and fair elections.

Skepticism, however, remains following the failure of a South African-sourced technology during the live electronic transmission of the April 2013 General Election results.

Moving Forward

According to the government progress report, new boundaries were developed and gazetted in 2012 through a consultative process by the IEBC, and the government used TV and radio to share voting information with citizens.

Given the paucity of evidence and technological fixes, the progress of these commitments can be described as substantial (1.a) and limited (2.b), respectively. Serious technological challenges – such as the electonic transmission system's failure – need to be addressed to ensure better implementation.

The IRM researcher recommends the maintenance and monitoring of existing commitments' implementation. The implementation could be improved further if the government:

1. Replaces the faulty South African voting technology

2. Links commitment 2.b to the Digital Village Project (DVP) by making voter information available at Pasha centers[5] and polling stations.

[1] http://bit.ly/1gx6sVD
[2] See, www.iebc.or.ke
[3] See, IEBC Election Gadgets available at: http://vote.iebc.or.ke/
[4] http://bit.ly/1fNA9Ad
[5] The primary role of these digital village centres is to provide access to information to rural public.

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B. Promoting Public Participation

1.b, 1.c & 1.d. Open Government for Improving Public Services

1.b. Fast track and finalize the Government of Kenya's End-to-End initiative as an integrated service delivery portal for the improvement of Government Service Provision to Citizens.

1.c. Promoting transparency, accountability in government services by providing published datasets online, and in simplified formats that relate to public expenditures and disbursements in health, education, water and other essential services on the Kenya Open Data Portal.

1.d. Promote transparency, accountability and public participation in the area of essential services, especially education and health by developing a collaborative CSO-Government public complaints portal. The portal will be an affirmation of the spirit of the new constitution that recognizes the rights but also responsibility of citizens in improving services.

2.c. Kenya Action Plan Online

Promote transparency, accountability and public participation in Open Government Partnership initiatives by developing and making available for public scrutiny, the Kenya Open Government Partnership process online.

COMMITMENT DESCRIPTION		
ANSWERABILITY	**LEAD INSTITUTION**	Kenya Information and Communications Technology (ICT) Board
	SUPPORTING INSTITUTIONS	Kenya ICT Board, Virtual Kenya and www.opendata.go.ke
	POINT OF CONTACT SPECIFIED?	Yes
SPECIFICITY AND MEASURABILITY		High (Commitment language provides clear, measurable, verifiable milestones for achievement of the goal)
RELEVANCE	**OGP GRAND CHALLENGES**	Improving public services. Increasing public integrity. More effectively managing public resources. Increasing corporate accountability

	OGP VALUES				
MILESTONE	**ACCESS TO INFORMATION**	**CIVIC PARTICIPATION**	**ACCOUNTABILITY**	**TECH & INNO-VATION FOR TRANS. & ACC.**	**NONE**
1.b., 1.c. & 1.d Open Government for Improving Public Services	✗	✗	✗	✗	
2.c. Kenya Action Plan Online	✗	✗	✗	✗	

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AMBITION		
NEW VS. PRE-EXISTING		**POTENTIAL IMPACT**
1.b., 1.c. & 1.d Open Government for Improving Public Services	Pre-existing	Transformative (the commitment entails a reform that could potentially transform "business as usual" in the relevant policy area)
2.c. Kenya Action Plan Online Pre-exisiting	Pre-existing	Transformative (the commitment entails a reform that could potentially transform "business as usual" in the relevant policy area)

LEVEL OF COMPLETION

1.b. End-to-End Service Delivery Portal

START DATE: Not Clear	END DATE: May 2012	Actual completion / Projected completion	NOT STARTED — LIMITED — SUBSTANTIAL — COMPLETE (Actual: Not Started; Projected: Complete)

1.c. Open Data Portal

START DATE: Not Clear	END DATE: May 2012	Actual completion / Projected completion	NOT STARTED — LIMITED — SUBSTANTIAL — COMPLETE (Actual: Limited; Projected: Complete)

1.d Public Complaints Portal

START DATE: Not Clear	END DATE: May 2012	Actual completion / Projected completion	NOT STARTED — LIMITED — SUBSTANTIAL — COMPLETE (Actual: Not Started; Projected: Complete)

2.c. Kenya Action Plan Online

START DATE: Not Clear	END DATE: Not Clear	Actual completion / Projected completion	NOT STARTED — LIMITED — SUBSTANTIAL — COMPLETE (Actual: Not Started; Projected: Complete)

NEXT STEPS	
1.b., 1.c. & 1.d Open Government for Improving Public Services	Further work on basic implementation
2.c. Kenya Action Plan Online	Further work on basic implementation

What Happened?

First, the government commited to fast track and finalize the End-to-End initiative as an integrated service delivery portal and improve government service provision to citizens.

Second, the open data portal was launched by President Kibaki on 8 July 2011[1] and some databases – such as the 2009 Census, national and regional expenditures and information on health facilities across the country – in pdf and open datat formats (CSV) could be found on the open data portal.

The launch of the open data portal spurred efforts from outside the government, mainly from civil society, to strengthen the open government data space. Two examples are Data Bootcamp (www.databootcamp. org) and Code for Kenya (www.code4kenya.org). Data Bootcamp is an effort to provide training to journalists and civil society organizations interested in

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using open government data. Code for Kenya places fellows, who are computer or data experts, in media and civil society organizations to improve the host's use and understanding of open government in Kenya. These civil society efforts are encouraging, as buy-in and participation by civil society is necessary for open government data to be meaningful and relevant.

The Kenya ICT Board is in the process of awarding grants to developers to create "high impact" applications using data from the portal. Already, the team behind the Ushahidi-powered platform, *Huduma* (Kiswahili for 'services'), has used the data to map and explore access to health, infrastructure and education. Virtual Kenya (www.virtualkenya.org) has built an application for mapping counties where MPs have refused to pay taxes.

It is unclear whether the online portal to share information on the OGP process – the Kenya Action Plan Online – was created. However, few government ministries and agencies opened websites and dedicated customer care lines. Ministry helplines are available through social media and websites, and key government departments use Twitter to officially reply to tweets. For example: the Judiciary, the Police (@PoliceKe), the Ministry of the Interior and Coordination of National Government in the Office of the President (@InteriorKe), etc.

Did it Matter?
At the time of writing this report, data on the End-to-End initiative (government-shared services or *Shirikiana*) was not available on Kenya's open data portal, but through an external link to a PowerPoint presentation that reported on the current state of services as of September 2011.[2]

Although the government launched the open data portal, databases related to public expenditures and disbursements in eduation ,water and other essential services – as committed to in the nation action plan – are absent.

Additionally, the public complaints portal, specifically meant to capture complaints related to health and education, is pending. The government progress

reports also notes it has yet to begin work on these protals. The collaborative CSO-government public complaints portal, as commited to in the action plan, has also not been developed.

Due to lack of evidence on the progress made, the commitment to the launch of the open data portal (1.c) can be described as limited. Given that commitments 1.b. &1.d. have not been started, no preliminary results can be assessed.

In particular for commitment 2.c., while the government progress report states the commitment is "complete," it does not provide a link to the website to review the Kenya OGP process online. Furthermore, the researcher was unable to locate a website after extensive online searching. Lack of evidence suggests the commitment has not begun, and no preliminary results could be assessed.

Moving Forward
According to the government progress report, some progess has been made on commitments 1.b and 1.d. For example, the report states that the services of the Ombudsman are online; however, the specific complaint portals on health and education are pending (1.d). The strategy for the government of Kenya's End-to-End initiative is completed; however, the integrated service delivery portal as commited to in the action plan (1.b) has not been created. Furthermore, there is a lack of evidence on the development of a collaborative CSO-government public complaints portal (1.d.).

Going forward, the government of Kenya needs to do the following:

1. Launch Kenya's End-to-End service integrated service delivery portal

2. Launch the public complaint portals for health and education, as well as other essential services

3. Make information available – in open data formats – related to public expenditure and disbursements in education, water and other essential services on the Kenya open data portal.

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[1] The Kenya Open Data Portal officially launched http://bit.ly/1jxWUz1
[2] See http://bit.ly/1cgUKfg

C. Improving Transparency in the Judiciary
2.a. Public Vetting of Judges and Case Allocation Syatem

Promoting transparency in administration of justice by public vetting of judges and integrating new technologies within the judiciary to improve expediency in judgements. The Government of Kenya through the Minister of Justice and the Chief Justice will introduce software that randomly allocates cases ot judges to reduce corruption in handling ad allocation of cases.

COMMITMENT DESCRIPTION		
ANSWERABILITY	**LEAD INSTITUTION**	The Judiciary
	SUPPORTING INSTITUTIONS	Judicial Service Commission and Ministry of Justice, National Cohesion and Constitutional Affairs.
	POINT OF CONTACT SPECIFIED?	Yes
SPECIFICITY AND MEASURABILITY		High (Commitment language provides clear, measurable, verifiable milestones for achievement of the goal)
RELEVANCE	**OGP GRAND CHALLENGES**	Improving public servicesIncreasing public integrity. More effectively managing public resources

		OGP VALUES		
ACCESS TO INFORMATION	**CIVIC PARTICIPATION**	**ACCOUNTABILITY**	**TECH & INNOVATION FOR TRANS. & ACC.**	**NONE**
✗	✗	✗	✗	

AMBITION	
NEW VS. PRE-EXISTING	**POTENTIAL IMPACT**
Pre-existing	Transformative (the commitment entails a reform that could potentially transform "business as usual" in the relevant policy area)

LEVEL OF COMPLETION			
START DATE: 2011	**END DATE:** December 2012	Actual completion Projected completion	NOT STARTED — LIMITED — SUBSTANTIAL — COMPLETE

NEXT STEPS
Further work on basic implementation

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What Happened?

The commitment on ensuring transparency in the judicary and the justice system focused on establishing a process for: publicly-vetting judges, integrating new technologies within the judiciary to improve the justice delivery system, and ensuring transparency in the case allocation system.

To improve the quality of judgments made, the Judicial Service Commission began a process of hiring legal researchers for all judges and some magistrates. This is the first time in Kenya's history that the Court of Appeal and High Court judges and magistrates have the opportunity to hire research assistants. For judges and magistrates, research assistants are a welcomed judicial innovation that will not only speed up cases, but also ensure that cases are well researched before verdicts are given.

The process of hearing cases on a "first filed, first heard" basis was also initiated, and case proceedings and judgments were mde accessible online. Many consider the corridors of Kenyan courts to be avenues of corruption, and the possibility of hearing cases on a "first come, first served" basis may greatly enhance the image of the judiciary in the eyes of the general public.

Finally, the commitment focused on discontinuing the practice of hiring prosecutors drawn from the police department. Since these prosecutors were not trained as lawyers, justice was not properly done in many cases, especially when the defence was handled by a lawyer. The proposal envisions replacing the current practice of hiring court prosecutors from the police department with lawyers from the Attorney General's Office in the future.

Did it Matter?

The first element of this commitment: public vetting of judges had never been done in Kenya until the inclusion of this commitment in the OGP action plan. In October 2012, the government of Kenya enacted a bill for discussion in the National Assembly, titled *The Vetting of Judges and Magistrates (Amendment), Bill 2012.*[1] The government also commited to public

vetting of judges of the High Court, Court of Appeal and Supreme Court through radio and TV. In a move to reduce the huge backlog of cases, the Judicial Service Commission hired 28 new high court judges after vetting more than 140 applicants. The judges found to be unfit to continue serving in the Judiciary were retired in the public interest (although some appealed the decision).

Additionally, Kenyans can for the first time access and download cases and judgements online.

However, due to lack of evidence, the researcher is unable to assess the implementation of:

1. the process of hiring legal researchers to assist judges and some magistrates;

2. the development and use of the system of "first filed, first heard" basis; and,

3. discontinuing the practice of hiring prosecutors drawn from the police department.

Based on the government progress report, and the language of the commitment, the progress of this commitment to publicly vett judges can be described as substantial; however, the second element of this commitment – to introduce a software for the case allocation system, as commited to in the action plan – is still pending.

Moving Forward

While progress has been made in publicly vetting judges and ensuring public access (online) to cases and judgements, the introduction of a system to enable random allocation of cases among judges by the Chief Justice is still pending. The implementation of this commitment could be improved further if the government does the following:

1. Introduce software to establish a system for the random allocation of cases among judges in order to minimize corruption.

2. Begin the process of sourcing court prosecutors from the Attorney General's Office.

3. Initiate the process to hire legal researchers who will be attached to judges and magistrates.

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[1] http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2012/THEVETTING_OFJUDGESANDMAGISTRATES_AMENDMENT_BILL2012.PDF

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D. Open Budgets

3.a & 3.b. Increase Public Participation in the Budget Process and OBI Ranking

3.a. Improve the management of public resources by increasing Kenya's ranking in the Open Budget Index (OBI) from providing "more information" to "significant information."

3. b. Promote transparency and accountability on budget information by involving the public in budget preparation using technology channels, publishing data on proposed and approved budgets and citizens' budgets in machine readable format.

COMMITMENT DESCRIPTION		
ANSWERABILITY	**LEAD INSTITUTION**	Ministry of Finance
	SUPPORTING INSTITUTIONS	Director of Budget
	POINT OF CONTACT SPECIFIED?	Yes
SPECIFICITY AND MEASURABILITY		High (Commitment language provides clear, measurable, verifiable milestones for achievement of the goal)
RELEVANCE	**OGP GRAND CHALLENGES**	Improving public servicesIncreasing public integrityMore effectively managing public resources

		OGP VALUES			
	ACCESS TO INFORMATION	**CIVIC PARTICIPATION**	**ACCOUNTABILITY**	**TECH & INNOVATION FOR TRANS. & ACC.**	**NONE**
	✗	✗	✗	✗	

AMBITION	
NEW VS. PRE-EXISTING	**POTENTIAL IMPACT**
Pre-existing	Transformative (the commitment entails a reform that could potentially transform "business as usual" in the relevant policy area)

LEVEL OF COMPLETION

3.a. Improve Kenya's OBI Index

START DATE:	END DATE:		
Not Clear	September-December 2012	Actual completion Projected completion	NOT STARTED — LIMITED — SUBSTANTIAL — COMPLETE

3.b. Increase public participation in budgetary processes

START DATE:	END DATE:		
Not Clear	September-December 2012	Actual completion Projected completion	NOT STARTED — LIMITED — SUBSTANTIAL — COMPLETE

NEXT STEPS

Further work on basic implementation

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What Happened?

With this commitment, the government intended to improve the management of public resources, improve citizen participation in budget processes, and increase Kenya's ranking in the Open Budget Index (OBI) by providing "significant information" rather than "more information." The IRM finds that this commitment has been substantial completed in this regard.

The first element of this commitment was to raise Kenya's OBI score. From 2010 until 2012, the OBI score remained constant, and Kenya's score has remained at 49 throughout the duration of its OGP participation. Notably, Kenya's score on the executive budget actually decreased from report to report.[1]

The second element promised to improve public participation in the budget process. It committed to do this through technology and through the publication of proposed and approved budgets in machine-readable format. As far as publication through technology is concerned, there is no evidence available on public websites about progress made in open budgets. The Kenya open data portal (opendata.go.ke) lacks any budgetary information (including the county and national levels) at the time of this report. Similarly, while the Minister of Finance has published the 2013 budget, it is not available in the formats committed to in the language of the OGP national action plan. The only documents available are the Budget Policy Statement, the Statistical Annex (in a scanned PDF, non-machine readable format),[2] the Budget Speech, and the Highlights of the budget. Additionally, no evidence exists of channels for public participation in budgetary processes.

Given the paucity of progress on these technological fixes, and the lack of evidence of forward progress, this commitment can only be described as not having started.

Other actions related to open budgets were taken, but cannot be counted as fulfillement of this commitment. The government, through the Ministry of Finance, made its Integrated Financial Management Information System (IFMIS) available online for public comment. This was aimed at ensuring meaningful engagement of the public throughout the national budget cycle. The country has also made information on devolved funds and the Economic Stimulus Package available online. Municipal Council budgets and budget days are published through print media with public engagement and scrutiny throughout the project selection and budgeting.

Did it Matter?

Given that this commitment has not started, no preliminary results can be assessed.

Moving Forward

Moving forward, the government will need to recommit to this essential program of work. Concrete steps to be taken immediately include:

1. Improve the score on the OBI index by providing the Executive Budget online in an open data format.

2. Convert existing budgetary documents from scanned PDF to CSV format open data.

3. Develop a new commitment for a plan to create digital and face-to-face channels for citizens to give feedback and input on proposed and existing budgetary documents.

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[1] See, http://bit.ly/NrWb4p
[2] See, http://bit.ly/MoMyTa

V | SELF-ASSESSMENT

The government did not provide the two-week public comment period on the draft self-assessment reports and as a result, no public comments were received except through the regional meeting held in Mombasa in May 2013.

The government of Kenya published its self-assessment in May 2013, roughly a week after the required deadline. The report covers nine commitments related to three OGP grand challenges: improving public services, improving public integrity, and more effectively managing public resources.

The report was made available in the English language and has yet to be translated into Kiswahili, the national language. Thus, public participation in the self-assessment has been limited.

Furthermore, the government did not provide the two-week public comment period on the draft self-assessment report, thus further limiting public support in its formulation. The involvement of the private sector was also minimal. In addition, the regional meeting from 29-30 May 2013 in Mombasa only allowed for a limited amount of public comments before the report was then uploaded on the OGP portal – without a review of the consultation efforts.

Finally, some of the commitments marked as 'complete' may actually be on-going and much work remains to be done on several commitments.

Table 2 | Self-Assessment Checklist

Was annual progress report published?	☒ Yes	☐ No
Was it done according to schedule?	☐ Yes	☒ No
Is the report available in the local language?	☐ Yes	☒ No
According to stakeholders, was this adequate?	☐ Yes	☒ No
Is the report available in English?	☒ Yes	☐ No
Did the government provide a two-week public comment period on draft self-assessment reports?	☐ Yes	☒ No
Were any public comments received?	☒ Yes	☐ No

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Is the report on the OGP portal?	☒ Yes	☐ No
Did the self-assessment report include review of the consultation efforts?	☐ Yes	☒ No
Did the report cover all of the commitments?	☒ Yes	☐ No
Did it assess completion according to schedule?	☒ Yes	☐ No
Did the report reaffirm responsibility for openness?	☒ Yes	☐ No
Does the report describe the relationship of the action plan with grand challenge areas?	☒ Yes	☐ No

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VI | MOVING FORWARD

This section puts the OGP action plan into broader context and highlights potential next steps, as reflected in the preceding sections as well as stakeholder-identified priorities.

COUNTRY CONTEXT

In recent years, Kenya has undertaken significant reforms in making government transparent and more accountable to its citizens. The new constitution (2010) has set major state reforms in motion in response to citizens' requests.

At the time of joining OGP, the government was in the process of drafting a Freedom of Information Law. The relevant draft bill meets the criteria for an effective citizen Access to Information law (ATI), having scored 114 out of a maximum 150 on the Right to Information (RTI) Legislation Rating Methodology. If passed, the bill would have placed Kenya 10th globally for progressive ATI laws. However, at the same time, the government is drafting a Data Protection Law to ensure that privacy legislation does not contradict the Freedom of Information (FOI) law. The ATI bill was tabled in parliament and debated but the president declined to sign it into law, ostensibly because it infringed on state security. Pursuant to this position, the government introduced the Kenya Information and Communication (Amendment) Bill, which CSOs dismissed as an attempt by government to muzzle freedom of the press and take the country back to the dark days of the Moi tyranny. When the amendment came up for debate in parliament, the Orange Democratic Movement (ODM)-led opposition walked out en masse, effectively paralyzing the envisaged debate. The level of acrimony over the bill is still high in the country and Kenyans are pondering the government's next move.

Before the Information and Communication (Amendment) Bill came up, Kenya was enjoying a position of close proximity to good or open governance following a string of democratic reforms traceable to the "second liberation" that began with the repeal of Section 2A of the old constitution in December 1991. This particular section had made

Kenya a de jure one party state, which gave the Kenya African National Union (KANU) exclusive dominance of the political terrain. With the repeal of the Information and Communication (Amendment) Bill, political pluralism was re-introduced in the form of multi-party politics. The net result was expansion of the democratic space that was ideal for open governance. Moi's 24 years of autocratic rule ended in 2002 after which Mwai Kibaki took over. During Kibaki 1 (2002-2007), most of the fundamental rights and freedoms of the individual were restored and independent reporting became the norm rather than the exception. This took the country to the 2007 disputed multi-party elections whose stalemate was broken by a Kofi Anan-brokered agreement that installed a coalition government.

One of the landmarks of this agreement was Agenda Four of the National Accord, which demanded the enactment of a new constitution. The new constitution guarantees freedom of access to information to all citizens. It also guarantees improved access to public services, enhanced integrity of public servants, and equitable distribution of public resources. It is on these three areas that Kenya's commitments to OGP as contained in the national action plan are built.

Kenya's new constitution provides for a decentralization of service delivery to the county level. This is in line with open government as evidenced by Article 10 that recognizes transparency and accountability as essential to good governance. Further, Article 35 stipulates, "[…] the state shall publish and publicize any important information affecting the nation[…]." Article 232 is more categorical by providing that, "the principles of accountability and transparency in the form of provision to the public of timely, accurate information shall guide public service." Article 232 reiterates the public service recruitment and training policy (GoK,

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2005), which provides for transparency in recruitment, training and promotion in the public sector and stipulates that county governments shall ensure and demonstrate meritocracy in the process of recruitment and appointment of public servants. By this provision, appointments and promotions in the public service shall be on the basis of fair competition and merit. Kenya's new constitution therefore embodies all three national commitments to open governance of improved service delivery, increasing public integrity and more effective management of public resources.

Since the reintroduction of multi-party politics in Kenya in 1991, the country has made steady progress in building a democratic society that cherishes individual liberties. In 2008, the government adopted Vision 2030, a national long-term development blueprint aimed at public sector reforms and achieving a 10% per annum growth rate (by 2030) for poverty reduction and wealth creation to become a middle-income country.[1] The three pillars of the vision are anchored in improved service delivery, public integrity, and equity in resource allocation. The new constitution, promulgated on 27 August 2010, carries with it a progressive Bill of Rights and the principles of good governance. The new constitution puts citizen participation at the centre of governance. The new constitution effectively legitimized citizen rights and access to information to increase transparency and accountability. Kenya thus became the first sub-Saharan African country to make government data open to and usable by the citizens.[2] Through engagement with OGP, Kenya has sought to consolidate democratic governance through the use of ICT.

Following the Africa regional conference on promoting OGP in Mombasa, the government of Kenya reaffirmed its commitment to champion the OGP agenda through legislative and policy reforms. As a result, the Minister for Information and Communications, Dr. Fred Matiang'i, tabled the Freedom of Information Bill in parliament. CSOs pledged to facilitate media-based public debates to deepen public awareness on OGP in Africa. Other outcomes of the Africa conference included widening OGP membership in Africa, apportioning adequate time for the OGP process, publicizing national action plans, and involving more actors.

The government of Kenya is barely two years old as a member of the OGP community of nations. However, it has made tremendous strides in addressing the key concerns of the Partnership. There is evidence of some progress in implementation of the commitments in three areas covered by the first action plan: improving public integrity and more effectively managing public resources. However, much needs to be done and going by recent pronouncements, the government intends to move forward to fully implement all commitments.

CURRENT STAKEHOLDER PRIORITIES
While stakeholders admitted that all nine commitments were critical to the country's development efforts, for those present at the stakeholder forum, improving public services was the most significant commitment. Kenya is a country of great geographical, ethnic, religious, linguistic and socio-cultural diversity and access to government services remains the greatest challenge to the largest proportion of the population. This is followed by improving public integrity – which should add value to improving public services by demanding more government responsiveness and accountability to the needs of the people.

FUTURE STAKEHOLDER PRIORITIES
While more effectively managing public resources is a public priority, some stakeholders noted that the government should incorporate commitments on improving corporate accountability.

RECOMMENDATIONS
The stakeholder arena for open government in Kenya is dominated by civil society organizations. In Kenya OGP/IRM focal points include trans-national organizations like Transparency International, the African Centre for Open Governance (AFRICOG), the Open Institute, and the International Commission of Jurists (Kenya Chapter). The ICT Board represents the government in the OGP process. The private sector is

not satisfactorily active in OGP – perhaps due to the nature of their interests.

In developing the next action plan, the government should take a more proactive approach to include the wider public once a multi-stakeholder consultative forum on OGP implementation is established. This should increase transparency and public participation in action plan development as well as future self-assessment and post-implementation processes and activities. After more work is done for fuller implementation of the four initial commitments, the next action plan should focus on the following three areas:

1. Increasing corporate accountability

2. Enacting a comprehensive access to information (ATI) law

3. Implementing the new constitution, which embodies the principles on which the first action plan commitments are built.

In this endeavour, the government should ensure more public participation in both the drafting of the action plan and the self-assessment.

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[1] Kenya's Vision 2030: Second Annual Progress Report on the Implementation of the First Medium Term Plan (2008-2012). Nairobi: Ministry of State for Planning, National Development and Vision 2030. See also, "Sessional paper No. 10 of 2012 on Kenya Vision 2013," available at: http://bit.ly/1dqd5XG
[2] See http://tnw.co/MVitLP and http://bit.ly/1pkXH7n

ANNEX: METHODOLOGY

As a complement to the government self-assessment, well-respected governance researchers write an independent assessment report, preferably from each OGP participating country.

These experts use a common OGP independent report questionnaire and guidelines,[1] based on a combination of interviews with local OGP stakeholders as well as desk-based analysis. This report is shared with a small International Experts Panel (appointed by the OGP Steering Committee) for peer review to ensure that the highest standards of research and due diligence have been applied.

Analysis of progress on OGP action plans is a combination of interviews, desk research, and feedback from non-governmental stakeholder meetings. The IRM report builds on the findings of the government's own self-assessment report and any other assessments of progress put out by civil society, the private sector, or international organizations.

Each local researcher carries out stakeholder meetings to ensure an accurate portrayal of events. Given budgetary and calendar constraints, the IRM cannot consult all interested or affected parties. Consequently, the IRM strives for methodological transparency, and therefore where possible, makes public the process of stakeholder engagement in research (detailed later in this section.) In those national contexts where anonymity of informants— governmental or nongovernmental—is required, the IRM reserves the ability to protect the anonymity of informants. Additionally, because of the necessary limitations of the method, the IRM strongly encourages commentary on public drafts of each national document.

INTRODUCTION
The IRM researcher organized a multi-stakeholder forum based on a focus group discussion model, and analyzed the government action plan and progress report (2013) to compile this report. The IRM researcher met OGP/IRM focal points in the Kenyan government, starting with the Kenya ICT Board, which is the agency under the Ministry of Information, Communications and Technology tasked with spearheading the OGP process in Kenya. The researcher gathered details of the relevant stakeholders who were then interviewed for this report.

STAKEHOLDER MEETING ONE
This took place at the Kenya ICT Board Headquarters boardroom on 4 October 2013 and involved the OGP steering committee of the ICT Board.

The meeting lasted 2 hours and the mode of interaction was an interview/focus group discussion. The discussion covered all the relevant issues surrounding Kenya's participation in OGP, the action plan, the self-assessment report, and the Africa Regional Conference. From this meeting, a list of stakeholders was prepared to conduct interviews in their respective places of work:

1. The Kenya ICT Board
2. Transparency International, Kenya Chapter
3. The International Commission of Jurists-Kenya Chapter
4. The Open Institute
5. The Kenya National Commission on Human Rights
6. The Centre for Open Governance
7. The Kenya Judiciary (Offices of the AG, High Court and Chief Justice).

INTERVIEWS

In Kenya, it proved difficult to organize stakeholder meetings in the form of conventional focus group discussions. Instead, the researcher opted for separate interviews with designated officials from stakeholder organizations. In this endeavour, in addition to the stakeholders listed above, the IRM researcher also secured appointments with individuals from the following organizations and institutions:

1. The International Commission of Jurists-Kenya Chapter

2. The Kenya National Commission on Human Rights

3. The Kenya Judiciary (AG, Chief Justice and High Court)

4. The Ministry of Finance

5. The Ministry of State for Planning, Devolution and Vision 2030

6. The Ministry of Information and Communication

7. The Ministry of Transport

8. The Ministry of Education

TOC

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