

# GLOBAL INFORMATION SOCIETY WATCH 2012

THE INTERNET AND CORRUPTION  
*Transparency and accountability online*



# Global Information Society Watch

## 2012



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### Kenya ICT Action Network (KICTANet)

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## Introduction and background

Kenya was ranked 154th out of 182 countries on the 2011 Transparency International Corruption Perceptions Index.<sup>1</sup> It is considered the most corrupt country in the East Africa region. In June 2012, industrialisation assistant minister Ndiritu Muriithi noted that Kenya loses KES 400 billion (USD 4.549 billion) through corruption every year and, despite various initiatives to tackle corruption, there have been major setbacks with a number of corruption scandals that have damaged the current government's credibility. Afro Barometer 2008 notes that a large proportion of Kenyans believe all or most public officials, including the president, to be involved in corruption.<sup>2</sup> The police are considered the most corrupt, followed very closely by parliamentarians and government officials. The media and civil society are the most trusted groups.

The former head of the Kenya Anti-Corruption Commission (KACC), PLO Lumumba, notes that the identifiers for corruption are poor leadership, absence of public participation in governance, weak institutions, lack of accountability, transparency and political will, weak ethical values and a weak judicial system, among others.<sup>3</sup> Corruption continues to pose a serious challenge with severe consequences ranging from poverty and disease to famine and conflict.

According to the World Bank, information and communications technologies (ICTs) can reduce corruption in the public service by increasing transparency and accountability. The past several years have therefore seen an increased focus on using ICTs as tools for accountability, transparency and the reduction of corruption. For example, the Kenyan government has launched several initiatives to automate and digitise public services, including

the lands ministry, judiciary and procurement sector. Most recently (in 2011) it launched an open data initiative.

The open data initiative makes previously held government data available to the public as a way of improving governance, transparency and citizen participation and reducing corruption. According to the permanent secretary in the Ministry of Information and Communications, Bitange Ndemo, the government's reform efforts to reduce corruption are centred on the new constitution that supports good governance, integrity, accountability and transparency, as well as the national development blueprint, the Vision 2030 Plan, which focuses on public sector reforms and developing world class infrastructure.

Open data can be defined as "data sets that are made accessible in a non proprietary format under licences that permit unrestricted reuse."<sup>4</sup> It is also defined as "the democratic use of data to enable citizens to access and create value through the reuse of public sector information."<sup>5</sup>

Kenya's open data initiative was the first in sub-Saharan Africa to develop an open data portal making over 160 key government datasets freely available through a publicly accessible online portal. According to the Kenya ICT Board, the government body responsible for this initiative, the goal is "to make core government development, demographic, statistical and expenditure data available in a useful digital format for researchers, policymakers, ICT developers and the general public."<sup>6</sup>

The initiative intends to support greater public sector transparency and accountability, essentially changing the nature of citizen-government engagement. According to the Kenya ICT board, the release of government-held data will provide a vehicle for increased public outreach and improve public interaction with government, thereby leading to a more citizen-responsive government.

Another objective is to provide a platform for third party applications and opportunities for

1 [cpi.transparency.org/cpi2011/results](http://cpi.transparency.org/cpi2011/results)

2 [www.afrobarometer.org/results/results-by-country-a-m/kenya](http://www.afrobarometer.org/results/results-by-country-a-m/kenya)

3 Lumumba, PLO (2011) Fighting corruption in Africa: The case for an African association of anti-corruption authorities, paper presented at the First African Anti-Corruption Conference, Bujumbura, Burundi, 20-22 June.

4 [opendefinition.org/okd](http://opendefinition.org/okd)

5 Rahemtulla, H., Kaplan, J., Giger, B.-S., Cluster, S., Kiess, J. and Brigham, C. (2011) *Open Data Kenya: Case Study of the Underlying Drivers, Principal Objectives and Evolution of one of the first Open Data Initiatives in Africa*. [www.scribd.com/doc/75642393/Open-Data-Kenya-Long-Versioner](http://www.scribd.com/doc/75642393/Open-Data-Kenya-Long-Versioner)

6 [www.ictboard.go.ke](http://www.ictboard.go.ke)

innovation, entrepreneurship and development of technologies, which would enable the creation of new services based on open data. To this end, the developer community, business and social entrepreneurs are creating innovative applications, tools and visualisations to repurpose and enrich the data – and in doing so turning public sector information into new services and products. For example, the Kenya ICT Board launched the Tandaa digital content grant offering awards to entrepreneurs for developing applications that utilise the data to provide services or products. Other projects include a partnership with the World Bank, Google, Ushahidi and the Kenyan government to make census data available. Most of the current open data initiatives are, however, focused on developing and stimulating skills for developers to access and work with the data to increase government efficiency and stimulate socioeconomic development, rather than increasing transparency and accountability.

### Policy and legislative context

Kenya's new constitution was promulgated in August 2010. It is expected that there will be several new legislative frameworks to accompany the constitution, which will help embed transparency, accountability, integrity and good governance. The constitution is expected to involve, amongst other things, the enactment of appropriate laws, for example the Anti-Corruption and Economic Crimes Act, and the creation and strengthening of institutions involved in governance.

The constitution has, as its basic pillar, the engagement of citizens, which has seen increased transparency in the development of its subsequent bills and public vetting of public officers. In addition, objectivity, impartiality and accountability are enshrined as guiding principles for all state officers, and parliament is required to enact legislation translating these principles into an ethics and anti-corruption commission. Article 33 of the Bill of Rights guarantees freedom of expression and Article 35 provides the right of access to information. The freedom of information legislation is expected to provide for the repeal of the Official Secrets Act and encourage proactive disclosure.

The Anti-Corruption and Economic Crimes Act 2003 defines and criminalises corruption and establishes rules for integrity and transparency, while the Public Officers Ethics Act 2003 defines corruption and abuse of office and sets rules for transparency and accountability.

The Ethics and Anti-Corruption Commission (EACC) is the new anti-corruption agency created with a constitutional mandate in August 2011,

replacing the old Kenya Anti-Corruption Commission (KACC). The mandate of the EACC includes the examination of practices and procedures of public bodies, the investigation of corruption and economic crime, and educating the public on corruption and economic crime. The EACC has the power to prosecute, but this needs to be bestowed by parliament; because of this it currently forwards cases to the Attorney General, which is seen as a potential weakness.

Other proposed legislation includes the Data Protection Bill 2012.<sup>7</sup> Both the freedom of information and data protection bills are currently undergoing stakeholder consultation.

Kenya is a signatory to the United Nations Convention against Corruption (UNCAC), which provides for international cooperation against corruption, particularly on the criminalisation of cross-border bribery, the recovery of assets, and law enforcement.

There was no legal framework for the open data project. Authorisation to launch the initiative without a legal framework was sought directly from the president, according to Ndemo. This was seen as the prudent way to ensure that bureaucracy and the closed government culture did not derail the project. An Open Data Licence has however been developed, which provides guidance on the use and reuse of government data. The licence was adopted from the United Kingdom Open Government Licences (UK OGL, 2011), which allow for the copying and distribution of information, freely and flexibly, with only a few conditions, which include acknowledging the source of the information by including any attribution statement by the information providers.

Although the government has defined an open data strategy and there exist sufficient legislation and constitutional provisions, some government agencies are still quite reluctant to implement them. A major barrier is the closed culture within government, caused by a general fear of the exposure of government failures and any subsequent political repercussions.

### The challenges of open data

Gurnstein<sup>8</sup> and Rahemtulla et al.<sup>9</sup> note that open data initiatives are founded on the premise that everyone has the potential to make use of the data. The initiatives are launched with ideals of inclusiveness,

<sup>7</sup> [cickenya.org/legislation?page=3](http://cickenya.org/legislation?page=3)

<sup>8</sup> Gurnstein, M. (2010) Open Data: Empowering the Empowered or Effective Data Use for Everyone? [gurnstein.wordpress.com/2010/09/02/open-data-empowering-the-empowered-or-effective-data-use-for-everyone](http://gurnstein.wordpress.com/2010/09/02/open-data-empowering-the-empowered-or-effective-data-use-for-everyone)

<sup>9</sup> Rahemtulla et al. (2011) op.cit.

but unfortunately within societal contexts often characterised by inequities, including lack of ICT infrastructure, knowledge, skills and resources to make use of the data for their specific needs. This means that citizens are not able to translate open data into meaningful uses unless they have access to resources.

According to a 2011 World Bank study, the Kenya Open Data portal assumes the public has sufficient skills to correctly interpret and use the datasets – which means that usage numbers for the Kenya Open Data portal are modest. Ndemo has expressed concerns regarding the limited uptake of data provided<sup>10</sup> and continues to urge the media and other stakeholders to contribute not only towards creating awareness but by developing capacity to enable the interpretation of the data for the public.

The release of public sector information without a proportionate increase in data literacy will do little to empower average citizens, allow institutions and communities to make smarter decisions, or to hold governments accountable. While provision of government data and access to information laws are important they represent only the first step to a more informed citizenry.<sup>11</sup>

The next step should involve understanding which groups are in a position to make use of this available data and addressing barriers that limit access, such as information literacy, infrastructure, and digital inclusion, among others.<sup>12</sup> This requires the existence of supporting factors, which include a reliable and robust ICT infrastructure, an ICT-literate community, supportive governance and political will, as outlined by Zainab et al.<sup>13</sup>

Input from citizens is also critical. Crowd-sourced data and information platforms, such as Ushahidi,<sup>14</sup> which was originally developed to monitor 2007 post-election conflict in Kenya, are now being deployed in a number of anti-corruption settings, and the use of social media like Twitter (#twitterbigstick and #twitterthumbsup) enables citizens to report cases of corruption and inefficient public services, among others. The various tools must accept online and SMS submissions to allow as many citizens to engage as possible.

Kenya ICT Board CEO Paul Kukubo urges data intermediaries and mobile application providers, among others, to act as facilitators and to contextualise data so that it can be easily used by the wider public. He notes that open data is meant to “provide a platform for intermediaries to build interfaces and tools that would make the data available in forms of relevant information for citizens to contribute to socio-economic and political development.”

Open data initiatives must also be supported by intensive awareness, education and training programmes to expand the information capabilities of citizens, including the ability to work with data visualisation tools, interpret information and understand public policy processes. In addition, the development of infrastructure including data centres to encourage local hosting and collocation are also necessary requirements for open data initiatives to have impact.

According to Matt Parker,<sup>15</sup> creating a participatory ecosystem and feedback mechanisms will enable citizens to create useful tools, data visualisation, analysis, fresh perspectives, and insights, and allow for mixing and mashing to produce real-time, relevant perspectives. Only then do open data initiatives become really valuable in enhancing democracy.<sup>16</sup>

One area that is fraught with possibilities of corruption is the procurement process. Making available and publishing the results of requests for proposals would help enhance transparency and accountability. In addition, as Kenya is gearing up for elections in 2013, publishing voter registration to see people listed on the voter roll would provide the public with the opportunity to challenge the listing of persons who do not exist or may be deceased several months before the elections, and in doing so, preventing possible voting fraud.

Ensuring that the datasets released do not violate civil privacy laws is another issue that needs to be considered. While government should be open to scrutiny, it should not compromise citizens' rights to privacy or maintaining control of their self-presentation. O'Hara<sup>17</sup> argues that for transparency programmes to succeed, privacy is a *necessary condition*. One way to ensure this is to reassure the public that its privacy is a central concern whose protection is entrenched in decision-making processes for open government initiatives.

10 KICTANet discussions, 2011.

11 Boyd, D. (2010) Transparency Is Not Enough. [www.danah.org/papers/talks/2010/Gov2Expo.html](http://www.danah.org/papers/talks/2010/Gov2Expo.html)

12 Gurnstein (2010) op. cit.

13 Zainab, A. N., Abdullah, A. and Edzan, N. N. (2002) An Information and Communication Technology (ICT) Enabled Knowledge-based Malay Society, *Malaysian Journal of Library and Information Science*, 7(1), p. 1-15.

14 [ushahidi.com/about-us](http://ushahidi.com/about-us)

15 [www.guardian.co.uk/voluntary-sector-network/2012/may/25/open-data-charities-advice](http://www.guardian.co.uk/voluntary-sector-network/2012/may/25/open-data-charities-advice)

16 Ibid.

17 [eprints.soton.ac.uk/272769](http://eprints.soton.ac.uk/272769)

The more governments comply with the citizens' demands for transparency, and better and more efficient ways to mash up the data provided emerge, the more demands there will be for increased transparency.<sup>18</sup>

### Conclusions and recommendations

Open data has the potential to provide raw material for informed policy making, offer an empirical foundation for developing solutions to various challenges, convene informed discussions about various challenges, and contribute to the fight against corruption. However, the relationship between open data, democratic participation and the reduction of corruption is not yet clear.

More research is required to improve the evidence base and demonstrate the multiple (socio-economic, political, cultural) impacts of open data on anti-corruption efforts, and to make the case for the use of the internet to fight corruption.

Participatory approaches need to be implemented to help foster open government and accountability. Government institutions and corporate entities should continue to actively open up data and establish successful and effective open data policies. They should continue to develop information infrastructure in such a way that it lays a foundation for transparency and accountability efforts.

### Action steps

- Research the impact of open data on transparency and corruption to provide an evidence base.
- Create awareness of the potential of open data and advocate for collaboration and networking with industry and governments.
- Civil society should take on the role of information intermediaries on particular issues, for example, health and education. They should then use this position to collaborate on open data initiatives in those sectors.
- Organise “hackathons”<sup>19</sup> for groups/individuals interested in hacking corruption, where citizens come together to create tools that will help prevent collusion and corruption. ■

<sup>18</sup> Lessig, L. (2009) Against Transparency: The perils of openness in government, *The New Republic*, 9 October.

<sup>19</sup> [en.wikipedia.org/wiki/Hackathon](http://en.wikipedia.org/wiki/Hackathon)