



TRANSPARENCY  
INTERNATIONAL  
KENYA

IACC  
MONITOR



# IACC HIGH-LEVEL SEGMENT MONITORING MECHANISM KENYA 2018-2020

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# EXECUTIVE SUMMARY

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## SUMMARY OF FINDINGS

<b>Total number of commitments made at the 18th IACC</b>	<b>8</b>
<b>Total number of commitments selected for monitoring</b>	<b>3</b>

<b>Current level of progress in commitment implementation</b>	
Number of completed commitments	1
Number of partially completed commitments	2
Number of commitments not started/dropped	0

## KEY CHALLENGES TO COMMITMENT IMPLEMENTATION

There are two key challenges to the satisfactory implementation of the commitments made by the Kenyan government in 2018. These relate to:

1. The lack of sanctions against procuring entities that do not comply with the executive order requiring such entities to publish public procurement information.
2. The Public Procurement Regulatory Authority (PPRA) decries the lack of adequate staff to fully execute their mandate.
3. The change in leadership at the National Treasury, which could have affected the roll out of the electronic government procurement (EGP) system as well as the budgetary allocation for the acquisition of this system.

## KEY OPPORTUNITIES TO ACCELERATE COMMITMENT IMPLEMENTATION

1. The current Kenya Open Government Partnership (OGP) National Action Plan III ends in December 2020 and the creation of a new plan is underway. To sustain this commitment, continuous publication of procurement data on the public procurement information portal (PPI) should be included in the new plan.
2. Increased demand for strengthening public procurement through the use of publicly accessible digital mechanisms, through which all procurement information is easily available in the wake of increased emergency procurement to manage the COVID-19 pandemic.

## KEY RECOMMENDATIONS

	<b>Recommendations to government</b>	<b>Institution</b>
1.	Executive order 2 of 2018 on the requirement for public procuring entities to publish procurement data on available platforms should be revised to include sanctions against non-compliant entities	Office of the President
2.	Amend the Public Procurement and Asset Disposal Act 2016 and attendant regulations to incorporate the executive order 2 of 2018 requirement for public procuring entities to publish procurement data on available platforms as a means to ringfence transparency in public procurement requirements	National Treasury, PPRA, Parliament
3.	Increase the budgetary allocation to the PPRA to increase their staff resources to enable them to conduct proper oversight over procuring entities	National Treasury, Parliament
4.	Map the capacity of procuring entities to uptake and implement the EGP to avoid challenges with roll out of the system	National Treasury, PPRA

	<b>Recommendations for civil society organisations</b>	<b>Institution</b>
1.	Train and conduct capacity building activities for media and civil society organisations to improve their ability to exercise civilian oversight of public procurement processes	Civil society organisations
2.	Form a CSO coalition to monitor the implementation of the national anti-corruption policy as per the timelines indicated in the implementation matrix	Transparency International Kenya and other civil society organisations

# INTRODUCTION

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The 18th IACC in Copenhagen featured a series of high-level meetings among countries in the Organisation for Economic Co-operation and Development (OECD) and non-OECD countries as well as international and regional organisations. As part of these meetings, participants made a set of statements on the steps that each intends to take to make progress in the field of anti-corruption, based on existing commitments, such as Open Government Partnership (OGP) action plans, UK summit, United Nations Convention against Corruption (UNCAC), OECD instruments, Sustainable Development Goals (SDGs), etc.<sup>1</sup> Participants at the high-level meetings agreed to establish a follow-up mechanism engaging all stakeholders (including governments, international and regional organisations, companies and civil society) in monitoring the implementation of these commitments.

The aims of the follow-up mechanisms are to:

- assess the level of progress towards the implementation of the commitments
- provide further analysis on, and complement, other reporting mechanisms
- focus on the qualitative nature of the commitments rather than quantitative scoring or ranking
- provide insights into what has and has not worked and why
- provide insights into the opportunities and challenges for implementation as a basis for understanding where technical support should be targeted

This report aims to capture the context and conditions under which the commitments are being implemented as well as recording progress in the implementation of the commitments. It provides further analysis on, and complements, other reporting mechanisms, rather than duplicate them.

This report presents the results of the first round of monitoring for Kenya.

The report contains the following sections:

1. Filtering of commitments: presents the results of selecting Kenya's commitments based on an assessment of their level of specificity and measurability, and hence the feasibility of monitoring each one of them.
2. Analysis of Kenya's context: presents a brief analysis of the extent to which the commitments overall are considered pertinent to the country context.
3. Progress in implementing the commitment: presents the level of progress of the commitments selected for monitoring as well as the challenges and opportunities for implementation.
4. Recommendations: presents the key recommendations to accelerate the implementation of commitments.

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<sup>1</sup> 18th IACC high level segment commitments, <https://iaccseries.org/18th-iacc/18th-iacc-high-level-segment-commitments/>

# FILTERING OF COMMITMENTS

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In total, Kenya presented eight commitments at the 18th IACC in 2018. Of these, three commitments are deemed feasible to monitor based on their level of specificity and measurability, as presented below.

**COMMITMENT 1: “Kenya has enhanced mechanisms for implementation of Open Governance initiatives through issuance of Executive Order No. 2 of 2018 that came to effect from 1st July, 2018. It directs all Public Procuring Entities to maintain and continuously update and publicise complete information of all tenders awarded, a comprehensive list of all registered suppliers, contractors and consultants.”**

**IS THE COMMITMENT SPECIFIC? YES**

The commitment is specific as it targets public procurement entities to ensure publication of contract awards and tender notices by procuring entities. While the commitment is an existing measurement of countering corruption, the Kenyan government commits to maintain and continuously update and publish information on all public tenders, contractors and suppliers. This is in line with upholding the principles of open and transparent government, which Kenya endorsed in the Open Government Partnership (OGP).

**IS THE COMMITMENT MEASURABLE? YES**

The commitment is sufficiently measurable as it has clear indicators and milestones to achieve. These include the development and launch of the public procurement information portal, an online platform that is regularly updated with information on the publication of contract awards and tender notices by public procuring entities.

**IS THE COMMITMENT SELECTED FOR MONITORING? YES**

**COMMITMENT 2: “Kenya is working towards securing the seamless integration of all procurement entities to the e-procurement module under the Integrated Financial Management System by the 1<sup>st</sup> January, 2019. This will increase functionalities that ensure commitment to price guidelines as published by the Public Procurement Regulatory Authority, analytical tools and procedures to flag out suspicious and repeated payments, payments above contracted pricing transactions and any other breaches. Public Procuring Entities will from 1<sup>st</sup> January, 2019 undertake their procurement through the e-procurement module.”**

**IS THE COMMITMENT SPECIFIC? YES**

The commitment is specific as it is anchored in Article 227 of the Constitution of Kenya which provides for the establishment of a system for the procurement of goods and services that is fair, equitable, transparent, competitive and cost-effective. The article further requires development of

a legislative framework to that effect, which was provided for by the Public Finance Management Act (2012) and the Public Procurement and Asset Disposal Act 2015 Sec. 12 (1) (e) of the Public Finance Management Act, which mandates the National Treasury to design and prescribe an efficient financial management system for the national and county governments that will also ensure transparent financial management and standard financial reporting. Sec. 7(2) (c) of the Public Procurement and Asset Disposal Act mandates the National Treasury to design and prescribe an efficient procurement management system for the national and county governments to ensure transparent procurement and asset disposal as contemplated by Article 227 of the constitution. The commitment is a further elaboration of a strong efficient procurement system that provides price guidelines and has tools that flag suspicious transactions.

**IS THE COMMITMENT MEASURABLE? YES**

The commitment is sufficiently measurable as indicators include the launch of an electronic procurement system for all procuring entities, which should have indicative prices for all commonly used items to ensure that there are no price inflations by procuring entities.

**IS THE COMMITMENT SELECTED FOR MONITORING? YES**

**COMMITMENT 3: “Kenya has introduced a requirement that all payments to the Government be made on ICT-based platforms through which citizens can apply and pay for passports, driving licenses, business registration, marriage certificates, land search certificates and other necessary documents so as to reduce human contact.”**

**IS THE COMMITMENT SPECIFIC? NO**

The commitment is not specific as it merely mentions an already existing commitment under various policies already implemented in country. This commitment is premised on the 2010 constitution which expressly recognises and provides the legal basis for the enjoyment of economic, social, and cultural rights. The commitment further operationalises Kenya Vision 2030, the country’s national development blueprint. The deployment of Kenya’s citizen service centres arose out of a direct presidential decree in 2013 and was embedded in the Devolution Plan of 2013.

**IS THE COMMITMENT MEASURABLE? NO**

The commitment is not measurable as the would-be indicators include the creation of e-platforms that have already been established to facilitate service delivery and payments, the publication of policy documents on these digital platforms that have already been produced, and the establishment of centres to offer basic services that have already been set up.

**IS THE COMMITMENT SELECTED FOR MONITORING? NO**

**COMMITMENT 4: “Kenya is undertaking periodic vetting of Public Officers including polygraph testing, to determine their integrity and suitability. This preventive measure was introduced on 1st June, 2018 and started with the Heads of Accounting Units and Procurement Units in Government Ministries, Departments, Agencies and Parastatals.”**

**IS THE COMMITMENT SPECIFIC?**

**NO**

The commitment is not considered specific as it is a result of a presidential directive that was issued on 1 June 2018 as part of the measures taken to counter corruption and is merely a description of the already existing anti-corruption framework. The president directed all heads of procurement and accounts in government ministries, departments, agencies and parastatals to undergo fresh vetting, including polygraph testing, to determine their integrity and suitability. Those who failed the vetting were to be suspended. This was followed by a circular, Ref. No. OP/CAB.39/1A of 4 June 2018 which was signed by the Head of Public Service Commission of Kenya.

**IS THE COMMITMENT MEASURABLE?**

**NO**

The commitment is not measurable as it was an exercise already carried out through a presidential directive that was then reduced into an internal circular. There have been no further measures, either via a circular or a directive, providing instruction on how to continue or institutionalise this policy.

**IS THE COMMITMENT SELECTED FOR MONITORING?**

**NO**

**COMMITMENT 5: “Kenya amended the Companies Act, through the Companies (Amendment) Act 2017 to introduce the concept of Beneficial Ownership Register. This was in accordance with the Financial Action Task Force recommendations on transparency of beneficial owners, the Open Governance Partnership Action Plan II and the Kenya Country Statement at the London Anti-Corruption Summit.”**

**IS THE COMMITMENT SPECIFIC?**

**NO**

The commitment is not specific as it merely mentions legislative reform, specifically to the Companies Act Kenya, which was already amended in 2017 to include the concept of a beneficial ownership register. The attendant regulations were developed and subsequently adopted in the Companies (Beneficial Ownership Information) Regulation 2020. All these changes were geared towards establishing a public register of company beneficial ownership information.

**IS THE COMMITMENT MEASURABLE?**

**NO**

The commitment as worded is not measurable, but if it is reworked then it could potentially be measured. The possible indicators could include the establishment and use of a beneficial ownership register.



**IS THE COMMITMENT  
SELECTED FOR  
MONITORING?**

**NO**

**COMMITMENT 6: “Kenya has enacted the Bribery Act, 2016 which seeks to strengthen the prevention, investigation and punishment of bribery particularly in the private sector. The Act provides stringent provisions of combating corruption and will bolster efforts to expose and punish corrupt conduct in the private sector.”**

**IS THE COMMITMENT  
SPECIFIC?**

**NO**

The commitment is not specific as it merely mentions the existence of an anti-corruption framework already in place through the provisions of the Bribery Act 2016. The commitment does not offer anything new.

**IS THE COMMITMENT  
MEASURABLE?**

**NO**

The commitment is not measurable as worded as it does not identify any measurable actions to indicate whether the commitment will have been achieved.

**IS THE COMMITMENT  
SELECTED FOR  
MONITORING?**

**NO**

**COMMITMENT 7: “Kenya has formulated a National Ethics and Anti-Corruption Policy, which will enshrine the strategies that are crucial in spearheading the war on corruption. Some of the strategies outlined in the Policy include prioritization of impactful investigations, recovery and restitution of illicitly acquired assets, intensified public education and awareness, and coordination of law enforcement and prosecution of corruption and economic crimes.”**

**IS THE COMMITMENT  
SPECIFIC?**

**YES**

The commitment is specific as it is premised on Article 5 (1) of the United Nations Convention against Corruption (UNCAC), which obligates states to develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. The commitment is aimed at prioritising effective investigations, recovery and restitution of illicitly acquired assets, intensified public education and awareness, and coordination of law enforcement and prosecution of corruption and economic crimes.

**IS THE COMMITMENT MEASURABLE?** Yes

While the commitment is not phrased as a measurable one, the policy is a commitment to harmonise anti-corruption strategies in the country in a specific, measurable, timebound framework outlined in the policy's logical matrix. The matrix outlines milestones and indicators for tracking progress as well as the institution involved in implementation. The policy was gazetted and adopted in 2019 and was formally launched in October 2020. The priority areas outlined require strengthening of the legal framework to enhance asset recovery efforts, investigations, prosecutions and adjudication of economic crimes through inter-agency cooperation, among other methods. These are measurable items that can be monitored within the logical matrix part of the policy.

**IS THE COMMITMENT SELECTED FOR MONITORING?** Yes

**COMMITMENT 8: “Kenya acknowledges the support from Britain, Switzerland and Jersey Island through the signing of bilateral agreements aimed at repatriating proceeds of crime hidden in their respective jurisdictions by corrupt individuals. Sequestration of stolen assets from the corrupt acts as a big deterrence for engaging in criminal activity.”**

**IS THE COMMITMENT SPECIFIC?** No

The commitment is not specific as it mentions frameworks for the recovery of assets that already exist. It basically acknowledges international collaboration without any associated activities or objectives.

**IS THE COMMITMENT MEASURABLE?** No

The commitment as stated provides no clear indicators or identifiable milestones.

**IS THE COMMITMENT SELECTED FOR MONITORING?** No

# COUNTRY CONTEXT

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Corruption in Kenya has become a matter of great concern, both domestically and internationally, primarily because it can no longer be said to be limited to a few rogue officials. The culture of corruption has grown roots in society at large and, as a result, become endemic.

The World Justice Project's 2019 assessment<sup>2</sup> awarded Kenya a rank of 18 out of 31 countries regionally, and a rank of 102 of 128 countries assessed globally. Kenya is accorded an overall score of 0.45 out of a best possible score of 1, with a score of 0.27 on the specific indicator assessing absence of corruption

In the 2019 Corruption Perception Index (CPI),<sup>3</sup> Kenya obtained a score of 28 out of 100, below the global average score of 43 and the sub-Saharan average score of 32. For the last five years, Kenya has scored between 25 and 28, out of 100, depicting slow progress in countering corruption.

The Mo Ibrahim Index on African Governance 2017 puts Kenya's score at 59.8 out of a possible 100, ranking it 13 out of 54 countries assessed. On the indicator assessing transparency and accountability, Kenya got a score of 45.4 and ranked 15 out of the 54 countries assessed. In the 2019 edition, both the overall score and the rule of law indicator showed some positive though minimal increases in scores for the anti-corruption efforts instituted in the country in the last few years.<sup>4</sup>

In terms of surveys assessing bribery and corruption in service delivery, the East Africa Bribery Index 2017<sup>5</sup> revealed that a third of Kenyan citizens encounter bribery incidents and, of those, seven out of ten paid bribes to access various government services, including law enforcement, health, judiciary and education. Eight out of ten citizens also rate the level of corruption as high, while six out of 10 noted that government was not doing enough to address it. Similarly, the Global Corruption Barometer<sup>6</sup> noted that 71 per cent of respondents felt that the government was not doing enough to fight corruption, while a majority (67 per cent) stated there had been an increased level of corruption in the previous 12 months; 45 per cent reported paying a bribe while accessing government services.

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<sup>2</sup> World Justice Project, *Rule of Law Index 2019*, 2019, <https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf>

<sup>3</sup> Transparency International, *Corruption Perceptions Index 2019*, 2019, <https://www.transparency.org/en/cpi/2019/results>

<sup>4</sup> Mo Ibrahim Foundation, *Ibrahim Index of African Governance (IIAG)*, 2020, <https://mo.ibrahim.foundation/iiag>

<sup>5</sup> Transparency International Kenya, *East African Bribery Index 2017*, 2017, <https://tikenya.org/wp-content/uploads/2017/09/East-African-Bribery-Index-EABI-2017-1-1.pdf>

<sup>6</sup> Transparency International and Afrobarometer, *Global Corruption Barometer Africa 2019*, 2019, [https://images.transparencycdn.org/images/2019\\_GCB\\_Africa3.pdf](https://images.transparencycdn.org/images/2019_GCB_Africa3.pdf)

In addition to these surveys and global indices, there are also more analytical assessments of the progress the country has made in establishing an anti-corruption legal and policy framework. Kenya signed and ratified the United Nations Convention against Corruption (UNCAC) in December 2003 and ratified the African Union (AU) Convention on Preventing and Combating Corruption in February 2007. Both conventions require member states to take various initiatives to counter corruption. Currently, Kenya is undergoing a review of the extent of implementation of the AU convention while the most recent country review report for UNCAC was launched in 2019.

This latter report concluded that Kenya has almost fully complied with the convention, especially in establishing the policy and legislative frameworks required under the terms of the convention.<sup>7</sup> Some of the missing pieces of legislation that the report highlighted include whistleblower protection measures and the failure to implement the Election Campaign Financing Act 2013.

The Constitution of Kenya promulgated in August 2010 gave Kenya the impetus needed to counter corruption. Art. 79 established the Ethics and Anti-Corruption Commission (EACC) as an independent commission with a broad mandate to fight corruption in Kenya. It further established a value system upon which a covenant between the state, its public officers and citizens in the country must be based. It sought to usher in a change in the ethos and style of leadership and introduce ethical and servant leadership under chapter 6 of the constitution.

On the policy and legislative front, parliament enacted the Anti-Corruption and Economic Crimes Act (ACECA) 2003, the Ethics and Anti-Corruption Commission Act (EACC Act) 2011, the Public Officer Ethics Act (POEA) 2003, the Bribery Act 2016, the Leadership and Integrity Act (LIA) 2012, the Public Procurement and Asset Disposal Act (PPAD) 2015, the Public Service Commission Act (PSCA) 2017, the Public Finance Management Act (PFMA) 2012, the penal code, and the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) 2009, Access to Information Act, 2016 and the Bribery Act, 2016. In 2019, parliament also adopted the national anti-corruption policy that provides a comprehensive framework for the design and development of an effective legal and institutional framework for curbing corruption and ensuring effective monitoring and evaluation of the efficacy of various anti-corruption measures.

On the institutional front, the Kenyan government has dedicated anti-corruption bodies, such as the EACC, the National Anti-Corruption Campaign Steering Committee, the Commission on Administrative Justice, the Financial Reporting Centre and the Asset Recovery Agency among other institutions that play complementary roles in countering corruption.

To address the lack of coordination among the investigative, prosecution and adjudicative institutions, a multi-agency team was established in 2015 to coordinate the anti-corruption chain. To

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<sup>7</sup> UNODC, *Country Review Report of the Republic of Kenya*, 2015, [https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2015\\_09\\_28\\_Kenya\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2015_09_28_Kenya_Final_Country_Report.pdf)

expedite anti-corruption cases, the chief justice established the anti-corruption and economic crimes division of the high court as well as practice directions that require the relevant cases to be heard without adjournments. There was a further proposal in the Miscellaneous Amendment Bill 2020 to introduce a definite period of two years to conclude anti-corruption cases. This was a welcome move as it provided a much needed nudge to expedite the adjudication of anti-corruption cases and shield them from the backlog challenges associated with the rest of the dockets at the judiciary. There was also increased budgetary allocation to both the Directorate of Public Prosecution and Directorate of Criminal Investigation to improve the delivery of their mandates.

There is, however, a need to clarify mandates for the EACC, the Asset Recovery Agency and the Office of the Director of Public Prosecutions with regards to asset recovery matters to avoid overlapping remits and possible turf wars that could jeopardise public confidence in their respective efforts to curb corruption. To date, the EACC has reported the recovery of assets worth KES26.65 billion (approximately US\$244 million), averting a loss of KES135.9 billion (approximately US\$1.2 billion) and a conviction rate of 52 per cent with 289 recorded convictions.<sup>8</sup>

In March 2015, President Uhuru Kenyatta's state of the nation address directed the attorney general's office to initiate a review of the policy and legislative framework for countering corruption. The intention is to ensure the effective discharge of constitutional imperatives related to integrity with a view to examining the legal, policy and institutional framework for countering corruption. The review culminated in a report that formed the basis for various policy and legislative reforms currently undertaken by the various agencies.<sup>9</sup>

Kenya has made significant strides in digitising government services to reduce human interaction, which reduces the opportunities for discretionary behaviour and corruption, particularly bribery. Nonetheless, there are still some key services that remain to be digitised. Kenya has also made some progress in improving the public procurement processes through the introduction of online tendering through the suppliers portal<sup>10</sup> and the subsequent publication of procurement data on the public procurement information portal<sup>11</sup> as set out in executive order 2 of 2018. The reforms in the public procurement process speak to wider challenges experienced in public finance management, particularly in procurement malpractice that accounts for the majority of the biggest corruption scandals that have affected the country in the recent past.

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<sup>8</sup> Kenyan Ethics and Anti-Corruption Commission website, <https://eacc.go.ke/default/>

<sup>9</sup> Republic of Kenya, *Report of the Taskforce on the Review of Legal, Policy and Institutional Framework for Fighting Corruption in Kenya*, 2015, <https://statelaw.go.ke/wp-content/uploads/2020/07/Report-of-the-Task-Force-on-the-Review-of-the-Legal-Policy-and-Institutional-Framework-for-Fighting-Corruption.pdf>

<sup>10</sup> National Treasury suppliers portal, <http://ifmis.go.ke/wp-content/uploads/2018/11/KENYA-SUPPLIER-PORTAL-SELF-REGISTRATION.pdf>

<sup>11</sup> Public Procurement Information Portal, [www.tenders.go.ke](http://www.tenders.go.ke)

# PROGRESS ON COMMITMENT IMPLEMENTATION

**COMMITMENT NAME:** “Kenya has enhanced mechanisms for implementation of Open Governance initiatives through issuance of Executive Order No. 2 of 2018 that came to effect from 1<sup>st</sup> July, 2018. It directs all Public Procuring Entities to maintain and continuously update and publicise complete information of all tenders awarded, a comprehensive list of all registered suppliers, contractors and consultants.”

**THEMATIC AREA:** fiscal integrity

**COMMITMENT TIMEFRAME:** continuous

**COMMITMENT SOURCE:** UK anti-corruption summit

Current level of progress in commitment implementation	
Completed	X
Partially completed	
Not started/dropped	

This commitment is a reiteration of a similar commitment made at the London Anti-Corruption Summit in 2016 and was later actualised through the issuance of executive order 2 of 2018. At the time of this commitment, there were ongoing efforts to digitise public procurement processes through the integrated finance management information system (IFMIS)<sup>12</sup> though no procurement data was proactively disclosed. The commitment aimed to embed more transparency in public procurement processes and eventually minimise procurement malpractice.

There currently exists a public portal ([tenders.go.ke](http://tenders.go.ke)) launched in 2019 that contains information of tenders awarded, details of suppliers, contractors and consultants awarded these tenders plus how the tender award decision was made. Progress in this commitment is ongoing as each day there are more procuring entities publishing information on the portal.

## Challenges to effective commitment implementation

Adherence to the executive order has been a continuous process as procuring entities have different capacities to comply with the executive order. The Public Procurement Regulatory Authority (PPRA) is charged with the mandate to oversee compliance. Notable challenges in implementation of this commitment include a lack of sanctions against procuring entities that do

<sup>12</sup> Open Government Partnership, *The Republic of Kenya Open Government Partnership National Action Plan II*, 1 July 2016, [https://www.opengovpartnership.org/wp-content/uploads/2001/01/Kenya\\_AP2\\_2016\\_0.pdf](https://www.opengovpartnership.org/wp-content/uploads/2001/01/Kenya_AP2_2016_0.pdf)

not comply with the order. Additionally, the PPRA decries the lack of adequate staff to allow it to fully execute its mandate.<sup>13</sup>

## Opportunities to accelerate commitment implementation

The commitment was made previously in the London Anti-Corruption Summit and is in line with national government efforts to strengthen public procurement systems through greater transparency and digitisation of various processes. It is also in line with global priorities aimed at opening up government processes, as evidenced by initiatives such as the Open Government Partnership, among others.

The current Kenya Open Government Partnership (OGP) National Action National Plan(NAP) III ends in December 2020, and the process of creation of NAP(IV) is underway. To sustain this commitment, the new plan should allow monitoring to make sure the various procuring entities comply.

## Recommendations

	Recommendation	Institution
1.	Executive order 2 of 2018 should be revised to include sanctions against non-compliant entities	Office of the President
2.	Amend the Public Procurement and Asset Disposal Act , 2016 and attendant regulations to incorporate the contents of the executive order as a means to ringfence the legal framework	National Treasury, PPRA, parliament
3.	Increased budgetary allocation to the PPRA to increase their staff for proper oversight over procuring entities	National Treasury, parliament

**COMMITMENT NAME:** “In addition, Kenya is working towards securing the seamless integration of all procurement entities to the e-procurement module under the Integrated Financial Management System by the 1<sup>st</sup> January, 2019. This will increase 3 functionalities that ensure commitment to price guidelines as published by the Public Procurement Regulatory Authority, analytical tools and procedures to flag out suspicious and repeated payments, payments above contracted pricing transactions and any other breaches. Public Procuring Entities will from 1<sup>st</sup> January, 2019 undertake their procurement through the e-procurement module.”

**THEMATIC AREA:** fiscal integrity, public integrity

**COMMITMENT TIMEFRAME:** from 1 January 2019

**COMMITMENT SOURCE:** not applicable

## Current level of progress in commitment implementation

<sup>13</sup> Public Procurement Regulatory Authority, *Annual Report for Year ended 30 June 2018, 2018*, <http://ppra.go.ke/annual-reports/>

Completed	
Partially completed	
Not started/dropped	<b>X</b>

This is a new commitment made by the Government of Kenya to digitise and provide seamless integration of e-procurement in the existing IFMIS. In August 2020, the National Treasury invited stakeholders to provide input on the electronic government procurement (EGP) implementation strategy, which perhaps signals a start to the implementation of the commitment.

At the moment, procurement in Kenya is still done in a hybrid format with some processes happening online in the IFMIS system, while others are still done offline. Ideally, all bidders for government tenders should use the suppliers portal<sup>14</sup> to register and submit their bids, but not all public procuring entities have automated their processes to allow for this. Additionally, the market price index is done separately and periodically by PPRA, and this is not part of IFMIS. IFMIS also does not have the capacity to flag suspicious and repeated payments, payments above contracted pricing transactions or any other breaches.

### Challenges to effective commitment implementation

After the commitment was made, there was a change in leadership in June 2019 at the National Treasury, the ministry in charge of its implementation. This necessitated a review of IFMIS to assess the extent to which it could accommodate the suggested additions. This technical review concluded that there was a need to drop further amendments to IFMIS in favour of a new eGP system.

While the roll out and implementation of the eGP does not require parliamentary approval, it requires a budgetary allocation. This was done in the 2020/2021 financial year, and roll out is likely to take place within the next two years.

### Opportunities to accelerate commitment implementation

There has been increased discussion both nationally and globally about corruption in public procurement, especially in the wake of emergency procurement for pharmaceutical and medical commodities as part of the response to the COVID-19 pandemic. In this regard, there have been increased calls for strengthening public procurement through publicly accessible digital mechanisms through which all procurement information is easily available. There is no shortage of resources for governments willing to adopt this approach. These include the open contracting data standards as well as systems currently in use in various countries such as Nigeria and Ukraine.

### Recommendations

<sup>14</sup> National Treasury suppliers portal, <http://ifmis.go.ke/wp-content/uploads/2018/11/KENYA-SUPPLIER-PORTAL-SELF-REGISTRATION.pdf>



	Recommendation	Institution
1.	Map procuring entities capacities to uptake and implement the EGP to avoid challenges with roll out of the system	National Treasury, PPRA
2.	Training and capacity building of media and civil society organisations on how to improve their oversight role on public procurement processes	CSOs

**COMMITMENT NAME:** “Kenya has formulated a National Ethics and Anti-Corruption Policy which will enshrine the strategies that are crucial in spearheading the war on corruption. Some of the strategies outlined in the Policy include prioritization of impactful investigations, recovery and restitution of illicitly acquired assets, intensified public education and awareness, and coordination of law enforcement and prosecution of corruption and economic crimes.

**THEMATIC AREA:** legislative and institutional framework, security and law enforcement

**COMMITMENT TIMEFRAME:** continuous

**COMMITMENT SOURCE:** OGP NAP II

Current level of progress in commitment implementation	
Completed	X
Partially completed	
Not started/dropped	

The commitment was new in that it was the first time the government had made a public commitment to formulate and adopt a national anti-corruption policy. The policy, launched and disseminated on the 7 October 2020 provides a framework for the design and development of an effective legal and institutional framework for countering corruption, promoting ethics and integrity in the country while ensuring effective monitoring and evaluation of the efficacy of various anti-corruption measures.<sup>15</sup> For the first time, the policy spells out strategies to strengthen asset recovery efforts, amplify civic education plans and improve the coordination plans of the various anti-corruption law enforcement agencies, among other priority areas.

### Challenges to effective commitment implementation

There was a delay in the launch of the policy due to COVID-19 management protocols that saw government operations scaled down considerably. Full implementation of the strategies outlined in the policy are easily adaptable in the implementing entities’ budgets and mandates; as such there are no significant, additional resources required.

<sup>15</sup> Republic of Kenya, *Announcement of the launch of the national ethics and anti-corruption policy*, 7 October 2020, <https://statelaw.go.ke/launch-of-national-ethics-and-anti-corruption-policy-7th-oct-2020/>

## Opportunities to accelerate commitment implementation

None

## Recommendations

	<b>Recommendation</b>	<b>Institution</b>
1.	Formation of a CSO coalition to monitor implementation of the policy as per the timelines indicated in the implementation matrix	Transparency International Kenya

# RECOMMENDATIONS

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	<b>Recommendation</b>	<b>Institution</b>
1.	Executive order 2 of 2018 should be revised to include sanctions against non-compliant entities	Office of the president
2.	Amend the Public Procurement and Asset Disposal Act , 2016 and attendant regulations to incorporate the contents of the executive order as a means to ringfence the legal framework	National Treasury , PPRA , Parliament
3.	Increased budgetary allocation to the PPRA to increase their staff for proper oversight over procuring entities	National Treasury , Parliament
4.	Map procuring entities capacities to uptake and implement the EGP to avoid challenges with roll out of the system	National Treasury , PPRA
5.	Training and capacity building of media and civil society organisations on how to improve their oversight role on public procurement processes	CSOs
6.	Formation of a CSO coalition to monitor implementation of the policy as per the timelines indicated in the implementation matrix	Transparency International Kenya

# ANNEX 1: LIST OF INTERVIEWEES

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**Persons interviewed during the commitment monitoring – [Nairobi, [Between 5 and 14 October 2020]**

	<b>Position</b>	<b>Organisation</b>
1	State counsel	Department of Justice
2	Deputy director Data Center	Ethics and Anti-Corruption Commission
3	Directorate of Public Procurement	National Treasury

# ANNEX 2: STAKEHOLDERS CONSULTED

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## Persons engaged during consultation on monitoring findings – [Nairobi], [5<sup>th</sup> Nov]

	Position	Organisation
1	State counsel	Department of Justice
2	Deputy director Data Center	Ethics and Anti-Corruption Commission
3	State counsel	Department of Justice

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