

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

This report was prepared in collaboration with Ruth Kendagor, University of Eldoret.

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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 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 progress and determine if efforts have impacted people's lives.

The IRM has partnered with Ruth Kendagor from University of Eldoret to carry out this evaluation. The IRM aims to inform ongoing dialogue around the 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>.

This report covers the implementation of Kenya's third action plan for 2018-2020. In 2021, the IRM implemented a new approach to its research process and the scope of its reporting on action plans, approved by the IRM Refresh.¹ The IRM adjusted its Implementation Reports for 2018-2020 action plans to fit the transition process to the new IRM products and enable the IRM to adjust its workflow in light of the COVID-19 pandemic's effects on OGP country processes.

¹ For more information, see: IRM Refresh, OGP, <https://www.opengovpartnership.org/process/accountability/about-the-irm/irm-refresh/>

II. Action Plan Implementation

The IRM Transitional Results Report assesses the status of the action plan's commitments and the results from their implementation at the end of the action plan cycle. This report does not re-visit the assessments for "Verifiability," "Relevance" or "Potential Impact." The IRM assesses those three indicators in IRM Design Reports. For more details on each indicator, please see Annex I in this report.

2.1. General Highlights and Results

Kenya's third national action plan contained six commitments addressing different priority policy areas for reforms. Although the different commitments recorded varying levels of implementation, the overall progress was limited. By the end of the cycle, in August 2020, the commitments on beneficial ownership and OGP resilience were substantially implemented, while the commitments on open contracting, public participation, and open data were limited. Commitment 5, on improving public service, was not started, although related activities were undertaken that laid ground for the fourth action plan. In comparison with the previous plans, Kenya recorded a slower rate in implementation and change in government practice² during the third national action plan.

Progress in implementing beneficial ownership could be attributed to the drive to honor pledges made in other forums, such as the London Anti-Corruption Summit and the presidential directive on implementation of beneficial ownership, coupled with strong support from civil society organizations (CSOs). However, as detailed in the sections that follow, other factors, such as the COVID-19 pandemic and capacity and resource challenges, hindered implementation. Further, two commitments (open contracting and public service delivery) involved a redesign of the activities, and therefore could not be completed within the plan period. Thus, although open contracting was identified as a noteworthy commitment in the IRM Design Report,³ the general implementation level was limited since the redesign of the government procurement systems needed more time, beyond the action plan window.

Early results from implementation include the adoption of the beneficial ownership register, which has resulted in higher levels of compliance to statutory requirements by companies, and steps toward transparency gained through registry access by competent authorities, such as the procurement authorities. Equally, through the continuous engagement of local governments under Commitment 6, Kenya was able to have three local governments⁴ join the OGP Local Program in the 2020 cohort.

2.2. COVID-19 Pandemic Impact on Implementation

Activities most affected by the COVID-19 pandemic were those involving direct engagement with members of the public. For instance, the public participation campaigns under Commitment 4. Equally, physical meetings for the commitment actors were limited. Although this slowed down engagements for a while, the actors transitioned to virtual meetings and hybrid, in-person and virtual sessions.

² The second national plan had eight commitments, with one fully implemented and three substantially implemented. Five of the nine commitments in the first action plan were not started. The results reports for these action plans can be found here: IRM Staff with contributions from Tracy-Lynn Humby and Caroline Othim, *Independent Reporting Mechanism, (IRM): Kenya End-of-Term Report 2016–2018*, OGP, https://www.opengovpartnership.org/wp-content/uploads/2020/08/Kenya_End-of-Term_Report_2016-2018.pdf and Geoffrey Runji Njeru, *Independent Reporting Mechanism: Kenya Progress Report 2012–13*, OGP, https://www.opengovpartnership.org/wp-content/uploads/2019/07/Kenya_final_2012_0.pdf.

³ *Kenya Design Report 2018–2020*, OGP, 1 April 2021, <https://www.opengovpartnership.org/documents/kenya-design-report-2018-2020/>.

⁴ Nairobi, Makueni, and Nandi Counties joined the OGP Local Program in the 2020 cohort. This is in addition to Elgeyo Marakwet, which joined in 2016. For more information, please see OGP Local, OGP, 2023, <https://www.opengovpartnership.org/ogp-local/>.

2.3. Early Results

The IRM acknowledges that results may not be visible within the two-year time frame of the action plan and that at least a substantial level of completion is required to assess early results. For the purpose of the Transitional Results Report, the IRM will use the “**Did it Open Government?**” (DIOG) indicator to highlight early results based on the changes to government practice in areas relevant to OGP values. Moving forward, new IRM Results Report will not continue using DIOG as an indicator.

Section 2.3 focuses on outcomes from the implementation of commitments that had an ambitious or strong design, per the IRM Design Report assessment, or that may have lacked clarity or ambition but had successful implementation with “major” or “outstanding” changes to government practice.⁵ Commitments considered for analysis in this section had at least a “substantial” level of implementation, as assessed by IRM in Section 2.4.⁶ While this section provides the analysis of IRM’s findings for the commitments that meet the criteria described above, Section 2.4 includes an overview of the level of completion for all the commitments in the action plan.

Commitment 1: Beneficial Ownership	
Aim of the commitment	<p>Beneficial ownership in Kenya has gained momentum through the OGP process. Out of four action plans, three have identified beneficial ownership as an instrumental strategy for fighting corruption and illicit financial flows.⁷ Before the action plans, the true beneficiaries of public sector contracts in Kenya were unknown. This lack of transparency created suspicions that public procurement processes were abetting corruption and illicit financial flows out of Kenya.⁸</p> <p>The commitment speaks to and progresses efforts spanning back to the presidential declaration on corruption as a national threat,⁹ the commitments made during the 2016 London Anti-Corruption Summit¹⁰ and the continuation of activities under the previous action plan. Prior to this commitment, the beneficial ownership activities had generated incremental but narrow change. For instance, the amendment of the Companies Act in 2017¹¹ provided legal definition of a beneficial owner, set requirements for companies to keep a register of beneficial owners</p>

⁵ IRM Design Reports identified strong commitments as “noteworthy commitments” if they were assessed as having a verifiable, relevant, and “transformative” potential impact. If no commitments met the potential impact threshold, the IRM selected noteworthy commitments from the commitments with “moderate” potential impact. For the list of Kenya’s noteworthy commitments, see the Executive Summary of the [2018–2020 IRM Design Report: Kenya Design Report](https://www.opengovpartnership.org/documents/kenya-design-report-2018-2020/), <https://www.opengovpartnership.org/documents/kenya-design-report-2018-2020/>.

⁶ Commitment 2 on Open Contracting was assessed as noteworthy in Kenya’s IRM Design Report but is not included in this section because its limited implementation means there is not enough progress to assess results.

⁷ At the time of reporting, Kenya had developed four action plans: 2012/13, 2016/18, 2018/20, and 2020/22. Except for the first action plan, 2012/13, all the action plans made commitments touching on beneficial ownership.

⁸ Kenya End-of-Term Report 2016–2018, OGP, 31 August 2020, <https://www.opengovpartnership.org/documents/kenya-end-of-term-report-2016-2018/>.

⁹ President of Kenya Uhuru Kenyatta. National Call to Action Against Corruption. 23 November 2015. <https://www.president.go.ke/2015/11/23/statement-by-his-excellency-hon-uhuru-kenyatta-c-g-h-president-and-commander-in-chief-of-the-defence-forces-of-the-republic-of-kenya-on-a-national-call-to-action-against-corruption-state-house/>

¹⁰ Transparency International. “43 countries, 600 commitments: Was the London Anti-Corruption Summit a success?” 12 September 2016. <https://www.transparency.org/en/news/43-countries-600-commitments-was-the-london-anti-corruption-summit-a-success>

¹¹ Government of Kenya. Companies Amendment Act of 2017. <http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2017/CompaniesAmendmentAct2017.pdf>

	<p>and file the same information with the registrar of companies. However, the effective application of this law required subsidiary legislation to operationalize it and provide the tools necessary to capture this information. Similarly, the Public Procurement Authority launched the Public Procurement Information Portal (PPIP)¹² to provide information on contract awards and tender notices. Although the PPIP published contracts awarded and company registration details, the information was not adequate to capture beneficial ownership.¹³ The 2018–2020 action plan further explains that the Kenyan government collects beneficial ownership information, but it is not made public.¹⁴</p> <p>This commitment endeavored to conduct a national risk assessment that would involve consultations with different stakeholders, develop associated regulations for beneficial ownership and make information on companies operating in the Republic of Kenya public through an open, accessible register. The register would also spotlight companies and individuals convicted of bribery or corrupt practices. An additional register was to be established to provide information on foreign and local entities and cover the purchase of public property.¹⁵</p>
<p>Did it open government?</p> <p>Marginal</p>	<p>Under this commitment, the Business Registration Service and partners established regulations and registered to collect beneficial ownership information. Overall, three of the four milestones aimed for under this commitment were completed. However, the register is not public and therefore the commitment fell short of its full potential to increase transparency.</p> <p>The key implementer, Business Registration Service (BRS),¹⁶ is a member to the National Risk Assessment Task Force (NRATF). This is a gazetted task force, established in March 2019 to combat money laundering and terrorism financing in Kenya. The task force membership includes actors drawn from government and nongovernmental agencies.¹⁷ The national risk assessment has been an ongoing exercise since 2019, by NRATF. Equally, NRAFT played a key role in looking into the availability and accessibility of beneficial ownership in Kenya. Although CSOs such as Hivos, Transparency International, and Mzalendo were not part of NRATF, these organizations worked closely with BRS, championing for the implementation of the register and regulations.¹⁸ At the time of reporting, Kenya had not published the risk assessment report, despite earlier announcements that it was expected</p>

¹² Public Procurement Information Portal (PPIP), 2023, <https://www.tenders.go.ke/>.

¹³ For more information on the previous action plan implementation, please refer to the 2016–2018 mid-term and end-term results reports: *Kenya Mid-Term Report 2016–2018*, OGP, 6 June 2018, <https://www.opengovpartnership.org/documents/kenya-mid-term-report-2016-2018-year-1/> and *Kenya End-of-Term Report*, <https://www.opengovpartnership.org/documents/kenya-end-of-term-report-2016-2018/>.

¹⁴ *Kenya Action Plan 2018–2020*, OGP, 10 December 2018, <https://www.opengovpartnership.org/documents/kenya-action-plan-2018-2020/>.

¹⁵ *Kenya Design Report*, <https://www.opengovpartnership.org/documents/kenya-design-report-2018-2020/>.

¹⁶ For more information about the Business Registration Service, please see Business Registration Service (BRS), <https://brs.go.ke/>.

¹⁷ “Task Force on the National Risk Assessment (NRA) on Money Laundering and Terrorism Financing,” MW & Company Advocates LLP, 15 April 2019, <https://mwc.legal/task-force-on-the-national-risk-assessment-nra-on-money-laundering-and-terrorism-financing/>; Kenya Gazette, vol.CXXI-No.34, Kenya Law, 22 March 2019, http://kenyalaw.org/kenya_gazette/gazette/volume/MTkyOA--/Vol.CXXI-No.34/

¹⁸ Mariam Mwakio, official, (Business Registration Services), interview with IRM researcher, 21 June 2021.

	<p>to be delivered by 28 February 2020, and an extension to December 2020 had been granted. While the report was still a work in progress at the time of writing, BRS noted that the consultations therein contributed input to the development of legislations and regulations.</p> <p>The beneficial ownership regulations were enacted. The Statute Law (Miscellaneous Amendments) Act 2019¹⁹ redefined the requirement to keep and file a beneficial owners register (with timelines specified), prescribed the penalties for noncompliance and, importantly, provided clarification on beneficial ownership information, as opposed to a list of directors/register of members. In addition, the Companies (Beneficial Ownership Information) Regulations 2020²⁰ operationalized the Act by prescribing the detailed information, steps, and format required for filing information. The regulations also introduced clauses on disclosing and accessing beneficial ownership information, prohibiting public access, and restricting use and access to competent authorities. However, the regulation allows companies to disclose beneficial ownership information for purposes of communication to the beneficial owners, to comply with regulations or court orders, or with the written consent of the beneficial owner.</p> <p>With the legislative frameworks in place, the beneficial ownership register was established in October 2020.²¹ BRS issued a 31 July 2021 deadline for all companies to submit beneficial ownership information on the e-register.²² Within the action plan implementation period, BRS operationalized e-register for private limited companies and advanced on the e-registers for other types of companies beyond the implementation period. However, the register did not conform to the Beneficial Ownership Data Standards.</p> <p>Main challenges during implementation revolved around the capacity needed to support coordinated implementation. To ensure the accuracy and credibility of the information provided, BRS linked declaration of beneficial ownership information with statutory requirements for business registration and filing of annual returns. Companies had to ensure correct status in terms of compliance with annual returns declaration as they filed for beneficial ownership information. This created an influx of companies working toward meeting the set deadlines and thus, extra capacity demands on BRS. In a bid to address this challenge, BRS undertook a phased approach to documentation of beneficial ownership information—starting with private companies, then companies limited by guarantee, followed by public foreign companies, and lastly, public local companies. Further, implementation of milestones 4 and 5 required close collaboration with other government agencies, such as the Ethics and Anti-Corruption Commission, Directorate of Public Prosecution, Public</p>
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¹⁹ “Kenya Gazette Supplement,” no. 114 (acts no. 12), Republic of Kenya, 9 July 2019, <http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2019/StatuteLawMiscellaneousAmendmentsAct2019.pdf>.

²⁰ Government of Kenya. Companies (Beneficial Ownership Information) Regulations 2020. http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN12_2020.pdf

²¹ Government of Kenya. Business Registration Service. “Beneficial ownership E-Register Operationalized 20 October 2020.” https://brs.go.ke/assets/downloads/Press_Release_BENEFICIAL_OWNERSHIP_E_REGISTER_OPERATIONALIZED_30th_October_2020_Approved.pdf

²² Government of Kenya. Business Registration Service. Extension of Beneficial Ownership Information Submission. https://brs.go.ke/assets/downloads/Press_Release_Extension_BO.pdf

	<p>Procurement Regulatory Authority, and National Lands Commission, which was not realized within the implementation period that ended in August 2020. Milestones 4 and 5 were not implemented and were carried forward to the 2020–2022 action plan.</p> <p>Companies must now comply with statutory mandatory requirements, such as filing of annual returns with the registrar of companies. BRS has regularized information records for each company and thus, enabled the companies and companies’ registry to be at par, through the “link up business”²³ initiative where companies had to file annual returns before provision of beneficial ownership information. This serves as a means of verification to ensure the information provided is correct and up-to-date. In addition, BRS granted Public Procurement Regulatory Authority (PPRA) read-only access to the registry, to facilitate PPRA’s work, including counterchecking information provided through the PPIP platform.</p> <p>The amendment and enactment of the law has provided the institutional framework needed for implementation of BO. This gave room for the operationalization of the register, as evidenced by public notice from BRS for companies to file. The reform also enhanced the OGP value of civic participation by creating spaces for CSOs and non-state actors to participate in the national risk assessment and in amending the law. However, the contribution of these milestones toward changing government practice and enhancing access to information were limited since access to the register was limited to specific authorities. By the end of the implementation period, the National Risk Assessment Report had not yet been shared. Hence, the influence that would be yielded by the findings of the report was not achieved. The commitment fell short of its ambition to make the BO register open and accessible. And it failed to provide information on companies bidding for and buying property and companies convicted of bribery and corruption.</p>
Commitment 6: Open Government Resilience	
Aim of the commitment	<p>Although Kenya joined OGP in 2011, coordination of OGP activities were not structured. OGP in Kenya generally lacked a whole-of-government approach, with gaps in institutional memory as a main challenge. In addition, there were no supporting structures for peer learning among the local governments in the country, nor among the African states, as intra-country activities only happened at OGP summit events. The government point of contact (POC) was identified to champion the process, but lacked adequate linkages with other national government departments, local governments, and non-state actors to foster collaboration and fast-track implementation of commitments.²⁴ As further explained in the action plan, support systems for open government were unstructured or nonexistent within and across African countries. Open government in</p>

²³ Government of Kenya. Business Registration Service.

https://brs.go.ke/assets/downloads/PUBLIC_NOTICE_LINK_A_BUSINESS.pdf

²⁴ Phillip Thigo, (Government POC), interview with IRM researcher, 3 November 2021.

	<p>Africa mostly revolved around individual POCs and lacked whole-of-government, high-level political support.²⁵</p> <p>This commitment aimed to establish a framework to link Kenya's OGP activities with African values recognized across governments and identify and establish structures that could anchor OGP in Kenya (locally and nationally) and in other African states. The commitment is anchored on the two-tier government. It aims to leverage OGP technologies and values for open government at the local level.</p>
<p>Did it open government?</p> <p>Marginal</p>	<p>Implementation of this commitment strengthened OGP structures in Kenya to facilitate government and civil society collaboration, implementation of commitments, and county-level engagement.</p> <p>The government identified lead contacts from key government branches, such as the Senate, and selected local governments to join the national OGP process. To this end, the local governments brought on board Nandi, Nairobi, Vihiga, and Makueni Counties. Phillip Thigo, the government OGP POC²⁶ noted that early results from the local engagement included Makueni, Nairobi,²⁷ and Nandi Counties' ascension to the OGP Local Program²⁸ and Makueni's leadership in open government initiatives, such as public participation and open contracting, prior to joining the OGP Local Program.²⁹</p> <p>The National Secretariat was established in 2019. Members of the Secretariat are the POC Phillip Thigo, Maureen Kariuki (OGP Support Unit), Steph Muchai (Hivos and member of OGP Global Steering Committee), Sandra Musoga (Article 19, and holder of co-creation grant) and Sharon Sambu (designated as a full-time government official supporting the OGP activities). The mandate of the Secretariat was to coordinate all activities of OGP, including (i) scouting for and sharing opportunities to network members, (ii) responding to requests for champions and government-CSO support (as in the case of beneficial ownership), (iii) preparing Steering Committee meetings, (iv) delegations for OGP summits, (v) workstreams and other OGP events, (vi) correspondence with commitment leaders, and (vii) serving as penholder for the national action plans.³⁰ The Multi-Stakeholder Technical Committee was also established. Membership was identified during co-creation and officially commissioned during the launch of the action plan in February 2019.³¹ Membership was comprised of respective POCs from Senate and local governments and technical officers from institutions and organizations represented in the Steering Committee. The core function of the Technical Committee was to ensure</p>

²⁵ "Kenya Action Plan," <https://www.opengovpartnership.org/documents/kenya-action-plan-2018-2020/>.

²⁶ Thigo, interview.

²⁷ Nairobi, Kenya, OGP, 2023, <https://www.opengovpartnership.org/members/nairobi-kenya/>.

²⁸ News Detail, County Government of Nandi, <https://nandicounty.go.ke/news/nandi-county-joins-the-elite-group-of-open-government-partnership-ogp-2021/>; Nandi, Kenya, OGP, <https://www.opengovpartnership.org/members/nandi-kenya/>; Makueni Now a Member of OGP, Makueni County Government, 2023, <https://makueni.go.ke/2020/partnerships/makueni-now-a-member-of-ogp/>; Makueni, Kenya, OGP, <https://www.opengovpartnership.org/members/makueni-kenya/>.

²⁹ Alex Macbeth, "Makueni: The Small County Leading Action on Open Procurement in Kenya" Open Contracting Partnership, 12 January 2021, <https://hivos.org/news/kenyas-makueni-county-adopts-the-open-contracting-approach/>.

³⁰ Thigo, interview.

³¹ The membership list for the technical and steering committees are provided in the action plan and can be viewed here: *Kenya Action Plan*, <https://www.opengovpartnership.org/documents/kenya-action-plan-2018-2020/>.

	<p>workstreams were driven toward implementation and to facilitate connection with principals in the Steering Committee for political expediency in decision-making and approvals. For instance, for the commitment on legislative openness and public participation, Senator Fatuma Dulo was the representative in the Steering Committee and Senate official Kavata Musyoka was the representative in the Technical Committee.³²</p> <p>Although a network had already been established in December 2016, with a WhatsApp group in place, membership was expanded during the action plan period. Membership at the time of writing was comprised of actors from government and nongovernmental organizations (not limited to OGP) and all actors with interests in open government at large. The objective of the network is to bring together all actors interested in the values of open government and create mechanisms for engagement between CSO, government, and private actors. An example of activity conducted by the network is an open dialogue forum held in Mombasa in 2019, which significantly influenced the co-creation and commitments for the third action plan.</p> <p>The government, with the support of Article 19, created the open government website,³³ but failed to update it thereafter. Although the community of practice was not established as intended, government and its actors, such as Mzalendo, utilized other existing platforms, such as their Twitter handles³⁴ as sharing platforms.</p> <p>According to the government POC,³⁵ implementation of milestone 30 was not structured and documented in the desired sense, but has recorded positive traction, especially in terms of sharing knowledge and practices in various forums, including the OGP summit; the Inter-Professional Summit;³⁶ and peer learning forums with African countries, such as Uganda, Burkina Faso, and Sierra Leone.³⁷ In addition, as part of the milestone, the Local Development Research Institute³⁸ commissioned research on how CSOs support OGP processes in Kenya.³⁹ The research aimed at building resilience of Kenya's OGP to withstand political shocks and change of administrations.</p> <p>Implementation of this commitment has contributed positively to the attainment of important results. Adding the three new county governments to the national process contributed to their inclusion in the OGP Local Program, an important achievement that shows how Kenya has strengthened open government beyond national level institutions. Another result area is the improved government. CSO engagement,</p>
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³² Thigo, interview.

³³ <https://opengovernment.ke/>.

³⁴ Open Government Kenya, Twitter, <https://twitter.com/ogpkenya>; Mzalendo, Twitter, <https://twitter.com/MzalendoWatch>.

³⁵ Thigo, interview.

³⁶ Inter-Professional Summit website. <http://inter-professionalsummit.co.ke/>.

³⁷ ogpkenya, Twitter, <https://twitter.com/ogpkenya/status/1097577527852367879>.

³⁸ Village Based Advisors, Local Development Research Institute, 2022, <https://www.developlocal.org/>.

³⁹ The research publication can be found here: Jessica Musila, *From Plans to Actions: How CSOs Support the OGP Process in Kenya*, Local Development Research Institute (LDRI), <https://www.developlocal.org/wp-content/uploads/2020/12/LDRI-Final-Presentation-Document.pdf>.

	<p>however, was more visible during co-creation of the fifth action plan,⁴⁰ compared to the implementation period and activities in the third action plan. These results contribute to enhancing the resilience of OGP initiatives by expanding the level of participation and cultivating strong links between government and CSO that are crucial to supporting OGP, more so during uncertain political periods.⁴¹</p> <p>This commitment has contributed a step forward in opening government at the national level but remains limited at continental level. Before this commitment, Elgeyo Marakwet's activities in the OGP Local Program were not in sync with national level activities. While this was not a requirement, the IRM report for Elgeyo Marakwet recommended collaboration between national and local government for strong support in implementation.⁴² This commitment has improved collaboration for local governments participating in OGP and for other county governments, such as Vihiga—which is not a member of OGP but expressed interest in implementing activities toward open government. In addition, CSO engagement in Kenya over the previous national action plans was inadequate. The IRM Design Report recommended deepening civil society engagement and addressing resilience of Kenya's open government agenda.⁴³ Through the activities under this commitment, the government-CSO engagements improved in implementation and in co-creation of the fourth action plan.</p>
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⁴⁰ A detailed description of the multi-stakeholder engagement in co-creation of Kenya's NAP IV can be found in the Action Plan Review Report here: Independent Reporting Mechanism, *Action Plan Review: Kenya 2020–2022*, https://www.opengovpartnership.org/wp-content/uploads/2021/10/Kenya_Action-Plan-Review_2020-2022_for-public-comment.pdf.

⁴¹ Musila, *From Plans to Actions*, <https://www.developlocal.org/wp-content/uploads/2020/12/LDRI-Final-Presentation-Document.pdf>.

⁴² Ruth Jepkorir Kendagor, *Independent Reporting Mechanism (IRM): Elgeyo Marakwet Final Report 2017*, OGP, https://www.opengovpartnership.org/wp-content/uploads/2018/05/Elgeyo-Marakwet_Report_2017_for-public-comments.pdf.

⁴³ IRM in collaboration with Linda Oduor-Noah, *Independent Reporting Mechanism (IRM): Kenya Design Report 2018–2020*, OGP, https://www.opengovpartnership.org/wp-content/uploads/2021/04/Kenya_Design_Report_2018-2020.pdf.

2.4. Commitment Implementation

The table below includes an assessment of the level of completion for each commitment in the action plan.

Commitment	Completion: <i>no evidence available, not started, limited, substantial, or complete.</i>
1. Beneficial Ownership	Substantial. <i>For details regarding the implementation and early results of this commitment, see Section 2.3.</i>
2. Open Contracting	<p>Limited.</p> <p>This commitment achieved a limited level of implementation as the National Treasury broadened its aim from updating the Public Procurement Information Portal (PPIP) to revamping the entire Electronic Government Procurement system, which required a longer timeline.</p> <p>Implementation of milestone 6 and 9 was supported by the Institute for Social Accountability (TISA). In November 2019, TISA engaged and consulted different actors in Elgeyo Marakwet, a selected county in conducting a rapid assessment of preference and reservation schemes in Access to Government Procurement Opportunities (AGPO) for disadvantaged groups. The assessment aimed to (a) assess the level of implementation of AGPO in Elgeyo Marakwet County; (b) identify gaps, challenges, and best practices; and (c) generate evidence to inform capacity building, sensitization, and advocacy of stakeholders.⁴⁴ However, the review of recommendations in studies published by partners and additional research on closing the existing data gaps was not done.⁴⁵</p> <p>At the time of research,⁴⁶ the Open Contracting Data Standard (OCDS) had not been implemented on the PPIP. However, the National Treasury was in the process of re-strategizing the existing procurement system into a revamped electronic government procurement system, upon which the OCDS standard would be laid and would progress government procurement systems beyond the PPIP.⁴⁷ Training and capacity building was conducted for various actors, including government officials from the PPRA and the National Treasury, the media, and CSOs. Training organized by the Open Contracting Partnership focused on application of the data standard and data use and management.⁴⁸ Revamping of the</p>

⁴⁴ *Assessment of Implementation of Access to Government Public Procurement (AGPO) on Promotion of Preference and Reservation Schemes for Disadvantaged Groups In Elgeyo Marakwet County*, The Institute of Social Accountability (TISA), January 2020,

https://www.tisa.or.ke/images/uploads/TISA_AGPO_Assessment_Report_in_Elgeyo_Marakwet_County_2020.pdf.

⁴⁵ Stephanie Muchai, East Africa lead, (Global Open Contracting Program, Hivos), interview with IRM researcher, 13 July 2021.

⁴⁶ Assessment of the implementation status of Kenya's 2018–2020 National Action Plan took place between June and November 2021.

⁴⁷ *Strategy for Implementation of an e-Government Procurement System for the Government of Kenya*, Republic of Kenya National Treasury & Planning, Steph Muchai's LinkedIn, September 2020, <https://www.linkedin.com/posts/activity-673888032306393088-1D76/>.

⁴⁸ Muchai, interview; Lawrence Kanyiyi and Jibril Ahmed, (PPRA), interview with IRM researcher, 22 November 2021.

	Kenya Open Data Portal ⁴⁹ was not done. ⁵⁰ However, the open contracting data from Makueni County is available on the county's open contracting portal. ⁵¹
3. Open Geospatial Data	<p>Limited.</p> <p>The Kenya Space Agency and Information and Communication Technology (ICT) Authority made incremental progress toward public-private sharing of geospatial data. Milestone 10 sought to establish and sustain an appropriate public-private cooperation platform on Earth observations and geospatial information. Prior to the action plan, Kenya had limited platforms for cooperation between government and private actors in the realm of open data. Although private entities and nongovernmental partners had previously been mapped out by the Kenya Space Agency and its actors, most of them were engaging with OGP and government at large for the first time. Equally, the Kenya Space Agency had not fully grasped its role in coordinating this level of engagement. However, during the action plan period, Strathmore University and Amazon Web Services supported the Africa Regional Data Cube Initiative.⁵² The participating government agencies include the ICT Authority and the Office of the Deputy President. Two major reasons cited for the inadequate cooperation are the unwillingness of data providers to readily provide their data and the inability of the ICT Authority to obtain and collect such data. However, the government has since received substantial support from the private sector, especially from Esri, but the challenge of licensing remains a major obstacle to private partners.⁵³</p> <p>Despite these limitations, the Kenya Space Agency launched Project MIDST (Monitoring for Information and Decisions using Space Technology) in July 2020, with the aim of using geospatial technologies to codevelop various Earth observation products and applications with stakeholders, to achieve certain goals within their mandate. The project makes use of Google Earth Engine and other remote sensing and geographic information system (GIS) platforms, such as ArcGIS and Digital Earth Africa, to conduct its operations.⁵⁴</p> <p>Regarding milestone 11, the draft geospatial guidelines and standards were developed, but not yet approved by the Council of Governors. Equally, the Kenya Space Agency spearheaded the development of a policy on development and use of geospatial data, which, at the time of research, had not been approved for adoption.⁵⁵</p> <p>Milestone 12 sought to leverage the Africa Regional Data Cube to bring together various actors to develop and share tools, knowledge, and technology through an open platform and improve access to open geospatial data. During implementation, several</p>

⁴⁹ <https://www.opendata.go.ke/>. As at the time of research (June–November 2021), the portal had last been updated in May 2017.

⁵⁰ Major Andrew Nyawade, (Kenya Space Agency), interview with IRM Researcher, 22 June 2021.

⁵¹ Makueni County. Open Contracting Portal. <https://opencontracting.makueni.go.ke/portal/tender>

⁵² Africa Regional Data Cube, Global Partnership for Sustainable Development Data, 2022, <https://www.data4sdgs.org/ARDC>.

⁵³ Nyawade, interview.

⁵⁴ Project MIDST, Kenya Space Agency, <https://www.ksa.go.ke/projects/midst>.

⁵⁵ Nyawade, interview.

	<p>government and non-government agencies participated in developing use cases in the priority areas of land degradation, agriculture, water quality and extent, urbanization, and forest cover. The Kenya Space Agency offered weekly, free training on use of the platform.⁵⁶</p> <p>Milestones 13 and 14 were not started.</p>
4. Public Participation	<p>Limited.</p> <p>During the implementation period, incremental progress was made toward operationalizing the constitutional requirement for public participation across government. The proposed Public Participation Law was presented to Senate for final reading, but its enactment was hampered by a court ruling requiring the Senate and the National Assembly to comply with constitutional provisions regarding consultations with the public and between the two legislative houses.⁵⁷ This ruling affected the Public Participation Bill and 22 other legislation already enacted or tabled for consideration.</p> <p>Prior to the action plan, only proceedings for the main Senate sessions and selected committees were live streamed. During the action plan period, the government moved forward to live streaming of all committees of Senate.⁵⁸</p> <p>Civil society organization Article 19⁵⁹ supported the establishment of the OGP commitment tracker.⁶⁰ The tracker provides descriptions and milestones for each commitment and implementation progress against the set timelines. However, at the time of research, neither government nor Article 19 had posted an update since its creation in 2019.</p> <p>Milestones 17 and 20 were not implemented.</p> <p>The Court Users Committee (CUC) is a platform that brings together actors and users in the justice sector to enhance public participation and stakeholder engagement, develop public understanding of court operations, and promote effective justice sector partnerships.⁶¹ The CUC guidelines were revised in 2019⁶² to provide a broader framework for engagement of state and non-state actors and, importantly, to clearly define the objectives, functions,</p>

⁵⁶ Nyawade, interview.

⁵⁷ Senate of the Republic of Kenya & 4 others v. Speaker of the National Assembly & another; Attorney General & 7 others (Interested Parties) [2020] eKLR (Petition 284 & 353 of 2019 [Consolidated]), Kenya Law, <http://kenyalaw.org/caselaw/cases/view/202549/>; <https://www.bowmanslaw.com/insights/dispute-resolution/the-nullification-of-senate-laws-the-decision-in-the-senate-vs-the-speaker-of-the-national-assembly-another/>. The case at hand concerned a power struggle between the two houses of parliament. To find out more about Kenya's parliament, please see About the Senate, Senate of the Republic of Kenya, <http://www.parliament.go.ke/the-senate/about> and About National Assembly, National Assembly of the Republic of Kenya, <http://www.parliament.go.ke/the-national-assembly/about>.

⁵⁸ The live streams can be found here: The Senate Live Proceedings, Senate of the Republic of Kenya, <http://www.parliament.go.ke/index.php/the-senate/live-proceedings>; Kavata Musyoka, government official, (Senate), interview with IRM researcher, 22 November 2021.

⁵⁹ Kenya, Article 19, <https://www.article19.org/region/kenya/>.

⁶⁰ Government of Kenya Open Government Partnership Website. <https://opengovernment.ke/index.php/commitments/>.

⁶¹ Government of Kenya. National Council on the Administration of Justice. "CUC Initiatives Towards Improving Court Services." <https://ncaj.go.ke/cuc-initiatives-towards-improving-court-services/>.

⁶² The new guidelines can be found here: *Court Users Committee Guidelines*, National Council on the Administration of Justice (NCAJ), revised 2019, [CUC-GUIDELINES-2019-PRINT-VERSION.pdf](https://www.ncaj.go.ke/CUC-GUIDELINES-2019-PRINT-VERSION.pdf) ([ncaj.go.ke](https://www.ncaj.go.ke)). The old guidelines can be found here: *Court Users' Committee*, NCAJ, https://www.law.berkeley.edu/wp-content/uploads/2015/10/Kenya_NCAJ_Court-Users-Cmte_brochure.pdf.

	<p>and scope of the CUC; measures for monitoring and evaluation; and descriptions of key performance indicators.</p> <p>In milestone 21, the Senate organized special visits to Kitui⁶³ and Kisumu Counties in September and April 2019, respectively. During the Kitui visit, dubbed Senate Mashinani, the Senate held sittings from 16 to 20 September 2019 at the Kitui County Assembly. The visit, which members of the public were invited to attend, sought to promote the work and role of the Senate and highlight existing opportunities for people to get involved, with a view of encouraging greater public engagement.</p>
5. Public Sector Performance	<p>Not started.</p> <p>None of the milestones were implemented as aimed for in the action plan. Instead, the Africa Peer Review Mechanism (APRM) Secretariat held sensitization forums⁶⁴ and drafted instruments that would be useful in collecting data and implementing the County Peer Review Mechanism (applicable to NAP IV).⁶⁵</p> <p>A misalignment between the reform's objective and written milestones as well as financial limitations hindered implementation of this commitment. As explained in the IRM Design Report⁶⁶ and reiterated by the APRM and governance director, New Partnership for Africa's Development, and APRM Kenya Secretariat, the milestones, as documented, did not capture or relate to the actual intention of the commitment. Instead of focusing on criticizing the existing indices, the desired objective was to borrow from the comprehensive review mechanisms APRM conducts for its member countries at the national level and replicate them at the subnational inter-county level in Kenya. Even with this clarified intention, APRM faced financial limitations that hindered progress in carrying out major activities. While this commitment did not realize any change to government practice, it laid ground for the implementation of the activities carried forward in the next action plan.</p>
6. Open Government Resiliency	<p>Substantial. <i>For details regarding the implementation and early results of this commitment, see section 2.3.</i></p>

⁶³ Senate Sittings in Kitui County, 16th to 20th September, 2019, Parliament of Kenya, <http://www.parliament.go.ke/senate-sittings-kitui-county-16th-20th-september-2019>.

⁶⁴ ogpkenya, Twitter, 11 December 2020, <https://twitter.com/ogpkenya/status/1337337770801557504>.

⁶⁵ Peter Kimemia, APRM and governance director, (NEPAD/APRM Kenya), interview with IRM researcher, 13 July 2021.

⁶⁶ Kenya Design Report, <https://www.opengovpartnership.org/documents/kenya-design-report-2018-2020/>.

III. Multi-Stakeholder Process

3.1 Multi-Stakeholder Process throughout Action Plan Implementation

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 the OGP process. Kenya **acted contrary** to OGP process during the implementation of the 2018-2021 action plan.⁶⁷ Kenya did not update the domestic OGP website to provide information on the progress of the commitments.

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

Table 3.2: Level of Public Influence

IRM has adapted the International Association for Public Participation "Spectrum of Participation" to apply it to OGP.⁶⁸ In the spirit of OGP, most countries should aspire to "collaborate."

Level of public influence		During development of action plan	During implementation 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.		

⁶⁷ Definition of "acting contrary to process": The country did not (1) meet "involve" during the development or "inform" during implementation of the action plan, or (2) the government failed to collect, publish, and document a repository on the national OGP website/webpage in line with IRM guidance.

Note: By the time of publication of this report, Kenya developed and submitted a new 2021–2023 action plan. IRM assessed the process of co-creation, and Kenya met the minimum requirements.

⁶⁸ "IAP2's Public Participation Spectrum," International Association for Public Participation (IAP2), 2018, https://cdn.ymaws.com/www.iap2.org/resource/resmgr/pillars/Spectrum_8.5x11_Print.pdf.

In comparison to the co-creation process, multi-stakeholder engagement improved marginally during implementation. Two key committees were established to oversee the OGP processes. The Steering Committee was comprised of top-level decision-making officials from government and civil society. It was responsible for providing the overall direction and decision-making on the commitments and for implementation. The Technical Committee was comprised of technical experts from each of the organizations and institutions represented in the Steering Committee. The Technical Committee coordinated the implementation process. Its activities were organized by the National Secretariat.

Most of the multi-stakeholder engagement took place through Technical Committee activities. At the beginning of implementation, the government categorized all its actors into cluster working groups according to commitments. In this manner, a total of five cluster groups were created, with the National Secretariat acting as cluster six. Each cluster group had an equal representation of government and non-state actor/CSO. Every cluster was mandated to coordinate its respective meetings and consultations to facilitate implementation of its commitment. The National Secretariat would then coordinate joint meetings for all cluster members to report progress made and share experiences, lessons learned, and challenges faced. However, IRM research could not determine the exact number of committee or cluster meetings. In addition, the Commission on Administrative Justice hosted two Steering Committee meetings and a few network activities (the Steering Committee and OGP Network is explained under section 2.3). The committees' membership was provided on the country's OGP website, but the remit and governance structure were not spelled out.

3.2 Overview of Kenya's performance throughout action plan implementation

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	During Development	During Implementation
1a. Forum established: The Steering Committee provided overall direction and decision-making on the commitments and implementation, while the Technical Committee drafted commitments and coordinated implementation. ⁶⁹	Green	Green
1b. Regularity: IRM research could not establish the number and frequency of meetings. However, evidence of some meetings was available. ⁷⁰	Yellow	Yellow
1c. Collaborative mandate development: Members of the forum jointly develop its remit, membership, and governance structure.	Yellow	N/A
1d. Mandate public: Information on the forum's membership was provided on the country's OGP website. However, the information did not indicate the remit and governance structure of the forum.	Red	Yellow
2a. Multi-Stakeholder: The Steering and Technical Committees included actors from government and civil society groups.	Green	Green
2b. Parity: The key committees had an even balance of governmental and nongovernmental representatives.	Green	Green
2c. Transparent selection: Nongovernmental members of the forum are selected through a fair and transparent process.	Green	N/A
2d. High-level government representation: The forum includes high-level representatives with decision-making authority from government.	Green	Green
3a. Openness: The forum accepts input and representation on the action plan implementation from any civil society and other stakeholders outside the forum.	Yellow	N/A
3b. Remote participation: There are opportunities for remote participation in at least some meetings and events.	Red	N/A

⁶⁹ In her blog "The OGP Story in Kenya: Building Political Will for Open Government," Sandra Musoga Waswa, from Article 19, describes the spaces for dialogue and meetings held during the co-creation process, including MSF meetings and the formation of the six working groups by commitment: "The OGP Story in Kenya: Building Political Will for Open Government," OGP, 27 January 2020, www.opengovpartnership.org/stories/the-ogp-story-in-kenya-building-political-will-for-open-government/.

⁷⁰ ogpkenya, Twitter, 29 March 2019, <https://twitter.com/ogpkenya/status/1111511752561303552>; ogpkenya, Twitter, 23 May 2019, <https://twitter.com/ogpkenya/status/1131473238767394816>.

3c. Minutes: The OGP forum or the government proactively communicates and reports back on its decisions, activities, and results to wider government and civil society stakeholders.	Red	N/A
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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 Implementation	
4a. Process transparency: A national OGP website exists but was not updated to provide information on the progress of commitments, including progress against milestones, reasons for any delays, or next steps. The government did not publish a self-assessment report.	Yellow
4b. Communication channels: When assessed, the website had a feature allowing the public to comment on action plan progress updates.	Green
4c. Engagement with civil society: The government held at least two open meetings with civil society (one per year) to discuss the implementation of the NAP.	Green
4d. Cooperation with IRM: The government shared the link to the IRM report with other government institutions and stakeholders to encourage input during the public comment phase.	Green
4e. MSF engagement: The Steering and Technical Committees and the cluster working groups monitored implementation progress. However, evidence was not provided as to how frequently these groups meet to review progress or deliberate on the improvements needed.	Yellow
4f. MSF engagement with self-assessment report: The government did not prepare nor submit its end-of-term self-assessment report to the national Multi-Stakeholder Forum for comments and feedback.	Red
4g. Repository: The government, in collaboration with Article 19, established an OGP website (https://opengovernment.ke/), but it does not include any evidence on progress during the action plan implementation period, as required by IRM guidance. ⁷¹	Red

⁷¹ "IRM Guidance for Online Repositories," IRM, updated March 2020, https://www.opengovpartnership.org/wp-content/uploads/2015/11/IRM_Guidance-for-Repositories_Updated_2020.pdf.

IV. Methodology and Sources

Research for the IRM reports is carried out by national researchers. All IRM reports undergo a process of quality control led by IRM staff to ensure that the highest standards of research and due diligence have been applied.

The International Experts Panel (IEP) of the IRM oversees the quality control of each report. The IEP is composed of experts in transparency, participation, accountability, and social science research methods.

Membership of the International Experts Panel is:

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

This review process, including the procedure for incorporating comments received, is outlined in greater detail in Section III of the Procedures Manual⁷² and in Kenya's Design Report (2018–2020).

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.



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⁷² *IRM Procedures Manual*, vol. 3, OGP, 16 September 2017, <https://www.opengovpartnership.org/documents/irm-procedures-manual>.

Annex I. IRM Indicators

The indicators and method used in the IRM research can be found in the IRM Procedures Manual.⁷³ 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?
- **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.

Results oriented commitments?

A potentially starred commitment has more potential to be ambitious and to be implemented. A good commitment design 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 behavior change that is expected from the commitment's implementation

⁷³ IRM Procedures Manual, <https://www.opengovpartnership.org/documents/irm-procedures-manual>.

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(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. To receive a star, a commitment must meet several criteria:

- The commitment’s design should be **Verifiable**, **Relevant** to OGP values, and have **Transformative** potential impact. As assessed in the Design Report.
- The commitment’s implementation must be assessed by IRM Implementation Report as **Substantial** or **Complete**.

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