

OPEN GOVERNMENT PARTNERSHIP (OGP) NATIONAL ACTION PLAN IV

2020 - 2022

Open Recovery Open Resilience



GOVERNMENT OF KENYA

OPEN GOVERNMENT PARTNERSHIP (OGP)

National Action Plan IV

2020 - 2022



FORWARD

When I launched the National Action Plan III in February of 2019, I had no idea that the COVID19 pandemic would hit our world a year later. Yet even when we were blissfully unaware that this fiendish foe would insert itself into our reality, we knew that a robust open government framework is a critical toolkit enabling governments the world over to respond and confront the challenges of our time in the most innovative and collaborative manner. In responding to the pandemic, governments worldwide have struggled to protect the health of citizens while balancing fundamental freedoms of movement and association. The world continues to experience significant disruptions in mobility, with differentiated lock-down regimes providing opportunity for innovation and collaboration.

The calls for transparent and accountable institutions have never been higher, especially in these challenging times of the Pandemic that requires governments to proactively disclose information and deliberately create mechanisms for engaging citizens on issues that matter to them. In Kenya, H.E. President Uhuru Kenyatta, on announcing the first COVID19 case on March 11, 2020, set the tone for transparency on handling the Pandemic by openly inaugurating a multi-stakeholder National Covid19 Response Committee and constituting a multi-stakeholder COVID19 Finance Committee chaired by the private sector.

H.E the President, further mandated the Ministry of Health to hold public briefings to ensure proactive disclosure of information on caseload, recoveries, and communicating strategies for managing the spread of Pandemic driven by science. The Pandemic strengthened the Open Government Partnership (OGP) resolve to re-imagine our democratic values and ideals in times of crisis. The OGP network focused on ensuring the provision of equitable public services remained high on the political agenda. OGP in Kenya led on actions that spoke to the need for economic prosperity for all, protection of fundamental freedoms online and in the real world, and ensuring that Government remains responsive and empathetic to citizens' needs.

As we look towards building forward stronger post-COVID19 Pandemic, the Government of Kenya intends to deliver its promise to its people especially by ensuring that government interventions designed to cushion the country from the adverse effects of the pandemic target the most vulnerable of our communities. We therefore commit to continue investing in human capital development geared towards enhancing equity, wealth creation and opportunities for all Kenyans as envisioned in our NAP IV.

The Fourth National Action Plan 2020 – 2022 while developed under incredibly challenging circumstances, intends to continue the unfinished business of NAP III while sparking ambitious commitments to consolidate and scale-up the gains made by all previous action plans. Our collective aspirations for a more equitable, better, and prosperous world, guided by fundamental tenets of democracy is articulated in NAP IV in the following ways:

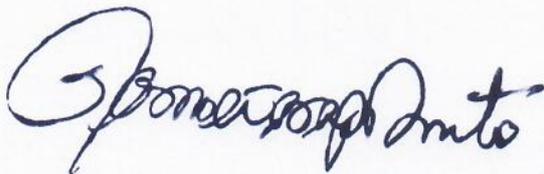
1. Raising the threshold of ensuring companies' real owners and their information is available for public scrutiny within internationally recognized data standards.
2. Government procurement processes remain open, transparent, and accessible to all across Government and in Champion Sub-National Governments.

3. Data for developmental decision-making and action is timely available, accessible, and maintained in open standards.
4. Deepening democracy by ensuring the process of law and policy within the legislature is open to public engagement and participation
5. Public servants and duty bearer are held to high-performance standards by citizens
6. Proactive disclosure and access to information by citizens, especially during these challenging times of COVID19.
7. Access to Justice remains a high priority, especially for indigents, without delays or denial.
8. The culture of Open Government is entrenched within public service in Kenya and across the African Continent.

The plan also recognizes the unique opportunity that Kenya has been accorded, with representation in the OGP International Steering Committee. We intend to leverage this platform to co-create with partners, a more resilient open government culture and practice. More specifically, NAP IV speaks to embedding Open Government Partnership in the continent by expanding the network to new countries and aligning its values with the African Union Africa Governance Architecture.

Ultimately, our success as a network of progressive government and Civil Society actors must be measured by our collective action and ability to innovate to address complex governance challenges and delivering responsive services that assure equitable prosperity for all.

I wish to extend the appreciation of the government of Kenya to all the partners who have continued to facilitate the evolution of a vibrant National Open Government Network. I commit to continue supporting the realization of the commitments contained in Kenya's NAP IV in the furtherance of mutual accountability and in the interest of the public good.



WILLIAM SAMOEI RUTO, PHD, EGH
DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA

FOREWORD BY THE SPEAKERS OF THE HOUSES OF PARLIAMENT

The Open Government Partnership (OGP) seeks to foster a global open government culture. OGP provides a platform for member states to empower their citizenry and advance the ideals democratic, open, and participatory governance. This way, open governments enjoy better service delivery scores by their citizens. The “*buy-in*” of legislatures is a core pillar of the gains and progress made through open government. Parliament's contribution to the partnership includes legislative oversight, political support and good will, as well as building cross-party inter-linkages, among others.

Open governance promotes public trust in government, and entrenches the need for civic awareness, this, lends credence to the age old adage that “*familiarity supersedes favorability.*” Parliaments that improve openness and participation reinforce public confidence at a time when citizens around the world are making legitimate demands concerning how they are governed by the Executive, and represented by their elected leaders, and their representative institutions, thereby promoting the legitimacy of democratic regimes.

Being an OGP member state, Kenya has participated in milestone achievements of the partnership. The country has often been called upon to participate in key OGP processes, countries selected based on several criteria, including *in-country demand for progress, prevailing in-house parliamentary openness initiatives*, and prior parliamentary engagement in OGP.

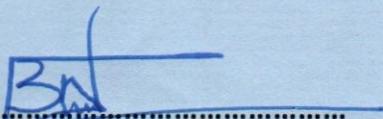
Article 118 of the Constitution captures the need for openness in government by providing that Parliament shall conduct its business in an open manner, and facilitate public participation and involvement in the legislative and other business of Parliament. The Parliamentary Service Commission Strategic Plan, 2019-2030 echoes the spirit behind Article 118 by recognizing “*Public Trust*” as a key strategic pillar. The vision of the Parliamentary Service Commission “*a democratic and people centered Parliament*” also accentuates the need for open government.

In addition, the Parliament of Kenya is a Member state of the Commonwealth Parliamentary Association. The Commonwealth Parliamentary Association together with

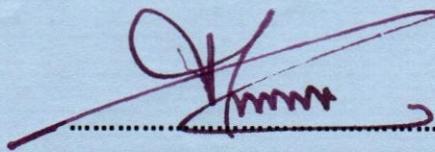
the Organization for Security and Cooperation in Europe's Parliamentary Assembly, and the First Summit of Legislative Presidents of the Americas formally endorsed the Declaration on Parliamentary Openness in September, 2012. Resultantly, the Parliament of Kenya subscribes to this declaration, through association with the Commonwealth Parliamentary Association.

The Declaration of Parliamentary Openness is a call to action for national Parliaments, as well as sub-national and transnational legislative bodies. It provides a platform for dialogue between parliamentary and parliamentary monitoring organizations to advance government and parliamentary openness, towards ensuring that open governance ultimately, greater gains for democracy. Legislative openness makes Parliament accessible by installing feedback mechanisms, availing parliamentary information readily on the website, hard copies and in electronic format, building consultation process amongst others.

There is no silver bullet for tackling public distrust, and disengagement with politics. However, mainstreaming and implementing a strategy that seek to enhance more awareness and greater familiarity with the role of Members of Parliament, and capitalizing on positive experiences may offer the most effective and efficient avenue to achieving parliamentary openness.



.....
**RT. HON. JUSTIN MUTURI, EGH, MP,
SPEAKER OF THE NATIONAL ASSEMBLY.**



.....
**RT. HON. KENNETH LUSAKA, EGH, MP,
SPEAKER OF THE SENATE.**

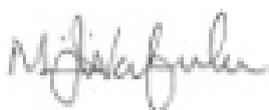
FORWARD

Kenya's constitution, demands that public institutions allow access to information that they hold. Article 35 of the constitution explicitly gives citizens the right to access public information. We now have the Access to Information Act 2016 enacted. All these instruments offer an enabling environment for open data which is a key ingredient for development to thrive in Kenya. Open data helps in ensuring transparency across systems, driving the participation of citizens in governance and improving service delivery. Open data is used to track political, social and economic trends, improve public services, build trust in government, and promote economic growth.

The Kenya Open Data (KODI) is a portal that makes public government datasets accessible at no extra cost to the public in an easy and reusable format. This initiative is in support of the Government's drive to consistently inform and be accountable to its citizens. County Governments and Ministries, Departments and Agencies of the Central Government are encouraged to provide their developmental, demographic, statistical and expenditure data, which are then availed in a useful digital format to various stakeholders and the general public. One of the major challenges KODI faces is to sufficiently demonstrate the impact of open data on the society in Kenya. NAP IV seeks to address this through packaging open data in ready to use formats, and improving access to open data using Application Programming Interfaces (APIs) to spur last mile innovations for citizens. Open Data, Open Access and Citizen Science are key pillars of Open Science. Open Science offers a source of knowledge that is accessible, transparent, verifiable and subject to scrutiny and critique and therefore a more efficient enterprise that improves the quality of science and thereby the reliability and the commensurability of the evidence needed for robust decision-making and policy formulation key to the success of Open Government. The collaborative and inclusive characteristics of Open Science allow new social actors to be actively involved in scientific production, democratizing knowledge, addressing existing systemic inequalities and enclosures of wealth, knowledge and power and guiding scientific work towards solving problems of social importance, and accelerating progress towards achievement of the Sustainable Development Goals.

Economists consider scientific knowledge generated by public research as a public good that anyone can utilize for higher social returns at no additional cost. Accessibility to scientific inputs and outputs improves effectiveness and productivity of the scientific research system by: reducing duplication costs in collecting, creating, transferring and reusing data and scientific material. The objectives for sharing research data are to: reproduce research, avail data considered as public assets, leverage investments in research, and advance research and innovation.

Open Government is enhanced through Open Data policies that promote citizen centric data driven innovations that create jobs and wealth by supporting startup and new service development. They also help create a balanced ecosystem of demand and supply of data. In general, Open Data brings to Open Government the following major benefits: accountability and transparency; citizen participation and empowerment, and promoting inclusive sustainable development.



Prof Muliaro Wafula PhD, FCCS, FCSK.
Associate Professor, Department of Computing
Jomo Kenyatta University for Agriculture and Technology Chair,
CODATA Kenya

FORWARD

The National Action Plan IV commitments articulate the willingness of the Kenyan government to allow its citizens to actively participate in various areas of services delivery. Successful implementation of these commitments will definitely foster citizen confidence through stakeholder consultations and access to information.

It is important to note that at the sub national level, information is more tangible to the citizens and this set-up increases the motivation for participation. At this level, citizens can actually see and monitor services offered by the government. Consequently, the sub national governments will provide a suitable platform to implement these commitments. We trust that NAP IV will further strengthen the civic role of the people to continue to co-create with the government among other stakeholders.

Kenya is proud to have the region's highest number of sub-nationals who now constitute the growing community of OGP Local. The admission of Nairobi Metropolitan Services, Makueni and Nandi counties into OGP Local brings the total to four sub-nationals including Elgeyo Marakwet County who have been members of OGP local since its inception. This clearly outlines Kenya's commitment to decentralizing the open governance principles to the local level further reaffirming our commitment to entrench transparency and accountability in the management of government affairs. I believe that the strong co-creation culture embedded in the OGP process shall serve to strengthen our partnership with the National Government in implementing the eight commitments outlined in this action plan.

As Makueni County we look forward to using this opportunity to further build on our commitment to open up government to public scrutiny as is evident in our successful operationalization of the Open Contracting Data Standards. The public portal has so far published contracts worth more than ksh 1.7 Billion including those specific to COVID-19 procurement data as part of the county's COVID-19 open response.

As we embark on executing the National Action Plan IV, we shall seek to improve on the current milestones in open governance including Access to information, Open Contracting Data Standards (OCDS), Public Participation, Corruption Prevention, undertaking an open COVID-19 response recovery and reforms, equity and equality in opportunities and service delivery.

In addition to working with the National Government to strengthen open governance for better service delivery, Makueni County together with the other sub-nationals who are members of OGP will continue to work within the intergovernmental framework to ensure that more sub-nationals in Kenya and the region subscribe to the OGP global platform through the County Peer Review Mechanism for our sub-national governments and the Africa Peer Review Mechanism for our regional community.



H.E KIVUTHA KIBWANA
GOVERNOR, MAKUENI COUNTY

Since joining in 2011, Kenya remains a committed member of the Open Government Partnership (OGP), a global platform that brings together both government and non-governmental actors, including Civil Society Organizations (CSOs), to facilitate multi-stakeholder engagement toward open, accountable, transparent and responsive governance. Kenya's commitment is manifested in its sustained engagement in the space despite a myriad of challenges that stalked the initiative, particularly during the formative years. It has not only worked to overcome them, but it has also responded proactively to open up new frontiers for the initiative. It is a fact that is borne out by the country's journey throughout its lifetime as an OGP member.

Consistent with the overall spirit of the OGP, NAP IV 2021-2022 promises to spotlight focus on accountable and transparent governance. It coincides with major developments, both systemic and local, a dynamic that thrusts it to the realm of a special Action Plan. Globally, the world has for the last one year shouldered the impact of the COVID-19 pandemic, an outbreak that has occasioned one of the most destructive and disruptive consequences in recent times. Politically, economically and socially, the pandemic has upended most of the global norms and order as hitherto known: Nationalism threatened to crowd out internationalism, democracy lay in peril as the civic space shrank, with various leaders flirting with democratic emasculation. Locally, the pandemic exposed the recalcitrant challenges on transparency and accountability within our governance ecosystem. Additionally, Kenya finds itself in the midst of two critical conversations: the ongoing Constitutional reforms conversation as well as the 2022 elections.

This is a rich but also complex cocktail of interrelated dynamics that will almost certainly shape and be shaped by NAP IV. Acknowledging the present context, but also alive to the past and looking forward to building better, NAP IV speaks directly to the issues that are critical if optimal governance is to be achieved. The commitments therein seek to mainstream accountability, inclusion, transparency and openness in the country's political, economic and social governance fabric, cognizant of the fact these will be key drivers of a post COVID-19 recovery process. As a key advocate of legislative openness and civic participation, we are delighted to see these key tenets of our Constitution well elucidated.

There is no gainsaying the fact that the now decade old OGP initiative has accorded the country a platform for trained and sustained focus. The global scope and reach has served to engender and entrench peer learning and sharing, a factor that has enriched global interconnectedness. As we move forward, and as strategically intended under NAP IV, we hope to secure the institutionalization of the initiative, to allow it assume a life of its own for the betterment of transparent and accountable governance. That it strives to reach and touch the entire expanse of government, as well as to include diverse players in the non-governmental space affirms the OGP as an effective tool of shaping good and publicly responsive governance.



Caroline Gaita
Executive Director,
Mzalendo Trust

The Open Government Partnership (OGP) was officially launched in September 2011 by 8 founding governments and 9 civil society organizations. The founding governments are Brazil, Indonesia, Mexico, Norway, South Africa, United Kingdom, and United States. OGP has since grown to a current membership of 78 countries and 76 local jurisdictions. The Partnership is a unique global initiative for its' emphasis on states meaningful collaboration with civil society to embrace the values of transparency, accountability, civic participation and innovation towards good governance.

Kenya's 4th National Action Plan (NAP 4) is submitted in a global season where the role of transparency and accountability to a responsive and resilient government cannot be over emphasized. It is also a time when the Partnership is expecting the submission of 100+ country and local government action plans detailing ambitious and transformative open government agendas.

The successful implementation of the commitments in this NAP 4 is critical to mitigating the cost of waste, inefficiencies and corruption in our pandemic response. The commitments are also a strong opportunity for public institutions to strengthen efficient and inclusive service delivery, meaningful public accountability, and incubate innovation to ensure strengthened devolved mechanisms to reach all communities.

The NAP 4 will be implemented alongside four County Governments Local Action Plans that will also be submitted to the Partnership this year. This creates a unique position for Kenya to have a broader targeted reach to marginalised citizens, and overall responsiveness to citizens' needs where they are. Local civil society also have the opportunity through the Partnership model, to empower citizens through civic monitoring to follow the money on government spending and report on the misuse of funds. Civil society as a whole must continue to play its' key role in advocating for proactive and accurate disclosure of information, ensuring prioritization of data that enables tracking and analysis, support the public to hold implementing agencies accountable and; undertake research to support needs based implementation.

Despite the uncertainties of the pandemic, ensuring adequate resourcing of the NAP4 is key to meaningful and innovative implementation that will result in a strong contribution to the country's challenges, responsiveness and resilience. With the opportunity for collaborative transformative implementation of these open government goals, comes the most dire consequences in history of failure; – the loss of lives, escalated poverty and inequalities, vulnerabilities, polarization and insecurity. We can do no less than ensure that Kenya's pandemic response and recovery is open. Government, private sector, civil society and the public - together - will ensure efficient, equitable, participatory and sustainable approaches.



Steph Muchai
Global Steering Committee Member,
Open Government Partnership

INTRODUCTION

Kenya has been a member of OGP since its inception. Therefore, as the OGP community prepares to mark its 10-year anniversary, Kenya will be at the fore front of showcasing its progress and contribution towards an open and transparent global governance system. The 10th anniversary comes at a time when governments across the world continue to face the greatest challenge in centuries, one that threatens to undo developmental progress and global cooperation as we know it. The COVID-19 pandemic has proven to be an acid test of every single country's quality of health care, governance standards and social capital. As we have witnessed, the virus has exposed weaknesses and disparities within the social economic governance systems and further widened the already existing inequalities.

As the world continues to grapple with the growing threat, now more than ever, there is need to strengthen global cooperation towards building back better, more open and resilient systems that will shield communities from effects, both economic and health, that will be felt for years to come. It is therefore imperative that resource allocation get to those who need it the most. For this to happen, focus must shift to ensuring greater participation and transparency in decision making, strengthening of the anti-corruption ecosystem and support towards innovation in service delivery.

The Constitution of Kenya guarantees every citizen access to basic social economic rights and freedoms. The OGP platform continues to provide impetus through which these rights and freedoms can be accessed by Kenyan citizens. This is evident in the country's commitments made under the third National Action Plan (NAP III). Designed to progressively build on gains made in the first and second national action plans, NAP III placed greater focus on enabling more transparency of business operations through beneficial ownership, strengthened anti-corruption mechanism through open public procurement and overall building greater resiliency of open government and the OGP initiative by ensuring wider participation and consultation of government institutions and civil society.

As we embark on the implementation of NAP IV in earnest, Kenya hopes to continue being an OGP ambassador in the region and globally. To this end, the NAP IV will revolve around four key broader objectives:

- a) Local: Kenya currently has the highest number of Sub-national governments in the continent who are OGP members. NAP IV is designed to enhance participation of local governments in the implementation of various commitments.
- b) National: As the country approaches the next elections scheduled to take place in 2022, the NAP IV activities are designed to institutionalize open government and building greater resilience of OGP to withstand future political transitions, economic shocks among other instabilities therefore ensuring sustainability of the open government discourse.
- c) Regional: During the 2019 global summit, Kenya was a witness to the signing of the MoU between OGP and APRM. To this effect Kenya will work with other regional OGP members to advance greater articulation of OGP values and principles at the continental level.
- d) International: In June 2020, Kenya was elected to the Steering Committee based on our unique commitment to Open Government Resiliency through creativity and innovation. We commit to strengthen multilateralism by contributing to an open and vibrant discourse through the OGP platform.

This will be achieved by fast-tracking implementation of key reform areas that had already been identified in our previous action plan. NAP IV commitments continue to emphasize transparency, accountability, use of technology and increased public participation in governance processes. In addition to the old commitments, the fourth National Action Plan will include two new commitments. One on Access to Justice aimed at promoting the use of Alternative Justice System to facilitate greater access to justice by the citizenry and the second new commitment is on Access to Information which seek to ensure the effective implementation of the Access to Information Act while leveraging on technology to enhance the practice of proactive disclosure and promote effective records management.

At the core, the fourth National Action Plan will place greater focus on building a stronger and sustainable support system for open government. To achieve this, the steering committee has embarked on an aggressive process of expanding the consultation circle to include the private sector, academia and the Kenyan Judiciary with the hope that this will facilitate institutionalization and ownership of OGP.

Developing Kenya's plan for 2020 to 2022

The process of the development of NAP IV begun in April 2020, at the height of COVID19 Pandemic, where the OGP Network in Kenya engaged in an extensive (online) reflection on the challenges of transparency, accountability and citizen engagement in this era of differentiated lock-down and restrictions of movement.

The consultations resulted in the addition of three more commitment as emerging areas of concern for citizens. These are 1) Access to Justice, especially for indigents when Courts have to transact their businesses online 2) Access to Information, especially with COVID19 restrictions 3) Legislative Openness necessitated by the need for citizen engagement and more legislative transparency. In this process, the Network also held several discussions with the Independent Review Mechanism (IRM) to ensure the commitments were in light with OGP Values.

The Open Government Network in Kenya held extensive cluster meetings and several technical committee meetings that resulted in a co-creation process supported by the Open Government Trust Fund grant through Mzalendo.

The resultant NAP IV was open to Public Participation (through civil society network and social media channels) for Two Months (November 2020 to January 2021) and approved by the Steering Committee of the Open Government in Kenya in February 2021, chaired by H.E Hon. William Ruto, Deputy President of the Republic of Kenya.

Call to Action

This action plan has considered Kenya's role in contributing to the partnership's collective effort to tackle major global challenges and build a better version of democracy for a post pandemic world. Through its commitments to advance beneficial ownership transparency and civic space, Kenya will model best practice in strengthening its anti-corruption, civic space and digital space.

SUMMARY OF COMMITMENTS

Commitment number and Title	Commitment Overview	Lead Implementing Organization(s)	Other actors involved-Government	Other Stakeholders
1. Beneficial Ownership	Publish a central public register of beneficial ownership information of companies operating within the Republic of Kenya	Office of the Attorney General-Business Registration Services	PPRA, National Treasury, Financial reporting Center, Ethics and Anti- Corruption Commission	TI-Kenya, HIVOS, NTA, KCSPOG, KEPISA
2. Open Contracting	Implement an interoperable end to end e-government system adopting the Open Contracting Data Standard (OCDS), to cover all stages of public procurement in Kenya.	Public Procurement Regulatory Authority	Senate of Kenya, Council of Governors (CoG), County Assemblies Forum (CAF), Commission on Administrative Justice (CAJ).	Development Gateway, Hivos, Local Development and Research Institute (LDRI), MAPACA Trust, Twaweza East Africa, Youth Agenda, National Taxpayers Association, Transparency International (TI)-Kenya.
3. Open Data for Development	Lower the barrier and increase access to timely, affordable, up-to-date, and accurate data for socio-economic development, evidence based decision-making and enhanced service delivery.	Kenya Space Agency, ICT Authority, Council of Governors, Office of the Controller of Budget,	Kenya National Bureau of Statistics, Department of Resource Surveys and Remote Sensing (DRSRS), Kenya Meteorological Department (KMD), National Drought Management Authority (NDMA), National Disaster Operations Centre, National Land Commission (NLC)	Local Development Research Institute (LDRI), Global Partnership for Sustainable Development Data (GPSDD), ESRI, Group on Earth Observations (GEO), Digital Earth Africa (DE Africa), Geospatial Society of Kenya (GeoSK), Women in GIS
4. Public Participation and Legislative Openness	Mainstream meaningful public participation in all developmental spheres in the country thereby ensuring that the voice of the public counts and shapes the eventual developmental outcome for ownership.	The Senate of the Republic of Kenya	Office of the Deputy President, Council of Governors (CoG), National Assembly, County Assemblies Forum (CAF)	Mzalendo Trust, Westminster Foundation for Democracy (WFD).

5. Improving Public Service Delivery Performance	Apply the sub-national survey instrument -the County Peer Review Mechanism (CPRM) to improve public service delivery performance by ensuring sustained citizens' engagements with their county governments.	NEPAD/APRM, Council of Governors	The Parliament of Kenya (The Senate and National Assembly),	LDRI, TI, Mzalendo, TISA, Katiba Institute, IGTRC
6. Access to Information	Seeking to ensure the effective implementation of the Access to Information Act for the realization of citizens' right of access to information by leveraging on the use of technology to enhance proactive disclosure and promote effective records management	Commission on Administrative Justice (CAJ)	Ministry of ICT, Kenya National Archives & Documentation Service, (KNADS)	ARTICLE 19 Eastern Africa, Mzalendo Trust, TISA, IBP
7. Access to Justice	Seeking to expand Access to Justice through the implementation of Legal Aid Act and Alternative Justice Systems Policy	The Judiciary	Judiciary (Chief Registrar of the Judiciary or the National Council on the Administration of Justice), National Legal Aid Service, County Government of Mombasa	Kituo cha Sheria, Namati, Katiba Institute, Mzalendo, CICC, Haki Yetu
8. Building Open Government Resiliency	Build institutional support of OGP by ensuring engagement of broader interest groups across Public institutions, Private sector, Academia, Civil Society and strengthen multilateralism with other OGP participating countries	Office of the Deputy President, Commission on Administrative Justice	MDA's, Senate, National Assembly, Council of Governors (CoG), County Assemblies Forum (CAF), Judiciary, Ministry of Foreign Affairs	IDS-UON, Universities and Colleges, CSO's

Commitment 1: Beneficial Ownership

Reported increase of cases of loss of public funds through fraud, embezzlement and procurement malpractice through companies whose real owners remain shadowy or unknown. Investigations often reveal the directors involved in the vice. There is however, always open inquiries as to whether the known directors are indeed the ultimate, true owners of the companies based on their profiles and the nature and extent of their involvement.

Objective

Publish a central public register of company beneficial ownership information operating in the Republic of Kenya.

Status quo

As of October 2020, the BRS is actively collecting data on beneficial owners of companies registered in Kenya. This information is currently available to competent authorities.

Ambition

The President in June 2018 through Executive Order 2 of 2018 further directed that all entities wishing to provide goods, works and services across all National and County Governments must disclose Beneficial Ownership Information online for public scrutiny. This commitment seeks to progress to an accessible register that supports among others, a wider anti-corruption architecture including public procurement and other contracting spheres and anti-money laundering.

Lead implementing organization

Office of the Attorney General: Business Registration Services (BRS)

CSO: Transparency International-Kenya (TI-Kenya)

Timeline

February 2021 – December 2022

OGP Values

Transparency and strengthened public accountability

New or ongoing commitment

Ongoing

Other actors involved - Government

PPRA, National Treasury, Financial reporting Center, Ethics and Anti- Corruption Commission

Other actors involved - CSOs, private sector, working groups, multilaterals etc.

HIVOS, National Taxpayers Association (NTA), Kenya Civil Society Platform for Oil and Gas (KCSPOG), Kenya Private Sector Alliance (KEPSA)

No.	Verifiable and measurable milestones to fulfill the commitment	Status of milestone	Start Date:	End Date:
1	Make public information on foreign and local company buying property	Ongoing	February 2021	June 2022
2	Build a module on the Beneficial Ownership Register Information of companies and individuals convicted of bribery and corrupt practices	Ongoing	June 2021	June 2022
3	Build a module on the Beneficial Ownership Register Information of debarred companies under the Public Procurement and Asset Disposal Act (PPAD) 2015	Ongoing	June 2021	December 2022
4	Apply the Beneficial Ownership (BO) data standard to the existing BO register	Ongoing	December 2021	June 2022

Commitment 2: Open Contracting

This commitment will implement a national end to end e-government system adopting the Open Contracting Data Standard (OCDS), to cover all stages of public procurement in Kenya. The system will be interoperable with all other government E-Systems. This commitment will ensure more efficient delivery of public goods and services, and increased opportunities to do business with government for all citizens. This includes increased opportunities for Women, Youth and Persons with Disability under the Access to Government Procurement Opportunities (AGPO) initiative.

Objective

To ensure reduced fraud and corruption, increased transparency, accountability, value for money, competitiveness, and authenticity of all public procurement processes. This includes all emergency procurement during the Covid-19 pandemic. The system will also boost performance on public contracts, deliver more efficient planning, monitoring, evaluation, audit and reporting of public procurement.

Status quo:

Since 2003, public procurement in Kenya has been done through the country's Integrated Financial Management Information System (IFMIS). Despite a number of public finance management reforms including the adoption of IFMIS, procurement in Kenya has not yet achieved the threshold of accountability, transparency, competition, equity and inclusivity envisaged in the Constitution of Kenya 2010 and the Public Procurement and Asset Disposal Act (PPDA) 2015. More is needed to be done to strengthen the processes, controls and oversight of each stage of procurement. Additionally, improvements are needed in publishing high quality open data on all stages of procurement including planning, tendering, awarding, contracting, implementation and oversight. Finally, more robust public participation as envisaged.

Ambition

The commitment seeks to achieve maximum impact and accountability of public funds expenditure on behalf of citizens; effective delivery of goods and services, stimulate market opportunities including for Women, Youth and Persons with Disability, support diversification of supply chains, and increase checks and balances for emergency procurement - particularly in the Covid-19 pandemic response and recovery period.

Lead implementing organizations

Government: Public Procurement and Regulatory Authority (PPRA)

CSO: Development Gateway, Hivos, Local Development and Research Institute (LDRI)

Timeline

February 2021 to December 2022

OGP Values

Technology for Openness and Accountability, Access to information, Civic Participation, Public Accountability

New or ongoing commitment

Ongoing

Other actors involved - Government

Senate of Kenya, Council of Governors (CoG), County Assemblies Forum (CAF), Commission on Administrative Justice (CAJ)

Other actors involved - CSOs, private sector, working groups, multilaterals etc.

MAPACA Trust, Twaweza East Africa, Youth Agenda, National Taxpayers Association, Transparency International-Kenya.

No.	Verifiable and measurable milestones to fulfill the commitment	Status of milestone	Start Date	End Date
1.	Publish beneficial ownership information on foreign and local companies bidding for and winning mining contracts	Ongoing	February 2021	June 2022
2.	Ensure the new end to end e-government procurement system is interoperable with open contracting portals developed by national and devolved governments set up for public funds management	New	February 2021	December 2021
3.	Amend PPDA 2015 to strengthen and encourage whistleblowing with a clear definition and scope of (robust and comprehensive) protection. Offer protective and easily accessible anonymous whistleblowing channels	New	February 2021	December 2021
4.	Develop draft national and county open contracting policies, acts and regulations to guide the data collection, disclosure and management of the E-Government Procurement system which adopts the Open Contracting Data Standard (OCDS)	New	February 2021	December 2022
5.	Fully operationalize the Public Procurement Information Portal (PPIP) with 100% of all procuring entities registered and actively submitting all information on the portal as per Executive Order No. 2 of 2018 in a timely manner. Information provided for publication to the PPIP by should include both foreign and local companies bidding for contracts in Kenya	New	March 2021	January 2022
6.	Publish all quarterly, annual and periodic reports generated under the Public Procurement and Assets Disposal Act (PPDA) 2015, on the Public Procurement Information Portal (PPIP) for transparency	New	March 2021	December 2022
7.	Adopt low tech/rural connectivity information dissemination mechanism for all Access to Government Procurement Opportunities (AGPO) documentation (including providing hard copies of documentation) as per provisions of the Access to Information Act 2016	New	April 2021	April 2022
8.	Develop a mechanism to ensure that public feedback through the project life cycle is documented and meaningfully channeled into decision-making	New	April 2021	April 2022
9.	Enactment of national legislation and an enabling framework for comprehensive Whistleblower Protection in Kenya. This legislation will provide a clear scope of protected disclosures, protected persons and control measures to facilitate whistleblowing	New	April 2021	December 2022
10.	Develop and implement joint public awareness campaign on measures for protection of whistleblowers with civil society	New	May 2021	December 2022

Commitment 3: Open Data for Development

We will lower the barrier and increase access to timely, affordable, up-to-date, and accurate data for socio-economic development in order to reduce inequality and improve evidence-based decision-making for enhanced service delivery.

Objectives

Promote transparent and accountable use of publicly funded research data for open science to spur innovation and knowledge creation, public expenditures, Earth Observations and geo-spatial information to enable academia, citizens, innovators and other data communities harness its capability for use in the areas of health, agriculture, water, physical and land-use planning, disaster management, natural resources management, environmental conservation and climate change.

Status quo

Analysis-ready Earth Observations Data - datasets that have been processed to allow analysis with minimum additional user effort and infrastructure - and information are currently not easily available or accessible to data communities such as farmers, planners, surveyors, health workers, academia and first responders in disaster. Data on public expenditures and location of capital projects in datasets that are also analysis-ready and can be used by both government and non-state actors is also not easy to find. County planning is guided by Section 102-115 of the County Government Act, 2012. County Governments are required to prepare a 5-year County Integrated Development Plan (CIDP) that informs annual budget of a county, a 10-year County Sectoral Plan, a 10-year County Spatial Plan, and city and municipal plans based on geographic information system (GIS). Clause 105 (f), in particular, obligates counties to establish a GIS based database system to be used as a tool for planning and implementation of development programmes in order to ensure inequalities in resource allocation are addressed. However, these requirements are currently at disparate levels of implementation. Further, current Disaster Risk Reduction (DRR) and Resilience interventions at national and sub-national level are not supported by accurate and timely data.

Ambition

The initiative will help provide affordable access to analysis-ready data in open standards, including publishing, and where possible disaggregated to include gender, minorities etc. The intent is to publish and share algorithms for re-use, through openly accessible platforms. This will enable decision makers and innovators leverage on open data to create products and services that are more context specific to cater for service gaps to farmers, policy makers, health workers in aid of every day decision making and action. The infrastructure will also be repurposed to ensure adequate disaster preparedness, faster response and recovery.

Lead implementing organizations

Kenya Space Agency, ICT Authority, Council of Governors, Office of the Controller of Budget, County Government of Vihiga, County Government of Nandi

- Andrew Otieno Nyawade (Kenya Space Agency)
- Mathew Chemwei Kipchemon (ICT Authority)
- Evans Kipruto (Council of Governors)
- Noah Asanga Okaya (County Government of Vihiga)
- Muliaro Wafula (Jomo Kenyatta University of Agriculture and Technology)

Timeline:

February 2021 – May 2022

OGP Values

Access to information, public accountability and use of technology and innovation.

Status of commitment:

Ongoing

Other actors involved – Government

Office of the Deputy President, Kenya National Bureau of Statistics (KNBS), Office of Controller of Budget, State Department of Housing and Urban Development, Department of Surveys, Department of Resource Surveys and Remote Sensing (DRSRS), Jomo Kenyatta University of Agriculture and Technology, Kenya Agricultural and Livestock Research Organization (KALRO), Kenya Meteorological Department (KMD), National Drought Management Authority (NDMA), National Disaster Operations Centre, National Environment Management Authority (NEMA), National Land Commission (NLC) and Intergovernmental Relations Technical Committee (IGRTC).

Other actors involved – CSOs, private sector, working groups, multilaterals etc.

Local Development Research Institute (LDRI), Global Partnership for Sustainable Development Data (GPSDD), ESRI, Group on Earth Observations (GEO), Digital Earth Africa (DE Africa), Geospatial Society of Kenya (GeoSK), Women in GIS, Kenya ICT Action Network (KICTANet), Kenya Private Sector Alliance (KEPSA), United Nations Development Programme, Food and Agriculture Organization, CODATA, Data Trace International Ltd and LocateIT Ltd.

No.	Verifiable and measurable milestones to fulfill commitment	Status of milestone	Start Date	End Date
1.	Regularly update the Kenya Open Data portal	Ongoing	February 2021	May 2022
2.	Include GIS information of capital projects in County budgets	Ongoing	February 2021	May 2022
3.	Establish conditional grant to support development of geographic information system laboratories (GIS Labs), and digitization of development control	New	February 2021	May 2022
4.	Support development and implementation of Spatial Plans through technical assistance, capacity building and sensitization, infrastructure development and data provision in at least five Counties	New	February 2021	May 2022
5.	Integrate use of analysis-ready data for development and disaster risk reduction	Ongoing	February 2021	May 2022
6.	Support the implementation of a Disaster Early Warning System	New	February 2021	May 2022
7.	Develop demand driven market for dissemination of simplified data products for decision making and action for different data communities (Governments, Civil Society, citizens)	New	February 2021	May 2022
8.	Open Research Data-Open science to accelerate Knowledge creation and Innovation (CODATA)	New	June 2021	May 2022
9.	Development of Data Policies, Data Management Plans for at least five counties	New	June 2021	May 2022

Commitment 4: Public Participation and Legislative Openness

We will strive to mainstream meaningful public participation and in all developmental spheres in the country, ensuring that the voice of the public counts and shapes the eventual developmental outcome for ownership. Additionally, we shall seek to boost legislative openness as part of the effort toward securing open and accountable governance.

Objective

To optimally actualize the constitutional aspiration on public participation, identified as a national value and principle of governance and a key requirement in legislative, economic and social development.

Status quo

The Constitution of Kenya, 2010 (COK, 2010), in Article 10, identifies public participation as one of the key national values and principles of governance. Via Article 118, COK, 2010 binds Parliament to engaging members of the public in its business. It requires Parliament to 'facilitate public participation and involvement in the legislative and other business of Parliament and its committees.' Despite being over a decade old provision, implementation of public participation largely remains sub-optimal, either completely ignored or half-heartedly implemented. A national-level legislation to refine its implementation is yet to be passed, thus confining the process largely to the zone of mere formality and tokenistic undertaking. It fails the test of inclusivity and genuine desire to incorporate the views as shared by members of the public. There is lack of robust and effective mechanisms of binding duty bearers to meaningful public participation process. Access to information, to inform optimal participation by the public, lacks optimal guarantee.

Ambition

Secure a framework to allow for meaningful public participation in the country's governance ecosystem, in all its variations; political, economic and social. Further open up the Parliament and County Assemblies by ensuring that all proceedings, both plenary and committee, are availed to the public for comprehensive scrutiny and robust engagement with the country's law making system and regime. This is in furtherance of legislative openness in keeping with the 2012 'Declaration on Parliamentary Openness' which in part provides that 'parliamentary openness enables citizens to be informed about the work of parliament, empowers citizens to engage in the legislative process, allows citizens to hold parliamentarians to account and ensures that citizens' interests are represented.' By seeking to secure the place of civic education, focus shall also be trained on empowering and equipping the public with requisite capacity to meaningfully engage with and in public participation spaces and engender in them the consciousness to ensure that their voices count in the best way possible. Intensifying the use of technology, particularly coming against the backdrop of the COVID-19 pandemic, to accord multiple and diverse alternatives of public participation.

Lead implementing organizations

Government: The Senate of the Republic of Kenya

CSO: Mzalendo Trust

Timeline

January 2021 to December 2022

OGP values

Access to information, Public accountability, Citizen Engagement, Use of Technology

New or ongoing commitment

Ongoing

Other actors involved - Government

Office of the Deputy President, Council of Governors (CoG), The National Assembly, County Assemblies Forum (CAF), Controller of Budget, Commission on Administrative Justice (CAJ), National Gender and Equality Commission (NGEC).

Other actors involved - CSOs, private sector, working groups, multilaterals etc

Westminster Foundation for Democracy (WFD), National Taxpayers Association (NTA), Election Observation Group (ELOG), Twaweza East Africa, Youth Agenda, United Disabled Persons of Kenya (UDPK), CRECO, Institute of Public Finance Kenya (IPFK), Katiba Institute, Kenya Civil Society Platform on Oil and Gas (KCSPOG).

No.	Verifiable and measurable milestones to fulfill the commitment	Status of milestone	Start Date	End Date
1.	Entrench legislative openness through timely proactive disclosure of information and providing access to Parliamentary and county assemblies plenary and committee proceedings and timely publication of all proceedings	New	February 2021	December 2021
2.	Develop publicly accessible petitions tracker for Parliament and select county assemblies	New	February 2021	December 2021
3.	Enactment of the Public Participation Law in Parliament	Ongoing	February 2021	May 2022
4.	Draft national Civic Education Legislation	New	February 2021	May 2022
5.	Expanding civic space by operationalization of the Public Benefits Organization Act.	New	February 2021	May 2022
6.	Adopt and enhance the use of technology as an enabler for public participation	New	February 2021	May 2022
7.	Develop guidelines to guarantee inclusivity in public participation to include Women, Youth and Person with Disability, minority and marginalized communities	New	February 2021	May 2022
8.	Institutionalization of the Open Government Partnership (OGP) in Parliament at both technical and political level through existing mechanisms and regular Speakers' Roundtable	New	February 2021	May 2022
9.	Pursuant to County Governments Act, operationalize citizen service centers in at least five (5) counties to improve access to information on budget implementation, pursuant to Article 119 of the 2010 Constitution	New	February 2021	May 2022

Commitment 5: Improving Public Service Delivery Performance

In accordance with resolution 32 of the fourth Devolution Conference, we will apply the sub-national survey instrument –the County Peer Review Mechanism (CPRM) to improve public service delivery performance by ensuring sustained citizens' engagements with their county governments.

Objective

CRPM is an evidenced based framework for promoting rigorous citizens engagement, peer reviews and peer learning for mutual accountability and improved service delivery performance.

Status quo

Kenya has voluntarily submitted two comprehensive reviews of governance. The most recent review was undertaken under the two-tier governance system. The resolution was done but has never been implemented. County Governments committed to undertake peer reviews and peer learning activities. They are however yet to set in motion the implementation of the peer review and mutual learning processes.

Ambition

- To facilitate extensive governance assessments in the semi-autonomous sub national units and peer reviews between Governors. This will be a pioneer initiative and one of the best ways of spurring democratic dialogue over service delivery.
- To publicize a county programme of action for continued citizens' engagement through an online platform that will enable citizens to interactively track its implementation.
- For resilience purposes: Lobby for the preparation of a piece of legislation to anchor the CPRM process. Also promote adoption and endorsement of the review reports by the Senate and County Assemblies (as oversight instruments).

Lead implementing organizations

Government: NEPAD/APRM, Council of Governors
CSO: LDRI

Other implementing organizations

TI-Kenya, Mzalendo, TISA, Katiba Institute, The Parliament of Kenya (The Senate and National Assembly), IGTRC

Timeline

February 2021- December 2022

OGP Values:

Access to Information, Technology, Public Accountability

No.	Verifiable and measurable milestones to fulfill the commitment	Status of milestone	Start Date	End Date
1.	Provide technical assistance to the counties on CPRM	New	February 2021	July 2021
2.	Validation and dissemination of the County self-assessment reports	New	April 2021	October 2021
3.	Hosting the CPRM Summit	New	June 2021	July 2021
4.	Preparation of the County Programmes of Action (CPoA) outlining the commitments by government	New	May 2021	July 2021
5.	Advocate for the use of APRM as a tool for oversight by Parliament	New	March 2021	July 2022

Commitment 6: Access to Information

We seek to ensure the effective implementation of the Access to Information Act (ATI Act) for the realization of citizens' right of access to information. We will leverage on technology to enhance the practice of proactive disclosure and promote effective records management. An area where information is sorely needed, and the commitment will seek to address, relates to Kenya's public debt sustainability.

Objective

To operationalize Article 35(1) and the Access to Information Act 2016.

Access to information is the bedrock upon which open governance is founded. When people are informed, they can participate fully in public life and contribute to determining priorities on policies and public spending. The public is also able to meaningfully participate in ensuring the government is accountable, responsive and transparent.

Status quo

Kenya passed the Access to Information Act on 31st August 2016. The law gives Kenyan citizens the right of access to information held by public entities and relevant public bodies. The Act came into force and is being implemented at both national and county levels of government. Effective implementation is hampered by the lack of regulations which would better articulate the processes through which information is provided to citizens. Lack of a proper monitoring framework on proactive disclosure ensures that no clear standards are applied by the public institutions in disclosure of information making it difficult to assess whether the objectives of the Access to Information Act are being met. Further, non-digitization of records as required by the Act has hindered access to information held by public entities.

Ambition

The commitment will help put focus on the adoption of the Access to Information regulations which will ensure better implementation of the Act by giving clarity on process issues. The digitization of records will help ensure better record keeping practices and in turn improve proactive disclosure standards of public entities, thereby ensuring maximum disclosure of information, a principle of ATI. The development of a county ATI law will ensure that the most requisite principles of access to information and best practices are adhered to when counties draft their own ATI laws.

Lead implementing organizations

Commission on Administrative Justice (CAJ) Ministry of ICT, Kenya National Archives & Documentation Service, (KNADS), Public Debt Management Office, National Treasury.

Other actors involved;

ARTICLE 19 Eastern Africa, Mzalendo Trust, The Institute for Social Accountability (TISA).

OGP Values

Access to Information, Use of Technology

New or ongoing commitment

New

Timeline

January 2021 to December 2022

No.	Verifiable and measurable milestones to fulfill the commitment	Status of milestone	Start Date	End Date
1.	Passing of Access to Information Regulations.	New	January 2021	December 2021
2.	Completion and roll out of the Access to Information (ATI) at the Kenya School of Government	New	January 2021	December 2021
3.	Develop a framework for the adoption of the model Access to Information Law by counties	New	January 2021	December 2022
4.	Implementation of a reporting framework on proactive disclosure for public institutions	New	January 2021	December 2022
5.	Enforcement of digitization of records held by public institutions	New	January 2021	December 2022
6	Open and accessible public debt register	New	January 2021	June 2022

Commitment 7: Access to Justice

Background

Access to justice for the majority of Kenyans remains a challenge due to inadequate financing of key government institutions such as the National Legal Aid Service and the Judiciary which are charged with the core responsibility of implementing the Legal Aid Act 2016 and the Alternative Justice Systems Policy. As a result, it has been challenging to operationalize the Legal Aid Fund that would be critical in supporting accredited legal aid providers to conduct access to justice programmes. At the same time, the National Legal Aid Service has been severely understaffed and hence incapacitated to fully fulfil its mandate. Both the Legal Aid Act and Alternative Justice Systems are imperative as they set in place legal and policy frameworks for the promotion of access to justice in Kenya.

On the other hand, the Judiciary has identified entrenchment of alternative justice systems and access to justice as a priority area of funding for the financial year 2021/2022. If the previous financial year is anything to go by, budgetary allocation was substantially reduced hence limiting the scope of access to justice work by the Judiciary. Commitment by other relevant Government institutions involved in the budgetary process is essential to ensure that adequate funding is allocated for the priority areas of alternative justice systems and access to justice.

The adoption of the Alternative Justice System (AJS) Policy by Kenyans and stakeholders requires a clear understanding of informal and traditional justice systems, their mandate and how they may be used to enhance access to justice. Traditional justice systems have been used in an ad hoc manner to resolve disputes within the community. In most cases, the traditional, informal justice systems have been delinked from the formal justice systems. Before the development of AJS policy, there had been no clear standardized mechanism for co-referencing of cases from the formal to the informal justice system and vice versa. As such, injustices were perpetrated as the informal justice systems were patriarchal in nature. In addition, the decisions from the informal justice systems did not have the force of law and hence were unenforceable. Government-citizen dialogues on AJS are key for purposes of creating awareness on the policy and how citizens may use AJS mechanisms to access justice for appropriate cases. The Mombasa County Legal Aid Unit receives many disputes, some of which do not have to go to court and may be solved using alternative justice mechanisms. As a result, the Legal Aid Unit has many cases to attend to which causes delay in accessing justice and dissatisfaction from citizens looking for legal remedies.

This is an opportunity to establish a much needed co-reference mechanism between the Legal Aid Unit and various AJS mechanisms in Mombasa that serves to not only reduce reliance on the Legal Aid Unit but provides a model for replication under the AJS policy.

Emergency actions to contain the spread of COVID 19 necessitated the use of innovative strategies which included the use of technology to promote access to justice. COVID 19 is as much a justice crisis as it is a health crisis as the pandemic threatens to widen the justice gap, especially for vulnerable communities who have borne the brunt of the pandemic. Data from civil society legal aid providers reveals an increase in labour related disputes during the pandemic. This is due to sudden loss of employment and/or unfair termination or redundancy. In response, we propose to pilot an ICT centre in partnership with the Employment and Labour Relations Court and the National Legal Aid Service. Through this ICT centre, clients can attend court and be assisted to file documents at no cost. It is expected that both NLAS and the judiciary will use lessons learnt from this pilot and scale the initiative within their respective institutions. In using technology to expand legal aid, this commitment seeks to ensure that people seeking justice are supported to do so and are not left behind due to the digital divide.

Objectives

We seek to expand Access to Justice through implementation of Legal Aid Act and Alternative Justice Systems Policy through:

1. Increasing citizen participation in justice delivery while promoting transparency and accountability in the local alternative justice structures.
2. Expanding legal aid capacity by supporting indigent clients to process online court proceedings and advocate for increased financing for legal aid services.

Status quo

Legal Aid Act.

A majority of Kenyans, due to an array of reasons, including socio-economic, legal and political factors, are unable to access justice. The indigent remains unaware of their legal rights, lack knowledge of the court system, or simply experience unending frustrations while seeking to access justice.

Generally, many Kenyans are unable to afford the high cost for legal services. In 2019, the Hague Institute for Innovation of Law Justice Index estimated that to access court, a Kenyan needs at least USD 80. This is a modest cost considering that court fees are assessed on a case to case basis and dependent on the nature and value of the claim. Due to almost 50 percent of Kenyans living below USD1 per day, the cost of accessing justice may be unattainable.

The Legal Aid Act was enacted in 2016. It provides a framework for collaboration between state and non-state actors in legal aid service provision. Further, it establishes a national legal aid scheme that is affordable, accessible, sustainable, credible and accountable among others. However, Kenya is yet to achieve the benefits of the provisions in the Act, specifically access to justice for the indigent Kenyans.

Due to limited budgetary allocation, some provisions of the Legal Aid Act that remain unrealized include: the operationalization of the Legal Aid Fund for financing, accreditation of community paralegals and legal aid providers and expansion of the legal aid scheme nationwide. The Legal Aid Fund supports the expansion of the legal aid scheme by remunerating legal aid providers, paying expenses incurred by represented persons and financing general operations and development activities of NLAS. Without a Legal Aid Fund, there is limited state funded legal aid which does little to bridge the expanding justice gap. Accreditation of community paralegals and legal aid providers is essential for their supervision and oversight by NLAS as well as a pre-condition for financial support.

Currently, state funding at USD 540,000 annually mainly supports administrative running costs of the 5 established NLAS offices nationwide leaving very little funding towards actual delivery of legal aid services. NLAS would require an estimated annual budget of USD 3.5 million to employ staff, both advocates and paralegals, to administer legal aid in all the 47 counties nationwide. A majority of NLAS activities are supported by development partners who are bound by time and specific targets. Principally, the legal aid scheme should be fully state funded; government funding would be more sustainable.

To adapt to the justice challenges brought about by the pandemic, the government supported the establishment of a toll free line used by NLAS to administer legal aid services. In addition, NLAS put in place desktop computers with internet access to support clients who needed to attend online hearings. However, this was just the case for Nairobi. In areas outside of Nairobi, status of legal aid delivery, beyond the toll free line remains uncertain. With additional funds, NLAS will be able to put in place nationwide mobile legal aid clinics, with internet access operated by paralegals to support clients attending to their matters. This is needed now more than ever as face to face hearings in court remain very limited. Further, under the collaborative spirit of the Legal Aid Act, NLAS may work together with civil society organisations that have support systems for clients to access justice through the use of technology.

Alternative Justice Systems.

Kenya is one of 3 countries in the world that has formalised its traditional and other informal mechanisms used in accessing justice. One consequence of access to justice problems in the formal legal system is that many Kenyans resort to alternative systems of justice, such as mediation processes facilitated by paralegals and community-based traditional justice systems. A survey by the Judiciary, together with the Hague Institute for Innovation of Law found that only 10% of Kenyans use the formal justice system to resolve their disputes. Alternative justice processes help to reduce the burden on courts and are meant to strengthen the links between formal and informal justice systems rather than replace the reliance on courts.

In some areas, such as Northern Kenya, informal justice systems have almost replaced the formal justice system, also in dealing with criminal offences. However, there is an amount of interplay between the formal and informal justice systems, evident for example from the fact that community leaders who serve in informal justice systems can refer serious crimes cases to the ordinary courts. The courts have also embraced the interplay with the informal justice system through court led mediation such as that which exists in Isiolo court where the court keeps a roster of council of elders. The court refers cases to the elders for determination and later recording of judgments and this is bearing fruit thus enhancing and expanding access to justice at the community level.

Kenya's Alternative Justice System (AJS) Policy proposes a legal framework that systematizes the use of various AJS models whilst linking the informal and formal justice systems.

During the pandemic the inaccessibility of justice for indigent litigants has been exacerbated by the use of technology in court processes. AJS presents an accessible platform for indigent clients to access remedies for their disputes within an informal space recognised by law.

The judiciary's priority area for funding in the financial year 2021/22 -2023/24 identifies the entrenchment of various alternative justice systems models and improving access to justice as key priority areas. In the past financial year 2018/2019, Judiciary had been allocated USD17.3 million but was further slashed down to USD14.5 million by Parliament through the Appropriation Act. There is a real fear that this situation may be repeated given that 2022 is an election year with competing interests from various government agencies. This will affect the implementation of the AJS policy and by extension meaningful access to justice for a majority of Kenyans.

Ambition

We seek to pilot the implementation of the Alternative Justice System Policy in Mombasa County and share lessons learnt with the broader Judiciary. The AJS policy presents an accessible model for timely and efficient resolution of disputes for a majority of Kenyans who still cannot access the formal courts.

Furthermore, through the OGP platform, we seek to leverage the use of technology to facilitate access to justice for clients who do not have access to internet services. We seek to pilot the ICT centre in collaboration with NLAS and the Employment and Labour and Relations Court with the aim of sharing lessons learnt for replicability in other court stations.

To fully realize the benefits of access to justice, either through the AJS policy or the Legal Aid Act, we intend to advocate for the operationalization of the Legal Aid Fund and the increase in budgetary allocation for Judiciary's priority areas of entrenching the use of AJS models and improving access to justice.

Lead implementing organization

Government lead: The AJS Implementation Committee (Judiciary), the Employment and Labour and Relations Court (Judiciary) and the National Legal Aid Service.

CSO lead: Kituo cha Sheria-Legal Advice Centre

Other actors involved

Katiba Institute, Namati-Kenya, Mzalendo, National Council for Administration of Justice, County Government of Mombasa, Coast Interfaith Council of Clerics, Haki Yetu, County Government of Mombasa, University of Nairobi-School of Law and Strathmore Law School.

OGP Values

Sustainability, use of technology, inclusivity, expertise, resiliency, link to existing strategy, access to information, transparency and accountability.

New or ongoing commitment

New

Timelines

March 2021 – December 2022

No.	Verifiable and measurable milestones to fulfill the commitment	Status of milestone	Start Date	End Date
1.	Conduct citizen-government dialogues on AJS	New	March 2021	December 2022
2.	Enhance co-referencing of cases between the Mombasa Legal Aid Unit and AJS Mechanisms	New	March 2021	December 2022
3.	Work with relevant institutions to provide adequate funding for the implementation of the AJS Policy and the operationalization of the Legal Aid Fund	New	March 2021	December 2022
4.	Set up one Virtual Court Centre in collaboration with Kituo's ICT Centre and build the capacity of indigent self-representing clients to use technology in accessing the Employment and Labour Relations Court in Milimani, Nairobi	New	March 2021	December 2022
5.	Benchmark with other OGP global justice actors using technology to promote access to justice	New	March 2021	December 2022

Commitment 8: Building Open Government Resiliency

Build institutional support of OGP by ensuring engagement of broader interest groups across Public institutions, Private sector, Academia, Civil Society and strengthen multilateralism with other OGP participating countries.

Objectives

- Build resilience through supporting documentation of OGP process
- Build resilience through targeted and strategic institutional involvement in OGP
- Build resilience through enabling greater institutional ownership of OGP backed processes
- Increase the capacity of public and private sectors to deliver on NAP IV commitments.

Status quo

The last two years have seen increased participation and ownership by government of the OGP process. However, support systems for Open Government continues to revolve around individual PoCs and lacks high level political support both at the national and subnational levels. As noted in the Independent Review Mechanism (IRM) report, the resourcing of OGP commitments continues to impact ownership and collective implementation thus affecting sustainability of OGP beyond electoral cycles.

Ambition

Following the impact of the pandemic on government operations, the Open Government Partnership platform provides an opportunity for rebuilding of resilient institutions with greater government openness and inclusion in the design and implementation of the recovery strategies.

Lead implementing organization

Office of the Deputy President, Commission on Administrative Justice

Contact Persons

- DR. Korir Sing'oei, Deputy President's Office
- Commissioner Lucy Ndungu, CAJ

Timeline: January 2021 – May 2022

OGP Values

Inclusive decision making, access to information, accountability, citizen engagement, innovation

Status of commitment:

Ongoing

Other Government actors involved:

MDAs, Senate, National Assembly, Council of Governors, County Assemblies Forum, Judiciary, Ministry of Foreign Affairs, NEPAD /APRM

Other actors

IDS-UON, Universities and Colleges, Media, CSO's

No.	Verifiable and measurable milestones to fulfill the commitment	Status of milestone	Start Date	End Date
1.	Develop policy briefs for each of the commitment areas	New	February 2021	December 2021
2.	Develop an induction program for new players and conduct quarterly review of progress of commitments	New	February 2021	December 2021
3.	Establish an institutional mechanism for open government (Operations and resource mobilization)	New	February 2021	May 2022
4.	Document stories and best practices amongst the Open Government Partners in Kenya/Africa	Ongoing	March 2021	March 2022
5.	Deepening of OGP network within Kenya, more specifically, ensure engagement and active participation of sub-national governments, Independent Commissions and the Judiciary	New	March 2021	May 2022
6.	Convene recurrent OGP roundtables for robust stakeholder engagement	New	March 2021	May 2022
7.	Establishment of OGP technical desks in each of the implementing public institutions	New	September 2021	May 2022

NATIONAL STEERING COMMITTEE

H.E. Dr. William Samoei Ruto

Deputy President
Republic of Kenya

Hon. Justice Paul Kihara Kariuki, EGH

Attorney General
Republic of Kenya

Sen. Samson Cherarkey

Senator
County Government of Nandi

Ms. Lucy Ndung'u, HSC

Commissioner
Access to Information
Commission on Administrative Justice

Prof. Muliaro Wafula PhD

Director
ICT Centre of Excellence & Open Data – iCEOD
Jomo Kenyatta University of Agriculture and
Technology (JKUAT)

Dr. Korir Singoei, EGH

Legal Advisor
Office of the Deputy President
OGP Convener

Dr. Annette Mbogoh

Executive Director
Kituo Cha Sheria

Ms. Sheila Masinde

Executive Director
Transparency International

Mr. Mugambi Kibe

Regional Director
Article 19, Eastern Africa

H.E. Prof. Kivutha Kibwana

Governor
County Government of Makueni

Mrs. Anne A. Amadi

Chief Registrar
The Judiciary

Maj. Gen. (Rtd.) James Aruasa

Chairman
Kenya Space Agency

Amb. Dr. Samori Okwiya

Chief Executive Officer
NEPAD/APRM

Mr. Henock Kirungu

General Manager
Public Procurement Regulatory
Authority

Ms. Caroline Gaita

Executive Director
Mzalendo Trust

Ms. Mendi Njonjo

Regional Director
HIVOS East Africa

Ms. Stephanie Muchai

Global Steering Committee Member
Open Government Partnership

TECHNICAL COMMITTEE

Patita Tingoi

Secretary
Inter- Governmental Affairs
Office of the Deputy President
Point of Contact (PoC),

Maj. Andrew Nyawade

Space Engineer
Kenya Space Agency

Ms. Kavata Musyoka

Gender and Democratic Governance
Specialist
Senate

Mr. Peter Kimemia

Director
NEPAD/APRM Secretariat

Mr. Alex Mutuku

Point of Contact (PoC)
County Government of Makueni

Ms. Harriet Wachira

Programme Coordinator
Transparency International

Mr. Alex Ogutu

Program Coordinator
Mzalendo Trust

Ms. Tracy Wachira

Legal Officer
Kituo cha Sheria

Philip Thigo

Head, Senior Director for Africa
Arizona State University | Thunderbird School
Global Management
Point of Contact (PoC),

Mr. Ahmed Jibril

ICT Officer
Public Procurement and Regulatory Authority

Mr. Peter Mwaura

Legal Officer
National Assembly

Ms. Viola Ochola

Director, Access to Information
Commission on Administrative Justice

Mr. Muchiri Nyagah

Executive Director
Local Development Research Institute

Ms. Sandra Musoga

Senior Program Officer
Article 19 East Africa

Ms. Charlene Migwe - Kagume

Senior Consultant
Development Gateway

