



Kenya Makueni County

A case study by Oxford Insights. Commissioned by Hivos' Open Up Contracting program.
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Citizen engagement and participation is a key ingredient for building accountability, driving improvements and innovation, and increasing trust between actors within the public contracting process.

This case-study is part of a larger study that explores and compares the direct results and benefits of this citizen engagement and participation, and the various strategies adopted by different open contracting initiatives to achieve these benefits. The complete study and results are found [here](#).



Sources

This open contracting case study draws on interviews conducted with the County Government of Makueni, Development Gateway, and a private contractor. It also contains secondary sources that are listed in footnotes and the bibliography in Annex 3.

Context and Beginnings

Corruption in Kenya is a significant problem. The National Ethics and Corruption Survey 2018, conducted by the Ethics and Anti-Corruption Commission in Kenya, found that public contracting is one of the most common areas where bribes are demanded in the country.¹ The national government of Kenya has adopted a number of measures that promote open contracting within the country, including the Public Finance Management Act of 2012 and the Public Procurement Asset Disposal Act of 2010. The Access to Information Act of 2016 also mandates that public entities publish the details of any signed contract.² These regulations were further bolstered by Executive Order No. 2 of 2018,³ which requires all public entities, at the national or sub-national level, to publicly disclose details of tenders and contracts. To support this, the Public Procurement Information Portal (PPIP) was put in place by the National Procurement Regulator, and all public procuring entities publish details of contracts to it by the 15th day of every month.

Makueni County is one of 47 sub-national governments formed by the Constitution of Kenya 2010. One of its functions is public contracting for delivery of goods and services as per its mandate provided by the Constitution and various statutes. The National Ethics and Corruption Survey 2018 ranked Makueni 38th out of 47 countries in terms of how often bribes were demanded, indicating the county might be one of the least corrupt.⁴ Makueni County like all other devolved governments, and the national government, is facing austerity measures,⁵ even as pressure mounts to implement development projects. This makes value for money in public contracts a major concern for the County government.

Makueni has been a leader in strengthening transparency and accountability in implementation of projects⁶. The county has an elaborate public participatory mechanism which has, as a key feature,

¹ Ethics and Anti-Corruption Commission (2018), 'National Ethics and Corruption Survey'.

² Republic of Kenya (2016). 'Access to Information Act', <http://kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=No.%2031%20of%202016>

³ "EXECUTIVE ORDER ON: PROCUREMENT OF PUBLIC GOODS, WORKS AND SERVICES BY PUBLIC ENTITIES | The Presidency." President.Go.Ke, 2018, www.president.go.ke/2018/06/13/executive-order-on-procurement-of-public-goods-works-and-services-by-public-entities/.

⁴ Ethics and Anti-Corruption Commission (2018), 'National Ethics and Corruption Survey'.

⁵ "Treasury Puts In Place Austerity Measures To Contain Spending." Treasury.Go.Ke, 2020, www.treasury.go.ke/news-updates/300-treasury-puts-in-place-austerity-measures-to-contain-spending

⁶ Implementation of the Makueni County Participatory Budgeting Framework (FY 2015-2016) – Participedia.

"Implementation of the Makueni County Participatory Budgeting Framework (FY 2015-2016) – Participedia." Participedia.Net, 2 Oct. 2015, participedia.net/case/4962.

Project Monitoring Committees (PMCs) at the grassroots who inspect and sign off on projects being implemented in their locality⁷. The PMCs sign off on every stage of the project and determine whether a project progresses to the next stage or whether a vendor is paid. The PMCs are made up of individuals drawn from the locality.

While the PPIP makes it possible for the general public to see details of public contracts at the county as well as national level, it doesn't provide enough details on the contract's life cycle in order for the county to address challenges related to bid integrity, securing value for money or strengthening accountability in public contracting. In Makueni, although the tendering process may be reasonably transparent and the project implementation monitored by the PMCs relatively efficiently, the gap between the two stages of the contracting lifecycle has been somewhat opaque. There was therefore a need to present citizens with a locally specific and relevant portal for increased transparency in the entire process, and reduce the signal to noise ratio for those looking for Makueni county contracts online.

The Governor, the local Finance Minister (known as the County Executive Member (CEC) for Finance), the Procurement officers, civil society, media and private sector were all key stakeholders in the initiative to adopt the open contracting approach and play a role in the procurement sector within the county.

Project Development

The choice of approach in Makueni County in addressing information asymmetry in public contracts, improving bid integrity and securing value for money was identified by the Governor, HE Prof Kivutha Kibwana⁸. Having identified open contracting as the best way of addressing these challenges, he tasked his then Devolution Minister, and later his Finance Minister with the implementation of the initiative and formed a Cabinet committee to provide oversight.

At the start, a MoU was signed between the Government of Makueni and its partners, Hivos and Development Gateway, in order to provide a framework for the delivery of technical assistance for trainings, sensitizations and the planned open contracting system. With the MoU in place, a technical assessment was undertaken by Development Gateway to assess the technical needs, existing infrastructure and systems, as well as any limitations that installment of an open contracting system would face. A cabinet meeting was then convened to consider the technical assessment and agree on the scope of the initiative's initial phase based on the assessment findings and recommendations. A technical committee was then formed to work on the design of the initiative and support stakeholder consultations in government, civil society and at the grassroots. With the scope agreed, the project team began working on sensitization of the various officials of the country government in order to ensure awareness and meaningful buy in for the planned

⁷ Maarifa Centre. "Participatory Budgeting- Makueni." *Maarifa Centre*, 2018, maarifa.cog.go.ke/46/participatory-budgeting-makueni/.

⁸ Interviews with P18 and P19, 2019.

changes in procurement; development of the data entry modules that would be needed for the portal, and the choice of indicators to be displayed.

The indicator selection was an especially critical part of the project and therefore a very collaborative approach was taken involving government, civil society and private sector and led by Development Gateway. The indicators were selected through the technical committee before they were shared with cabinet for approval. As part of this process, Development Gateway and Hivos, who were the implementing partners, convened consultations with civil servants, CSOs, private sector and media to obtain their views, and share the broader open contracting approach on disclosure of information, public participation and accountability/redress. This shared understanding of the open contracting approach and input on indicators contributed to the final design of the initiative's online portal and consequently how and what data was collected.

As the technical elements of the project progressed, there continued engagements led by Hivos to ensure a good grasp of the open contracting approach to complement the work on the technical tool and ensure effectiveness of the implementation of the holistic approach. This included; shared case studies on open contracting implementation in various contexts, facilitating a peer exchange in Kenya on sub national open government, peer capacity and networking for public officials at regional and international communities of practice, legal assessment on frameworks enabling or inhibiting the adoption of open contracting, and engagement with the Open Government Partnership (OGP) initiative to which Kenya has been a party since 2011.

Once the data entry modules were completed and tested the project moved to a systems improvement phase and then to validation by demonstrating the system to potential users in order to identify process and/or data gaps in the system and address them. The final milestone for the open contracting system was handover of the system to the County government and publishing of the live portal in December 2019.

Project Goals

For the County of Makueni, a key goal for the project was to bring a higher level of transparency, accountability and integrity to public contracting. This is key for the county as they believe open contracting is a valuable addition to their participatory project implementation framework by ensuring value for money is realized, bid integrity is secured and information on the project's life cycle is made public to strengthen accountability. This, in their view, would result in improved quality of project outputs and improved service delivery for the eventual beneficiaries of the project; the general public.

Makueni County was keen on changing the perception of government as opaque and eliminating procurement irregularities. By making every document and all the data on a contract publicly accessible for use by media, CSOs and communities, the county believes opportunities for graft in the contract award and implementation phases would be reduced or eliminated altogether.

Corruption free contracting would consequently result in improved quality of projects and better service delivery to the general public.

The County was equally keen to monitor the impact and effectiveness of the national affirmative action procurement scheme for Women, Youth and Persons with Disability. Under this scheme (Access to Government Procurement Opportunities - AGPO), all devolved governments in Kenya must demonstrate compliance with the 30% reservation requirement. Makueni County was keen to not only strengthen compliance under AGPO, but more so ensure that the scheme was achieving its intended purpose through the analytics feature of the tool.

Impact

As the initiative only went live in December 2019, it is hard to measure any direct impacts as yet. However, the portal already has over 140 contracts uploaded to it, suggesting a positive commitment to use of the portal by the government, and presenting opportunities for civil society to access information about public contracts. Based on available web analytics data, by the end of January 2020, the website had recorded almost 400 visits, the majority from Kenya-based users.

Impacts on Civil Society

Civil society was actively engaged in the design of the initiative. This was done through meetings organized by the government with various segments of society, including CSOs, persons living with disabilities, youth and women until a month before the portal became publicly available.⁹ Input from these groups had a direct effect on certain features of the portal. For example, the government had initially been planning to use procurement requisitions as the basic “unit of analysis” for the portal, but the consultations found that civil society related to procurement in terms of tenders. The final portal therefore used tenders as its unit of analysis, so as to be more accessible to the public.¹⁰

Civil society also saw an increased role for themselves in engaging the broader public in remote areas of the county, for meaningful participation in the planned adoption of open contracting. Based on the nature of the open contracting approach, they also saw an opportunity for non traditional civil society constituencies to engage on issues of public service delivery such as the local farmers association.

Impacts on Government

The most immediate impact on government has been to increase the workload for Procurement Officers. These staff are expected to upload every document related to a contract to the portal in addition to doing similar activities to fulfil the requirements of the Public Procurement Regulatory Authority in relation to its Public Procurement Information Portal (PPIP). The additional workload and possible or perceived duplication of tasks had an initial negative

⁹ Interviews with P18, P19 and P23, 2019.

¹⁰ Interview with P18, 2019.

impact on the project and going forward, in the absence of interoperability between the open contracting portal and the PPIP, the workload impact is bound to persist.¹¹ The issue of interoperability has been articulated to the Ministry of ICT and the Procurement Regulator as a significant barrier to the full enjoyment of the benefits of open contracting by Makueni County and any other counties that may later follow suit.

Other impacts that might be expected from open contracting reform were already present before the initiative was implemented. These include functioning feedback loops at project implementation, increased government oversight and strong leadership were already present before the initiative was implemented.¹²

Enabling Factors

High level political support. The commitment, leadership and contextual insights of the Governor of Makueni County enabled planned engagements for political and technical buy in, leading to strategic implementation approaches that were inclusive, awareness building and capacity tailored. This and the County Executive support for the initiative made it possible for it to overcome some challenges such as; initial resistance to change, potential increased workload in the absence of interoperability of the system with the Integrated Financial Management System (IFMIS), data entry of historical data and so on..

Makueni County's robust public participation and existing accountability structure. Makueni County is noted to have the most progressive public participation structure and practices of all the Kenyan counties. The existing system provides for grassroots to top local participation through a number of structured peoples' forums within the various tiers of local government. Project Monitoring Committees that include representation from government and citizen representatives, were also involved in the stakeholder consultations, and will likely become important users of the system going forward.

An enabling legal framework. The existence of a National Executive Order (2018) that mandates disclosure of various documents in the procurement stages, including contracts; as well as the Public Procurement and Asset Disposal Act 2015, Access to Information Act 2016 and the County Governments Act 2012 all provided a legal framework under which the level and frequency of disclosure could be justified. Additionally, the Constitution of Kenya 2010 provides for proactive disclosure of information in the public interest.

The availability of partners such as Hivos and Development Gateway. These partners had the resources and technical expertise to support the County government in design and implementation of the initiative especially because the public sector in Kenya is currently under

¹¹ Interviews with P19 and P21, 2019.

¹² Interviews with P18 and P19, 2019.

austerity measures. This means that the initiation of new projects by the public sector is heavily reliant on partnerships across the board at this stage.

A fairly free and independent media. The media in Kenya consistently reports on corruption and puts pressure on the public sector to reform. This results in the government having to respond to allegations made in the media with evidence, as illustrated by the case of a petition submitted to the Senate by an anonymous Makueni county resident in September 2019.¹³

Barriers

Resistance and concerns: There was noted resistance to the scope of disclosure open contracting would bring due to articulated privacy concerns on disclosure of bid evaluator's identities on the platform, as well as the increased workload the portal would present.¹⁴ This barrier was experienced at the implementation stage of the project, once the data entry modules became available for use and Procurement Officers were tasked with data entry. As a result, a backlog of historical entries continued to grow right up to a few months to project handover.

There were also challenges between oversight and technical committees tasked with aspects of the initiative. The more technical teams had design input and would submit suggestions for approval. However the oversight steering committee would sometimes overrule proposals. Communication challenges were also observed between the procurement officers and the technical committee, as the former would have input based on their experience as users, which the Technical Committee would sometimes have difficulty grasping based on their non technical background.

To overcome these barriers, the implementing partners convened a meeting of the steering committee, technical committee and the procurement officers to better understand their views on the system and to address any communication, design and capacity challenges. For instance, in one meeting it emerged that there were valid concerns on the level of transparency being implemented and the danger it might pose to the Procurement Officers. Changes were then adopted to take this into account and in this way their concerns were addressed bringing their level of comfort with the system to an acceptable level.¹⁵

The implementing partners also organised a data entry retreat for the Procurement Officers. This enabled the staff to be separate from their usual work demands and focus on uploading data to the portal, which reduced the backlog and made sure the portal had data to display once it became public.¹⁶

¹³ OTIENO, JULIUS. "Governor Kivutha Kibwana's Administration Fights off Graft Claims." The Star, The Star, 2019, www.the-star.co.ke/counties/eastern/2019-09-22-kivutha-kibwanas-administration-fights-off-graft-claims/

¹⁴ Interviews with P18, P19, P20 and P21, 2019.

¹⁵ Interviews with interviewees P18 and P21, 2019.

¹⁶ *Ibid.*

Notably, the county was able to overcome these barriers, even in the absence of policy or legislation mandating the use of open contracting, due to the high level political goodwill and leadership demonstrated by the Governor and the County Executive. While these barriers were mostly related to the technology platform in a county where government attitude to transparency and accountability is good, they still posed an existential risk to the initiative.

Lessons

Political will matters. Highest level political will is vital to open contracting in contexts such as Kenya where the initiative is state-led.

Open contracting can take a lot of administrative work. Design and implementation of open contracting initiatives should take into account the administrative overhead imposed on officers and include mitigation measures to address issues such as backlog, distributed workload for data entry (particularly historical), resistance to change by public officials, and connectivity challenges in low tech infrastructure areas.

Implementing officers need to be included in the design of the initiative. The approach taken by Makueni County in involving the implementing officers in the design was instrumental in strengthening a sense of ownership, as well as in identifying important aspects that needed to be re-designed early in the process. Including them in the conceptualization and design of an initiative from the very beginning is therefore critical to ensuring buy-in is secured early and solutions to any problems are co-created with them. When they are not sold on the initiative, reticence can deal a fatal blow even with the presence of high level political will.

A broader representation of non-state actors should have been included in the consultation processes that were undertaken with civil society, media and the contractors association. This can help avoid possible demand side apathy, distrust and ensure broader support for actual use of the data as intended.

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