

Independent Reporting Mechanism (IRM): Kenya Design Report 2018–2020

This report was prepared in collaboration with Linda Oduor-Noah, independent researcher

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Executive Summary: Kenya

To develop Kenya’s third action plan, the country increased participation of CSOs, however, without deepening their involvement to share the decision-making power and increasing the ambition of the plan. It contains three notable reforms to carry forward on addressing beneficial ownership, open contracting and public participation. Moving forward, Kenya could consider expanding the scope of commitments to include other relevant national priorities like improving civic space.

The Open Government Partnership (OGP) a global partnership that brings together government reformers and civil society leaders to create action plans that make governments more inclusive, responsive, and accountable. The Independent Reporting Mechanism (IRM) monitors all action plans to ensure governments follow through on commitments. Kenya joined OGP in 2011. Since, Kenya has implemented two action plans. This report evaluates the design of Kenya’s 3rd action plan.

General overview of action plan

Aiming to become a regional reference, Kenya has taken concrete steps to enhance transparency and access to information through legislative changes and with the use of technology, for example with the 2018 Executive Order on procurement transparency and the Bribery Act of 2016. Nevertheless, the country continues to grapple with concerns around enhanced state surveillance and a shrinking civic space. The implementation of this action plan represents an opportunity to consolidate gains on beneficial ownership, open contracting and public participation, and to prepare the grounds for a future action plan that could expand its focus to address other salient national priorities.

With each NAP cycle, Kenya has increased participation of civil society actors to drive the OGP agenda forward. However, while there were multiple instances for the public to provide inputs and comment on the draft version of the action plan, there is no evidence available to demonstrate that the government published its reasoning behind how civil society and public input was considered. Future consultation processes should deepen participation from groups and experts outside the limited traditional circle of actors to ensure stronger collaboration between more civil society representatives and government implementing agencies.

Table 1. At a glance

Participating since: 2011
Action plan under review: Third
Report type: Design
Number of commitments: 6

Action plan development

Is there a Multistakeholder forum: Yes
Level of public influence: Consult
Acted contrary to OGP process: Yes

Action plan design

Commitments relevant to OGP values:	6 (100%)
Transformative commitments:	0
Potentially starred:	0

Action plan implementation

Starred commitments: N/A
Completed commitments: N/A
Commitments with Major DIOG*: N/A
Commitments with Outstanding DIOG*: N/A

*DIOG: Did it Open Government



Kenya’s third national action plan outlines six commitments relating to enhancing access to information, civic participation and OGP resiliency. The commitments primarily reflected the OGP values of access to information, civic participation and technology and innovation for openness and accountability and less emphasis given to public accountability across the board. Kenya’s OGP Steering Committee members should consider carrying forward the three notable commitments on increasing transparency of beneficial owners, access to information in contracting processes and enhancing public participation.

Table 2. Noteworthy commitments

Commitment description	Moving forward	Status at the end of implementation cycle.
<p>Commitment 1: Beneficial Ownership</p> <p><i>“We will publish a central public register of company beneficial ownership information operating in the Republic of Kenya”</i></p>	<p>Consider specifying the frequency and focus of the risk assessment to include specific areas such as money laundering, terrorist financing or legal persons. Also, the IRM suggests creating the link between the asset declaration of public officials and the BO register, reintroduce the audit or verification of the register and develop a module that allows the public to provide comments or feedback.</p>	<p>Note: this will be assessed at the end of action plan cycle.</p>
<p>Commitment 2: Open Contracting</p> <p><i>“We will implement the Open Contracting Data Standard (OCDS), to improve transparency and reduce opportunities for corruption by enhancing openness and accessibility of the Public Procurement Information Portal.”</i></p>	<p>Expand the scope of the commitment to establish a monitoring, evaluation and learning framework to accompany implementation of the OCDS, enhance buy-in of the National Treasury and Procurement Regulatory Authority, strengthen accountability with feedback or appeal mechanisms for disadvantaged groups and ensure the adequate capacitation of citizens and civil society to use AGPO and monitor its allocations.</p>	<p>Note: this will be assessed at the end of action plan cycle.</p>

Recommendations

The IRM recommendations aim to inform the development of the next action plan and guide implementation of the current action plan.

Table 3. Five KEY IRM Recommendations

1	Deepen civil society participation in the co-creation process and provide clear feedback on how their input influenced the development of commitments and its milestones.
2	Improve the design of commitments within the NAP by increasing specificity on the expected outcomes and results of its milestones and activities.
3	Expand the scope of commitments beyond the publication of data to ensure public participation and the effective use of the data published.
4	Carry out multistakeholder discussions on the inclusion of commitments or milestones to improve civic space.
5	Address sustainability and resilience of Kenya’s open government agenda.

About the IRM

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 (IRM) assesses development and implementation of national action plans to foster dialogue among stakeholders and improve accountability.

Linda Oduor-Noah collaborated with the IRM to conduct desk research and interviews to inform and draft the findings in this report. Linda is an independent researcher based in Kenya.



I. Introduction

The Open Government Partnership is a global partnership that brings together government reformers and civil society leaders to create action plans that make governments more inclusive, responsive, and accountable. Action plan commitments may build on existing efforts, identify new steps to complete ongoing reforms, or initiate action in an entirely new area. OGP's Independent Reporting Mechanism (IRM) monitors all action plans to ensure governments follow through on commitments. Civil society and government leaders use the evaluations to reflect on their own progress and determine if actions have made an impact on people's lives.

Kenya joined OGP in 2011. This report covers the development and design of Kenya's third action plan for 2018-2020.

The Independent Reporting Mechanism of OGP has partnered with Linda Oduor-Noah, who carried out this evaluation. The IRM aims to inform ongoing dialogue around development and implementation of future commitments.

For a full description of the IRM's methodology please visit

<https://www.opengovpartnership.org/about/independent-reporting-mechanism>.

II. Open Government Context in Kenya

Through legislative changes and with the use of technology (e.g. 2018 Executive Order on procurement transparency, Bribery Act of 2016, etc.), Kenya has taken steps to enhance transparency and access to information. Nevertheless, the country continues to grapple with corruption and growing concerns around enhanced state surveillance and a shrinking civic space. The implementation of this action plan represents an opportunity to consolidate gains on beneficial ownership, open contracting and public participation, and to prepare the grounds for a future action plan that could expand its focus to address other salient national priorities.

The promulgation of the Constitution of Kenya in the year 2010 was a seminal moment, one laced with hopes for the country's transformation and growth in the areas of democracy, accountability and transparent governance. Its tenets catalysed much of the progress that has been observed over the last decade, with Kenya having since taken steps towards enhancing good governance, democracy and openness. Joining the Open Government Partnership (OGP) was one such step: Kenya joined the OGP in August 2011. In joining, the country sought to further entrench transparency, accountability and public participation into its development agenda. It has since demonstrated improvements in these domains with key examples of this being the positive effects of judicial reforms¹ and implementing [devolution](#) under the 2010 Constitution of Kenya. In 2017, Kenya launched its '[Big 4](#)' agenda following the Presidential elections. The agenda and its action plan would seek to enhance socio-economic growth by delivering on four pillars of development namely – affordable housing, universal healthcare, manufacturing and food security. NAP III would also be premised on addressing these pillars mainly by targeting obstacles to the achievement of the goals outlined, such as corruption.^{2 3}

Kenya's commitment emphasis has remained fairly consistent throughout OGP cycles, with access to information, beneficial ownership, public participation and fiscal openness remaining central concerns. NAP III showcases a more streamlined set of commitments, with new entrants into the plan including commitments focusing on open access to geospatial data for development, public sector performance, and building open government resiliency.⁴ NAP III further stresses the need for inclusivity, collaboration and technological innovation in the pursuit of improved public services, public integrity and the achievement of Kenya's Big 4 agenda. In NAP III however, less prominence is given to some issues that were incorporated in previous plans, such as strengthening electoral integrity, addressing climate change or instituting reforms in the judiciary and the extractive industry. This streamlining of commitments is indicative of shifting priorities and emerging opportunities for engagement (policy or otherwise) on specific areas. Nonetheless, all together, these commitments aim to address salient changes and challenges being experienced in the following areas:

i. Addressing corruption

Kenya has taken various steps to stem graft over the last few years. The Executive Order issued by the President in July 2018, for example, aimed to catalyse greater transparency regarding the procurement of public goods, works and services and would require all public institutions to “maintain and continuously publicize” information on all tenders and awards.⁵ The Government also launched ‘[Mwongozo](#)’, a code of ethics that was based on recommendations provided by the Presidential Taskforce on Parastatal Reforms, which was constituted to address weaknesses identified in the governance of state corporations.⁶ Kenya has also enacted progressive legislation such as the [Anti-Corruption and Economic Crimes Act \(2003\)](#), in addition to the [Bribery Act of \(2016\)](#), and established independent oversight bodies such as the Ethics and Anti-Corruption Commission (EACC). Additionally, the government also established an online portal containing supplier and vendor data shared by procurement departments across various public agencies. Also developed was a beneficial ownership registry known as [Usajili](#), and the introduction of one stop service centres ([Huduma centres](#)), and online registration and payment platforms for public services.⁷

Despite these and other efforts, Kenya continues to grapple with high levels of corruption. According to the Kenya Human Rights Commission and CSOs working on anti-corruption, the ‘loud’ anti-corruption offensive and expansion of anti-corruption infrastructure has not appeared to have had much impact.^{8,9} Evidence points to widespread and entrenched impunity often with strong ties to ‘electoral malfeasance.’¹⁰ Essential services such as the police, judiciary and lands services continue to feature high on the bribery index.¹¹ Anti-corruption actions by the state are now widely described as being staged, in the performative sense, applied selectively to advance political agendas.^{12,13,14}

As a result, the faith of citizens in their government and its ability to combat corruption continues to waver.¹⁵ According to one report, “Only 10% of Kenyans reported incidents of bribery to any authority. The remaining 90% did not report on account of perceptions that no action would be taken by the relevant authorities.”¹⁶ This perception is fed by the reality that bodies such as the EACC and the Office of the Auditor General, while mandated to deal with corrupt perpetrators, still lack any meaningful prosecutorial powers.^{17,18,19,20} The Office of the Director of Public Prosecutions (ODPP) is also challenged by significant case backlog, sluggish judicial processes and limits to resources and staff capacity.^{21,22,23}

In the State of the Nation Address in April 2019, the President of Kenya shared what can be described as the prevailing outlook stating that “the magnitude of the war against corruption we are fighting today is unprecedented, taking place within our core institutions of Parliament, the Executive, Judiciary, County Governments and also in our religious institutions, private sector and professional bodies”.²⁴ These realities further fuel negative perceptions that corruption will continue to impoverish Kenyan society.^{25,26}

ii. Access to information

The first Access to Information Bill was drafted in 1999 by the International Commission of Jurists in Kenya, culminating in the enactment of the [Access to Information Act in \(2016\)](#). The Act gives effect to article 35 of the [Constitution of Kenya \(2010\)](#), which provides that “Every citizen has the right of access to: (a) information held by the State; and (b) information held by

another person and required for the exercise or protection of any right or fundamental freedom”. A further requirement provided in the same article is that the state should “publish or publicise any important information affecting the nation”. Furthermore, the [Public Service \(Values and Principles\) Act](#) (No. 1A of 2015) and the [Public Finance Management Act](#) (2012) also require that civil servants and public institutions such as the Parliamentary Budget Office promptly provide or publicize information where required in an accurate and timely fashion.²⁷

To this end, the Government of Kenya set up the [e-ProMIS](#) and [Open Data](#) Portals in 2011, in order to provide greater access to government data. Additionally, the government launched the online publication of the Hansard, with records dating back to the 1980s, and set up the broadcasting of parliamentary and committee sessions.²⁸ However, various barriers to accessing information persist, including: no accompanying rules and regulations published alongside the Act; inadequate enforcement; prohibitive requirements for disclosure; limited proactive disclosure by state agencies, with county budget information given as one example²⁹; lack of responsiveness when data requests are made;³⁰ lack of knowledge or awareness about the Act or how to apply it for the public within the civil service;³¹ a culture of secrecy that often shrouds the inner workings of the civil service further codified by the Official Secrets Act (1968); misalignment of the Act with the Data protection Bill (2018);^{32,33} poor records and information management systems;³⁴ limited data or e-infrastructure and challenges with open data portals; and loopholes in the existing act that provide public entities with wide discretion in determining the quality and quantity of information they make available.^{35,36,37} The quality of government data has also been brought into question with datasets described as contradicting each other, while others described as incomplete.³⁸ This could be a possible reason for the reluctance by some institutions to release data.

The Open Budget Survey (2017) further confirms these challenges, by indicating a decline in Kenya’s Open Budget Index (OBI) score. The low score indicates continued limitations to participation and to the provision and availability of budget information.³⁹ Various other examples can be provided which point to the state’s reluctance to disclose information, for instance the non-disclosure of county audit reports, which are neither published by the Auditor General’s office nor the respective counties that have been audited.⁴⁰ Additionally, access to information and the right to freedom of expression are mutually reinforcing factors that allow for greater transparency and accountability. However, we find that while legislation around access to information may have been passed, there are growing concerns around enhanced state surveillance and monitoring, including on social media;⁴¹ threats to the freedom of expression and opinion via the Computer Misuse and Cybercrimes Act (2018);⁴² and a shrinking civic space especially during the electoral period.^{43 44} Most recently, the [Kenya Information and Communication \(Amendment\) Bill \(2019\)](#) outlines regressive steps to the freedom of expression by placing various restrictions and taxing blogging and use of social media. This, in essence, limits the value addition and utility of any access to information legislation.

iii. Limited public participation

National efforts towards enhancing public participation date as far back as 2001 when Local Authorities Service Delivery Action Plan (LASDAP) groups were created to enhance participatory budgeting at the local level. Studies, however, revealed that these programmes

were poorly implemented and as such failed to deliver effective participation.⁴⁵ The Constitution of Kenya (2010) therefore aimed to further entrench the principle and does so in articles 10, 33, 118, 124, 196, 201, 221, 232. These articles allow for any member of the public to participate and contribute to decision making processes, including the development of legislation, budgets and in oversight of the legislature and other public officials.⁴⁶ At the county level we find that various initiatives have also been effected to enhance public participation. These include the setting up of county legislative frameworks for participation and communication pathways such as online portals, text messages, or public fora such as the County Budget and Economic Forums. These domains allow for varying levels of participation. However, some studies conclude that overall the levels of public participation in Kenya remain low.^{47 48}

Challenges to public participation have been widely documented and include challenges with the scope, cost and reach of participation; lack of sufficient engagement from citizens; limited access to state held information and data;⁴⁹ challenges with ‘aggregating public opinion’; managing representation and diversity; tight turnaround times e.g. budget timelines;^{50 51} and lack of capacity to facilitate participation especially at the county level.^{52 53} From the citizens perspective, the following have also been noted: lack of knowledge and awareness about public participation, including not understanding the value of participating, the process, structures and modalities of participation, or being aware of opportunities for engagement;^{54 55 56 57} lack of capacity to participate or consume available information; limited or no access to information; inadequate or inappropriate means of communication;⁵⁸ insufficient legal guidance on how participatory platforms should operate and the norms and standards that should be adhered to⁵⁹; and lack of adequate guarantees that public comments will be considered or responded to, with no transparent mechanism to assess the reasoning behind these considerations.⁶⁰ These factors negatively impact the extent to which true participation can be achieved.

iv. Threats to accountability

Within the governance arena, accountability requires that adequate mechanisms and systems be put into place to outline roles and responsibilities within the public service and to enable the public to seek explanation, justification or redress as the need for it arises. The Kenyan State has been described as having low levels of accountability by its critics, given increased incidences of state capture;^{61 62 63} weak whistle-blower legislative frameworks and associated whistle-blower architecture, with some contradictions in the law that diminish the protection of whistle blowers;⁶⁴ and a judiciary that is increasingly accused of being compromised or corrupt.^{65 66} Despite the existence of a vibrant civil society, Kenya is also exhibiting classic signs of a shrinking civil society space including forced disappearances, extra judicial killings,^{67 68} arbitrary arrests and detentions;⁶⁹ restrictions to the freedom of speech and press through the intimidation of journalists and activists;^{70 71} and little protection or assurances for whistle blowers.^{72 73 74} Furthermore, some of these acts have reportedly been instigated directly by the state or with little protection provided by the state.^{75 76 77 78} Compounding this is the increased propensity of the State and top officials ignoring court decisions and judgements.^{79 80} Key officials, such as the Auditor General, who are charged with upholding the law, are also reported to have been harassed for enforcing it.⁸¹

Going forward

An assessment of the first action plan saw recommendations to the government around ensuring more meaningful participation and engagement of multiple stakeholders. This was based on the assessment that there was need for broader representation in the NAP design process and that lack of transparency and public access to information in regard to the decision making and progress of OGP activities needed to be addressed. Sustainability was also raised as a key concern in NAP II, due to the absence of implementation frameworks that would work alongside each commitment as well as insufficient financing and capacity building.⁸² This report will make an assessment of whether these recommendations were taken into consideration.

NAP III provides the Kenyan government with an opportunity to build on and consolidate the achievements of previous action plans, even as the government moves towards incorporating new focal areas. Effective implementation of NAP III would require the dedication of additional resources for facilitating public engagement in the use of information that is being made available. Furthermore, resources would also be required to expand the civic space and to enhance the enforcement of accountability mechanisms specifically at the tail end of accountability processes, such as the guaranteed prosecution of guilty parties.

¹ Gainer, M (2015) Transforming the Courts: Judicial Sector Reforms In Kenya, 2011-2015. Available at: <https://www.opengovpartnership.org/wp-content/uploads/2019/06/Case-Study-Kenya.pdf>

² The Presidency (2018) Big 4 And Fight Against Graft On The Agenda As President Kenyatta Returns Ahead Of Official Visit By British PM Theresa May. 29 August 2018. <http://www.president.go.ke/2018/08/28/big-4-and-fight-against-graft-on-the-agenda-as-president-kenyatta-returns-ahead-of-official-visit-by-british-pm-theresa-may-2/>

³ Kenya School of Government (2018) Unpacking the Big Four , Kenya School of Government Weekly Bulletin, Vol 7, Issues 20. Available at: https://www.ksg.ac.ke/images/bulletin/KSG_Bulletin_2nd-8th_June_2018.pdf

⁴ Kenya Open Government Partnership Action Plan 2018-2020. , Available at: <https://www.opengovpartnership.org/documents/kenya-action-plan-2018-2020/>

⁵ The Presidency (2018) Procurement of Public Goods, Works and Services by Public Entities, Executive Order No. 2 of 2018. Available at: <https://openinstitute.com/wp-content/uploads/2018/07/Executive-Order-No.-2-of-2018-Procurement.pdf>

⁶ Public Service Commission and State Corporations Advisory Committee. (2015) The Code For Governance of State Corporations. Available at: <http://www.scac.go.ke/2015-02-16-09-56-36/mwongozo?download=12:mwongozo>

⁷ Transparency International Kenya (2017) East African Bribery Index 2017 <https://tikenya.org/wp-content/uploads/2017/09/East-African-Bribery-Index-EABI-2017-1-1.pdf>

⁸ Medi, M. (2018) Corruption has undermined electoral reforms in Kenya. Kenya Human Rights Commission, 7 March 2018. Available at: <https://www.khrc.or.ke/2015-03-04-10-37-01/blog/646-corruption-has-undermined-electoral-reforms-in-kenya-2.html>

⁹ Khalid, H., Thompson, T.P. (2019) Conflict Prevention in Kenya: Combating Corruption through Nonviolent Action. Special Report No. 456 United States Institute Of Peace. Available at: https://www.usip.org/sites/default/files/2019-09/sr_456-conflict_prevention_in_kenya_combating_corruption_through_nonviolent_action-sr.pdf

¹⁰ Kenya Human Rights Commission (2018) Exposing The Governance Conundrum In Kenya: Deep State, Mega-Corruption and Stalled Electoral Reforms. Nairobi: Kenya Human Rights Commission. Available at: <https://www.khrc.or.ke/publications/206-exposing-the-governance-conundrum-in-kenya-1/file.html>

¹¹ Transparency International Kenya (2017) East African Bribery Index 2017 <https://tikenya.org/wp-content/uploads/2017/09/East-African-Bribery-Index-EABI-2017-1-1.pdf>

¹² Githongo, J. (2018) Bulldozers Knocking down Temples and Other Distractions: Awakening the Ghosts of Jubilee's Corruption. The Elephant, August 25, 2018. Available at: <https://www.theelephant.info/op-eds/2018/08/25/bulldozers-knocking-down-temples-and-other-distractions-awakening-the-ghosts-of-jubilees-corruption/>
The Elephant - Speaking truth to power.

¹³ Mwakideu, C. (2019) Uhuru Kenyatta's war on graft: a turning point or just scoring points? DW Akademie, 31st July, 2019. Available at: <https://www.dw.com/en/uhuru-kenyattas-war-on-graft-a-turning-point-or-just-scoring-points/a-49814142>

¹⁴ World Politics Review (2019) Is Kenyatta Finally Getting Serious About Tackling Corruption in Kenya? World Politics Review, 16 September 2019, <https://www.worldpoliticsreview.com/trend-lines/28192/is-kenyatta-finally-getting-serious-about-tackling-corruption-in-kenya>

- ¹⁵ Githongo, J. (2018) Kenyatta's War on Corruption: Words Won't Cut It, the Budget Is the Corruption. The Elephant, 16 June 2018. <https://www.theelephant.info/op-eds/2018/06/16/kenyattas-war-on-corruption-words-wont-cut-it-the-budget-is-the-corruption/>
- ¹⁶ Kenya Human Rights Commission (2017) The 2nd People's Anti-Corruption Summit. Available at: <https://www.khrc.or.ke/publications/186-the-2nd-people-s-anti-corruption-summit/file.html>, pg.5.
- ¹⁷ Editorial (2019) Heed Ouko's advice and give Auditor General office teeth. The Standard, 29th August 2019. Available at: <https://www.standardmedia.co.ke/article/2001339923/heed-ouko-s-advice-and-give-auditor-general-office-teeth>
- ¹⁸ AfriMAP (2015) Effectiveness of Anti-Corruption. Agencies in East Africa. Kenya, Tanzania and Uganda. A review by AfriMAP. 2. Cape own: African Minds. Available at <http://www.africanminds.co.za/wp-content/uploads/2016/01/AfriMAP-East-Africa-Anti-Corruption-Agencies-text-25Nov1245-WEB.pdf>
- ¹⁹ Abdallah, A., Muthoni, F.M.M., Ibrahim, S.G. (2018) Anti-corruption: Law and Practice Kenya, Chamber Global Practice Guides. Anjarwalla & Khanna. Available at: <https://www.africalegalnetwork.com/kenya/wp-content/uploads/sites/22/2018/01/Chambers-Global-Practice-Guides-Anti-Corruption-2018.pdf>
- ²⁰ Mungai, A. (2017) Give us powers to prosecute, EACC says. The Standard Digital, 8th December 2017. Available at: <https://www.standardmedia.co.ke/article/2001262454/give-us-powers-to-prosecute-eacc-says>
- ²¹ Transparency International Kenya (2019) Strengthening Public Audit Accountability In Kenya: A Baseline Survey Report <https://tikenya.org/wp-content/uploads/2019/03/Baseline-Survey-Report-Social-Accountability-Project.pdf>
- ²² Office of the Director of Public Prosecutions (ODPP) (2017) STRATEGIC PLAN 2016- 2021.ODPP: Nairobi. Available at: <http://www.odpp.go.ke/wp-content/uploads/2017/03/STRATEGIC-PLAN-2016-2021.pdf>
- ²³ Kenya Human Rights Commission (2017) The 2nd People's Anti-Corruption Summit. Available at: <https://www.khrc.or.ke/publications/186-the-2nd-people-s-anti-corruption-summit/file.html>, pg.5.
- ²⁴ Kenyatta, U (2019) State of The Nation Address, 4th April 2019. https://www.un.int/kenya/sites/www.un.int/files/Kenya/speech_by_his_excellency_hon._Uhuru_kenyatta_c.g.h._president_of_the_republic_of_kenya_and_commander_in_chief_of_the_defence_forces_during_the_2019_state_of_the_nation_address_.pdf
- ²⁵ Hope, K. R (2014) Kenya's corruption problem: causes and consequences, *Commonwealth & Comparative Politics*, 52:4, 493-512
- ²⁶ Odongo, K. (2018) Understanding the economic cost of corruption in Kenya. The conversation Available at: <https://theconversation.com/understanding-the-economic-cost-of-corruption-in-kenya-98255>
- ²⁷ KNHCR (2019) Kenya National Commission On Human Rights Submissions To Taskforce On Improvement Of Government Information and Public Communications Function to Align Them With Emerging Public Sector Dynamics And Expectation. Available At: https://www.knchr.org/Portals/0/KNCHR%20SUBMISSIONS%20-%20%20TASKFORCE%20ON%20IMPROVEMENT%20OF%20GOVERNMENT%20INFORMATION%20AND%20PUBLIC%20COMMUNICATIONS_____.pdf
- ²⁸ Kenya OGP Steering Committee (2016) The Republic of Kenya Open Government Partnership National Action Plan II July 2016 – June 2018. Available at: https://www.opengovpartnership.org/wp-content/uploads/2017/04/Kenya_AP2_2016_0.pdf
- ²⁹ IBP (2019) Kenya: How Much Budget Information Are Counties Publishing online? Available at: <https://www.internationalbudget.org/wp-content/uploads/kenya-budget-transparency-map-march-2019.jpg>
- ³⁰ TISA (2019) Report on the Panel Engagement on The Elevation of the Access to Information Act 2016 Held on 19th February 2019. Available at: https://www.tisa.or.ke/images/uploads/Report_on_the_panel_engagement_on_the_elevation_of_the_Access_to_Information_Act.pdf
- ³¹ Kakah, M (2019) Access to public information an uphill struggle in Kenya despite law. Business Daily, FEBRUARY 27, 2019 .Available at: <https://www.businessdailyafrica.com/datahub/Access-to-public-information-an-uphill-struggle-in-Kenya/3815418-5002502-osnfrgz/index.html>
- ³² Abuya, E. (2013) Realizing The Right of Access to Information in Kenya: What Should Stakeholders Be On the Lookout For? in *Access to Information in Africa Law, Culture and Practice*. Diallo, F., Calland, R. (Eds). Leiden: Koninklijke Brill
- ³³ Kakah, M (2019) Access to public information an uphill struggle in Kenya despite law. Business Daily, FEBRUARY 27, 2019 .Available at: <https://www.businessdailyafrica.com/datahub/Access-to-public-information-an-uphill-struggle-in-Kenya/3815418-5002502-osnfrgz/index.html>
- ³⁴ Mutimba, C.J. (2014) Implementation of Electronic Document and Records Management System in the Public Sector: A Case Study of the Ministry Of Higher Education Science and Technology. Master Of Library And Information Science, University Of Nairobi Available at: http://erepository.uonbi.ac.ke/bitstream/handle/11295/76120/Mutimba_Implementation%20of%20electronic%20document%20and%20records%20management%20system.pdf?sequence=3
- ³⁵ Muchiri, T (2019) Research reveals challenges with public participation at the county level. Available at: <https://www.usiu.ac.ke/935/research-reveals-challenges-public-participation-county-level/>
- ³⁶ Article 19 (2014) Kenya: Realising the Right to Information
- ³⁷ Commission on Administrative Justice (2018) Handbook on Best Practices on Implementation of Access to Information in Kenya. Nairobi: The Commission on Administrative Justice Available at:

<https://www.ombudsman.go.ke/index.php/access-to-information-centre/category/24-ati-law?download=242:handbook-on-best-practices-on-implementation-of-ati-in-kenya>

³⁸ TISA (2019) Report on the Panel Engagement on The Elevation of the Access to Information Act 2016 Held on 19th February 2019. Available at: https://www.tisa.or.ke/images/uploads/Report_on_the_panel_engagement_on_the_elevation_of_the_Access_to_Information_Act.pdf

³⁹ International Budget Partnership (2017) Open Budget Survey 2017 Summary. Available at: <https://www.internationalbudget.org/wp-content/uploads/kenya-open-budget-survey-2017-summary.pdf>

⁴⁰ RoGGKenya (2019) Access to Information Laws not obeyed by Parliament and Auditor General. Available at: <https://roggkenya.org/access-to-information-laws-not-obeyed-by-kenyan-parliament-and-auditor-general/>

⁴¹ Privacy International, National Coalition of Human Rights Defenders – Kenya (2019). State of Privacy Kenya. Available at: <https://privacyinternational.org/state-privacy/1005/state-privacy-kenya>

⁴² Ibid.

⁴³ Smidt, H. (2018) Shrinking Civic Space in Africa: When Governments Crack Down on Civil Society GIGA Focus Africa, Number 4. https://www.giga-hamburg.de/en/system/files/publications/gf_africa_1804_en.pdf

⁴⁴ CIVICUS (2017) Environmental Activists Face Death Threats and Intimidation. Available at <https://monitor.civicus.org/newsfeed/2017/04/18/activists-face-death-threats-intimidation/>

⁴⁵ Muriu, A.R., Mbai, G., Lakin, J. Flynn, R. (2014) County Budget and Economic Forums (CBEFs) and Public Participation in Kenya A Synthesis of Case Studies from Five Counties. International Budget Partnership. Available at: <https://www.internationalbudget.org/wp-content/uploads/County-Budget-and-Economic-Forums-CBEFs-and-Public-Participation-in-Kenya.pdf>

⁴⁶ The National Assembly of Kenya (2017) Public Participation in the legislative Process. Fact Sheet No. 27 Available at: http://www.parliament.go.ke/sites/default/files/2018-04/27_Public_Participation_in_the_Legislative_Process.pdf

⁴⁷ Muriu, A.R., Mbai, G., Lakin, J. Flynn, R. (2014) County Budget and Economic Forums (CBEFs) and Public Participation in Kenya A Synthesis of Case Studies from Five Counties. International Budget Partnership. Available at: <https://www.internationalbudget.org/wp-content/uploads/County-Budget-and-Economic-Forums-CBEFs-and-Public-Participation-in-Kenya.pdf>

⁴⁸ Gitegi, C. W., Iravo, M.A. (2016) Factors Affecting Public Participation in Effective Devolved Governance in Kenya: A Case of Uasin Gishu County, The Strategic Journal of Business and Change Management, Vol. 3, Issue. 4 (69), pp 1302-1324

⁴⁹ KNHCR (2019) Kenya National Commission On Human Rights Submissions To Taskforce On Improvement Of Government Information and Public Communications Function to Align Them With Emerging Public Sector Dynamics And Expectation. Available At: https://www.knchr.org/Portals/0/KNCHR%20SUBMISSIONS%20-%20%20TASKFORCE%20ON%20IMPROVEMENT%20OF%20GOVERNMENT%20INFORMATION%20AND%20PUBLIC%20COMMUNICATIONS_____.pdf

⁵⁰ Gitegi, C. W., Iravo, M.A. (2016) Factors Affecting Public Participation in Effective Devolved Governance in Kenya: A Case of Uasin Gishu County, The Strategic Journal of Business and Change Management, Vol. 3, Issue. 4 (69), pp 1302-1324

⁵¹ Intergovernmental Relations Technical Committee (2016) The Status Of Public Participation In National And County Governments. Available at <http://www.igrtc.go.ke/index.php/2016-02-22-04-01-26/resources?download=12:igrtc-reports>

⁵² The National Treasury (2015) Analysis on how to achieve effective public participation. Available at: www.treasury.go.ke/news-updates/286-analysis-how-to-achieve-effective-public-participation.

⁵³ Intergovernmental Relations Technical Committee (2016) The Status Of Public Participation In National And County Governments. Available at <http://www.igrtc.go.ke/index.php/2016-02-22-04-01-26/resources?download=12:igrtc-reports>

⁵⁴ Mariru, P (2019) What About Public Participation? Where Are We? ILA Kenya, October 16th, 2015, <https://ilakenya.org/what-about-public-participation-where-are-we/>

⁵⁵ Infotrak Research And Consulting (2017) Baseline Survey For Phase II of Amkeni Wakenya Programme (2015-2018), United Nations Development Programme. Available at: <https://www.undp.org/content/dam/kenya/docs/AmkeniWakenya/Baseline%20Survey%20Amkeni%20Wakenya%20Phase%20II.pdf>

⁵⁶ Transparency International-Kenya (2018) A Case Study Of Public Participation Frameworks And Processes In Kisumu County. Available at. <https://tikenya.org/wp-content/uploads/2018/08/Public-Participation-Frameworks-Kisumu-County.pdf>

⁵⁷ Ronoh, G., Mulongo, L.S., Kurgat, A. (2018) Challenges Of Integrating Public Participation In The Devolved System Of Governance For Sustainable Development In Kenya. International Journal of Economics, Commerce and Management, Vol. VI: 1. <http://ijecm.co.uk/wp-content/uploads/2018/01/6132.pdf>

⁵⁸ Gitegi, C.W., Iravo, M.A. (2016) Factors Affecting Public Participation In Effective Devolved Governance In Kenya: A Case Of Uasin Gishu County, The Strategic Journal of Business and Change Management, Vol. 3, Issue. 4 (69), pp 1302-1324.

⁵⁹ Guidelines launched by the council of governors in 2016 are not widely disseminated

⁶⁰ Watima, T. (2018) Enhance public participation in law making, 3 December 2018, the Business Daily Africa. Available at: <https://www.businessdailyafrica.com/news/539546-539546-nl9y6s/index.html>.

- ⁶¹ Maina, W (2019) State Capture: Why Kenya Has Been Unable to Slay the Corruption Dragon. The Elephant, 22 August 2019. Available at: <https://www.theelephant.info/features/2019/08/22/state-capture-why-kenya-has-been-unable-to-slay-the-corruption-dragon/>
- ⁶² Ndii, D. (2019) Crony Capitalism and State Capture 2: Documents Reveal the Kenyatta Family's Plans to Take over Lending to SMEs, 2 April 2019. The Elephant, : Available at; <https://www.theeastafricanreview.info/op-eds/2019/04/02/crony-capitalism-and-state-capture-2-documents-reveal-the-kenyatta-familys-plans-to-take-over-lending-to-smes/>
- ⁶³ Nyabola, N. (2018) The battle for Kenya's fourth estate: State capture and the Kenyan media during the 2017 election, in *State Capture In Africa Old Threats, New Packaging*, Edited by M. Meirotti & G. Masterson (Eds). Johannesburg: EISA.
- ⁶⁴ Transparency International Kenya (2015) Comprehensive legislation on whistle-blower protection in Kenya, Policy brief 1. Available at: <https://tikenya.org/wp-content/uploads/2017/06/policy-brief-no-1-2015-comprehensive-legislation-on-whistleblower-protection-in-kenya-1.pdf>
- ⁶⁵ Mutunga, W (2019) Civil Society Platform on the John Githongo Decision On Defamation Sarova-Panafric Friday, May 17, 2019. Available at: <https://s3-eu-west-1.amazonaws.com/s3.sourceafrica.net/documents/119128/Dr-Willy-Mutunga-Remarks-at-the-Civil-Society.pdf>
- ⁶⁶ Maina, W. (2019) State Capture Inside Kenya's Inability to Fight Corruption, Nairobi: AfriCog <https://africog.org/wp-content/uploads/2019/05/STATE-CAPTURE.pdf>
- ⁶⁷ Hassan, A (2018) Kenya must act now to stop extrajudicial executions. Amnesty International, 6 September 2018 <https://www.amnesty.org/en/latest/news/2018/09/kenya-must-act-now-to-stop-extrajudicial-executions/>
- ⁶⁸ Human Rights Watch (2019) Kenya: Nairobi Police Executing Suspects: Dozens Killed in Low-Income Areas. Human Rights Watch, 2 July 2019. <https://www.hrw.org/news/2019/07/02/kenya-nairobi-police-executing-suspects>
- ⁶⁹ Human Rights Watch (2018) Kenya: Stop Arbitrary Detention of Lawyer at Airport: Authorities Should Enforce Court Orders to End Standoff. Human Rights Watch, March 28, 2018. Available at: <https://www.hrw.org/news/2018/03/28/kenya-stop-arbitrary-detention-lawyer-airport>
- ⁷⁰ Odada, M (2018) Opinion: Journalists in Kenya Handling Intimidation and Harassment. Talk Africa, 4, September 2018. <http://www.talkafrica.co.ke/opinion-journalists-in-kenya-handling-intimidation-and-harassment/>
- ⁷¹ Article 19 (2018) Kenya: Violations of Media Freedom May 2017 – April 2018. Nairobi, Article 19 Eastern Africa. <https://www.article19.org/wp-content/uploads/2018/05/Kenya-Report-1.pdf>
- ⁷² Warah. R. (2018) In Whose Interest? Reflecting on the High Court Ruling Against John Githongo. The Elephant. Available at: <https://www.theeastafricanreview.info/op-eds/2019/05/27/in-whose-interest-reflecting-on-the-high-court-ruling-against-john-githongo/>
- ⁷³ Kegoro, G. (2019) The clear misses in Githongo's Sh27m defamation ruling, 12th May 2019. Standard Digital. Available at: <https://www.standardmedia.co.ke/article/2001325105/the-clear-misses-in-githongo-s-sh27m-defamation-ruling>
- ⁷⁴ Khalid, H. (2019) Shrinking civic space in Kenya a worrying concern. The Star, 29 July 2019. Available at: <https://www.the-star.co.ke/opinion/columnists/2019-07-29-shrinking-civic-space-in-kenya-a-worrying-concern/>
- ⁷⁵ Kenya National Commission on Human Rights (2018) Advisory Statement, Calling duty bearers to action on the protection and promotion of Human Rights 7th February 2018. <https://www.knchr.org/Portals/0/Statements/7th%20Feb%202018%20KNCHR%20ADVISORY%20STATEMENT%20O%20DUTY%20BEARERS%20ON%20HUMAN%20RIGHTS.pdf?ver=2018-02-07-152824-213>
- ⁷⁶ US Department of State (2015) Kenya 2015 Human Rights Report, Country Reports on Human Rights Practices for 2015, Bureau of Democracy, Human Rights and Labour. Available at: <https://2009-2017.state.gov/documents/organization/252905.pdf>
- ⁷⁷ Independent Reporting Mechanism (IRM) (2018) Kenya Progress Report 2016- 2018. Open Government Partnership. Available at: https://www.opengovpartnership.org/wp-content/uploads/2018/05/Kenya_MidTerm-Report_2016-2018_for-public-comment.pdf
- ⁷⁸ CIVICUS (2017) Environmental Activists Face Death Threats and Intimidation. Available at: <https://monitor.civicus.org/newsfeed/2017/04/18/activists-face-death-threats-intimidation/>
- ⁷⁹ Okoth, J. (2017) Kenya's parliament continues to stall on the two-thirds gender rule. The Conversation. Available at: <https://theconversation.com/kenyas-parliament-continues-to-stall-on-the-two-thirds-gender-rule-79221>
- ⁸⁰ Karuguti, M. (2019) Strong institutions key to Kenya's redemption, Standard Digital, 11th Jan 2019. Available at: <https://www.standardmedia.co.ke/article/2001309051/strong-institutions-key-to-kenya-s-redemption>
- ⁸¹ Waris, A. (2017) Probing the Office of the Auditor General is harassment. Katiba Institute, 27 February 2017. <http://www.katibainstitute.org/probing-the-office-of-the-auditor-general-is-harassment/>
- ⁸² Independent Reporting Mechanism (IRM) (2018) Kenya Progress Report 2016- 2018. Available at: https://www.opengovpartnership.org/wp-content/uploads/2018/05/Kenya_MidTerm-Report_2016-2018_for-public-comment.pdf

III. Leadership and Multi-stakeholder Process

Multi-stakeholder processes are imbued with complexity and Kenya has made significant efforts in trying to address this. With each NAP cycle, Kenya's approach has become more considered and continues to grow in inclusivity and collaboration in order to drive the OGP agenda forward. While the country has succeeded in some quarters, there is still room for improvement in others, as will be outlined below.

3.1 Leadership

This subsection describes the OGP leadership and institutional context for OGP in Kenya.

As outlined in NAP III, “the Government of Kenya believes in curating deliberate multi-stakeholder ecosystems to delivery responsive development outcomes”.⁸³ OGP in Kenya is therefore led by the OGP National Steering committee, which is chaired by Office of the Deputy President and the Commission on Administrative Justice (CAJ). CAJ was officially incorporated as co-chair of OGP in Kenya in 2019, taking over from the ICT Authority who was the previous co-chair.^{84 85 86} As the custodian of the Access to Information Act (2016), the CAJ was described as bringing to the leadership a renewed focus to addressing issues on transparency, accountability and public participation.⁸⁷⁸⁸ The Office of the Deputy President also acts as the OGP government Point of Contact.

The steering committee has the responsibility of developing the National Action Plan (NAP) in conjunction with a representative Technical Committee, which is appointed to provide technical support during the implementation of the NAP. Both the steering and technical committees are comprised of members from civil society and government, with further representation from sub-national governments and the senate. These committees are not legally gazetted; however, each member was reported to have received letters of appointment and terms of reference from the Office of the Deputy President in 2019.⁸⁹ This was a significant shift from NAP I where leadership was located solely in the ICT Authority, which was described as having extremely limited powers to drive reform at the time.^{90 91}

The Leadership of each NAP cycle in Kenya often adapts to the initiatives emerging needs and priorities. For instance, at inception, OGP was housed at the Ministry of Information and Communications, who in conjunction with Open Government Working Group developed the first National Action Plan. The second NAP saw the government provide further impetus for enforcement of OGP commitments by incorporating the Office of the Deputy President into the programme's leadership. In conjunction with the OGP National Steering and Technical committees, the Office of the Deputy President developed the third national action plan (hereinafter referred to as NAP III) via a consultative process.^{92 93 94} The Commission on Administrative Justice, often referred to as the custodian of the Access to Information Act (2016) was also incorporated into the leadership to further reflect the country's commitment to transparency and accountability, two key themes that NAP III would focus on. Unlike previous plans, NAP III would also involve county governments in the implementation of the agenda, based on recommendations provided in the IRM report.⁹⁵

Kenya's first formal OGP multi-stakeholder steering committee was therefore established in February 2016 during the NAP II process and was made up of representatives from government agencies, the private sector and civil society organisations.⁹⁶ The current steering committee is similarly comprised with high-level representation from the Office of the Deputy President, independent commissions, participating sub-national governments, the Africa Peer Review Mechanism Kenya Secretariat, civil society, members of the National Assembly and Senate, and the OGP convenor. This indicates a broader range of government interests compared to the previous plan and better representation of civil society groups. In addition to the formal government chairs, a democratically selected civil society co-chair was also selected in March 2019.⁹⁷

The technical committee is made up of representatives from the Office of the Deputy President, civil society, participating County governments, African Peer Review Mechanism (APRM) and the National Assembly. During NAP development, all members of the technical committee were also part of the steering committee. The Technical Committee has a point of contact clearly outlined within the published national action plan whose role also involves chairing the committee. Sitting on the committee are also commitment leads i.e. a government lead organization or agency that is responsible for implementing the commitment and a civil society counterpart. Each commitment therefore has an identified contact person and a list of other participating actors or stakeholders outlined clearly within the plan.

NAP III also seeks to institutionalize OGP and establish an OGP programme or initiative as outlined in commitment six. This ambition may likely stem from the funding bottlenecks that beset the implementation of NAP II which limited the organization and coordination of OGP activities.⁹⁸ Currently, OGP in Kenya does not have a dedicated budget, with funding for activities largely dependent on civil society budgets, especially where activities have not been incorporated into state department budgets.⁹⁹¹⁰⁰ However, some financial support was provided through a dedicated co-creation grant¹⁰¹ that was awarded to Article 19- Eastern Africa.¹⁰² The grant aims to enhance the quality of engagement and dialogue and meeting participation and co-creation standards.¹⁰³ Article 19 Eastern Africa specifically purposed to use the grant to improve the interface between the state and civil society; develop a communications strategy; build coalitions and broaden participation; and develop and launch an OGP Kenya website.¹⁰⁴ The heavy reliance on donor support, such as from the World Bank, has also been noted by various stakeholders which has implications for sustainability.¹⁰⁵¹⁰⁶ For instance, in the past, progress on NAP I was hampered by the halt of donor funds to the ICT Authority.¹⁰⁷ Commitment six seeks to address some of these limitations.

While improvements have been made in regard to representation, the lack of a strong coordinating framework will likely hamper progress and the future development of subsequent NAPs.¹⁰⁸ According to one stakeholder, a coordination framework would contribute to better orienting stakeholders around the commitments, allow for better stakeholder mapping and map out strategies for collaboration.¹⁰⁹ Currently, the OGP government point of contact (POC) and OGP secretariat (comprised of 2 members of staff) within the Office of the Deputy president, coordinates government actors while Article 19 has coordinated civil society by default, given that they were hosting the co-creation grant.¹¹⁰ The POC is now a fulltime member of staff

within the Office of the Deputy President which offers some stability.¹¹¹ However, there is room to improve the synergy and communication between the different sectors. As part of the requirements of the co-creation grant, Article 19 will be developing a communication strategy that will also contribute to improving this.¹¹²

3.2 Multi-stakeholder process throughout action plan development

In 2017, OGP adopted the OGP Participation and Co-Creation Standards intended to support participation and co-creation by civil society at all stages of the OGP cycle. All OGP-participating countries are expected to meet these standards. The standards aim to raise ambition and quality of participation during development, implementation, and review of OGP action plans.

OGP’s Articles of Governance also establish participation and co-creation requirements a country or entity must meet in their action plan development and implementation to act according to OGP process. Kenya acted contrary to the OGP process in the development of their third action plan. While there were instances for the public to provide inputs and comment on the draft version of the action plan, there is no evidence available to demonstrate that the government published its reasoning behind how civil society and public input was considered. Therefore, the government did not meet the “Involve” requirement on the level of public influence spectrum (see Table 4) during development of the action plan, as assessed by the IRM.¹¹³

Please see Annex I for an overview of Kenya’s performance implementing the Co-Creation and Participation Standards throughout the action plan development.

Table [3.1]: Level of Public Influence

The IRM has adapted the International Association for Public Participation (IAP2) “Spectrum of Participation” to apply to OGP.¹¹⁴ This spectrum shows the potential level of public influence on the contents of the action plan. In the spirit of OGP, most countries should aspire for “collaborate.”

Level of public influence		During development of action plan
Empower	The government handed decision-making power to members of the public.	
Collaborate	There was iterative dialogue AND the public helped set the agenda.	
Involve	The government gave feedback on how public inputs were considered.	
Consult	The public could give inputs.	✓
Inform	The government provided the public with information on the action plan.	
No Consultation	No consultation	

Multi-stakeholder forum

OGP in Kenya is facilitated via a multi-stakeholder mechanism that operates at multiple levels. More formally constituted are the National Steering and Technical Committees which together, form Kenya's Multi Stakeholder forum (MSF).¹¹⁵ The committees oversee the implementation of OGP in Kenya and guide the formation of action plans. Committee members are selected based on their political role and strategic importance and level of experience with OGP.¹¹⁶ These committees, however, have no legal mandate and neither are they legally gazetted. Membership of either committee is also not static, adapting membership to the commitments that emerge with each cycle. In early 2019, the membership of both committees was expanded based on recommendations provided during stakeholder meetings. This resulted in an increase of both state agencies and civil society members, enhancing representation from both quarters.¹¹⁷ Civil Society Organizations (CSOs) nominated their additional representatives to both the steering and technical committees at a meeting held on 18th March 2019 at Transparency International-Kenya in Nairobi.

Working clusters or groups also form part of overall MSF structure and are similarly comprised and open to all relevant stakeholders. The clusters are jointly led by a government agency and civil society representative and are required to submit work plans and progress reports to the Technical Committee.¹¹⁸ The clusters do not appear to have any formal terms of reference nor do they have a standardised approach to how they function. There is additionally no formal requirement with regard to how frequently they should be convened. Decisions around this are left up to the cluster leads discretion. The irregularity of meetings and lack of an operating framework for these clusters was cited as key a concern by stakeholders from both the government and civil society.^{119 120 121 122}

Feeding into these working groups is an even less formally constituted civil society forum, which is a loose network open to civil society members interested or participating in the OGP initiative in Kenya. This forum has evolved through the different cycles: in the first cycle, membership was primarily made up of open data and technology related private sector and civil society members that were also members of the Access to Information network. In the second and third cycles, this expanded to include professional bodies and civil society members working on issues of democratic governance, transparency and anti-corruption, and gender equality.^{123 124} As in NAP II, members of the forum are still largely based in the capital, Nairobi, and are mainly international non-governmental organisations. According to one civil society stakeholder broader civil society participation from the counties was hampered by lack of resources.¹²⁵ With previous cycles, greater sub-national or regional representation had been possible due to a grant that has been awarded to Constitution and Reform Education Consortium (CRECO) to enhance CSO participation and to monitoring OGP commitments.^{126 127} This grant came to an end in July 2017. Therefore, input from county civil society groups relied on dissemination of the draft plan via email through CSO networks.¹²⁸

In addition to the aforementioned structures, it was also evident that a smaller, more informal, core team facilitated the coordination of activities between government and civil society. This 'core team' is comprised of four members that have been part of the Kenya OGP process since its inception and includes the OGP point of contact (POC), the co-creation grant holder, the

OGP Regional Coordinator and two other civil society partners. This core team acts as an informal coordinating secretariat ensuring that momentum is maintained and provides a resource that can be readily called upon to represent the OGP initiative in different spaces.¹²⁹ For instance, members of this core team are called on to make presentations about OGP in Kenya during sensitization meetings with various actors.¹³⁰ The role of this informal core group was however not well understood by other stakeholders and perhaps was perceived as being relatively exclusive. One civil society member remarked “You see those [are the] perceptions, that they are people running this, that the space is theirs and that coming in may be difficult if you want to participate...Even if I am interested in open contracting and have the money, though I would want to get deeply involved I may not, because they are people already taking leadership. So I may play a subordinate to them.”¹³¹

Three or four key meetings held throughout the development of NAP III were supported by both Article 19 East Africa and HIVOS East Africa (hereinafter referred to as Article 19 and HIVOS). Article 19 administered the OGP Trust Fund Participation and Co-creation Award as per the aims outlined in the previous section while HIVOS East Africa provided financial and technical support. The award helped to broaden the scope of civil society actors participating in the NAP by drawing in women’s groups, youth and the media into the discussion and deliberations over what would be presented in NAP III.¹³² These meetings were held in Nairobi, with the first meeting described as a brainstorming meeting, the second a deeper discussion on themes and streamlining of priorities, a CSO strategy meeting and finally a validation meeting.¹³³¹³⁴¹³⁵

Outputs of these meetings, including some reports, were communicated mainly via emails. Requests for input were also made in the same manner.¹³⁶ The dates of these meetings are however difficult to ascertain as documents could not be traced to provide information on the same. That being said, the co-creation grant greatly enabled collaboration and dialogue which was a key focus going into NAP III.¹³⁷ Prior to this there had been no financial support for the convening of multi-stakeholder forums, save for the benevolence extended by civil society members already invested in the process.^{138 139} Article 19 will also utilize the grant for the development of an OGP Kenyan website or online portal, which is still underway. As such, progress and news on activities is also shared mainly via emails, a dedicated twitter account (<https://twitter.com/ogpkenya>) and through the use of messaging applications (primarily WhatsApp) on which stakeholders could communicate more rapidly. One WhatsApp group is constituted solely of civil society members and the other a broader mix of all OGP stakeholders. Article 19 will also be developing a communication strategy to bring further coordination around MSF communications.¹⁴⁰

Participation and engagement throughout action plan development

The development of NAP III began with an inter-sector roundtable meeting convened by Article 19 on the 27th February 2018 to: reflect on the achievements of NAP II; discuss potential areas to include in NAP III; kick start the discussion on developing a resilient OGP initiative in Kenya; discuss roles; and develop a roadmap for the development of NAP III. The dialogue would also seek to address prevailing trends and the challenges and prospects of OGP in addressing the development challenges targeted by the Big Four.¹⁴¹ Based on this discussion, an initial draft of

the action plan was developed and tabled by the POC, with stakeholders provided with the opportunity to submit comments and provide further input. The consultation was not open to the wider public at this point, but mainly targeted stakeholders within government and civil society who had actively participated in OGP activities. This initial draft was described by civil society as strongly echoing government priorities.¹⁴² It is unclear how different proposals were incorporated into NAP III due to insufficient documentation and the limited recall of those who were interviewed. However, by the second iteration, incorporating commitments on gender and elections became key points of discussion.¹⁴³ For instance, with regard to gender, the discussion revolved around whether the NAP could be made more gender sensitive and whether gender should be mainstreamed or made a stand-alone commitment.¹⁴⁴

The POC made the subsequent draft open for public comment. According to the NAP, the draft was opened to public consultation for about four weeks. As verified by the IRM researcher, the Government shared it through its Twitter account and received comments via email for a week, October 8-12, 2018.¹⁴⁵ The draft was also shared through a variety of CSO networks such as the Civil Society Reference Group and National Human Rights Defenders networks among others. The number of comments received during this period remains unclear. However, the final selection and prioritization of milestones considered the following: whether the milestone was 'low hanging fruit' i.e. whether it could be tied to government initiatives that were funded or were already being implemented and appeared in Medium Term Plans.¹⁴⁶¹⁴⁷ Open government trends, global trends and political priorities also played a significant role in the final selection. For instance, the inclusion of Access to Government Procurement Opportunities (AGPO) under the open contracting commitment was an example of a milestone that was not too politically charged.¹⁴⁸ ¹⁴⁹

In regard to participation, there was lack of broader consultation with sub-national or local civil society, the media, women's and youth groups during the development of NAP III. Their limited participation was attributed to resource and capacity limitations and an inability to find alignment with the emerging consensus on the OGP country agenda. Thus, co-creation still failed to go beyond urban areas or the purview of national organisations.¹⁵⁰ The process did however attempt to broaden the scope of participation by inviting civil society actors who had not been traditionally involved, into the process. These included rights based organisations such as the Katiba Institute and the Kenya National Human Rights Commission.¹⁵¹ The gender sector was also invited to participate in various forums through organisations such as Women's Empowerment Link (WEL) and FEMNET.¹⁵²¹⁵³ There are hopes to make implementation and the development of any subsequent NAPs more participatory.¹⁵⁴ ¹⁵⁵

A range of outreach activities were also undertaken in order to raise awareness and in so doing elicit the interest of a broader range of stakeholders to join the OGP process. Members of the technical committee and core team were enlisted to undertake the outreach. The activities included supporting the Governor of Elgeyo Marakwet, a sub-national OGP member, to host other subnational governments from Kenya, Tanzania, Nigeria and Ghana on the 2nd of May 2018.¹⁵⁶¹⁵⁷ On 10th September 2018, they also met with NEPAD¹⁵⁸ Kenya to discuss potential areas of collaboration for the deepening and improvement of democracy, accountability and citizen engagement for NAP III. Similarly, in the same month, members of the core team participated in meetings held by the Extractives Policy Working Group inception meeting and in March 2019, a Geo spatial conference.¹⁵⁹ On 29th March 2019, members of the technical

committee also briefed the Senate Committee on Justice and Legal Affairs on OGP, its progress and impact thus far.^{160 161} Article 19 further hosted a media caucus on 10th September 2019.¹⁶² Outreach meetings have also been held with women's groups¹⁶³ and further outreach is planned, targeting parliamentary staffers and the media.

Civil society described participation of government ministries as wanting. CSOs drafted an official communique to the relevant authorities outlining the reasons why government involvement needed to improve.¹⁶⁴ For the IRM researcher, this may be explained –in part- by the fact that government agencies leading on implementation were by and large roped into the process quite late, unable to provide inputs to the plan or only coming in at the tail end to provide comments on the final draft.^{165 166} Alternatively, consultations with government agencies were pursued individually, i.e. taking place in one-on-one meetings with the POC.¹⁶⁷ This may explain why some civil society representatives perceived government involvement during these early stages of NAP development to be at a minimum.¹⁶⁸ Civil society participation in the latter stages of NAP development was also described as having “fizzled” or marginally declined towards the end of the NAP development process as it was realized that certain items or themes would be left out of the NAP.¹⁶⁹

NAP III eventually emerged as a much leaner document, put together by a smaller group of actors. An APRM representative described the plan as being “compact, smart and deliberate.”^{170 171172} The final draft was launched in January 2019 at a high profile event hosted by the Office of the Deputy President. The highly publicised launch and endorsement by the Office of the Deputy President in early 2019 heightened visibility of OGP and ignited a surge of interest in OGP, mainly from government agencies.¹⁷³¹⁷⁴ The auspicious beginning of NAP III was described as having the effect of “seducing partnerships”.¹⁷⁵ According to one interviewee this has had several implications: *“OGP at this level is something people want to be associated with, whether they understand it or not It's a fear for me definitely...And even within civil society I am seeing the same thing. People just wanting association, people wanting to sound like we did this, we did that. So there's a lot of elbowing out...I fear politics watering down OGP ...and opportunism which is what I honestly currently see and experience.”*¹⁷⁶

Throughout the consultative period, the ground rules were mainly tacit in nature, with no explicit communication on the rules of engagement. Activities appeared to progress incrementally with stakeholders receiving communication on activities as they arose, once they subscribed to the OGP CSO or OGP Kenya mailing list. Communication via these channels, especially from Article 19, was described by both government and civil society members as being adequate.^{177 178}

The process of developing the NAP appears to be improving with each cycle. However the nature and number of participants, ideas generated, depth of discussion, methodology used for facilitating the discussion and prioritizing proposals, and the decision outcomes of each meeting during this process are all difficult to ascertain given little available documentation and limited recall of key stakeholders interviewed. Therefore an assessment of the quality of the process is difficult. Nonetheless, the commitments reflected inputs from the core group of organizations that participate in this process. Future consultation will need to consider how to ensure that considerations from groups outside the traditional circle of actors can be more adequately considered.

Co-creation and participation recommendations throughout development

Kenya showed evidence of improvement and strong performance in the composition of its multi-stakeholder forum. Those within both the steering and technical committees are also very clear on their mandate. There however appears to be no systematic approach to engagement. Kenya should systemise their process of MSF establishment, especially given that its composition may likely shift with each cycle. This may include incorporating steps such as stakeholder mapping, calls for expressions of interest, and awareness and outreach that should be undertaken prior to the formation of the MSF. Systematising the approach to engagement would allow for easy replication of the experience elsewhere. This is particularly important given that Kenya hopes to develop a franchising model for the deployment of OGP initiatives across Africa as part of implementing commitment six.

As already outlined, the consultative process leading up to NAP III made attempts to be inclusive. However, as one stakeholder remarked, membership of the all OGP related groups remains fairly static and there is an expressed need to grow in membership of the network and involvement of members.¹⁷⁹ In addition, Kenya currently lacks an OGP progress portal as was committed to in NAP I.¹⁸⁰ A dummy portal was presented to stakeholders in early 2019 and is still in the process of being developed. Hence there is no real time access to government self-assessments, records, updates or other relevant related materials to support the NAP co-creation and development process, and assist all relevant stakeholders and the general public in monitoring implementation of OGP commitments.

Some other areas where Kenya can improve are mainly in regard to the MSFs way of working, communication and outreach during development of the NAP. Things to consider would be:

- Establishing a formal secretariat to track, coordinate and adequately document OGP activities.
- Fast tracking the development of an online portal and repository on OGP in Kenya.
- Developing an outreach strategy for the purpose of engaging government ministries, sub-national government, subnational or local civil society organizations, media, parliament, special interest groups and the private sector in line with the communication strategy.
- Developing a clear communication strategy, that includes an overview of all the informal and formal structures available and the roles of different actors within them. This strategy could also help communicate the gains and positive impact of OGP.
- Enhancing participation by facilitating remote participation in OGP meetings.

⁸³ Government of Kenya (2018) Open Government Partnerships National Action Plan III. pg. 14, Available at: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf

⁸⁴ Interview 9, Interview with IRM Researcher, 26th August 2019.

⁸⁵ Interview 5, Interview with IRM Researcher, 31st August 2019.

⁸⁶ Interview 7, Interview with IRM Researcher, 27th August 2019

⁸⁷ Interview 6, Interview with IRM Researcher, 26th August 2019

⁸⁸ Interview 2, Interview with IRM Researcher, 23rd August 2019.

⁸⁹ Interview 4, Interview with IRM Researcher, 28th August 2019.

⁹⁰ Independent Reporting Mechanism (IRM) (2018) Kenya Progress Report 2016- 2018. Open Government Partnership. Available at: https://www.opengovpartnership.org/wp-content/uploads/2018/05/Kenya_MidTerm-Report_2016-2018_for-public-comment.pdf

⁹¹ ⁹¹ Interview 7, Interview with IRM Researcher, 27th August 2019.

⁹² Interview 5, Interview with IRM Researcher, 31st August 2019.

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- ⁹³ Othim, C (2018) Independent Reporting Mechanism (IRM): Kenya Progress Report 2016- 2018, Independent Researcher, Government of Kenya (2018) Open Government Partnerships. Available at: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf
- ⁹⁴ Interview 4, Interview with IRM Researcher, 28th August 2019.
- ⁹⁵ Othim, C (2018) Independent Reporting Mechanism (IRM): Kenya Progress Report 2016- 2018, Independent Researcher, Government of Kenya (2018) Open Government Partnerships. Available at: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf
- ⁹⁶ Ibid.
- ⁹⁷ Unknown (2019) OGP CSO Meeting held on 18th March 2019 at TI-Kenya, Meeting Minutes.
- ⁹⁸ Othim, C (2018) Independent Reporting Mechanism (IRM): Kenya Progress Report 2016- 2018, Independent Researcher, Government of Kenya (2018) Open Government Partnerships. Available at: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf
- ⁹⁹ Interview 13, Interview with IRM Researcher, 13th November 2019.
- ¹⁰⁰ Interview 5, Interview with IRM Researcher, 31st August 2019.
- ¹⁰¹ OGP (2018) OGP Trust Fund Application Guidelines Support to Participation and Co-creation of National/Local Action Plans February-March 2018. http://ogp.gov.ro/nou/wp-content/uploads/2018/02/MDTF_Application-Guidelines_20180220_EN.pdf
- ¹⁰² OGP (2018) Announcing the 2018 Co-Creation Awards. OGP Support Unit, 5th June 2018. <https://www.opengovpartnership.org/stories/announcing-the-2018-co-creation-awards/>
- ¹⁰³ OGP (2017) OGP Participation & Co-Creation Standard. Available at: http://www.opengovpartnership.org/wp-content/uploads/2019/07/OGP_Participation-Cocreation-Standards20170207.pdf
- ¹⁰⁴ Interview 15, Interview with IRM Researcher, 14th November 2019
- ¹⁰⁵ Interview 7, Interview with IRM Researcher, 27th August 2019.
- ¹⁰⁶ Interview 5, Interview with IRM Researcher, 31st August 2019.
- ¹⁰⁷ Interview 7, Interview with IRM Researcher, 27th August 2019.
- ¹⁰⁸ Interview 13, Interview with IRM Researcher, 13th November 2019.
- ¹⁰⁹ Interview 13, Interview with IRM Researcher, 13th November 2019.
- ¹¹⁰ Interview 4, Interview with IRM Researcher, 28th August 2019.
- ¹¹¹ Civil society participant (2019) Civil Society Open Government Partnership Meeting, 14th November 2019, Nairobi
- ¹¹² Civil society participant (2019) Civil Society Open Government Partnership Meeting, 14th November 2019, Nairobi
- ¹¹³ See: IRM Guidance on minimum threshold for involve <https://www.opengovpartnership.org/wp-content/uploads/2020/02/IRM-Guidance-Involve.pdf>
- ¹¹⁴ "IAP2's Public Participation Spectrum," IAP2, 2014. http://c.yimcdn.com/sites/www.iap2.org/resource/resmgr/foundations_course/IAP2_P2_Spectrum_FINAL.pdf
- ¹¹⁵ Office of the Deputy President (2018) Terms of Reference: Open Government Partnership (OGP) Technical Working Committee, Kenya 2018 – 2020. Nairobi.
- ¹¹⁶ Interview 9, Interview with IRM Researcher, 26th August 2019.
- ¹¹⁷ Article 19 East Africa, Office of the Deputy President (2018) Dialogue on trends, challenges and Prospects of Open Government Partnership 2016-2018. Report on the 2nd Kenya IOGP National Action Plan II Roundtable Meeting, 27th February 2018. Article 19 East Africa, Nairobi.
- ¹¹⁸ Interview 9, Interview with IRM Researcher, 26th August 2019.
- ¹¹⁹ Interview 11, Interview with IRM Researcher, 11th November 2019
- ¹²⁰ Interview 10, Interview with IRM Researcher, 12th August 2019
- ¹²¹ Interview 13, Interview with IRM Researcher, 13th November 2019
- ¹²² Interview 9, Interview with IRM Researcher, 26th August 2019.
- ¹²³ Interview 10, Interview with IRM Researcher, 12th August 2019.
- ¹²⁴ Interview 2, Interview with IRM Researcher, 23rd August 2019.
- ¹²⁵ Interview 4, Interview with IRM Researcher, 28th August 2019.
- ¹²⁶ Interview 10, Interview with IRM Researcher, 12th August 2019.
- ¹²⁷ Making All Voices Count. (2017) Monitoring and supporting the Kenyan government to achieve its OGP commitments. <https://www.makingallvoicescount.org/project/constitution-reform-education-consortium/>
- ¹²⁸ Interview 4, Interview with IRM Researcher, 28th August 2019.
- ¹²⁹ Interview 9, Interview with IRM Researcher, 26th August 2019.
- ¹³⁰ Interview 13, Interview with IRM Researcher, 13th November 2019.
- ¹³¹ Interview 11, Interview with IRM Researcher, 11th November 2019.
- ¹³² Interview 9, Interview with IRM Researcher, 26th August 2019.
- ¹³³ Interview 5, Interview with IRM Researcher, 31st August 2019.
- ¹³⁴ Interview 11, Interview with IRM Researcher, 11th November 2019.
- ¹³⁵ Interview 4, Interview with IRM Researcher, 28th August 2019.
- ¹³⁶ Interview 11, Interview with IRM Researcher, 11th November 2019

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- ¹³⁷ Article 19 East Africa, Office of the Deputy President (2018) Dialogue on trends, challenges and Prospects of Open Government Partnership 2016-2018. Report on the 2nd Kenya IOGP National Action Plan II Roundtable Meeting, 27th February 2018. Article 19 East Africa, Nairobi.
- ¹³⁸ Interview 15, Interview with IRM Researcher, 14th November 2019.
- ¹³⁹ Interview 9, Interview with IRM Researcher, 26th August 2019.
- ¹⁴⁰ Interview 10, Interview with IRM Researcher, 12th August 2019.
- ¹⁴¹ ODP, Article 19 (2018) Dialogue on Trends, Challenges, & Prospects of Open Government Partnership 2016-2018 Report of the 2nd Kenya OGP National Action Plan II Report. Roundtable Meeting, Hotel Intercontinental, 27th February 2018. Nairobi.
- ¹⁴² Interview 6, Interview with IRM Researcher, 26th August 2019.
- ¹⁴³ Interview 11, Interview with IRM Researcher, 11th November 2019.
- ¹⁴⁴ Interview 11, Interview with IRM Researcher, 11th November 2019.
- ¹⁴⁵ @ogpkenya. "Kenya's Draft 3rd Open Government Partnership (OGP) National Action Plan 2018 - 2020 is here! We welcome your input, please get your feedback in by Fri 12th October 2018 to ogpkenya@gmail.com asap! Read the plan here –". Twitter, 8 Oct. 2018, 3:20 a.m., https://owl.purdue.edu/owl/research_and_citation/mla_style/mla_formatting_and_style_guide/mla_works_cited_electronic_sources.html
- ¹⁴⁶ These are successive 5 year plans that outline how the approach to implementing Kenya Vision 2030.
- ¹⁴⁷ Interview 4, Interview with IRM Researcher, 28th August 2019.
- ¹⁴⁸ Interview 4, Interview with IRM Researcher, 28th August 2019.
- ¹⁴⁹ Interview 6, Interview with IRM Researcher, 26th August 2019.
- ¹⁵⁰ Interview 9, Interview with IRM Researcher, 26th August 2019.
- ¹⁵¹ Interview 5, Interview with IRM Researcher, 31st August 2019.
- ¹⁵² Interview 11, Interview with IRM Researcher, 11th November 2019.
- ¹⁵³ Interview 7, Interview with IRM Researcher, 27th August 2019.
- ¹⁵⁴ Interview 7, Interview with IRM Researcher, 27th August 2019.
- ¹⁵⁵ Interview 5, Interview with IRM Researcher, 31st August 2019.
- ¹⁵⁶ Interview 4, Interview with IRM Researcher, 28th August 2019.
- ¹⁵⁷ Muchai, S. (2018) Twitter feed. 2nd May 2018 <https://twitter.com/parchedoasis/status/991612079156203520>
- ¹⁵⁸ New Partnership for African Development
- ¹⁵⁹ Thigo, P (2019) Twitter feed. 11th September 2018 <https://twitter.com/pthigo/status/1039385266618871809>
- ¹⁶⁰ Interview 9, Interview with IRM Researcher, 26th August 2019.
- ¹⁶¹ Sing'oei, K (2019) Twitter feed. 29th March 2019, <https://twitter.com/SingoeiAKorir/status/1111460242032865280>
- ¹⁶² TISA Kenya (2019) Twitter feed. 10th September 2019. <https://twitter.com/TISAKenya/status/1171314887542419456>
- ¹⁶³ Interview 7, Interview with IRM Researcher, 27th August 2019.
- ¹⁶⁴ Interview 9, Interview with IRM Researcher, 26th August 2019.
- ¹⁶⁵ Interviews 3, Interview with IRM Researcher, 1st September 2019.
- ¹⁶⁶ Interview 1, Interview with IRM Researcher, 1st September 2019.
- ¹⁶⁷ Interview 13, Interview with IRM Researcher, 13th November 2019
- ¹⁶⁸ Interview 9, Interview with IRM Researcher, 26th August 2019.
- ¹⁶⁹ Interview 11, Interview with IRM Researcher, 11th November 2019
- ¹⁷⁰ Interview 9, Interview with IRM Researcher, 26th August 2019.
- ¹⁷¹ Interview 5, Interview with IRM Researcher, 31st August 2019.
- ¹⁷² Interview 7, Interview with IRM Researcher, 27th August 2019.
- ¹⁷³ Interview 7, Interview with IRM Researcher, 27th August 2019.
- ¹⁷⁴ Interview 9, Interview with IRM Researcher, 26th August 2019
- ¹⁷⁵ Interview 4, Interview with IRM Researcher, 28th August 2019.
- ¹⁷⁶ Interview 9, Interview with IRM Researcher, 26th August 2019.
- ¹⁷⁷ Interview 13, Interview with IRM Researcher, 13th November 2019
- ¹⁷⁸ Interview 11, Interview with IRM Researcher, 11th November 2019.
- ¹⁷⁹ Interviews 5, Interview with IRM Researcher, 31st August 2019.
- ¹⁸⁰ Independent Reporting Mechanism (2017) Kenya Progress Report 2012-2013. Open Government Partnership. Available at: https://www.opengovpartnership.org/wp-content/uploads/2017/05/Kenya_final_2012_0_0.pdf

IV. Commitments

All OGP-participating governments develop OGP action plans that include concrete commitments over a two-year period. Governments begin their OGP action plans by sharing existing efforts related to open government, including specific strategies and ongoing programs.

Commitments should be appropriate to each country's/entity's unique circumstances and challenges. OGP commitments should also be relevant to OGP values laid out in the OGP Articles of Governance and Open Government Declaration signed by all OGP-participating countries.¹⁸¹ The indicators and method used in the IRM research can be found in the IRM Procedures Manual.¹⁸² A summary of key indicators the IRM assesses is below:

- **Verifiability:**
 - Not specific enough to verify: As written in the commitment, do the objectives stated and actions proposed lack sufficient clarity and specificity for their completion to be objectively verified through a subsequent assessment process?
 - Specific enough to verify: As written in the commitment, are the objectives stated and actions proposed sufficiently clear and specific to allow for their completion to be objectively verified through a subsequent assessment process?
- **Relevance:** This variable evaluates the commitment's relevance to OGP values. Based on a close reading of the commitment text as stated in the action plan, the guiding questions to determine the relevance are:
 - Access to Information: Will the government disclose more information or improve the quality of the information disclosed to the public?
 - Civic Participation: Will the government create or improve opportunities or capabilities for the public to inform or influence decisions or policies?
 - Public Accountability: Will the government create or improve public facing opportunities to hold officials answerable for their actions?
 - Technology & Innovation for Transparency and Accountability: Will technological innovation be used in conjunction with one of the other three OGP values to advance either transparency or accountability?
- **Potential impact:** This variable assesses the *potential impact* of the commitment, if completed as written. The IRM researcher uses the text from the action plan to:
 - Identify the social, economic, political, or environmental problem;
 - Establish the status quo at the outset of the action plan; and
 - Assess the degree to which the commitment, if implemented, would impact performance and tackle the problem.
- **Completion:** This variable assesses the commitment's implementation and progress. This variable is assessed at the end of the action plan cycle, in the *IRM Implementation Report*.
- **Did It Open Government?:** This variable attempts to move beyond measuring outputs and deliverables to looking at how the government practice, in areas relevant to OGP values, has changed as a result of the commitment's implementation. This variable is assessed at the end of the action plan cycle, in the *IRM Implementation Report*.

What makes a potentially starred commitment?

A potentially starred commitment has more potential to be ambitious and to be implemented. A good commitment is one that clearly describes the:

1. **Problem:** What is the economic, social, political, or environmental problem? Rather than describing an administrative issue or tool (e.g., ‘Misallocation of welfare funds’ is more helpful than ‘lacking a website.’).
2. **Status quo:** What is the status quo of the policy issue at the beginning of an action plan (e.g., “26 percent of judicial corruption complaints are not processed currently.”)?
3. **Change:** Rather than stating intermediary outputs, what is the targeted behaviour change that is expected from the commitment’s implementation (e.g., “Doubling response rates to information requests” is a stronger goal than “publishing a protocol for response.”)?

Starred commitments

One measure, the “starred commitment” (★), deserves further explanation due to its particular interest to readers and usefulness for encouraging a race to the top among OGP-participating countries/entities. Starred commitments are considered exemplary OGP commitments. To receive a star, a commitment must meet several criteria:

- Potential star: the commitment’s design should be **verifiable**, **relevant** to OGP values, and have **transformative** potential impact.
- The government must make significant progress on this commitment during the action plan implementation period, receiving an assessment of **Substantial** or **Complete** implementation.

This variable is assessed at the end of the action plan cycle, in the *Implementation IRM report*.

General Overview of the Commitments

Kenya’s third national action plan outlines six commitments relating to enhancing access to information, civic participation and OGP resiliency. Each commitment was assessed against a framework for their specificity, relevance and potential impact. The commitments primarily reflected the OGP values of access to information, civic participation and technology and innovation for openness and accountability and less emphasis given to public accountability across the board.

¹⁸¹ “Open Government Partnership: Articles of Governance,” OGP, June 2012 (Updated March 2014 and April 2015), https://www.opengovpartnership.org/sites/default/files/attachments/OGP_Articles-Gov_Apr-21-2015.pdf

¹⁸² “IRM Procedures Manual,” OGP, <https://www.opengovpartnership.org/documents/irm-procedures-manual>

I. Beneficial Ownership

Language of the commitment as it appears in the action plan:

“We will publish a central public register of company beneficial ownership information operating in the Republic of Kenya”

Objective: The proposed beneficial ownership register will bring greater transparency services in Kenya.

Milestones

1. Conduct a national risk assessment, consult external stakeholders (e.g. financial institutions, designated non-financial businesses or professions (DNFBPs), Private Sector and NGOs)
2. Develop regulations that govern and give effect to Beneficial Ownership legislation
3. Develop an open, accessible and machine-readable beneficial ownership register on BO standards
4. Establish a central register of foreign and local companies bidding on public contracts and buying property
5. Build a module on the Beneficial Ownership Register Information of companies and individuals convicted of bribery and corrupt practices

Start Date: September 2018

End Date: May 2020

Editorial note: This is a partial version of the commitment text. For the full commitment text see: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf

Commitment Overview	Verifiability		OGP Value Relevance (as written)				Potential Impact				Completion				Did It Open Government?				
	Not specific enough to be verifiable	Specific enough to be verifiable	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not Started	Limited	Substantial	Completed	Worsened	Did Not Change	Marginal	Major	Outstanding
I. Overall		✓	✓		✓				✓		Assessed at the end of action plan cycle.				Assessed at the end of action plan cycle.				

Context and Objectives

Kenya is currently ranked 144 out of 180 countries on the Corruption Perception Index 2018¹⁸³ which suggests that despite the arsenal of commitments made and initiatives undertaken over the last decade, corruption continues to have a significant impact on the country and its citizens. Kenya has also increasingly been described as being at high risk for money laundering activity and scores low on the [Basel AML Index](#). This is especially in regard to the quality of its institutional

and legislative framework concerning anti-money laundering and counter financing for terrorism.¹⁸⁴ The President of Kenya therefore declared corruption a national threat in 2015¹⁸⁵ ¹⁸⁶ and in 2016, the Judiciary responded to these realities by establishing an Anti-Corruption and Economic Crimes Division at the High Court.¹⁸⁷ ¹⁸⁸ In 2019, the President once again renewed his and the government's commitment to fighting the vice.¹⁸⁹ Publishing a central public register on beneficial ownership (BO) was an extension of this commitment.

The commitment on BO is also derived from assurances given by former Attorney General, Githu Muigai, at the anti-corruption summit in London in 2016, which would commit the country to exposing and reducing public sector corruption and stopping illicit financial flows.¹⁹⁰ NAP III furthers this ambition by widening the scope of the commitment made previously in NAP II in order to address the inaccessibility of information collected on beneficial ownership.¹⁹¹ This challenge was caused in part by a clause in section 104 of the Companies Act (2015), which stood in variance with requirements around company disclosures and transparency. Additionally, the Register of Companies did not capture beneficial ownership information and lacked the tools to capture this information.¹⁹² The evaluation of NAP II also identified further areas that required attention such as: opening up "IFMIS contracting processes", auditing of information submitted on beneficial ownership and strengthening the regulatory framework around beneficial ownership.¹⁹³ The milestones outlined under this commitment address some of these areas. In addition to this, the commitment will also address the publication of information on property or real estate purchases, though the portal currently only contains infrastructure development related information and does not reflect property transactions. The hope is also that '[Usajili](#)' will eventually be linked to the [Public Procurement Information Portal](#) and that these platforms will be made even more accessible to the public. This is given concerns that described access to the entire database as being enabled only for law enforcement.¹⁹⁴

Kenya has since shown significant progress in relation to the development of BO legislation through the enactment of the [Companies \(Amendment\) Act \(2017\)](#), the proposed [Statute Laws Amendment Bill, \(2018\)](#) and the [Companies \(Beneficial Ownership Information\) Regulations \(2019\)](#). The activities proposed under NAP III will further contribute to this through the conducting of risk assessments, developing associated regulations, establishing a central open beneficial register, with modules spotlighting persons of interest and those convicted of crimes in this regard. An additional register will also be developed with a component on transactions involving both local and foreign entities and covering purchase of public property, given that the acquisition of real estate is often tied to money laundering schemes.¹⁹⁵¹⁹⁶ ¹⁹⁷ As of September 2019, the electronic BO register had also been developed and a demo site been presented to various stakeholders.¹⁹⁸

As outlined in the action plan, the objectives, expected results and activities are clear and can be objectively verified. In regards to specificity, the milestones outline various quality dimensions of processes that will be undertaken, using 'openness', 'consultative', 'accessibility' and 'machine readability of registers' as descriptors of the BO register. The level of specificity regarding some of its various activities can however improve especially in delineating the scope, target and/or timelines for implementation. The commitment is relevant to the OGP value of access to information through the beneficial ownership register. In addition to this, achieving milestone four and five will also create a repository of relevant information. The commitment also speaks

to the OGP value of public accountability by aiming to develop regulations that will “give effect to Beneficial Ownership legislation”. The regulations will also determine, to an extent, the quality of information submitted to the Registrar of Companies and eventually what is disclosed. Furthermore, the regulations will establish standards against which the state and other entities can be held to account.¹⁹⁹

The contribution of a beneficial ownership registers to the fight against corruption has been well documented, with BO initiatives contributing to resolving issues of conflict of interest, tracing illicit financial flows, recovering stolen assets and saving on the costs of law enforcement.^{200 201} The establishment of a beneficial ownership register is a key step in the right direction and could have transformative impact in the long run. However, the commitment has been rated as having “moderate” impact for various reasons.

Firstly, accessibility to the register is not clearly defined. There are some concerns that the current draft regulations introduce access restrictions in having access limited to law enforcement agencies or the ‘competent authorities’ as they are commonly referred to.²⁰² Additionally access may be contingent on payment of an administrative fee.^{203 204} According to one official, these concerns are currently being addressed through the creation of two channels or means of accessing BO information based on global BO standards: one channel will be a basic search that can be conducted by any citizen, free of charge. The second channel is an official search, which is considered more extensive and will be charged a fee of Kes. 500 (\$5). The official search may however only be accessible by those deemed to be competent authorities.²⁰⁵ Though this fee may be viewed as being minimal, the allowance is generally outside the realm of acceptable best practice. Furthermore, though access by the public is implied in the objective there is however no explicit mention of what the public will specifically have access to. Save for milestone four, the notion of public access is not explicitly mentioned in any milestone.

Secondly, the rationale for milestone five is well understood and is being supported by various other efforts such as the establishment of the Taskforce on the National Risk Assessment on Money Laundering and Terrorism Financing in March 2019. However, corruption conviction rates in Kenya are characteristically low more so for high profile persons involved in bribery and corruption.^{206 207 208} This has been attributed to a variety of factors including: poor evidence handling, arrest records, sluggish court processes and challenges with the criminal justice system.^{209 210} The realization of this milestone is therefore contingent on significant external factors that the Business Registration Service has very little control over.

In regard to milestone one a government officer reported that the risk assessment was undertaken in 2018, prior to the launch of the current NAP.²¹¹ This was conducted mainly via the convening of four forums held within three of Kenya’s main cities. These forums were attended, on invitation, by members of the private sector, legal fraternity, civil society, and government officials (national and county level).²¹² The principles of beneficial ownership indicate that a risk assessment should produce “a clear understanding of the types of legal persons and arrangements that exist in the country, their formation and registration process, their different forms and structures and the risks they pose is foundational to a substantive risk assessment.”²¹³ Therefore, while the participatory approach is appreciated, it is unclear whether it would adequately determine the level of risk present.

Widening the scope of public participation would also be welcome, though resource limitations are a likely factor that contributed to the limited participation. The current draft regulations are also said to be silent on the number, frequency and methodology that these risk assessments should take.²¹⁴ In addition to this, concerns raised at the 'risk assessment' forums in 2018 revolved around issues of data protection, security and privacy as well. It is unclear how these concerns will be addressed, though a Data Protection Bill (2018) has been published.²¹⁵ Lastly, it is also unclear whether particular loopholes in the Act have been addressed in the guidelines, such as clauses that could see parties hide behind nominee shareholders.²¹⁶ These should be addressed.

Next steps

The milestones can be further enhanced by making them more specific. For instance, milestone one aims to undertake a risk assessment. However, the focus of this risk assessment is unclear despite guidance indicating that such assessments should target various "arrangements or persons", for example money laundering, terrorist financing or legal persons.^{217 218} This would enhance understanding of the nature of threat and risk underfoot, as well as establish a baseline for evaluating progress. The frequency of these assessments is also not clear in the current plan. Milestone two could also be strengthened by ensuring that regulations are developed against or according to best practice.²¹⁹ In addition to these the government and civil society can take various steps to enhance the impact of this commitment by:

- Revisiting the risk assessment methodology and ensuring that risk assessments be conducted annually with findings published in the public domain.
- Creating a link between the "asset declaration of public officials and the BO register as was recommended in NAP II.
- Reintroducing the audit or verification of the BO register as was raised in NAP II, given that the register will be dependent solely on the veracity of information submitted to the portal. Initiatives under this commitment could be expanded to include processes of robust verification, integration, maintenance and monitoring as has been recommended.
- Developing a module that allows the public to provide comments or feedback.
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¹⁸³ Transparency International (2019) Corruption perception Index 2018. <https://tikenya.org/wp-content/uploads/2019/01/2018-Corruption-Perception-Index.pdf>

¹⁸⁴ United States Department of State (2019) International Narcotics Control Strategy Report Volume II Money Laundering. Bureau of International Narcotics and Law Enforcement Affairs <https://www.state.gov/wp-content/uploads/2019/03/INCSR-Vol-INCSR-Vol.-2-pdf.pdf>

¹⁸⁵ Nsehe, M (2015) Corruption and 'Tenderpreneurs' Bring Kenya's Economy To Its Knees. Forbes, 1 December 2015

<https://www.forbes.com/sites/mfonobongnsehe/2015/12/01/corruption-and-tenderpreneurs-bring-kenyas-economy-to-its-knees/#6cd46b15abea>

¹⁸⁶ PSCU (2015) President Uhuru Kenyatta declares corruption a national security threat , The Standard , 23rd November 2015. <https://www.standardmedia.co.ke/article/2000183336/uhuru-declares-corruption-a-national-security-threat>

¹⁸⁷ United States Department of State (2019) International Narcotics Control Strategy Report Volume II Money Laundering. Bureau of International Narcotics and Law Enforcement Affairs <https://www.state.gov/wp-content/uploads/2019/03/INCSR-Vol-INCSR-Vol.-2-pdf.pdf>

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- ¹⁸⁸ Basel Institute on Governance (2019) Basel AML Index 2019: A country ranking and review of money laundering and terrorist financing risks around the world International Centre for Asset Recovery. Available at: <https://www.baselgovernance.org/sites/default/files/2019-08/Basel%20AML%20Index%202019.pdf>
- ¹⁸⁹ The Presidency (2019) Speech By His Excellency Hon. Uhuru Kenyatta, C.G.H., President And Commander In Chief Of The Defence Forces of The Republic Of Kenya During The Multisectoral Initiative Against Corruption-National Anti-Corruption Conference At Bomas Of Kenya, 25th January 2019. Available at <http://www.president.go.ke/2019/01/25/speech-by-his-excellency-hon-uhuru-kenyatta-c-g-h-president-and-commander-in-chief-of-the-defence-forces-of-the-republic-of-kenya-during-the-multisectoral-initiative-against-corruption-national-an/>
- ¹⁹⁰ Office of the Attorney General and Department of Justice (2016) Kenya Attends Anti-Corruption Summit in UK, 13th May 13th 2016, Department of Public Communication. <https://www.statelaw.go.ke/kenya-attends-anti-corruption-summit-in-uk/>
- ¹⁹¹ Kenya OGP Steering Committee (2016) The Republic of Kenya Open Government Partnership National Action Plan II July 2016 – June 2018. Available at: https://www.opengovpartnership.org/wp-content/uploads/2017/04/Kenya_AP2_2016_0.pdf
- ¹⁹² Transparency International -Kenya (2017) Towards Beneficial Ownership Transparency in Kenya an Assessment of the Legal Framework. Available at: <https://tikenya.org/wp-content/uploads/2017/11/beneficial-ownership.pdf>
- ¹⁹³ Independent Reporting Mechanism (IRM) (2018) Kenya Progress Report 2016- 2018. Open Government Partnership. Available at: https://www.opengovpartnership.org/wp-content/uploads/2018/05/Kenya_MidTerm-Report_2016-2018_for-public-comment.pdf
- ¹⁹⁴ Transparency International UK, Access to International Law Enforcement, Anti-corruption Pledge Tracker <https://www.anticorruptionpledgetracker.com/commitments/access-to-international-law-enforcement-6/>
- ¹⁹⁵ Omondi, D.(2019) How CBK crackdown on dirty cash coincided with slump in real estate. The Standard Digital 13th October 2019. <https://www.standardmedia.co.ke/business/article/2001345336/how-cbk-crackdown-on-dirty-cash-coincided-with-slump-in-real-estate>
- ¹⁹⁶ Owaah (2017) Broke and Broken: How Money Laundering Ruins Lives. The Elephant, 13 October 2017. Available at: <https://www.theelephant.info/features/2017/10/13/broke-and-broken-how-money-laundering-ruins-lives/>
- ¹⁹⁷ Gumba, D.E.O (2019) Kenya must do more than just find the money. Institute Of Security Studies, 18 June 2019. Available at: <https://issafrica.org/iss-today/kenya-must-do-more-than-just-find-the-money>
- ¹⁹⁸ Interview 8, Interview with IRM Researcher, 31st August 2019.
- ¹⁹⁹ The Companies (Beneficial Ownership Information) Regulations (2019), [https://brs.go.ke/assets/downloads/Companies%20\(Beneficial%20Ownership%20Information\)%20Regulations,%202018.pdf](https://brs.go.ke/assets/downloads/Companies%20(Beneficial%20Ownership%20Information)%20Regulations,%202018.pdf)
- ²⁰⁰ Open Ownership (2017) Learning the lessons from the UK’s public beneficial ownership register. Available at <https://www.openownership.org/uploads/learning-the-lessons.pdf>
- ²⁰¹ UNODC (2017) Follow-up to the St. Petersburg Statement: Report of the international expert group meeting on beneficial ownership transparency, held in Vienna from 3 to 4 October 2017 , Conference of the States Parties to the United Nations Convention against Corruption Seventh session, Austria, 6-10 November 2017. Available at: <https://www.unodc.org/documents/treaties/UNCAC/COSP/session7/V1707523e.pdf>
- ²⁰² Transparency International UK (2019) Access to International Law Enforcement. Available at: <https://www.anticorruptionpledgetracker.com/commitments/access-to-international-law-enforcement-6/>
- ²⁰³ The Companies (Beneficial Ownership Information) Regulations (2019), [https://brs.go.ke/assets/downloads/Companies%20\(Beneficial%20Ownership%20Information\)%20Regulations,%202018.pdf](https://brs.go.ke/assets/downloads/Companies%20(Beneficial%20Ownership%20Information)%20Regulations,%202018.pdf)
- ²⁰⁴ Transparency International -Kenya (2017) Towards Beneficial Ownership Transparency in Kenya an Assessment of the Legal Framework. Available at: <https://tikenya.org/wp-content/uploads/2017/11/beneficial-ownership.pdf>
- ²⁰⁵ Interview 8, Interview with IRM Researcher,
- ²⁰⁶ Gumba, D.E.O (2019) Kenya must do more than just find the money. Institute of Security Studies, 18 June 2019. Available at: <https://issafrica.org/iss-today/kenya-must-do-more-than-just-find-the-money>
- ²⁰⁷ World Politics Review (2019) Is Kenyatta Finally Getting Serious About Tackling Corruption in Kenya? World Politics Review, 16 September 2019, <https://www.worldpoliticsreview.com/trend-lines/28192/is-kenyatta-finally-getting-serious-about-tackling-corruption-in-kenya>
- ²⁰⁸ Ngenye, G. (2018) Finding a Cure of Kenya’s Criminal Justice System. The Judiciary, January 27, 2018. Available at: <https://www.judiciary.go.ke/finding-a-cure-of-kenyas-criminal-justice-system/>
- ²⁰⁹ Ngenye, G. (2018) Finding a Cure of Kenya’s Criminal Justice System. The Judiciary, January 27, 2018. Available at: <https://www.judiciary.go.ke/finding-a-cure-of-kenyas-criminal-justice-system/>
- ²¹⁰ ICJ (2018) Criminal Justice Reforms: Issues and Options for Kenya. <https://icj-kenya.org/news/latest-news/184-criminal-justice-reforms-issues-and-options-for-kenya>
- ²¹¹ Interview 8, Interview with IRM Researcher, 31st August 2019.
- ²¹² Interview 8, Interview with IRM Researcher, 31st August 2019.
- ²¹³ Transparency International (2015) Beneficial Ownership Principles, G20 Position Paper. Available at: https://www.transparency.org/files/content/activity/2015_TI_G20PositionPaper_BeneficialOwnership.pdf

²¹⁴ Interview 8, Interview with IRM Researcher, 31st August 2019.

²¹⁵ Interview 8, Interview with IRM Researcher, 31st August 2019.

²¹⁶ Transparency International -Kenya (2017) Towards Beneficial Ownership Transparency in Kenya an Assessment of the Legal Framework. Available at: <https://tikenya.org/wp-content/uploads/2017/11/Beneficial-Ownership.pdf>

²¹⁷ Transparency International (2015) Beneficial Ownership Principles, G20 Position Paper. Available at: https://www.transparency.org/files/content/activity/2015_TI_G20PositionPaper_BeneficialOwnership.pdf

²¹⁸ Financial Action Task Force (2014) FATF guidance Transparency and Beneficial Ownership. FATF/OECD. Available at:

<http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

²¹⁹ Transparency International (2015) Beneficial Ownership Principles, G20 Position Paper. Available at: https://www.transparency.org/files/content/activity/2015_TI_G20PositionPaper_BeneficialOwnership.pdf

2. Open Contracting

Language of the commitment as it appears in the action plan:

“We will implement the Open Contracting Data Standard (OCDS), to improve transparency and reduce opportunities for corruption by enhancing openness and accessibility of the Public Procurement Information Portal”

Objective

To ensure realization or actualization of Executive Order No 2 of 2018 and its alignment to international standards such as the Open Contracting Data Standard. Further, that 30 percent of public procurement opportunities set aside for youths, women and persons with disabilities (PWDs) benefits these categories of “disadvantaged groups”, actively monitored by citizens.

Milestones

1. Improve access to AGPO through consultations with women, youth and people living with disabilities including review of recommendations in studies published by partners and additional research on closing existing data gaps.
2. Open Contracting Data Standard implemented on Public Procurement Information Portal (PPIP)
3. Revamping the Kenya Open Data Portal, to include Open Contracting Data from national government and at least One County (Makueni)
4. Sensitization and public engagement, especially with Women, Youth and Persons with Disabilities on monitoring AGPO

Start Date: September 2018

End Date: May 2020

Editorial note: This is a partial version of the commitment text. For the full commitment text see: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf

Commitment Overview	Verifiability		OGP Value Relevance (as written)				Potential Impact				Completion				Did It Open Government?				
	Not specific enough to be verifiable	Specific enough to be verifiable	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not Started	Limited	Substantial	Completed	Worsened	Did Not Change	Marginal	Major	Outstanding
I. Overall		✓	✓	✓		✓			✓		Assessed at the end of action plan cycle.				Assessed at the end of action plan cycle.				

Context and Objectives

Historically, Kenyans have had to endure the consequences and negative impact of wasted or lost public resources. Evidence highlights the significant loss of public funds in various stages of the procurement process as well as issues with financial record keeping.²²⁰ According to one

report “a power elite has captured the state ... and repurposed the machinery of government into a “temporary zone for personalised appropriation””.²²¹ Open contracting is therefore viewed as an integral mechanism for enhancing transparency and combating the high levels of corruption in public procurement in Kenya.^{222 223}

Open contracting has the potential to improve access to information in Kenya which could improve the quality of due diligence actions, shorten procurement times, generate savings, enhance participation in public procurement and enhance the efficiency of monitoring the contracting process by the government, civil society actors and the public at large.²²⁴ Public procurement has also been embraced as a vehicle for poverty alleviation in Kenya: The [Public Procurement and Disposal Act \(2015\)](#) and Regulations aimed for 30% of public procurement to favour goods, works and services from enterprises owned by disadvantaged groups namely youth, women and persons with disabilities. These disadvantaged groups would therefore have access to these opportunities once issued with an [Access to Government Procurement Opportunities \(AGPO\)](#) certificate. The implementation of AGPO has however experienced various challenges making it difficult to ascertain whether these groups are benefitting from the reform. Research indicates that 7.7% of total tenders supplied were awarded under [AGPO](#), with majority of these awarded to entities based in urban areas. Also reported is the pervasive lack of understanding of the tender process which has likely contributed to members of these marginalized groups being exploited by powerful political and corporate interests that seek to co-opt their submissions.²²⁵ Similarly, there are challenges in determining the impact of the reform on the economic status of these disadvantaged groups.²²⁶ The problems to be addressed therefore revolve around the issues of vetting and verification, ensuring value addition and determining impact.

Open contracting first appeared in Kenya’s OGP process in NAP II, in which Kenya committed to: map “current disclosures and data collection against the Open Contracting Data Standard as part of the preparation for the development of an Open Data Policy for IFMIS” and to “Re-design the Suppliers Portal of IFMIS according to [Open Contracting Data Standards \(OCDS\)](#)”.²²⁷ In NAP III, the objective of the commitment is multi-pronged: first, it places emphasis on meeting the requirements for open contracting as outlined in a Presidential Executive Order and aligning these developments to the OCDS. Secondly, it aims to engage citizens in the monitoring of AGPO allocations and its impact. The focus on AGPO provides an opportunity to demonstrate the utility of open contracting for promoting and monitoring inclusion via AGPO. Similarly, the commitment will be useful for reviving the Kenyan Open Data Portal following a decline in funding that rendered the project almost obsolete.^{228 229} The commitment further involves sub-national governments in its implementation thus broadening the scope of participation.

As written in the action plan, the proposed milestones actualize these objectives by proposing the implementation of OCDS on the Public Procurement Information Portal (PPIP) and the inclusion of county (sub-national) related information on existing portals. The expected results and activities are clear, specific and objectively verifiable for milestones seven and nine, where verifiability can be checked by whether OCDS was implemented on the PPIP, whether the Portal was revamped and included data from National and a County government, as well as the number of engagements with disadvantaged groups. However, specificity can be enhanced by

detailing the number of sensitization forums to be held; providing information on the extent to which it is expected the OCDS will be implemented on PPIP within the implementation period, and expounding on the nature and scope of the revamp of the open data portal,

The commitment is relevant to the OGP values of access to information and civic participation: Access to information is enhanced through the very nature of the OCDS which assures “shareable, reusable, and machine-readable [and extensible] open data”.²³⁰ Furthermore, county level data will be incorporated onto various platforms thereby widening the scope of information available. In regard to civic participation, Kenya is making attempts to engage with disadvantaged groups through consultations, a sensitization programme and other public engagement. The commitment is also relevant to the OGP value of technology and innovation for openness and accountability. This is mainly through the adoption, development and application of the OCDS onto the PPIP and county portals. This is especially so for sub-national governments who did not have the technological capacity prior to undertaking this commitment.^{231 232}

The commitment has been coded as “moderate” in regard to its potential impact. The commitment will contribute to improved transparency and reduced opportunities for corruption by enhancing accessibility of the PPIP. Furthermore, given that the PPIP is housed at Treasury, the adoption of the OCDS could potentially have positive ripple effects and impact throughout the whole of government. This will be due to the signal effect that may cause other government procurement departments to model Treasury’s approach.²³³ However, the Government of Makueni, who are also implementing the commitment, cited challenges with implementation due to lack of responsiveness from National Treasury and the Public Procurement Regulatory Authority (PPRA).²³⁴ This will need to be addressed in order to avoid duplication and to ensure progress on the commitment.

Secondly, while there is some potential to affect governance and behavioural practices if enforced as is, the commitments positive impact could be reinforced if measures to strengthen accountability are introduced. It is important not to assume direct causality between the application of the OCDS on the portals and reduced corruption. Dealing with the cleavages in the public sector that facilitate corruption would require a more holistic approach which involves institutional strengthening. It is also noted that there is no mention of engaging or collaborating with other stakeholders to develop innovative approaches that would enhance the utility of these open data platforms. These broader dimensions are not captured by the milestones as constituted.

In regard to AGPO, while sensitization and engagement is crucial they do not ensure uptake of AGPO given some of the barriers to uptake already identified. According to one interviewee from civil society, *“Awareness is one thing but then equipping people to be able to run businesses that can perform tenders is another thing... There are deeper issues that are not open contracting related concerning the success of that. So sensitization and inclusion is one thing but the capacity to be included is like an economic discussion.”*²³⁵ Furthermore, there is no evidence in the Action Plan of a government institute, national monitoring and evaluation instrument that has been introduced to track beneficiary access to AGPO and the value addition, in economic or livelihood terms, which should emerge as a result. The Government of Makueni through its robust public participation

framework may certainly fare better in this regard.²³⁶ The same cannot be said across all other counties. Lastly, consultations and the “review of recommendations” as framed in milestone six may facilitate the identification of barriers but not necessarily provide incentives to act on said recommendations. Much more would be required in order to resolve the challenges identified and to ensure that value is transferred to the beneficiaries within the implementation cycle. There are also no requirements for the government to disclose evaluative information to the public. In summary, it appears therefore that proposals set forward are biased towards access over measuring the benefit accrued by various stakeholders in this process.

Next steps

The commitment could be potentially impactful in the long run if it results in decreased levels of corruption and improvements in the economic status of youths, women and people with disabilities. The IRM researcher recommends expanding the scope of this commitment in the next action plan by Kenya considering the following:

- Ensuring that citizens are adequately capacitated to utilize AGPO and to monitor AGPO allocations, and its resultant impact, through the use of available information.²³⁷
- Establish a monitoring, evaluation and learning framework, with findings synthesized and publicized.²³⁸
- Enhance buy-in of the National Treasury and Public Procurement Regulatory Authority²³⁹
- Strengthening the accountability dimensions of the commitment by establishing feedback, complaints or appeal mechanisms that can be utilized by the disadvantaged groups in question or the public. This would allow for these groups to communicate their experiences of interacting with the various portals or allow the public to interrogate awarding decisions.
- Establishing a virtual help desk to assist various groups with the tender application process.
- Outline the various intermediary or mitigating steps that will be taken in order to ensure that the OCDS reduces the incidence of corruption.

²²⁰ Kagume, J., Wamalwa, N. (2018) Public procurement in Kenya: Analysis of the Auditor General’s Reports. Nairobi. Institute of Economic Affairs. Available at: <http://www.ieakenya.or.ke/downloads.php?page=1536006455.pdf>

²²¹ Maina, W. (2019) State Capture Inside Kenya’s Inability To Fight Corruption, pg. vii. Nairobi: AfriCog. Available at: <https://africog.org/wp-content/uploads/2019/05/STATE-CAPTURE.pdf>

²²² Brown, S (2019) More than scandals: What Kenya’s audit reports reveal about risks in public procurement. Open Contracting Partnership, 21 MAY 2019. Available at: <https://www.open-contracting.org/2019/05/21/more-than-scandals-what-kenyas-audit-reports-reveal-about-risks-in-public-procurement/>

²²³ Ndemo, B. (2014) Open contracting format can clean up government procurement. The Daily Nation, 24 November 2014. <https://www.nation.co.ke/oped/blogs/dot9/ndemo/2274486-2532264-format-xhtml-xquodlz/index.html>

²²⁴ Kovalchuk, A., Kenny, C., Snyder, M (2019) “Examining the Impact of E-Procurement in Ukraine.” CGD Working Paper 511. Washington, DC: Center for Global Development.. Available at: <https://www.cgdev.org/sites/default/files/examining-impact-e-procurement-ukraine.pdf>

²²⁵ HIVOS (2018) Summary of Findings: Impact of Kenya’s Access to Government procurement opportunities (AGPO) Law on Youth , Women and Persons with Disability. Available at: <https://east-africa.hivos.org/assets/2018/02/AGPO-summary-of-findings-Web-version.pdf>

²²⁶ HIVOS (2018) Summary of Findings: Impact of Kenya’s Access to Government procurement opportunities (AGPO) Law on Youth, Women and Persons with Disability. Available at: <https://east-africa.hivos.org/assets/2018/02/AGPO-summary-of-findings-Web-version.pdf>

²²⁷ Kenya OGP Steering Committee (2016) The Republic of Kenya Open Government Partnership National Action Plan II July 2016 – June 2018, pg. 20. Available at: https://www.opengovpartnership.org/wp-content/uploads/2017/04/Kenya_AP2_2016_0.pdf

²²⁸ Interview 4, Interview with IRM Researcher, 28th August 2019.

²²⁹ Interview 7, Interview with IRM Researcher, 27th August 2019.

²³⁰ IMF (2019) Open Contracting: Getting Better Value for Money, May 2019, Public Financial Management Blog. Available at: <https://blog-pfm.imf.org/pfmblog/2019/05/open-contracting-getting-better-value-for-money.html>

²³¹ Interview 12, Interview with IRM Researcher, 6th November 2019.

²³² Interview 4, Interview with IRM Researcher, 28th August 2019,

²³³ Interview 4, Interview with IRM Researcher, 28th August 2019,

²³⁴ Interview 12, Interview with IRM Researcher, 6th November 2019.

²³⁵ Interview 4, Interview with IRM Researcher, 28th August 2019,

²³⁶ Interview 12, Interview with IRM Researcher, 6th November 2019.

²³⁷ Interview 4, Interview with IRM Researcher, 28th August 2019,

²³⁸ Interview 4, Interview with IRM Researcher, 28th August 2019,

²³⁹ Interview 12, Interview with IRM Researcher, 6th November 2019.

3. Open Geo –Spatial Data for Development

Language of the commitment as it appears in the action plan:

“We will lower the barrier and increase access to geospatial data to support Health, Disaster Management, Food and Nutrition Security”

Objective

Promote transparent and accountable use of Earth Observations and geo-spatial information to enable academia, citizens, innovators and other data communities harness its capability for use in the areas of health, agriculture, water, land-use planning disaster management, environmental conservation and climate change.

Milestones

1. Establish and sustain an appropriate public-private cooperation platform on Earth Observations and Geo-Spatial Information.
2. Develop draft open geo-spatial data guidelines and standards to ensure interoperability and accessibility.
3. Improve access to open geospatial data through the Africa Data Cube by working with researchers, innovators, data scientists to develop tools and share their tools, knowledge and technology through an open platform.
4. Include geographical information of capital projects in County budgets.
5. Co-create targeted open geo-spatial/earth observations applications to address the Big 4 policy priorities through open calls and challenges.

Start Date: September 2018

End Date: August 2020

Editorial note: This is a partial version of the commitment text. For the full commitment text see: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf

Commitment Overview	Verifiability		OGP Value Relevance (as written)				Potential Impact				Completion				Did It Open Government?				
	Not specific enough to be verifiable	Specific enough to be verifiable	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not Started	Limited	Substantial	Completed	Worsened	Did Not Change	Marginal	Major	Outstanding
I. Overall		✓	✓			✓		✓			Assessed at the end of action plan cycle.				Assessed at the end of action plan cycle.				

Context and Objectives

The production and use of geospatial data in the domains of health, food security and disaster management has greatly progressed over the years, with its value for decision making increasingly appreciated.^{240 241 242 243 244} Policy development and implementation has suffered as a result of not exploiting these technologies.²⁴⁵ Various steps have been taken to better integrate

GIS data into development planning include the passing of legislation which requires that county governments develop ten year spatial plans that are to be integrated into County Integrated Development Plan (CIDP).^{246 247 248} Kenya's OGP commitments continue to extend these efforts, building on NAP II which had specifically aimed at opening up forestry and climate change datasets and geospatial information. NAP III in turn targets four additional areas namely: food and nutrition security, disaster management and health.

Kenya, through the Office of the Deputy President, is currently a champion of the Data Revolution for Sustainable Development. Various initiatives are therefore being undertaken in this regard, including participating in the Africa Regional Data Cube (ARDC). The ARDC allows for the capturing of high resolution imagery, remote processing and the production of analysis-ready outputs that lead to greater ease in the use of earth observation data. The ARDC was launched in Kenya in May 2018 and also adopted by four other African countries namely Tanzania, Sierra Leone, Ghana, and Senegal.²⁴⁹ Various limitations of the cube were identified such as limitations to the number of users able to access the cube in a specific instance. A more robust system, Digital Earth Africa (DEA),²⁵⁰ was therefore adopted that could handle even higher resolution imagery, house a wider array of data or datasets, and offer more flexibility and options for replicability.²⁵¹ DEA can be considered as the scaling up of the ARDC to the entire continent. Once ARDC and DEA are fully operational, the Kenya Space Agency will become a clearing house for geospatial data, directing it as necessary to other government agencies and other parties. This would lead to greater efficiencies especially in regard to coordination and avoiding the duplication of efforts.²⁵²

According to the current NAP, geospatial information is neither available nor accessible to specific data communities such as farmers, health workers and first responders.²⁵³ The commitment therefore aims to enhance data accessibility in order to enable citizens to “harness its capability for use” in decision making and in closing ‘service gaps’.²⁵⁴ In this regard, the working group on geospatial data is developing five use cases or case studies looking at the application of spatial technology to address challenges in agriculture, water quality and extent, urbanisation, forest cover and land degradation. The development of these cases studies are primarily led by government agencies such as the Ministry of Agriculture; Ministry of Transport, Infrastructure, Housing and Urban Development and Public works; or the National Land Commission. Other agencies involved include the Council of Governors (CoG), UN Habitat; Food and Agriculture Organization and some private sector organisations. Local communities have been cast as consumers of these products.²⁵⁵

The commitment's milestones are all verifiable. However, their specificity could be improved by mentioning the type of spatial dimensions that will be considered for each domain under consideration. The nature of the “public-private” cooperation could also be further clarified. Milestone eleven could also go further to clarify whether there will be the development of new standards or whether Kenya will adopt standards developed by International Standards Development Organizations for Geospatial Information such as the Open Geospatial Consortium (OGC).²⁵⁶ The construction of milestone thirteen could also improve as it currently does not specify whether the information on capital projects will relate to all thematic areas mentioned (i.e. food, health and disaster management) or whether the scope will be narrower. How this will translate into utilization by local actors is also not explicated.

The commitment as framed reflects the OGP values of “access to information” and “using technology and innovation for openness and accountability”. The Africa Regional Data Cube as part of the Global Partnership for Sustainable Data will expand access to geospatial data on the domains outlined in Kenya’s Big 4 agenda and beyond. Milestone 12 and 13 also provide the government and other actors with the opportunity to engage in proactive disclosure of data. Importantly, the utilization of these platforms and data in question will be further enhanced through the open call and challenges laid out in milestone fourteen. In regard to “using technology and innovation for openness and accountability”, there are various advantages to developing open geo-spatial data guidelines: For instance the open nature of these data guidelines means that they are versatile and can be regularly updated in a cost effective manner, reduce or spread risk and are able to respond and adapt to emerging issues that prevail.²⁵⁷ This approach would allow the government’s interoperability and accessibility challenges to be addressed in an open source community which is highly transparent among other advantages.

It is therefore envisioned that the commitment could have “minor” impact given its framing in the current NAP. There are some indications that the commitment presents further opportunities for collaboration and/or co-creation as outlined in milestones twelve and fourteen. Additionally, the very nature of platforms commonly used within this work such as GitHub or the ARDC itself, forces community members to interact, to share their knowledge and innovations, and allows for borrowing and replicability of the same elsewhere.²⁵⁸ By all indications, the community that is now emerging from the commitment is a vibrant and thriving one.²⁵⁹ However, more would be required in order to ensure utilization of this data by the target groups and communities outlined in the NAP. For instance, access to the cube is described as free, though it is not clear what hidden costs or barriers to access may be incurred in trying to access the cube in our context. As it is, an individual requiring access must be given the credentials to access the cube from an officer either with the Kenya Space Agency or the Geospatial and Data Division after going through a basic vetting process.²⁶⁰

In addition to this, the commitment does not outline how the data will be shared with policy and professional communities and citizens outside the technical scope of the initiative. Sentiments shared at a civil society meeting revealed that civil society actors did not greatly understand the commitment and were unable to articulate its value or potential.²⁶¹ One participant remarked that discussions around the commitment focused mainly on hardware in terms of the development of GIS infrastructure when the discussion needs to move towards the utility.²⁶² The milestones therefore appear to be constructive within specialised spaces rather than outlining steps that will be undertaken to ensure that citizens can use the data to participate in decision making. One may argue that the tools and knowledge products or outputs arising from milestones twelve and fourteen could be packaged for consumption by these communities. However, this is not assured and could have the potential to further alienate the communities in question if they are not enabled or empowered to consume and use what is made available. Work is already being undertaken in this regard by the Kenya Space Agency who has begun training mainly data communities in how to utilise the ARDC. These efforts should be incorporated in the NAPs design as they are an essential component in regard to utilisation of these platforms.

Secondly, while access to geospatial data may increase, the commitments impact is difficult to ascertain given that the NAP does not provide an adequate baseline i.e. the NAP neither outlines the breadth and volume of available data or its current relevance to the domains or sectors in question.

Thirdly, various reasons for limited access and uptake of GIS information in various jurisdictions have been documented including institutional barriers such as organizational culture; significant red tape when it comes to accessing government GIS data; limited technical capacity; or limitations of the data infrastructure (hardware and software) within government, as has been identified in many of Kenya's counties.^{263 264} Geospatial data sets have also been described as lacking in volume, scope or diversity. For instance, one study indicates that universal coverage in Kenya is not the norm, and data exists mostly in the form of land parcel information and development maps that are mainly developed for urban areas. Additionally, most of these maps exist in hardcopy and not digital GIS format.²⁶⁵ While milestones ten and thirteen aim to address some of these bottlenecks, challenges remain and have significant implications for the accomplishment of the goal as outlined. Lastly, while efforts to promote accountability, through the development of open geospatial data guidelines and standards, are commendable, the absence of a regulatory framework means that there may be no clear requirement for government to routinely produce or provide accessibility to this data according to the developed data standards.

Next steps

The commitment could be potentially impactful in the long run if it is able to bridge the gap between innovation and use by policy makers and local communities in order to address current service gaps and aid every day decision making. To this end, subsequent action plans should aim to address this gap as well as develop a policy framework and plan for sustainability.²⁶⁶ The IRM researcher recommends that future commitments in this area consider:

- Building the capacity of farmers, health workers and first responders, bureaucrats and civil society to understand and consume geospatial data.²⁶⁷
- Developing a plan and strategy for reaching out to professional, policy and local communities that reside outside the technical scope of the initiative. This could include fora in which various actors discuss the confluence between GIS, Earth Observation data and a sector specific issue.
- Linking user cases or cases studies to public participation processes.
- Establish a regulatory framework for the production and use of geospatial data to address concerns around data sharing and data security as regards geospatial information. These would need to be harmonized with the Draft Spatial Planning Guidelines for Kenya (2017), Data Protection Bill (2018), Computer and Cyber Crime Act (2018) and Access to Information Act (2016). A national geospatial policy framework is also required to outline the governance structure and coordinating mechanisms around the spatial data initiative.²⁶⁸

²⁴⁰ Robin T.A, Khan M.A, Kabir N, et al Rahaman, S.K., Karim,A., Mannan, I.I., George, J.,Rashid, I., (2019) Using spatial analysis and GIS to improve planning and resource allocation in a rural district of Bangladesh, *BMJ Global Health* 2019;4:5

- ²⁴¹ ICMA, ESRI (2018) A Guide For Smart Communities: Using GIS Technology for Local Government. Washington DC: International City/County Management Association Management https://icma.org/sites/default/files/18-137%20GIS%20e-Primer%20Report_final.pdf
- ²⁴² Mesgari, M.S., Masoomi, Z. (2008) World GIS Applications in Public Health as a Decision Making Support System and It's Limitations. *Iran Applied Sciences*, 3 (1): 73-77, 2008
<https://pdfs.semanticscholar.org/23a4/c0a45ea59dd554aa0daef9a106e37293e9b6.pdf>
- ²⁴³ Fradelos, E.C., Papathanasiou, I.V., Mitsi, D., Tsaras, K., Kleisiaris C.F., Kourkouta, L. (2014) Health Based Geographic Information Systems (GIS) and their Applications. *ACTA INFORM MED.* 22(6): 402-405.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4315644/>
- ²⁴⁴ Ushahidi (2018) 10 Years of Innovation. 10 Years of Global Impact. This Is Ushahidi. Available At: https://www.usahidi.com/uploads/case-studies/ImpactReport_2018.pdf
- ²⁴⁵ JKUAT (2019) Towards Data Driven Informed Decision Making in Health Sector, Corporate Communications Office. Available at: <http://www.jkuat.ac.ke/towards-data-driven-informed-decision-making-in-health-sector/>
- ²⁴⁶ Space in Africa (2019) Kenya passed a law mandating all counties to develop GIS-based database systems and the results are incredible . Space in Africa, May 21, 2019. Available at: <https://africanews.space/kenya-passed-a-law-mandating-all-counties-to-develop-gis-based-database-systems-and-the-results-are-incredible/>
- ²⁴⁷ Ministry Of Devolution And Planning (2017) Guidelines For Preparation of County Integrated Development Plans (Revised), 2017. Available at: <https://roggkenya.org/wp-content/uploads/CIDP-GUIDELINES-REVISED-SEPTEMBER-2017.pdf>
- ²⁴⁸ Digital Earth Africa (2019) The Story. Available at: <https://www.digitalearthafrika.org/story>
- ²⁴⁹ Global Partnership for Sustainable Development (2016) Initiative: Africa Regional Data Cube. Available at: <http://www.data4sdgs.org/index.php/initiatives/africa-regional-data-cube>
- ²⁵⁰ Digital Earth Africa (2019) The Story. Available at: <https://www.digitalearthafrika.org/story>
- ²⁵¹ Interview 3, Interview with IRM Researcher, 1st September 2019
- ²⁵² Interview 3, Interview with IRM Researcher, 1st September 2019
- ²⁵³ Government of Kenya (2018) Open Government Partnerships National Action Plan III. pg. 14, Available at: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf
- ²⁵⁴ Government of Kenya (2018) Open Government Partnerships National Action Plan III. pg. 21, Available at: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf
- ²⁵⁵ Interview 3, Interview with IRM Researcher, 1st September 2019
- ²⁵⁶ Open Geospatial Consortium (OGC), The International Organization for Standards (ISO) Technical Committee 211 Geographic information/Geomatics, International Hydrographic Organization (IHO) (2018) A Guide to the Role of Standards in Geospatial Information Management. Available at: http://ggim.un.org/meetings/GGIM-committee/8th-Session/documents/Standards_Guide_2018.pdf
- ²⁵⁷ Open Geospatial Consortium (OGC), The International Organization for Standards (ISO) Technical Committee 211 Geographic information/Geomatics, International Hydrographic Organization (IHO) (2018) A Guide to the Role of Standards in Geospatial Information Management. Available at: http://ggim.un.org/meetings/GGIM-committee/8th-Session/documents/Standards_Guide_2018.pdf
- ²⁵⁸ Ibid
- ²⁵⁹ Interview 3, Interview with IRM Researcher, 1st September 2019
- ²⁶⁰ Interview 3, Interview with IRM Researcher, 1st September 2019
- ²⁶¹ Civil society participant (2019) Civil Society Open Government Partnership Meeting, 14th November 2019, Nairobi.
- ²⁶² Civil society participant (2019) Civil Society Open Government Partnership Meeting, 14th November 2019, Nairobi.
- ²⁶³ S, Ganapati (2010) Using geographic information Systems to increase Citizen Engagement. IBM Center for The Business of government. Available at: https://icma.org/sites/default/files/301388_GIS.pdf
- ²⁶⁴ Mutua, F., Mwaniki, D. (2017) GIS Needs assessment in Kenya: A County and National level Analysis on the State of GIS and its Application for Spatial Planning in Kenya. Available at: <https://www.undp.org/content/dam/kenya/docs/Democratic%20Governance/UNDP-KE-GIS-Needs-Assessment-Report-2017.pdf>
- ²⁶⁵ Ibid.
- ²⁶⁶ Johnson, P.A., Sieber, R., Scassa, T.A., Stephens, M., Robinson, P. (2017) The Cost(s) of Geospatial Open Data. *Transactions in GIS*;21:434–445.
- ²⁶⁷ Civil society participant (2019) Civil Society Open Government Partnership Meeting, 14th November 2019, Nairobi.
- ²⁶⁸ Mutua, F., Mwaniki, D. (2017) GIS Needs assessment in Kenya: A County and National level Analysis on the State of GIS and its Application for Spatial Planning in Kenya. Available at: <https://www.undp.org/content/dam/kenya/docs/Democratic%20Governance/UNDP-KE-GIS-Needs-Assessment-Report-2017.pdf>

4. Public Participation

Language of the commitment as it appears in the action plan:

“We will work together to improve public participation in development decision making for better and responsive service delivery.”

Objective:

To operationalize the Constitutional requirement of public participation on all matters of policy, decision making and service delivery in Kenya.

Milestones

1. FastTrack the enactment of the Public Participation Law in Senate
2. Making senate committee proceedings open by deploying live stream capabilities.
3. Develop technology tools and platforms (Web, SMS) to enhance citizens participation and feedback (311 type applications and Petitions)
4. Develop an Open Government Commitment indicators and online Tracker
5. Open up Court User Committee (CUC) complaints and resolution, including the judiciary ombudsman complaints portal.
6. Digitize and make publicly accessible, Government Performance Contracts for public scrutiny, monitoring and citizen feedback
7. Roll out a public participation and engagement campaign in at least 3 Counties, to sensitize citizens on the Constitutional provisions, the Public Participation legislations, tools and platforms that facilitate engagement with policy and decision makers.

Start Date: September 2018

End Date: July 2020

Editorial note: This is a partial version of the commitment text. For the full commitment text see: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf

Commitment Overview	Verifiability		OGP Value Relevance (as written)				Potential Impact				Completion				Did It Open Government?				
	Not specific enough to be verifiable	Specific enough to be verifiable	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not Started	Limited	Substantial	Completed	Worsened	Did Not Change	Marginal	Major	Outstanding
I. Overall		✓	✓	✓	✓	✓			✓		Assessed at the end of action plan cycle.				Assessed at the end of action plan cycle.				

Context and Objectives

Historically, Kenya has engaged in various initiatives to enhance public participation starting with the District Focus for Rural Development (DFRD) Strategy in 1983, to the enactment of the Physical Planning Act (1996), The Local Authority Service Delivery Action Plan (LASDAP) (2001) and Constituencies Development Fund (CDF) in 2003, all focusing on greater participation/

involvement in the areas of budgeting, physical planning and/or development. These initiatives were however often deemed to be top down in nature not offering citizens ample breadth to effectively participate in decision making.²⁶⁹ Consequently, the Constitution of Kenya (2010) in Article 118 (b), 174 (c) and 196 (1) (b),²⁷⁰ as well as provisions in the Public Finance and Management Act (2012) and the Public Procurement Act, then made public participation a requirement within legislative, budget and procurement processes.²⁷¹ Devolution would also see power and resources decentralized to the county level with the hopes of enhancing civic participation in decision making for development. Section 87 of the County Governments Act (2011) and the Public Finance Management Act (2012) further outline various modalities that counties can establish to enhance public participation including online platforms, notice boards and various fora such as the County Budget and Economic Forum (CBEF), town hall meetings and so on.²⁷²

However, various challenges have emerged in regard to public participation at the county level including contentions around the enactment of public participation laws and regulations. This is mainly driven by disagreements over the prioritization of use of public resources for public participation.²⁷³ There also appears to be a conflict over the nature and adequacy of participation that would meet constitutional thresholds and lack of clarity on what mechanisms would be considered effective in various contexts.²⁷⁴ Lastly, there is little public engagement with public participation tools and platforms mainly due to little awareness of the presence and value of these tools.²⁷⁵ ²⁷⁶ Given these challenges and the constitutional provisions already outlined, improving public participation has been a core component of all of Kenya's National Action Plans.²⁷⁷ Initiatives outlined in NAP II were not fully completed and as such efforts are being taken once again to enhance public participation through NAP III.

According to one interviewee, proposals within the current NAP seek to move public participation from being a tokenistic exercise to being more substantive.²⁷⁸ For instance, the current NAP introduces a campaign for the sensitization of the public on civic participation and what it entails. This is a key step that was lacking in previous OGP plans. Milestone sixteen and seventeen are particularly relevant given the diminishing credibility and growing lack of trust in Parliament given recent scandals involving political leaders.²⁷⁹ ²⁸⁰ ²⁸¹ These milestones would also offer an opportunity for Parliament and the Senate to co-create or implement the said milestones with civil society.²⁸²

The commitment's milestones are verifiable, in some ways, more specifically outlined than in previous NAPs, with their locus, scope and specific targets better defined than those that were in NAP II. For instance, this commitment can be verified by assessing the States deliverables or outputs as regards enacted laws; the existence of senate livestreaming, open government online trackers, or publicly accessible government performance contracts. The milestones also demonstrate high specificity speaking directly to the outlined problem and ambition. However, specificity of the can be enhanced: for instance milestone fifteen seeks to "fast track the enactment of the public participation law in senate" and milestone nineteen will "open up Court User Committee (CUC) complaints and resolution, including the judiciary ombudsman complaints portal." The terms 'fast track' and 'opening up' could be misconstrued or considered ambiguous making it difficult to determine how progress towards this can be measured.

The commitment is relevant to the OGP value of access to information specifically through the opening up of senate proceedings and the complaints portal as well as enhancing accessibility to government performance contracts. The commitment is also relevant for public accountability in that it not only establishes the regulatory framework necessary for public participation, but goes beyond this to: establish channels of participation; enhance scrutiny; create feedback mechanisms; track responsiveness; and promote informed engagement. The campaign outlined in milestone twenty one could also contribute to improving public participation in development by not only sensitizing communities on the emerging regulatory framework, but could also providing them with the requisite information concerning: the offices to engage; how to frame their engagement; awareness of policy calendars and opportunities for engagement and the most efficient and effective mechanisms of participation; and what feedback and complaints mechanisms are available.²⁸³ Lastly, milestones as outlined also speak directly to the OGP value on technology and innovation for openness and accountability with various activities requiring the development of portals, tools and technology to facilitate the capturing of citizen feedback and for monitoring responsiveness and performance on open government commitments. The commitment is therefore highly relevant to all the OGP values in question.

Despite its promise, the commitment has been coded as “moderate” but with high potential to be transformative. Should the aspirations outlined in this commitment be met, then the result will be better structured public participation processes and engaged citizenry.²⁸⁴ According to one government official, the commitment would also go a long way to transforming the status quo by “demystifying” how parliament works and raising awareness on the legislative tools and mechanisms available to ordinary citizens. The commitment would also improve the public’s confidence in their ability to participate and stand before committees, having been able to observe ordinary Kenyans doing the same. The commitment would also likely enhance participation in petitions and bills through the e-petitions platform.²⁸⁵ However, OGP initiatives around public participation are plagued by incompleteness: The End-to-End initiative as an integrated service delivery and the CSO-Government complaints portal proposed in NAP I remained inactive at the end of the second OGP cycle (2012-2014) to date. Prescriptions outlined in NAP II as well were also not fully accomplished. A key factor underlying this is the lack of adequate financing where public participation initiatives are concerned. According to one government official the current commitment is similarly plagued. ²⁸⁶In their view, there has been no discussion in terms of how some of the milestones in the NAP would be financed. Support from development or other partners will therefore need to be sought in order to implement particularly milestone sixteen and twenty one, though this is yet to be undertaken as of the drafting of this report. ²⁸⁷

Secondly, while the commitment speaks to “develop[ing] technology tools and platforms to enhance citizen participation and feedback”, there is no direct reference to where these feedback mechanisms will be located and what the focus of their concern will be. For instance whether it will be feedback on participatory processes per se or broader than this or whether it will be tied to thematic areas or not. In addition, all public participation interventions should endeavour to journey through all levels of public participation namely to: inform, consult, involve, collaborate and empower. ²⁸⁸ The milestones as outlined tend towards the lower tiers of this spectrum given that there is no indication that structures or delegated authority have been established to enable citizens to take part in decision making.

Additionally, though the public participation and engagement campaign laid out in milestone twenty one may aid in creating awareness, it is not clear whether the wider framework and infrastructure supporting public participation is also being strengthened alongside these awareness-raising and information sharing efforts. According to one interviewee the accomplishment of this particular milestone could be quite difficult: In their words, “OGP can sound easy but is not... I would say for a county like Makueni it would be easy but for the other who may not have the frameworks in place? and whether the goodwill is there? If the people are suspicious of their governor then even if he wants many things they won’t cascade.”²⁸⁹ According to another stakeholder, the commitment could have grafted in milestones on civic education, through reviving or reformulating the Kenya National Integrated Civic Education Programme (KNICE) as the campaign cannot occur without civic education.²⁹⁰ This would also ensure that KNICE remains active beyond or between electoral cycles.²⁹¹

Next steps

The commitment could be potentially impactful in the long run if it results in empowered citizens that are able to exploit linkages between data, oversight bodies and participatory mechanisms, for the purpose of fully participating in decision making. To be truly transformative, the IRM researcher recommends that the scope of this commitment be expanded by considering the following in the next action plan:

- The development of a resource mobilization strategy alongside the NAP to address the problem of limited finances for the implementation of this commitment.²⁹²
- Ensuring that milestones also speak to the establishment of the institutional systems and structures needed to operationalize the Senate Public Participation Law or the National Public Participation Bill (2018). One representative from civil society felt that the commitment did not sufficiently address the institutionalization and operationalization of public participation legislation.²⁹³
- Building in mechanisms that allow for enhanced responsiveness from the relevant authorities to issues raised by the public.
- Establish a coordinating framework for the coordination of various stakeholders participating in enhancing public participation, even within OGP.

²⁶⁹ Omolo, A (2011) Policy Proposals On Citizen Participation In Devolved Governance In Kenya The Institute For Social Accountability (TISA)

https://www.tisa.or.ke/images/uploads/Policy_Recommendations_on_Citizen_Participation-TISA_2011.pdf

²⁷⁰ The Constitution of Kenya (2010) <https://www.wipo.int/edocs/lexdocs/laws/en/ke/ke019en.pdf>

²⁷¹ Othim, C (2018) Independent Reporting Mechanism (IRM): Kenya Progress Report 2016- 2018, Independent Researcher, Government of Kenya (2018) Open Government Partnerships. Available at:

https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf

²⁷² CISP (2017) Effective Public Participation Mechanisms in Mombasa, Kilifi, Taita Taveta and Kajiado Counties.

http://developmentofpeoples.org/uploads/analysis/analysisPARTICIPATION-MAIN-Book_Amended.pdf

²⁷³ Ibid.

²⁷⁴ Ibid.

²⁷⁵ Mariru, P (2019) What About Public Participation? Where Are We? ILA Kenya, October 16th, 2015,

<https://ilakenya.org/what-about-public-participation-where-are-we/>

²⁷⁶ Interview 13, Interview with IRM Researcher, 13th November 2019

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- ²⁷⁷ Kenya OGP Steering Committee (2016) The Republic of Kenya Open Government Partnership National Action Plan II July 2016 – June 2018. Available at: https://www.opengovpartnership.org/wp-content/uploads/2017/04/Kenya_AP2_2016_0.pdf
- ²⁷⁸ Interview 6, Interview with IRM Researcher, 26th August 2019.
- ²⁷⁹ Maina, W (2019) State Capture: Why Kenya Has Been Unable to Slay the Corruption Dragon. The Elephant, 22 August 2019. Available at: <https://www.theelephant.info/features/2019/08/22/state-capture-why-kenya-has-been-unable-to-slay-the-corruption-dragon/>
- ²⁸⁰ Opalo, K. (2019) Kenyans are fed up with Jubilees corruption. The Standard, 2 Mar 2019 . Available at: <https://www.standardmedia.co.ke/article/2001314951/kenyans-are-fed-up-with-jubilee-s-corruption>
- ²⁸¹ Mpungu, P (2019) Kenya's corruption crackdown: New era, or political theatre? Al Jazeera, 27 Jul 2019. <https://www.aljazeera.com/ajimpact/kenyas-corruption-crackdown-era-political-theater-190726154554617.html>
- ²⁸² Interview 6, Interview with IRM Researcher, 26th August 2019.
- ²⁸³ Interview 13, Interview with IRM Researcher, 13th November 2019.
- ²⁸⁴ Interview 13, Interview with IRM Researcher, 13th November 2019.
- ²⁸⁵ Interview 13, Interview with IRM Researcher, 13th November 2019.
- ²⁸⁶ Interview 13, Interview with IRM Researcher, 13th November 2019.
- ²⁸⁷ Interview 13, Interview with IRM Researcher, 13th November 2019.
- ²⁸⁸ Victorian Auditor General's Office (2015) Public Participation in Government Decision-making: Better Practice Guide. <https://www.audit.vic.gov.au/sites/default/files/20150130-Public-Participation-BPG.pdf>
- ²⁸⁹ Interview 6, Interview with IRM Researcher, 26th August 2019
- ²⁹⁰ Interview 10, Interview with IRM Researcher, 12th August 2019 and Interview 13, Interview with IRM Researcher, 13th November 2019
- ²⁹¹ Interview 10, Interview with IRM Researcher, 12th August 2019
- ²⁹² Interview 13, Interview with IRM Researcher, 13th November 2019.
- ²⁹³ Interview 10, Interview with IRM Researcher, 12th August 2019

5. Improve public sector performance through governance indices

Language of the commitment as it appears in the action plan:

“To provide a comparative analysis of five key governance indices for their veracity and reliability to allow the society to evaluate and possibly redefine its perception towards performance of public sector and its specific institutions.”

Objective:

To assist the public in making informed choices, understand the impact of their collective actions on public finances; and perhaps most importantly enable the public to judge the performance of government and governmental institutions from a composite analysis of the indices.

Milestones

1. Develop a tracker for available governance indices (APRM, Performance Contracts, SDGs, Corruption Perception Index, Ease of Doing Business)
2. Develop technology tools and platforms for available for access and analytics of governance indices in the country
3. Build capacity of public service entities to improve services based on indices recommendations.
4. Disseminate indices analysis reports, two times annual to the all stakeholders and public

Start Date: January 2019

End Date: July 2020

Editorial note: This is a partial version of the commitment text. For the full commitment text see: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf

Commitment Overview	Verifiability		OGP Value Relevance (as written)				Potential Impact				Completion				Did It Open Government?				
	Not specific enough to be verifiable	Specific enough to be verifiable	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not Started	Limited	Substantial	Completed	Worsened	Did Not Change	Marginal	Major	Outstanding
I. Overall		✓	✓			✓		✓			Assessed at the end of action plan cycle.				Assessed at the end of action plan cycle.				

Context and Objectives

This commitment focuses on the development of a County Peer Review Mechanism that will be used to assess public service delivery at the sub-national or county level. The tool will explore citizen’s experiences of all fourteen service delivery areas, their views on the relevance of these services and whether they were discharged adequately and appropriately.²⁹⁴ This commitment

stems from a broader discussion around the relevance of OGP in the African context and its alignment with existing initiatives such as the [African Peer Review Mechanism \(APRM\)](#). The APRM is a basket of governance indicators widely utilized in the region to assess the effectiveness of governance systems and contribute to evidence based decision making.²⁹⁵ In addition to being a platform for learning and experience sharing, the APRM aims to enhance accountability amongst African states. During Kenya's second country review it was suggested that the role of county government be better highlighted to reflect the role they play in implementing and monitoring commitments in the National Programme of Action (NPoA).

In May 2013, the Kenyan government hosted an OGP Africa regional meeting that aimed to discuss the relationship between the OGP and African normative frameworks such as the 'African Shared Values Instruments' and the APRM. This culminated in the establishment of a "Framework For Collaboration between the APRM and OGP" in May 2019, which would entail collaborating on: supporting implementation of APRM recommendations; substantive interaction between APRM national structures and the OGP multi-stakeholder forums; embedding both institutions or approaches; synergising efforts towards the attainment of various goals; and undertaking joint activities in three select countries.²⁹⁶ This commitment is a manifestation of this collaboration, seeking to address key concerns around poor government performance and lack of an adequate monitoring and evaluation framework on the same.

The CPRM is a multi-agency product whose development and implementation is led by the APRM secretariat in Kenya. Implementation has thus far involved the Panel of eminent persons, all the independent commissions, the Intergovernmental Budgets and Economic Council, the Intergovernmental Relations Technical Committee; the Speakers of the National Assembly and the Senate; Council of Governors (COG), Ethics and Anti-corruption Commission (EACC), Vision 2030, Kenya Institute for Public Policy Research & Analysis and one or two representatives from civil society.²⁹⁷ The construction of the CPRM made reference to: the Africa Peer Review Mechanism, performance contracts, County Integrated Development Plans, Sustainable Development Goals, Corruption Perception index and Ease of Doing Business Index.²⁹⁸ The CPRM report and outputs will be widely publicised on the APRM site and launched at national summits, where governors of the reviewed counties would also be peer reviewed based on the findings of the report. It is envisaged that the CPRM will be undertaken three times during the electoral cycle, detailing an initial baseline, mid-term review and end term evaluation of county performance.²⁹⁹

The commitment is verifiable with deliverables such as the governance indices tracker, analytical tools and platforms and dissemination of analysis reports, as addressed in milestones 22-23 and 25, easily being tracked and assessed. Additionally, capacity building exercises as outlined in milestone 25 can be evaluated for their effectiveness. This commitment is relevant to the OGP value of technology and innovation for openness and accountability. The tracker could be extremely useful for synthesising large amounts of information and the analytical reports generated would go a long way to contributing to public service improvement. According to one state official the CPRM would foster "the kinds of conversations that we think are going to foster the growth of our democracy but also improve the performance of the counties, of county governments, in terms of serving their people".³⁰⁰ This commitment is also relevant to the OGP value of access to information in that analyses reports will be publicly disseminated.

Overall, this commitment could contribute to better decision making by synthesising large amounts of complex layers of data and information that can be readily consumed by policy makers, civil society and the public. The impact of this commitment would however be considered “minor” in addressing these concerns for various reasons. Firstly, while the CPRM holds a lot of promise, its potential is not evident in the design of the commitment which instead focuses on proposing a shift away from the use of existing indices given growing concerns around cited biases and weaknesses. This framing within the NAP appears to not be well understood as confirmed by sentiments shared at a civil society gathering in Nairobi in November 2019.³⁰¹ In addition, the design of the commitment is incongruent with what stakeholders feel is the main ambition, which is to customize the APRM in order to cascade the principles of good governance to the counties and improve county performance.³⁰² Rather, the current NAP focuses the ambition on countering the negative portrayal of the country as framed by existing indices.

Secondly, the dissemination of measures and indices focusing on service delivery and local government performance are often premised on the notion that information asymmetries contribute to erratic voter behaviour. Therefore, providing citizens with the right information should result in informed and better decision making during the electoral period. However, extraneous factors also play a significant role in shaping whether performance information is utilized and whether elected officials actually respond to citizen feedback.^{303 304 305} According to Grandvoinet, Aslam and Raha (2015), “within the state, elected and nonelected officials respond to different sets of incentives and might have divergent attitudes toward fostering or responding to social accountability.”³⁰⁶ This has significant implications for the achievement of this goal. While access to information on government performance is useful, the commitment is likely to only improve civic participation if other factors are taken into account such as: the quality of the tracking or survey tools; the quality of information in the analysis reports; the communication strategy accompanying dissemination; and the accountability infrastructure that is built into the deployment of the CPRM.

Despite the public’s powers of evaluation being foregrounded in the objective, we see very little interface between the production of these analyses and initiatives towards enabling the public to make the necessary judgments. There is also no reference made to the specific decision-making processes, feedback or redress mechanisms that the public can engage with as a direct result of the milestones being fulfilled. The commitment is framed in a manner that emphasises production and dissemination and not necessarily the public holding court over findings once reports are shared. It is also noted that the consequences for falling short of performance targets, save for a marred reputation³⁰⁷, are not clear, assuming that even this would be a sufficient deterrent in the Kenyan context. Little has also been said as to how the indices developed will gain prominence or legitimacy amongst the various constituencies being targeted for dissemination in order to affect electoral and political accountability. Lastly, the data collection exercise that is to be undertaken and which should inform the implementation of milestones 21, 22, 24 has been significantly delayed due to resource and funding limitations.³⁰⁸ Part of the fundraising strategy is to see county governments integrate the CPRM into their public participation budgets. However, given the strained intergovernmental relations

heightened by the introduction of the [Division of Revenue Bill \(2019\)](#),³⁰⁹ ³¹⁰ negotiating such a settlement will undoubtedly be challenging.³¹¹

Next steps

Governance indices can be useful. However, their utility is contingent on myriad other factors that should also be reflected on. The IRM Researcher recommends that the following be taken into consideration:

- The resourcing for and sustainability of the CPRM should be clearly established.³¹²
- Public awareness and capacity building efforts for the utilization of results should be made a priority and incorporated into the wider work plan.
- The development of any tools should be considered a good opportunity to engage in co-creation with wider civil society and the public at large.
- In order to better reflect the access to information OGP value, the analysis report should also be accompanied by supporting documentation. For instance, performance contracts and other reports with sufficiently disaggregated data should be published alongside the report.
- A discussion on how the tracker will interface other government systems such as the Electronic Document & Records Management System, that was suggested in NAP II or the End-to-End initiative, which was to be an integrated service delivery portal.
- The commitment could be reinforced by outlining and discussing how such analyses could lead to a wider public reflection on collective action and their impact on public finance.
- Future iterations could track how the indices map on the quality of leadership over time.

²⁹⁴ Interview I, Interview with IRM Researcher, 1st September 2019.

²⁹⁵ Gisselquist, R.M (2014) Developing and evaluating governance indexes: 10 questions. , Policy Studies Vol, 35:5.

²⁹⁶ APRM (2019) Framework of collaboration between The African Peer Review Mechanisms and Open government Partnership. Available at: https://www.opengovpartnership.org/wp-content/uploads/2019/05/MOU_AfricanPeerReviewMechanism_May2019.pdf

²⁹⁷ Interview I, Interview with IRM Researcher, 1st September 2019.

²⁹⁸ Interview I, Interview with IRM Researcher, 1st September 2019.

²⁹⁹ Interview I, Interview with IRM Researcher, 1st September 2019.

³⁰⁰ Interview I, Interview with IRM Researcher, 1st September 2019.

³⁰¹ Civil society participant (2019) Civil Society Open Government Partnership Meeting, 14th November 2019, Nairobi

³⁰² Interview I, Interview with IRM Researcher, 1st September 2019

³⁰³ De Kadt, D., Lieberman, E.S. (2015) Do citizens reward good service? Voter responses to basic service provision in southern Africa. Working Paper No. 161. Available at:

http://afrobarometer.org/sites/default/files/publications/Working%20papers/afropaperno161_do_voters_reward_good_services_in_southern_africa.pdf

³⁰⁴ Politicians' perspectives on voice and accountability: Evidence from a survey of South African local councillors. Evan S. Lieberman, Philip Martin and Nina

McMurry https://opendocs.ids.ac.uk/opendocs/bitstream/item/14442/RRReport_Politicians%20_VoiceAccountability_SA_3.0.pdf

³⁰⁵ Graham, P., Gilbert, S., Alexander, K. (2010) The Development and Use of Governance Indicators in Africa A Comparative Study. IDASA , EU, UNDP . Available at:

https://www.undp.org/content/dam/undp/library/Democratic%20Governance/indicators_in_africa_idasa_2011.pdf

³⁰⁶ Grandvoinet, H., Aslam, G. Raha, S. (2015) Opening the Black Box: The Contextual Drivers of Social Accountability, Washington DC: World Bank Group

³⁰⁷ Interview I, Interview with IRM Researcher, 1st September 2019

³⁰⁸ Interview I, Interview with IRM Researcher, 1st September 2019

³⁰⁹ Citizen Digital (2019) Stalemate over? Senate throws in the towel, agrees on Ksh.316B for counties, September 5, 2019 14:22 (EAT). Available at: <https://citizentv.co.ke/news/stalemate-over-senate-throws-in-the-towel-agrees-on-ksh-316b-for-counties-275453/>

³¹⁰ Omulo, C (2019) Counties warn of shutdown in revenue row. August 29, 2019. Available at: <https://www.businessdailyafrica.com/economy/Counties-warn-of-shutdown-in-revenue-row/3946234-5253718-150lum4/index.html>

³¹¹ Interview I, Interview with IRM Researcher, 1st September 2019

³¹² Interview I, Interview with IRM Researcher, 1st September 2019.

6. Build Open Government Resiliency

Language of the commitment as it appears in the action plan:

“We will build political support across National, County Government, Civil Society, Private sector, Pan African Institutions and other OGP participating Countries in Africa to share skills, knowledge, resources and expertise.”

Objective

Ensure that the Open Government Partnership initiative in Kenya and Africa is resilient, continuing its unique role as a platform for co-creation, dialogue and collaboration between governments, parliaments, private sector and civil society.

Milestones

1. Develop an Open Government Program in support of the NAP III
2. Establishment of a multi-stakeholder technical committee and OGP National Secretariat
3. Create an Open Government Network in Kenya as the permanent dialogue mechanism
4. Create a Community of Practice for Open Government, including an OGP Kenya Website and knowledge sharing platform
5. Document stories and best practices amongst the Open Government Partners in Kenya/Africa

Start Date: January 2018

End Date: July 2020

Editorial note: This is a partial version of the commitment text. For the full commitment text see: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf

Commitment Overview	Verifiability		OGP Value Relevance (as written)				Potential Impact				Completion				Did It Open Government?				
	Not specific enough to be verifiable	Specific enough to be verifiable	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not Started	Limited	Substantial	Completed	Worsened	Did Not Change	Marginal	Major	Outstanding
I. Overall		✓	✓	✓		✓		✓			Assessed at the end of action plan cycle.				Assessed at the end of action plan cycle.				

Context and Objectives

Currently only fourteen countries in Africa are participating in the OGP process. This commitment seeks to build an OGP support system in which the institutionalization of open government programmes can be fostered across governments throughout the region. The commitment also seeks to address current deficits in OGP coordination and institutional support and sets out to establish and strengthen the national OGP programme.³¹³

The assessment of NAP II made various recommendations related to the sustainability and institutionalisation of OGP in Kenya including: creating a budget for the implementation of the open government programme and related coordination activities; creating interagency collaborative frameworks; instituting quarterly progress meetings and the publicizing of progress

reports.³¹⁴ This followed from the identification of weaknesses such as: inadequate representation of local and sub-national CSOs; lack of consistency between OGP plans; lack of adequate resourcing; insufficient institutional and technical capacity concerning OGP processes; a need to weak inter-agency working; limited transparency and so on.³¹⁵ These sentiments were further echoed by a member of civil society who stated that OGP “isn’t institutionally anchored ...it relies on “champions” which makes it hard to track with transitions... We cannot be anchoring reforms on mere champions. It's too volatile in the face of Africa's changing politics.”³¹⁶ This commitment is therefore a clear indication that steps are being taken to address these cleavages.

The commitment as drafted is clear and verifiable and outputs of the process can be easily assessed. However, specificity could be enhanced: for instance, milestone twenty six refers to the establishment of an OGP programme but however does little to indicate the form, structure or shelf-life of the proposed programme. This is particularly relevant given that coordination challenges have been highlighted as a challenge both in the development and implementation of the current NAP.^{317 318}

In regard to the OGP values, ‘Access to information’, ‘technology and innovation for transparency and accountability’ and ‘civic participation’ are all reflected in the milestones: Access to information could be potentially enhanced through the Permanent Dialogue Mechanism (PDM) and community of practice. PDMs can take on a variety of forms including information portals, town hall forums, media roundtables, policy dialogues and so on.³¹⁹ In some cases these allow for enhanced communication between different sectors and actors and improved transparency around decision making. Civic participation would be enhanced via milestones twenty seven and twenty eight, more so if these platforms also function as network hubs in which learning takes place.

In relation to whether this particular commitment would open government, the impact of this commitment in relation to its stated objective has been rated as “minor”. In order to achieve resilience, concerns around co-creation and dialogue will need to be adequately addressed for resilience to be achieved. This includes ensuring: wider representation from the counties (sub-national) and special interest groups; adequate documentation of processes and decision outcomes; and succession planning. It is not enough to assume that these aspects will be covered by milestone twenty six. Additionally, the overarching question of the CSO operating environment will also need to be addressed. The commencement and implementation of the Public Benefits Organisations (PBO) Act (2012) would be instrumental in maintaining CSO participation which thus far has been at the core of the OGP in Kenya.³²⁰ The Act has remained in limbo since its enactment. It will also be important for Kenya to consider that the performance of the PDM is also contingent on external factors arising from institutional, financial, legal, and political spheres. For instance, the shrinking of civic space especially during times of political upheaval, would undoubtedly affect the PDM.

Secondly, while much needed first steps towards resilience have been introduced, the commitment focuses on the establishment of platforms and networks but does not necessarily outline the uptake of resiliency strategies that would ensure that these networks and platforms are resilient, sustainable and effective in and of themselves. More could also be said about the resourcing of OGP initiatives in Kenya given that it has been identified as a key impediment to the realisation of OGP commitments. The establishment of a programme does not necessitate that it will be adequately resourced and funded. In regard to the regional scope of this commitment, the milestones do not appear to take a proactive stance towards ensuring that resilience across Africa occurs. The objective is quite clear in expanding the scope of the vision to include the Africa

region while the interventions outlined narrow this focus to Kenya. Therefore the work that is already being undertaken to foster resilience across the country (amongst subnational governments) and with other African states through mentorship and learning exchanges will not be captured when implementation against the milestones is evaluated or measured.³²¹ That being said, while regional OGP work is important, especially politically, it does not immediately or strongly impact resilience and the opening of government at the national level.

Ensuring resilience will also require adequate representation of citizens. The current NAP addresses this by including three sub-national governments and the Senate in the implementation of the NAP. However, wider participation is not necessarily assured through the current milestones. Very little is said about the membership requirements to either the Open Government Network or the Community of Practice and the levels of access allowed by members. The Community of Practice and emerging network may be closed and therefore less participatory than envisioned. Significant effort has been made to improve political buy in for the current NAP.^{322 323 324} However, it would be important to collectively reflect on how political will and ownership can be sustained and to move towards the adoption of a model of institutionalization.³²⁵

Lastly, grafting in milestones that promote utilisation especially within milestones twenty eight, twenty nine and thirty would also go a long way to enhancing the impact of the commitment. This is especially so given the fact that involvement in OGP in Kenya, for both CSOs and state agencies/ department has been known to wax and wane in the light of competing or shifting priorities, political transitions, misalignment with the OGP agenda, or shifts in donor priorities among other factors.^{326 327 328} Different interventions can be incorporated to further reflect on these factors.

Next steps

The IRM Researcher therefore recommends that those involved in the OGP process consider the following:

- The OGP secretariat should strengthen its coordination framework in order to build synergy between the various stakeholders and implementers of the plan.^{329 330}
- The government should implement the Public Benefits Organization Act (2013).³³¹
- Developing guidelines around the operation of the PDM, including: membership requirements; levels of access; approach to documenting best practices and stories; the manner in which dissemination of information will be undertaken; frequency of meetings and so on.
- Grafting in milestones that promote utilization of the platforms outlined and that promotes membership to the network and community of practice.
- Introducing mechanisms that can assist in evaluating the effectiveness of the PDM and community of practice such as has been undertaken in Moldova through the introduction of a performance scorecard of OGP initiatives. This could be used as the basis for discussion and communication to the public.³³²
- Focus on enhancing resilience in Kenya prior to extending this to the rest of the region.

³¹³ Interview 5, Interview with IRM, 31st August 2019.

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- ³¹⁴ Othim, C (2018) Independent Reporting Mechanism (IRM): Kenya Progress Report 2016- 2018, Independent Researcher, Government of Kenya (2018) Open Government Partnerships. Available at: https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf
- ³¹⁵ Ibid.
- ³¹⁶ Interview 14, Personal correspondence (2019) Whatsapp message. 1 November 2019.
- ³¹⁷ Interview 13, Interview with IRM, 13th November 2019.
- ³¹⁸ Interview 10, Interview with IRM, 12th August 2019.
- ³¹⁹ Razzano, G (2016) Connecting the Dots the Coordination Challenge for the Open Government Partnership in SA, Open Democracy Advice Centre and Making All Voices Count. Available at: https://www.corruptionwatch.org.za/wp-content/uploads/2016/09/Odac-Book_Digital.pdf
- ³²⁰ Ongere, C (2019) Give CSOs better workspace. The Star, 14 January 2019. <https://www.the-star.co.ke/opinion/columnists/2019-01-14-churchill-ongere-give-csos-better-workspace/>
- ³²¹ Interview 5, Interview with IRM, 31st August 2019
- ³²² Interview 9, Interview with IRM, 26th August 2019.
- ³²³ Interview 5, Interview with IRM, 31st August 2019.
- ³²⁴ Interview 13, Interview with IRM, 13th November 2019.
- ³²⁵ Interview 13, Interview with IRM, 13th November 2019.
- ³²⁶ Interview 11, Interview with IRM, 11th November 2019.
- ³²⁷ Interview 13, Interview with IRM, 13th November 2019.
- ³²⁸ Interview 4, Interview with IRM, 28th August 2019.
- ³²⁹ Interview 13, Interview with IRM, 13th November 2019.
- ³³⁰ Interview 4, Interview with IRM ,28th August 2019
- ³³¹ Interview 15, Interview with IRM ,14th November 2019

V. General Recommendations

This section aims to inform development of the next action plan and guide implementation of the current action plan. It is divided into two sections: 1) IRM key recommendations to improve OGP process and action plans in the country or entity and, 2) an assessment of how the government responded to previous IRM key recommendations.

5.1 IRM Recommendations

Over time, stakeholders generally agree that the focus and design of the NAP has improved. NAP III therefore presents a more streamlined set of commitments and a more inclusive process than previous NAPs. However, there still remains room for improvement given that the milestones, as designed, have often been unable to produce the envisioned outcome.

Specific recommendations for milestones have been outlined in previous sections. The following are a set of cross cutting recommendations that can be taken into consideration when developing subsequent national action plans.

1. Deepen civil society participation in the co-creation process and provide clear feedback on how their input influenced the decisions made.

While Kenya has made strides in making the MSF more representative and to strengthen collaboration between government and civil society stakeholders, more should be done to ensure deeper participation in the development and validation of the NAP, and in the evaluation of the co-creation process and implementation. Specifically, the IRM recommends to:

- Provide clear feedback on how civil society and public input influenced the development of commitments and milestones: include information on public input that was not considered for the action plan.
- Enhance the influence of civil society organizations and policy experts in the identification and prioritization of thematic areas.
- Maintain a public repository to improve tracking and documentation of OGP activities, including comments received during all stages of the co creation process and how these were considered for the drafting of commitments.
- Consider undertaking greater awareness and sensitization on OGP and the relevance of the NAP that goes beyond the usual constituencies. Both government and civil society could do more to support opportunities for local civil society and special interest groups (women, media and youth) to convene and coordinate their efforts around OGP.
- Ensure greater buy-in and participation of government ministries from the beginning of the co creation process and throughout the development of the plan.

2. Improve the design of commitments within the NAP.

Kenya has made marked improvements in the design of its NAP over time. However, the specificity of most commitments can still be enhanced. Secondly, while Kenya's NAPs have exhibited a high level of ambition, they contain milestones that are not always appropriately aligned to the objective. The MSF is therefore encouraged to ensure that the means-ends relationships in the crafting of commitments are clear and that incremental steps and timelines are well outlined. Additionally, incorporating more regular, inclusive and structured moments of

reflection into the every NAP cycle would also go a long way to better shaping the commitments.

3. Expand the scope of commitments beyond the publication of data to ensure public participation and the effective use of the data published.

Public participation has been a recurrent theme in Kenya's three OGP action plans. However, these commitments have focused on promoting the publication of information or datasets without including specific activities to ensure the use of the information to attain the overall goal of the commitment. For instance, the first action plan promoted the publication of simplified datasets related to expenditures and disbursements in public services on Kenya's Open Data Portal. However, it was not accompanied with mechanisms for citizen engagement to inform how decisions on disbursements and expenditures are being made. Similarly, commitment 7 of Kenya's second action plan 2016-2018 aimed to increase access to government budget information, however, it did not specify which activities or mechanism would ensure the use of this information to prevent corruption in the budgetary process. For instance, it could have included activities to enhance public participation in the role of oversight, audit or external control. While this 2018-2022 action plan gives some consideration to enabling citizens to use the information in commitment two and four, more can be done to ensure that citizens and stakeholders are adequately supported to utilize the outputs of each commitment.

Therefore, the IRM recommends embedding, in future commitments, activities that promote the effective use of information and data published and include a clear link between the use of public data for a specific policy aim (such as prevention of corruption in the budgetary process).

4. Carry out multistakeholder discussions on the inclusion of commitments or milestones to improve civic space.

The Civicus Monitor characterizes Kenya as "obstructed" while Freedom House rates it as "Partly Free". As explained in Section II of this report, this is primarily due to growing concerns around threats to freedom of expression and assembly, the use of excessive force by security institutions and restrictive legislation. During the next co-creation process, at the stage of identifying commitment themes, the IRM encourages government and civil society organizations to discuss the addition of commitments to address these concerns, especially considering the use of excessive force and limitations to freedom of speech and expression witnessed during the pandemic and that may arise during the upcoming electoral period.

5. Address sustainability and resilience of the country's open government agenda.

The importance of addressing the sustainability and resilience of the OGP initiative in Kenya was underscored by all. Financing was the main factor highlighted. It also emerged that the NAP risks being perceived as an aspirational, opportunistic or reactive tool rather than a strategic one with achievements on the NAP largely attributed to work that has preceded or been external to the NAP.^{333 334} Therefore the strategic value of the NAP needs to be urgently reinforced and the value of engaging in OGP in Kenya, well communicated.

Secondly, the MSF could also engage in some strategic forecasting. This would ensure continuity between plans and assist in stakeholder mapping which could allow for partnership development to proceed over a longer period. Doing so may also allow civil society organization to better

plan for their involvement (both technically and financially) over several NAP cycles. It is also important that the MSF devise a mechanism for monitoring and reporting on all OGP activities. This would generate the necessary learning required to move the initiative forward and would also contribute to the shoring up of institutional memory which is necessary within Kenya’s transitory political and bureaucratic space.

The NAP should be accompanied by an implementation strategy and coordination framework from the onset of each NAP. These should outline, at a minimum, the resourcing requirements for each commitment and unpack how implementation should progress. This will therefore guide resource mobilisation framework and would contribute to the breaking of silo’s in which most actors operating based on their respective organizational or agency work plans.

Finally, the IRM suggests developing a strategy to ensure the OGP Action Plan and open government agenda successfully continue through the electoral transition of 2022. The IRM has learned over the years from other country experiences that preparing a strategy in advance to plan for multiple scenarios is key to keep commitments on track for implementation and sustain political momentum for the open government agenda. Countries that have gone through similar political contexts, have found the MSF, particularly civil society members of the forum, an exceptional ally to minimize disruptions due to electoral processes. The IRM recommends that a strategy include mitigation measures to possible implementation interruptions, actions that civil society members of the MSF can lead to keep priority themes and commitments in the public agenda, measures to ensure implementing government institutions are empowered in their roles, active communication channels between the different bodies that lead the OGP process in Kenya to guarantee coordination and securing political commitment to this and future OGP action plans. The OGP Handbook includes guidance on political transitions and elections³³⁵ and the IRM has collected some lessons from political transitions in other OGP countries³³⁶ that may be helpful resources in the development of the strategy.

5.2 IRM Recommendations

Table 5.1: Five Key Recommendations

1	Deepen civil society participation in the co-creation process and provide clear feedback on how their input influenced the development of commitments and its milestones.
2	Improve the design of commitments within the NAP.
3	Expand the scope of commitments beyond the publication of data to ensure public participation and the effective use of the data published.
4	Carry out multistakeholder discussions on the inclusion of commitments or milestones to improve civic space.
5	Address sustainability and resilience of Kenya’s open government agenda.

5.2 Response to Previous IRM Key Recommendations

Table 5.2: Previous IRM Report Key Recommendations

	Recommendation	Responded to?	Integrated into current action plan?
1	<p>Improve the action plan development process</p> <p>Engage local level civil society and create commitments with clear and measurable objectives that build on open government initiatives from the first action plan. Identify lead officials responsible for each commitment and milestone.</p>	✓	✓
2	<p>Address commitment implementation challenges</p> <p>Ensure there is a budget line for OGP, improve interagency collaboration and produce quarterly Steering Committee meetings to monitor progress.</p>	✓	✓
3	<p>Full Implementation of the Access to Information Act</p> <p>To ensure timely and effective implementation of the law, take further steps to enhance record management and develop regulations to implement the law.</p>	✗	✗
4	<p>Open contracting and beneficial ownership transparency</p> <p>Open up IFMIS contracting processes, publish contracts in OCDS, and provide beneficial ownership information on the new public beneficial ownership registry.</p>	✓	✓
5	<p>Expand and Protect Civic Space and civil liberties</p> <p>The next action plan should include commitments to protect or expand citizens' rights to organise, speak out, and report on government. Commitments could focus on making it easier for CSOs to register their organisation, receive and maintain funding, and organise and communicate to carry out their activities.</p>	✗	✗

Of the five recommendations provided in the previous IRM report, Kenya addressed three out of five recommendations, though to varying extents. In regard to Improve the action plan development process, lead officials from both civil society and the government were identified and jointly lead on each commitment. Local civil society was still not well represented within the current NAP development process, though efforts were made to broaden participation beyond traditional groups. This can be attributed to the fact that the CSO organisation that had previously undertaken the role of mobilizing these stakeholders had seen the project come to an end and no other funds were available.

In regard to address commitment implementation challenges, the current NAP seeks to establish a national OGP programme. However as already outlined this may not necessarily lead to sufficient resourcing. Improvements could also still be made to avoid working in silos and the MSF still meets irregularly and on an ad hoc basis. Where open contracting and beneficial ownership transparency is concerned, a commitment was clearly integrated into the current NAP to build on previous commitments. Finally, access to information and the protection of civic space, were not addressed or integrated into the current NAP.

³³³ Interview 6, Interview with IRM, 26th August 2019.

³³⁴ Interview 10, Interview with IRM, 12th August 2019.

³³⁵ OGP Handbook https://www.opengovpartnership.org/wp-content/uploads/2019/03/OGP_Handbook-Rules-Guidance-for-Participants_20190313.pdf

³³⁶ Open Government Reforms in Times of Political Transitions, Lessons from Latin America, 2018 <https://www.opengovpartnership.org/stories/open-government-reforms-in-times-of-political-transitions-lessons-from-latin-america/>

VI. Methodology and Sources

The IRM reports are written by researchers for each OGP-participating country or entity. All IRM reports undergo a process of quality control 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, observation, and feedback from nongovernmental stakeholders. The IRM report builds on the evidence available in assessments of process and progress put out by civil society, the private sector, or international organizations. At the beginning of each reporting cycle, IRM staff share a research plan with governments to open a seven-day period of comments or feedback regarding the proposed research approach.

Each IRM researcher carries out stakeholder interviews to ensure an accurate portrayal of events. Given budgetary and calendar constraints, the IRM cannot consult all interested parties or visit implementation sites. Some contexts require anonymity of interviewees and the IRM reviews the right to remove personal identifying information of these participants. Due to the necessary limitations of the method, the IRM strongly encourages commentary during the pre-publication review period of each report.

Each report undergoes a quality-control process that includes an internal review by IRM staff and the IRM's International Experts Panel (IEP). Each report also undergoes an external review where governments and civil society are invited to provide comments on the content of the draft IRM report.

This review process, including the procedure for incorporating comments received, is outlined in greater detail in Section III of the Procedures Manual.³³⁷

Interviews and stakeholder input

Given the limited amount of information on the OGP process in Kenya, the research strategy adopted for the initial draft of the IRM report was to conduct in-person qualitative interviews with key informants. Interviews targeted members of the technical and steering committees and lead agencies or organisations leading on commitments given their strategic interest, historical involvement and broad knowledge of the NAP design process.

Ten interviews were conducted and correspondence made with representatives from the following institutions:

1. Office of the Deputy President
2. Mzalendo Trust
3. Article 19 East Africa
4. Hivos East Africa
5. Constitution and Reform Education Consortium (CRECO)
6. Local Development Research Institute (LDRI)
7. Kenya Space Agency
8. Office of the Attorney General
9. African Peer Review Mechanism
10. Women's Empowerment Link (WEL)
11. The Senate

12. County Government of Makueni
13. FEMNET

The IRM researcher identified these stakeholders from documentation, such as the NAP and located them using the snowballing method or through personal networks. Each interview made reference to a question guide. Additionally, each interview was audio recorded and extensive notes transcribed from each recording on the assurance that the privacy and confidentiality of respondents would be protected. To this end all referenced to interviews have been appropriately coded.

The Researcher was unable to attend stakeholder, strategy or reflection meetings as none were scheduled during the report writing period.

About the Independent Reporting Mechanism

The Independent Reporting Mechanism (IRM) is a key means by which all stakeholders can track OGP progress in participating countries and entities. The International Experts Panel (IEP) oversees the quality control of each report. The IEP is comprised of experts in transparency, participation, accountability, and social science research methods.

The current membership of the International Experts Panel is

- César Nicandro Cruz-Rubio
- Mary Francoli
- Brendan Halloran
- Jeff Lovitt
- Juanita Olaya

A small staff based in Washington, DC, shepherds reports through the IRM process in close coordination with the researchers. Questions and comments about this report can be directed to the staff at irm@opengovpartnership.org.

³³⁷ IRM Procedures Manual, V.3 : <https://www.opengovpartnership.org/documents/irm-procedures-manual>

Annex I. Overview of Kenya's performance throughout action plan development

Key:

Green= Meets standard

Yellow= In progress (steps have been taken to meet this standard, but standard is not met)

Red= No evidence of action

Multi-stakeholder Forum	
1a. Forum established: There is a forum to oversee the OGP process	Green
1b. Regularity: The forum meets at least every quarter, in person or remotely	Yellow
1c. Collaborative mandate development: Members of the forum jointly develop its remit, membership and governance structure.	Yellow
1d. Mandate public: Information on the forum's remit, membership and governance structure is available on the OGP website/page.	Red
2a. Multi-stakeholder: The forum includes both governmental and non-governmental representatives	Green
2b. Parity: The forum includes an even balance of governmental and non-governmental representatives	Green
2c. Transparent selection: Non-governmental members of the forum are selected through a fair and transparent process.	Green
2d. High-level government representation: The forum includes high-level representatives with decision making authority from government	Green
3d. Openness: The forum accepts inputs and representation on the action plan process from any civil society or other stakeholders outside the forum	Yellow
3e. Remote participation: There are opportunities for remote participation in at least some meetings and events	Red
3f. Minutes: The OGP forum proactively communicates and reports back on its decisions, activities and results to wider government and civil society stakeholders	Red

Key:

Green= Meets standard

Yellow= In progress (steps have been taken to meet this standard, but standard is not met)

Red= No evidence of action

Action Plan Development	
4a. Process transparency: There is a national OGP website (or OGP webpage on a government website) where information on all aspects of the national OGP process is proactively published.	Yellow
4b. Documentation in advance: The forum shares information about OGP to stakeholders in advance to guarantee they are informed and prepared to participate in all stages of the process.	Red
4c. Awareness-raising: The forum conducts outreach and awareness raising activities with relevant stakeholders to inform them of the OGP process.	Yellow
4d. Communication channels: The government facilitates direct communication with stakeholders to respond to action plan process questions, particularly during times of intense OGP activity.	Yellow
4e. Reasoned response: The multi-stakeholder forum publishes its reasoning behind decisions and responds to major categories of public comment.	Red
5a. Repository: Government collects and publishes a document repository on the national OGP website/webpage, which provides a historical record and access to all documents related to the national OGP process, including (but not limited to) consultation documents, National Action Plans, government self-assessments, IRM reports and supporting documentation of commitment implementation (e.g. links to databases, evidence of meetings, publications)	Red

Editorial note: If a country “meets” the six standards in bold IRM will recognize the country’s process as a Starred Process.