



A DECADE OF REVIEW

Kenya - Open Government Partnership

JULY 2023

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About Mzalendo Trust

Mzalendo ('Patriot' in Swahili) Trust is a Kenyan non-partisan Parliamentary Monitoring Organization started in 2005 whose mission is to promote 'open, inclusive, and accountable parliaments across Kenya and Africa.' We do so by creating and managing civic tech tools, producing evidence-based research, and leading and facilitating advocacy and partnerships with Parliaments, citizens, and other relevant stakeholders. We believe that success in our work will build more effective and responsive legislations and political processes that support Kenya's national development goals. Currently, Mzalendo is the civil society convener on the co-creation and implementation of Kenya's Open Government Partnership (OGP) and leads the co-creation of the National Action Plan (NAP) IV, 2020-2022.

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Thank you to all open government champions and reformers past and present. Thank you for your vision, tenacity, sacrifices, and hard work for Kenyans to benefit from transparent, inclusive, participatory, and innovative governance.

Keep the fire burning.

Report Author

Steph Muchai, for Mzalendo Trust

Acronyms And Abbreviation

EGP - Electronic Government Procurement

IRM - Independent Reporting Mechanism

LAP - Local Action Plan

NAP - National Action Plan

OGP - Open Government Partnership

ODP - Office of the Deputy President

OPCS - Office of the Prime Cabinet Secretary

A. Executive Summary

The main objective of open government is to facilitate transparent governance with participation from an informed citizenry. This denotes a shift from bureaucracy-oriented governance to responsive, collaborative, and people-centred governance. The OGP strategy describes open government as an approach to mean:

- “Everyone can access relevant, usable, and timely information about government processes and decisions that impact their lives.
- Everyone has an equal opportunity to participate freely in shaping the public policies and decisions that impact their lives.
- Everyone has the freedom and ability to seek effective redress when the rule of law is not upheld, their rights are not respected, or their needs are unmet, without risk or harm.
- Public officials are accountable for their decisions and actions.
- Public resources are managed transparently, fairly, and equitably.
- Transparency, accountability, participation, and inclusion are embedded in the culture and practice of governments at all levels.”

Kenya’s journey to open government reforms began in the early 90s with the ushering in of multiparty rule paving the way for democratic values of governance. Almost two decades later, Kenya’s first comprehensive long-term development plan, Vision 2030, was launched in 2008. Amidst all the planned reforms were transformative political governance plans that committed to “a democratic political system that is issue-based, people-centred, result oriented and accountable to the public.” This approach of participatory accountable government was later enshrined in Kenya’s second Constitution, promulgated in 2010 with the most progressive bill of rights, and provisions on transparency, participation, citizen-centred law-making and other key foundational open government tenets.



Amidst all the planned reforms were transformative political governance plans that committed to “a democratic political system that is issue-based, people-centred, result oriented and accountable to the public.” This approach of participatory accountable government was later enshrined in Kenya’s second Constitution, promulgated in 2010 with the most progressive bill of rights, and provisions on transparency, participation, citizen-centred law-making and other key foundational open government tenets.

In the beginning, open government reforms in Kenya tended to have a heavy emphasis on data disclosure while missing the critical elements of participation and collaboration. Kenya’s first NAP commitments were not necessarily and strictly focused on opening government; but the nation has since then developed cohesive open government reforms and priorities; even aligning with global trends such as beneficial ownership. With little guidance at the beginning, much of the thinking on open government came from the open data community.

Slowly, Kenya has evolved its grasp to more holistic approaches beyond information disclosure to include increased interactions among diverse stakeholders and within distinct levels of government, as well as broader thinking of open government beyond ICT reforms. Kenya is now reflecting on its last decade or so in OGP to learn from its co-creation, commitments, implementation, and related processes to its open governance ambitions actualized via OGP. It is a timely reflection as OGP itself has just concluded the process of developing a new strategy for its members, operations, and focus areas for the period 2023-2028.

Since Kenya joined the OGP, there has been a raft of developments and gains noted. Largely the reforms have centred on legal reforms in various areas such as access to information and climate; enhanced legislative openness and public participation, improved integrity in the judiciary, improved public access to the judiciary and legal information, measures towards alternative justice systems for citizens, technological innovation for disclosure of data, open budgets, beneficial ownership, procurement transparency and overall resilience of open government reforms. Challenges and limitations have been encountered and mitigated along the way. These include low resourcing for open government reforms, political transitions and encumbrances, low awareness of the OGP beyond reformers and champions, the need for increased citizen demand, as well as completion pace of the national and county commitments.

Strong recommendations have been made in this report (See: Recommendations and Opportunities section) by key open government actors in the country for the next decade of OGP in Kenya, to ensure Kenya maximises and catalyses open government reforms and impact.

Reformers inside and outside of government want to see a people-centred OGP in the next ten years of implementation of Open Government Reforms under the Open Government Partnership - “We want to see the people of Kenya at the centre of everything. We do so that Kenyans can enjoy transformative changes in their lives and enjoy a high quality of life. Whatever mandate we are given over the next decade, we must have Kenyans at the centre of what you do”

B. Introduction

The Open Government Partnership (OGP) is a multilateral organization of reformers inside and outside government working to transform how government serves its citizens. It was launched in 2011 when 8 founding countries took their open government efforts further and formed the first Global Partnership committed to advancing open government in a strategic, accountable, and structured manner. Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom and the United States launched OGP with the endorsement of the Open Government Declaration.

Alongside these founding governments were civil society reformers. OGP's membership has since grown to 78 member countries and 106 local governments all working in partnership with civil society organizations across the globe. OGP provides a platform for reformers in and out of government to work together to meaningfully engage with the needs of the public, combat elite capture, and form responsive governments that serve and empower their citizens for long-term exponential benefits for all. The platform also provides a space for global, regional, national, and local peer exchanges, knowledge sharing and showcasing of governments' initiatives, successes, and learnings. Through the Partnership, reformers work together to co-create two or four-year national action plans (NAPs) in the case of national governments; or one-year Local Action Plans (LAPs) for local governments (known as county governments in Kenya).

These plans have concrete ambitious commitments across a broad range of policy areas that are submitted to the Partnership. This sets OGP apart as the only multilateral institution to have specific, measurable, achievable, relevant, and time-bound commitments from its member states. These are developed via a co-creation process that ensures civil society or direct citizen engagement in shaping and co-implementing commitments. National members and local jurisdictions are then assessed for their ambition and performance in the country by the Independent Reporting Mechanism (IRM) of the OGP. This enables members to not only track their progress but identify challenges and areas for improvement with each action plan. The premise of OGP is that governments that are more open, accessible, and responsible to their citizens, are more beneficial and



effective. Further, such governments improve their relationship with the people they serve and operate based on trust. Citizens around the globe are increasingly perceiving public institutions to be captured by the political and economic elite who are disconnected from the real and present needs of the people benefiting the powerful at the expense of ordinary citizens.

Kenya joined the OGP in 2011 via a letter of intent from the Ministry of Foreign Affairs. One year after the promulgation of the Constitution, Kenya launched the first Open Data Portal in Africa, dubbed the Kenya Open Data Initiative (KODI). Key government data was made freely available to the public, and this became the springboard for Kenya to seek and obtain membership in the Open Government Partnership in the same year, 2011. To participate in OGP, Kenya was required to exhibit a demonstrated commitment to open government by meeting a set of minimum performance criteria on key dimensions of open government that increase government responsiveness, strengthen citizen engagement, and fight corruption. Kenya entered into the Partnership meeting the minimal requirements for eligibility.

OGP was originally domiciled and coordinated by the Ministry for Information Communication and Technology. In Mombasa, 29th-30th May 2013, the Government of Kenya hosted an OGP Africa Regional Meeting under the theme: Taking OGP Forward in Africa, seeking to connect the OGP with other normative African Shared Values Instruments. This was a key regional initiative by Kenya bringing together for the first time OGP with Pan-African Institutions including the African Union Commission and its organs.



In 2015, OGP was reinvigorated and led by the Office of the Deputy President (ODP) and is currently domiciled in the Office of the Prime Cabinet Secretary (OPCS). In March 2020, Kenya successfully applied to be a member of the Global Steering Committee and has since been serving in that capacity alongside Canada, Chile, Germany, Indonesia, Italy (Troika Government Co-Chair), Morocco, Nigeria, Republic of Korea, the United

Kingdom, and Estonia (Lead Government Co-Chair 2022 -2023). In March 2023, Kenya was re-elected to a second term in the Steering Committee alongside the United States, and Spain.

Since joining OGP in 2011, the National Government has submitted four NAPs, making commitments in various policy areas showcasing ambition and strong implementation in some. Other commitments are still ongoing, while some processes have been identified as

needing strengthening and improvement. The most current completed NAP was for the period 2020-2022. Co-creation for the 5th NAP commenced on May 2023. For the first time, under new options provided to Member States by the OGP, the National Government will co-create a 4-year NAP, to run for the period 2023-2027. A departure from the 2-year NAPs developed until now. This is hoped to improve the rate of completion of commitments within a NAP period.

OGP also has a second membership option dubbed “OGP Local.” In it, the Partnership hosts independent membership of a diverse range of entities such as local governments, municipalities, provincial governments, etc. The Partnership recognises that local governments are directly engaged with citizens providing critical goods and services; with the potential for open government reforms to directly impact the people. The program boasts a membership of over 100 local governments. Kenya has four County Governments that are members of OGP Local: Elgeyo Marakwet, Nairobi, Nandi and Makueni counties. The County governments submit one-year LAPs under the Local membership.

C. Methodology Of Review

The key source of information for this review is publicly available literature on the Open Government Partnership and Kenya’s participation therein. This information was reviewed and analysed and formed part of the recommendations made in this report. This literature included;

1. Kenya’s 4 National Action Plans – 2012 – 2022¹
2. 4 Local Governments National Action Plans - Elgeyo Marakwet², Makueni³, Nairobi⁴ and Nandi⁵ counties.
3. 9 reports of OGP’s Independent Review Mechanism (IRM) on Kenya⁶
4. Report - From Plans to Action: How CSOs support the OGP process in Kenya⁷
5. OGP Strategy 2023 - 2028⁸
6. Academic paper – “Open government research over a decade: A systematic review” by Kuang-Ting Tai⁹

¹ Kenya National Action Plans, Open Government Partnership - <https://www.opengovpartnership.org/members/kenya/>

² Local Action Plan, Elgeyo Marakwet County - <https://www.opengovpartnership.org/members/elgeyo-marakwet-kenya/>

³ Local Action Plan Makueni County - <https://www.opengovpartnership.org/members/makueni-kenya/>

⁴ Local Action Plan Nairobi County not available - <https://www.opengovpartnership.org/members/nairobi-kenya/#current-action-plan>

⁵ Local Action Plan Nandi County - <https://www.opengovpartnership.org/members/nandi-kenya/>

⁶ Open Government Partnership Independent Review Mechanisms Reports, Kenya - <https://www.opengovpartnership.org/members/kenya/>

⁷ Musila, J (2020). From Plans to Action: How CSOs Support OGP in Kenya. <https://www.developlocal.org/from-plans-to-actions-how-csos-support-the-ogp-process-in-kenya/>

⁸ Open Government Partnership Strategy 2023-2028 - <https://www.opengovpartnership.org/strategy/>

⁹ Kuang-Ting Tai, Government Information Quarterly, <https://doi.org/10.1016/j.giq.2021.101566>

The secondary source of information for this report is key informant interviews which targeted representative persons involved in the design, co-creation, implementation, and review of Kenya’s various commitments over a decade of membership in the OGP. Targeted individuals were:

1. National Point of Contact
2. Technical committee and cluster leads
3. OGP Support Unit Members
4. Key National and Local OGP champions (government and civil society)

Participation in this review for secondary information was voluntary and undertaken with consent.

Risks and assumptions

| | |
|---------------------|--|
| Assumption 1 | Reports and other literature review materials and data are available for analysis; or will be made readily available upon request |
| Assumption 2 | Key informants are willing and available to provide their experiences, inputs, and recommendations toward the objectives of this report. |

D. Action Plans And Performance

Since 2016, countries' eligibility to be a member of the Partnership involved a 4-part eligibility criteria score and a two-part values check. The four eligibility criteria are country performance on access to information, fiscal openness, asset disclosure and citizen engagement. In OGP's Vital Signs Research report,¹⁰ it was found that participating members showed the best improvement in access to information, marginal changes in fiscal transparency and unfortunately a 20% decline in citizen engagement despite the centrality of public participation to open government. With regards to member countries' performance across all policy areas, anticorruption has been the 'highest performing' thematic area with public service delivery ranking as the lowest.



In Kenya, the country's maiden policy areas of commitment in its first National Action Plan (NAP) were in improving public services, increasing public integrity, and more effectively managing public resources. In consequent NAPs, Kenya has made and implemented commitments on; transparent and participatory climate policies, preventative and punitive mechanisms against corruption, transparency in legislative processes of Parliament and County Assemblies, publication of contracts (oil and gas, individual and company contracts), citizen-led, transparent and accountable procurement, access to government budget information and enhanced freedom of information/ records management, beneficial ownership, open contracting, open geospatial data for development, public participation and legislative openness, improved public service delivery performance, access to justice and open government resiliency.

Over the period of implementation of 4 NAPs, Kenya's performance has varied. According to the IRM which assesses the design and implementation of NAPs, Kenya did not manage to complete any of the 9 commitments made in the first Plan which only lasted for one year. 4 of the commitments had substantial or limited completion while 5 of the commitments had not been started by the end of the NAP period. Following this NAP, Kenya did not submit another until 2016. This second NAP had a total of 8 commitments and saw a boost in performance by the country. 1 commitment was wholly completed in the 2 years, while 5 had substantial or limited completion. 2 commitments were not started.

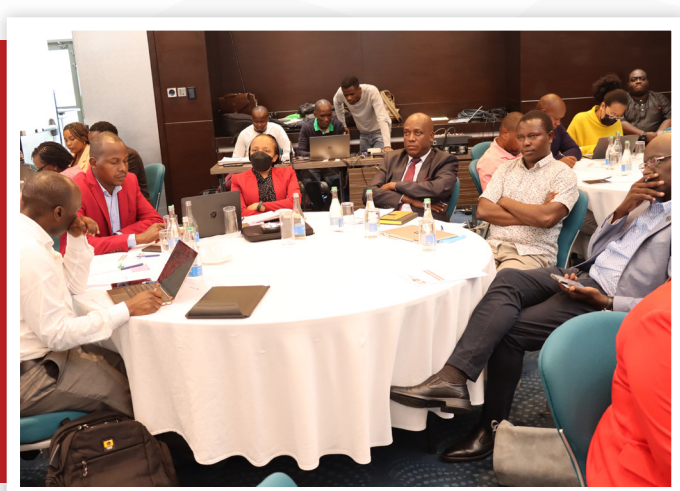
¹⁰https://www.opengovpartnership.org/wp-content/uploads/2021/12/Vital-Signs_Full-Report.pdf

The most recently concluded NAP was for the period 2020-2022. In this plan, 6 out of the 8 commitments were carried over from the previous action plans to complete unfinished milestones and introduce new implementation areas to enhance ambition in reform areas. It is also the country's first NAP as a country member of the Global Steering Committee. The final review report of the implementation of the NAP by the Independent Reporting Mechanism (IRM) of the OGP is yet to be published. However, the IRM has undertaken a review of the NAP commitments and found that 4 commitments have the potential to yield promising results. Open contracting, Public Participation and Legislative Openness, Access to Information and Access to Justice have all been initially assessed to be ambitious, verifiable, and relevant to OGP values.

According to key in-country actors¹¹ interviewed for this report, the overall performance of Kenya over the period of its various commitments since 2011 has been partially successful. Areas of partially successful implementation of open government commitments by Kenya were improvements noted in legislative openness, access to information, proactive disclosure of budgets and procurement contractual information, improvement in the availability of judicial and voter information online, transparency in appointment of public officials in open/public vetting for example, public participation, beneficial ownership, public records management, enactment of enabling laws and policies, partial interoperability with the public procurement information portal, and efforts towards sustainability/resilience measures for open government.

Furthermore, respondents cited the main enabling factors for Kenya's partial successes in the implementation of its OGP commitments as follows:

- 1. Political will:** All respondents cited political will as a crucial element to the implementation of OGP commitments. Whether this was high-level leadership at the Presidential, Ministerial, Devolved or Legislative levels, political buy-in for the implementation of OGP commitments was necessary. Where political will was present, respondents noted swift action; technical staff were assigned to the work of implementation and provided with the



¹¹ 17 persons were interviewed as key respondents for this research who have had past or recent direct engagement with OGP in Kenya.

implementation to various levels. Without political will, many of the commitments stalled as technical staff lacked the authority and approvals required for implementation. Political will was also found to be critical in overcoming conflicting interests or even potential sabotage from persons benefitting from opaque and non-inclusive ways of doing government.

2. Champions in government: All respondents commended government champions for the progress and entrenching of open government in Kenya. These include but are not limited to; Permanent Secretary Dr. Korir Sing’oei, H.E. Amb Dr. Bitange Ndemo, OGP National Point of Contact and President’s Advisor Philip Thigo, former Makueni Governor Kivutha Kibwana, County Points of Contact and many others who have individually made a significant contribution to spread awareness of OGP, conceptualize commitments of significant impact for Kenya, developed technical expertise in various elements of open government, and successfully built partnerships of external stakeholders in civil society, private sector and the development/bilateral agencies to support the partial success and resilience of OGP commitments. Champions in government are a key lever they stated, for the success of OGP in Kenya. They, however, face many challenges in their spaces of impact and influence with little institutionalized, resilient support in many cases. They have however managed to build up key reform agendas that have propelled many of the NAP and LAP commitments to be actualized.

3. Civil society champions for the open government have also been critical and an enabling factor to the successes of OGP in Kenya; they include Gladwell Otieno, Muchiri Nyaggah, Jessica Musila, and other dedicated reformers listed in the report – “How CSOs support OGP in Kenya” - Appendix IV: OGP CSO Champions. It also lists civil society networks and organisations that have been involved in OGP in Appendices II and III. The report further notes that “Civil society members involved on the OGP platform either as individuals or in institutions have been crucial to the success of OGP in Kenya. During tumultuous and uncertain times in the country -such as during the election years and the years preceding them- civil society has borne the burden, at times in its entirety, of keeping the OGP process alive.”



¹²Musila, J (2020). From Plans to Action: How CSOs Support OGP in Kenya. <https://www.developlocal.org/from-plans-to-actions-how-csos-support-the-ogp-process-in-kenya/>

¹³Musila, J (2020). From Plans to Action: How CSOs Support OGP in Kenya. <https://www.developlocal.org/from-plans-to-actions-how-csos-support-the-ogp-process-in-kenya/>

multi-stakeholder forum have consistently supported the implementation of the various NAP and LAP commitments with technical expertise in key thematic areas such as access to information, open budgets, beneficial ownership, open contracting, and access to justice to name a few. They have also supported areas such as civic engagement in drafting laws, use of government data, research to produce evidence and data, development of simplified educational material for the public as well as awareness and advocacy campaigns for the various thematic areas discussed above.

- 4. Financial and technical partnerships:** Since Kenya joined OGP in 2011, commitments have never been provided for in national budgets. Thus far, implementation has depended on financial partnerships with civil society and development/bilateral agencies. This has been both a limiting and a success factor for OGP. The limiting element is discussed in the “Limitations and Challenges” section of this report. Civil Society has been able to successfully fundraise to support tech innovation and capacity trainings, as well as support local, regional, and international peer exchanges for government counterparts working on various commitments. Development partners have funded civil society but also provided some direct support to the government e.g., for Electronic Government Procurement (EGP). Additionally, partnering with technical teams in government was found to have borne positive fruit towards open government goals when civil society partnered with technical teams to fulfil their mandates.
- 5. Peer exchanges and learning:** These are key elements of OGP’s model and value for member countries. National and local governments have opportunities locally, regionally, and internationally to showcase their open government reforms and learn from peer governments implementing the same at various events organized by the OGP support unit, governments, and civil society. Both national and local government actors in Kenya have had the opportunity to attend global summits, regional meetings, and county exchanges to gain knowledge on initiatives, and approaches and broaden learning within technical teams in particular.



E. Limitations And Challenges

Kenya has experienced some limitations and challenges in the implementation of OGP commitments since first implementing OGP commitments over a decade ago. These have varied from domestic/local challenges and limitations; to global events and limitations within OGP’s framework for member countries.

1. In country, the fulfilment of OGP commitments has been partial or none at all due largely to **a lack of awareness of the commitments within the government agencies** tasked with implementing the commitments. While the NAPs have been developed through a co-creation process, often, not all the implementing agencies are present during the process; or become aware of the requirements on their part after the fact. This means that they are unable to adequately plan, budget and participate towards the completion of the commitment in time. In the most recent NAP 2020- 2022, respondents acknowledge that the co-creation, institutional involvement, and co-implementation process was the strongest it has ever been since Kenya joined OGP. Particularly, commitment-focused cluster groups were all adequately represented by both a government and civil society lead in a more comprehensive and sustained manner than previous NAPs. However, the involvement of supporting institutions was weak which meant lead institutions did not have the requisite support of their counterparts. It is hoped that this particular challenge will be completely overcome in the development of the 5th NAP noting the progress made in NAP 4 to foster broader awareness and inclusion of lead implementing institutions.
2. Additionally, in government **the responsibility for the Open Government agenda is largely placed on the shoulders of the national and county points of contact.** This is because OGP is perceived as “extra work” within the government and has not been mainstreamed either through inductions for new government officials, capacity trainings for existing staff or performance contracts. This is particularly felt at the local government level. However, at both levels of government, OGP is still perceived to fall outside of usual government business. In both Government and civil society, OGP is not yet sufficiently mainstreamed and is largely driven by champions and advocates of open government.
3. **Intergovernmental collaboration** is another area affected by the lack of awareness of OGP within the government. Some government agencies tasked with leading commitments from 2011 to date, stated that as much as their institutions were well sensitized and able to implement the commitments, the elements of their commitments that required other government agencies’ attention often were left undone. As the government leads, they were left to ensure the implementation of the commitment on their own. This proved impossible especially where an institution required proactive disclosure of information from another, the set-up of tools such as registers to be interoperable for linked data disclosure

and so on. For civil society, this lack of awareness limited their ability to engage with the government in their collaborative and accountability role. Many of the commitment cluster c0-leads and members reported that to engage, they found themselves introducing OGP to government officials whose institutions were listed on the various NAPs, but they were not aware of the initiative nor their roles.

4. **Budget.** Since 2011, **Kenya has not made any specific national budgetary allocation** for OGP commitments. This has meant that the OGP commitments are either achieved as part of an ongoing government process in which the commitment can be realized; or, the commitments have, for over a decade, relied on external funding to be implemented. Additionally, none of the country's NAPs has been properly costed in advance to determine what number of resources would be required to fulfil the various commitments.
5. As open government reforms are not yet considered an integral part of public service delivery and other key government activities towards its citizens, the narrative of **competing national priorities** has been raised as a reason open government reforms are not prioritized in some cases. This could include natural disasters, food security emergencies and so on.
6. **Corruption is more sophisticated and follows due process.** Previously, corruption thrived in opaque dysfunctional and manual systems. It was largely unapologetically illegal with little or no accountability. However, as much as there has been progress in areas like the digitization of government services, corruption has found a way to “follow the process” and still thrives. Respondents stated that corruption in procurement is still rampant despite information disclosure, the key being that corruption is now “budgeted” within the due process and follows all legal requirements to bid. For example, delivery of goods is lower than what was budgeted, suppliers are pre-decided before the bid goes public and therefore the application process is simply going through the motions.
7. **Political Encumbrances and Transitions:** OGP countries globally face the challenge to safeguard OGP gains, champions, and plans in times of political transitions through elections, transfers, resignations, change of guard and so forth. Sometimes the politics of the day proves to be an encumbrance to prioritisation and implementation of NAPs and LAPs which ends up with the commitments not fulfilled even when the action plans have reached the end of their term. This challenge although present in Kenya, is not unique to any one country. It is however a challenge/limitation that can be anticipated and mitigated; particularly through the institutionalization of OGP, as well as the enactment of legal frameworks that perpetuate beyond any individual's involvement or departure.
8. **Development of commitments:** Interviewed respondents found that oftentimes, commitments in the various NAPs are not crafted in a sequential way of the steps that need to happen for the desired change to be affected. Further, it has continually been a place

of weakness for NAP development that the list of agencies to be involved is not exhaustive and has not to date in any NAP included all the offices that have an implementation role. The tendency has been for the key institutions to be identified and engaged, however, the secondary or support institutions which are key for planned milestones to be met, are engaged after the NAPs have already been developed and finalized for implementation. This often means that they either do not see a role for themselves having not been consulted at the beginning, or the set goals are not realistic to their way of working as they were developed by others relying heavily on assumptions.

9. Commitments have sometimes also been noted to be **contrary to the provisions of existing law**. That is, a NAP may have provisions for a level of disclosure of information that surpasses the provisions of an existing law on more limited disclosure. This then limits its implementation where state or public officers are more likely to stick to the confines of the law.
10. On the side of the **selection of thematic areas for priority** in the NAPs for implementation, both national and local governments reported that the co-creation process sometimes saw heavier weighting on the civil society and public agenda which affected government buy-in. That is to say, each party, including the government, brought proposals to the table for inclusion in the particular NAP under development. Upon discussion, government officials found on some occasions that in the instances where civil society and the public have the same priorities that were different to the government, they were overrun on issues where they were the sole voice. While this meant that they went ahead and adopted the majority position, it also meant that there was little buy-in on the government side when it came to implementation as their priorities in some cases had not been reflected at all. This then affects the pace of achievement of those commitments.
11. **Lastly, on the matter of the development of commitments**, county governments (**local members OGP**) tend to be ‘isolated’ when they are making commitments. Yet, some of their commitments rely on decisions that are beyond the scope of county governments. This is true of both open contracting and beneficial ownership for example. These are mandates that sit with the national government – yet in practice are very key for the work of local governments in circumstances such as determining the real owners of companies for Kenya’s Affirmative Action Procurement Initiative, AGPO – Access to Government Procurement Opportunities. This initiative reserves up to 30% of procurement contracts for Women, Youth and Persons with Disability. To measure compliance with AGPO, county governments would benefit from collecting/having access to relevant data held by national governments through interoperable disclosure tools for example. Improvements in ‘non-siloed’ commitment-making between the county and national government were noted in NAP 4, but there is still more to be done in integrating local commitment-making

for open government reforms.

- 12. Levels of compliance with OGP tools/initiatives:** When commitments and milestones in the NAPs have been met, the next challenge is compliance or use of tools by both government agencies and the public that are operational on a particular milestone/commitment area. For example, Kenya now has a beneficial ownership register with partial disclosure of beneficial ownership information. This was a commitment in the 2020-2022 NAP. If a bidder wins a tender, the Public Procurement Regulatory Agency will publish the beneficial ownership information of the winning bidder. Otherwise, the information is only open to competent authorities. At the time of this report, the compliance rate of disclosure of beneficial ownership information to the Business Registry Service (BRS) was at 40%. Many companies on BRS records were formed in the 70s-90s and therefore no email or other digital contact information is available to them to pursue compliance as the mode of communication at the time of their set-up was the use of company secretaries.
- 13. Prioritization of development projects is a political process in Kenya.** It is also a prime opportunity for corruption in the use of public resources. Concerning OGP commitments, this means that at both national and local levels, commitments such as open contracting/procurement and public participation are fought from within government officials in cahoots with suppliers or who are doing business themselves with the government despite conflict-of-interest restraints. Transparency and participation would mean that there is more scrutiny, and decisions of contractors and management of projects would feature prominently in the public domain. It also means that within government, technical personnel would have a voice in prioritizing development projects and taking on management roles – currently, this is not welcome by the political class gaining illicit wealth from the public system. Therefore, while these transformative and ambitious commitments may exist, the limitations in full implementation are not merely a matter of resources or capacity. They are, in some instances, deliberate roadblocks to protect the interests of unscrupulous public or state officers.
- 14. Peer learning and exchange on OGP are not institutionalized.** While peer learning and exchanges are institutionalized by the OGP; there is no mechanism by which national and local governments can learn and successively ensure the information on implementation, lessons, wins and challenges can be shared to support open government reforms. Similarly, civil society actors have not created a shared learning and knowledge tool for their work in supporting open government.
- 15. Limited public participation at the national level is still a challenge a decade on.** Generally, public participation at the design stage of the NAP is done online via social media channels. The draft NAP is posted on the OGP Kenya social media channels and input is invited. There is usually little or no feedback as OGP is not well known to the general

public. There is some participation during the implementation of commitments such as the development of laws following national requirements for participation; however, that is more focused on a product or milestone of the NAPs rather than the OGP cycle itself. On the contrary, Nandi and Elgeyo county governments have shown robust public engagement and diversity of public engagement from the beginning of the co-creation process and have more accountability from the public on implementation and use of resources. That is a learning that can be adopted by the National government.



16. The 2-year National Action Plan Cycle has been too short a period for the successful implementation of all the commitments. While some of the commitments have been completed within the two-year cycle, respondents cited that some commitments cannot be rolled out in the period of two years of implementation given the nature of the holistic change envisaged. For example, having an Electronic Procurement Government (EGP) adopted, is a holistic system and way of working change that requires various stages to be properly and comprehensively undertaken before arriving at the final change. It also requires other related changes in areas frameworks, capacity trainings and so forth that are not envisaged when committing for a shorter period. Therefore, at the design stage of commitments, the reality of implementation needs to be kept in mind so that commitments are crafted more realistically to capture not only the goal but the process as well. Respondents also reported that in practice, the time provided for co-creation is usually shorter than needed. There is not a lot of time for onboarding the various government agencies although good improvements on this were noted in the process of the 4th NAP. More can be done, especially with supporting implementers.

17. **Communications and Documentation** – Communications for work done under OGP has been a challenge over the period of Kenya’s membership to the Partnership. This is on two main fronts: (i) difficulty in communicating OGP and the commitments in the various action plans to the public and, (ii) communicating the co-creation, implementation, and performance under OGP. Much of the communication for OGP commitments at the national level is done online to a limited audience and only at the public comment stage of the draft action plans. Unfortunately, because OGP is not well known amongst the public, the action plan is not a familiar document nor is it well understood why public input is being sought. This is the same for the implementation and evaluation – the majority of the communication is left to the Independent Reporting Mechanism and in one case, a country self-assessment. These are however not disseminated beyond the government and civil society actors who have a role to play in the plans or are part of the multi-stakeholder forum. A draft communications strategy was developed to mitigate this, however, it was not able to be supported. An open government website was developed and has some information available – however regular content from the community is challenging to maintain regularly; therefore, the information is not always up to date. This unfortunately means that a lot of work that is done by the various actors is not always documented; awareness of OGP amongst the public is low and reflection/learning is limited for consequent cycles of action planning.

F. Change and Outcomes

The OGP model of having government, civil society, the private sector, and other reformers outside of government on the table to discuss, co-create and co-implement change together has brought actors to the table who previously did not have a voice in matters of public interest. This includes more Women, Youth, Persons with Disability, and economically marginalized persons. Furthermore, it continues the exercise of trust building and lowering the trust deficit between government, civil society, and the public in governance matters. State and public officials stated that they have benefitted from peer exchanges, knowledge sharing and capacity trainings in various areas of open government that has improved their technical expertise which in turn supports. Local governments also reported that OGP has opened up their counties to more strategic partnerships towards their social and economic goals for citizens.

The following achievements have been documented from 2013 over the period of the implementation of the NAPs and LAPS in Kenya; it is worth noting that some processes began prior to their inclusion in Action Plans and OGP was seen as a good vehicle to advance them to completion. Conversely, some commitments in the various Action Plans are entirely new and began their cycle as a new OGP commitment.

Improving Public Service Delivery Performance

1. By resolution 32 of the fourth Devolution Conference, the sub-national survey instrument known as the County Peer Review Mechanism (CPRM) was applied to two counties – Makueni and Tharaka Nithi. Makueni’s format has been recognized as a good best practice and will be shared for use by other counties. The CPRM model derives from the Africa Peer Review Mechanism (APRM) which promotes and enhances good governance. The review covers the following broad thematic areas while assessing performance against all the devolved functions in the Constitution of Kenya 2010, Democracy and Political Governance, Socio-Economic Development, Economic Governance and Management and Corporate Governance. This is led by the NEPAD/APRM Kenya Secretariat.



2. 4 counties were trained on the developed CPRM tool – Embu, Kilifi, Laikipia and Nakuru

Laws, Legal Frameworks and Supporting Institutions

1. Ratification of the Paris Climate Treaty by the Kenyan Parliament
2. Establishment of a Climate Change Council and Climate Change Directorate
3. Adoption of the National Policy Framework on Ethics and Anti-Corruption.
4. Adoption of legal requirements for the publication of contracts within the Oil and Gas Industry
5. Executive Order No.2 of 2018 on the Procurement of Public Goods, Works and Services in Kenya requires the Publication and Publicization of Procurement Information Detailed in the Executive Order
6. Development and passage of the Access to Information Act 2016
7. Statute Law (Miscellaneous Amendments) Act, 2019 - amendments to the Companies Act, 2015, Section 93 A – beneficial ownership; Companies (Beneficial Ownership Information) Regulations, 2020 and Companies (Beneficial Ownership Information) (Amendment) Regulations, 2022.
8. County Geographic Information Systems (GIS) Implementation Guidelines
9. A model Geographic Information System (GIS) Policy for County Governments. Makueni County was the pilot county in the development of the model policy and has since adopted it.

Open Data for Development

1. Kenya Space Agency has acquired high-resolution satellite imagery to support Counties in spatial planning and delineation of boundaries for cities and municipalities.
2. Pilot flood monitoring project – Kenya Space Agency is currently piloting a flood monitoring project in the Lower Tana River Basin using Google Earth Engine in collaboration with Water Resources Authority, Kenya Meteorological Department, National Disaster Management Unit, and the Kenya Red Cross Society. The products and algorithms developed will be applied to other flood-prone regions.

Access to Information/Proactive Disclosure of Information

1. Publication of voter information online
2. Published datasets online, in simplified formats that relate to public expenditures and disbursements in health, education, water and other essential services on the Kenya Open Data Portal.

3. Kenya Law Initiative – Proactive Disclosure and Public Access to public legal information, adopted open/public domain licensing messaging on its website based on Creative Commons.
4. Publication of information on proposed and approved budgets to promote participation, transparency and accountability in the budget process and Open Budget Index (OBI) Ranking
5. Publication of Senate, National Assembly, and County Assembly plenary proceedings via Parliamentary Hansard; parliamentary website, and broadcast of parliamentary proceedings.
6. Publication of copies of bills in every stage of discussion in Parliament
7. Publication of information on beneficiaries of contracts by individuals and companies in Kenya on the Public Procurement Information Portal (PPIP).
8. Reporting Framework for Proactive Disclosure of Information by Public Entities by the Commission on Administrative Justice
9. Adoption of Access to Information Curriculum at the Kenya School of Government.

Public Participation/Civic Engagement

1. Facilitation of citizen engagement with Parliament and County Assembly via alternative media.
2. Opening up of Parliament for accessibility and access to parliamentary information.
3. Development of public participation tools such as Dokeza
4. Development of Public Participation Bill, 2021

Nandi County – Public Participation

1. Institutionalization of Public Participation through the development and allocation of funds for public participation and/or department and staff.
2. Increased capacity and knowledge of state and public officers in matters of public participation, open procurement, open data, nutrition, and other thematic areas of work being undertaken by local governments in their Local Action Plans

Elgeyo Marakwet – Public Participation

1. Citizens engage more in advancing local transparency and accountability through social accountability – in undertaking exercises such as social audits and producing community scorecards in collaboration with civil society

2. More robust public participation and informed citizenry on matters of development priorities, transparency, and accountability
3. More robust public engagement from groups such as Women, Youth and Persons with Disability who previously were not as engaged/active in matters of public interest
4. Strengthened oversight of public development projects
5. Increased understanding of citizenry that governments are accountable to them

Judicial Reforms and Access to Justice

1. Introduction of Public Vetting of Judges to promote transparency in the administration of justice
2. Citizen-Government Dialogues on Alternative Justice Systems
3. Incorporation of community paralegals in access to digitised judicial services

Tech and Innovation for Transparency, Accountability, Participation and Anticorruption

1. On International Anti-Corruption Day 2019, Makueni County launched the first open contracting portal of a devolved/sub-national government in Eastern Africa with proactively disclosed data on the stages of the tender and award process of their public procurement. A Corruption Risk Dashboard was also developed for public officials that flag tenders that may indicate corruption. At the time of the launch of the OC portal, 133 procurement contracts and 326 projects worth 699 million were made publicly available.
2. In 2021, Nandi County was awarded the runners-up position for the 2021 OGP Local Innovation Award in Africa by the Open Government Partnership. This was for the use of the 24-hour, toll-free centre 1548 to enhance civic engagement on county matters.



3. The Business Registrations Service (BRS) developed a Beneficial ownership register with information on actual owners and beneficiaries of companies. The information in this register is only available to ‘competent authorities including the Attorney General, criminal investigation and law enforcement agencies, and authorities that supervise and monitor the financial sector, including the financial reporting Centre and the Kenya Revenue Authority.

Open Government Mainstreaming, Institutionalizing and Resilience



1. Establishment of National Steering Committee, National Secretariat and Multi-Stakeholder Technical Committee with representation from state and non-state actors
2. Establishment of a Parliamentary Caucus on Open Government with representation from both Houses of Government which will institutionalize and advance open government reforms in Parliament.
3. Deepening of the OGP network within Kenya with the engagement and active participation of 4 sub-national governments, the Commission of Administrative Justice, the Legislature, and the Judiciary.
4. Establishment of Open Government Website - <https://opengovernment.ke/>

Peer Learning and Exchange

1. In 2018 Elgeyo Marakwet hosted three African regional governments namely, Kaduna State in Nigeria, Kigoma Ujiji in Tanzania, and Sekondi Takoradi in Ghana for a peer learning workshop to share experiences and successes of efforts made in making their governments more transparent and accountable to citizens.
2. In 2019, the Government of Kenya hosted the Government of Sierra Leone and a delegation from Burkina Faso, comprising of Government and Civil Society for Peer Learning, with commitments to collaboration and open communications.
3. In 2019, the Government of Kenya worked with the Government of Uganda, the National

Government Information Center to host the first-ever multi-stakeholder dialogue on Open Government, especially in the era of the 4th Industrial Revolution.

4. Makueni County hosted a peer learning exchange on open contracting implementation for Nyandarua County to better understand the concept and benefits of the practice of open contracting.
5. In 2022, Nandi County hosted OGP Local Capacity Building and Peer Learning Convention with the governor launching the Nandi OGP action plan and committing to provide resources needed for a successful implementation of the OGP commitments.




 COUNTY GOVERNMENT OF NANDI

OPEN GOVERNMENT PARTNERSHIP
LOCAL CAPACITY BUILDING AND PEER LEARNING CONVENTION

30TH NOV - 3RD DECEMBER, 2021

Venue: Allens Hotel, Kapsabet
Topics:
 • Public Participation and Citizen Engagement
 • Open Contracting and Procurement
Guests: Elgeiyo Marakwet & Makueni Counties

VISION
 A Citizenry Empowered through an Open, Transparent and Inclusive Local Government



For more information Contact: POC Email: misajjnr@nandi.go.ke | Phone: 0729809247
 Visit: www.opengov.nandicounty.go.ke

Other: Definition of County and Constituency Electoral boundaries (including Parliamentary Constituency names) as a means of bringing government closer to citizens.

G. Recommendations and Opportunities

The following are the recommendations of Open Government Actors in Kenya to strengthen, improve and catalyze Open Government Reforms in Kenya via the Open Government Partnership.

Institutionalize Open Government

1. Create an institutionalized Open Government Coordination and Implementation Mechanism with representation from the Government, Civil Society and Private Sector to coordinate and support the development of action plans, implementation, peer/knowledge exchanges and undertake country self-assessments (monitoring and evaluation. This Mechanism would also coordinate national and local convening of actors on matters of open government. The National Point of Contact (PoC) should also be institutionalised within this mechanism.
2. Create technical desks in each public institution with a designated open government officer. This can be the public information officer tasked with matters open to the government in the event there is no public budget available to dedicate to an extra staff member.
3. Develop and enact national and county open government policies and laws to implement open government a legal requirement for institutions. This will also assist in mitigating political transitions and encumbrances; as well as safeguard critical gains made by various administrations and partners.
4. Develop and publicise an annual State of Openness Report
5. Develop a one-government approach to sharing open government data to ensure interoperability of systems, open government license and more efficiency in data output and access.
6. Include open government key performance indicators in performance contracts of state and public officials
7. Include Open Government in the training/induction of new state and public officials when new administrations come into government after national and county elections.
8. Develop Open Government Training Curriculum at the Kenya School of Government and train state and public officials on open government approaches, innovations, reforms, and progress. This is most effective when done at least annually and not on a one-off basis.
9. Adopt measures to ensure the purpose for openness is achieved – e.g. If transparency in procurement results in savings of public funds, those monies must be transparently re-allocated and utilized in the public interest

10. Recognize, incentivize, and retain open government champions, drivers of reform and innovative measures by various government arms to promote and implement open government reforms.

Institutionalization - County Governments

1. Develop and enact a law for the County Peer Review Mechanism to support the deepening of local government's responsiveness to the public as well as entrench the culture of openness in counties.
2. An institutionalised Open Governance Committee formed at the Council of Governors to promote knowledge, implementation, and oversight of open government reforms at the County level.
3. Institutionalise Local Points of Contact of OGP within County Governments
4. Ensure all open government projects and plans are in the County Integrated Development Plan (CIDP) to ensure that public funds can be appropriated as per the provisions of The Public Finance Management Act, 2012 to inform the annual budget process particularly the preparation of annual development plans, the annual county fiscal strategy papers, and the annual budget estimates.
5. Create County Directorates for Open Government with allocated Directors and staff.
6. OGP actors engage further to ensure more County Governments join OGP

National and Local Action Plans

1. Each National and Local Action Plan should be presented with a budget and monitoring framework for final approval to the National and County Coordinating Mechanism for Open Government. Allocate and approve national and county budget lines so that open government reforms are properly resourced.



2. Make the National and Local Action Plans key policy documents and accelerators for development reforms.
3. Ensure that each NAP and LAP has an election-related commitment – in Kenya, elections bring most activities to a standstill as the nation puts its focus and energies towards the electoral process and outcome. It is important that transparency, participation, accountability, and innovation play a key role in the elections and also that the performance of NAPs and LAPs are retained during this period.
4. Leverage the interface between the various commitments and have clusters groups collaborate where possible for stronger results
5. Provide reasoned responses for NAPs and LAPs. Providing a reasoned response as to why certain priorities, ideas or activities were or were not included in the action plan can help ensure accountability and overcome resistance from those whose proposals were rejected.
6. Ensure political feasibility, alignment with citizen priorities, and a clear open government approach to achieve stronger commitment results.
7. Align commitment objectives and activities with political and budgetary cycles, while designing longer-term initiatives which address systemic issues.
8. Design specific, measurable, attainable, realistic, and time-bound commitments with clear expected outcomes whilst allowing for a degree of flexibility in implementation.
9. Focus on the demand side of open government reforms by supporting the uptake of open data and participation tools and platforms.

Civil Society, Civic Engagement and Participation

1. Increase the diversity of civil society actors and reformers in the OGP space and raise their capacity to engage on matters of open governance.
2. Support deeper and broader engagement of citizens in the conceptualization, development and implementation of NAP and LAP commitments. This will increase citizen demand on open governance issues and improve the accountability of governments.

NTA
National Taxpayers Association
pesa zetu, haki yetu

Open Government Partnership
is a broad partnership that includes members at the national and local level and thousands of civil society organizations.

#opengovernanceweek

#OpenGovKE

Idri
Hivos
people unlimited
ARTICLE 19

3. Collaborate with government agencies and institutions to undertake “citizen listening tours” in the areas of their mandate and implementation to improve the relevance of prioritization and delivery of public goods and services.
4. Standardize social audits to present to local and national governments for ease of consideration and adoption rather than having organizational approaches with different recommendations and approaches.
5. Mainstream open governance in funding proposals to ensure continued and institutionalized engagement in OGP cycles, NAPs, and LAPs
6. Ensure more collaboration between national and county CSOs to ensure a more comprehensive and cohesive approach to OGP nationally and locally.
7. Develop OGP Training Curriculum for Civil Society
8. Create institutionalized civil society mechanisms such as an Open Government CSO Forum that will insulate the OGP process from CSO transitions.

Open Government Partnership



1. Establish regional offices for better engagement, coordination, and support with national and local governments as well as non-state actors
2. Support governments and civil society to access funds for open government reforms as other multilateral organisations do
3. Support IRM researchers to visit all counties and national places of implementation to ensure that the evaluation report is accurate and contextually relevant.

Development Partners/Funding

1. Host national and county donor roundtables with open government reformers to discuss funding needs and opportunities for successful and efficient implementation of open government reforms.
2. Support the resourcing of open government reforms in Kenya through the commitments in the NAPs and LAPs co-created by Governments, Civil Society, and the Private sector. Development partners are encouraged to consider various ways to finance open government reforms such as (a) committing to support individual thematic commitments of interest within the action plans (b) committing general core support to the action plans

(c) financing particular elements or products within the actions plans such as technology products, research and evidence knowledge products, peer learning and exchange forums, capacity engagements and so on.

3. Provide open government core funding to civil society to enable them to provide responsive unhindered and long-term support to the co-creation and co-implementation of NAPs and LAPs. Ensure that funding opportunities are provided to both national and local civil society organisations.





MZALENDO



Open Government Partnership



A DECADE OF REVIEW

Kenya - Open Government Partnership

JULY 2023

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