Board of Directors Meeting Minutes
November 19, 2018
Washington DC

Members Present:
Mark Robinson, Board Chair
Nathaniel Heller, Secretary/Treasurer
Laura Gorrie, Member
Mukelani Dimba, Member
Maria Baron, Member

Staff Present:
Sanjay Pradhan, CEO
Kate Lasso, CFOO
Annora Borden, Grants Officer

Members Absent: none

1. **Welcome and Opening Remarks**

Mark Robinson, Board Chair, opened the meeting at 2:25 pm and invited the Board members to review the agenda and ask questions or propose changes. There were no questions or changes.

2. Approval of Minutes from March 2018 meeting

Mark then referred the Board members to the minutes from the March 2018 Board meeting that they received in their packet, asking if there were any corrections or changes to the minutes. There were none.

Nathaniel motioned to approve the minutes from the March 2018 Board meeting, which was seconded by Mark, with all in favor.

3. Board members: Introduction, Terms & Capacity Building

a. Introduction and Terms

Mark then acknowledged that the Steering Committee had recently appointed three additional members to the Board of Directors, who had participated in a Board orientation meeting in the morning.

María Baron is the global executive director of Directorio Legislativo, an organization that promotes transparency in government, democratic consolidation, and enhanced access to public information throughout Latin America. She is also founding chair of the Latin American Network for Legislative Transparency, is a member of OGP's Steering Committee, and a board member of the Argentine Network for International Cooperation (RACI).

Mukelani Dimba is the Head of Development of the International School for Transparency in South Africa. Prior to this role he served as the Executive Director of the Open Democracy Advice Center (ODAC), a South African law center that specializes in freedom of information and whistleblower protection laws. He is a member of the advisory committee of the Open Contracting Partnership and just completed his term as Civil Society Co-chair of OGP's Steering Committee.

Laura Gorrie is the Director General for Corporate Planning, Performance and Risk for Global Affairs of the Government of Canada where she is responsible for key corporate planning, corporate risk management, for developing the Department's Investment Plan and supporting the implementation of performance measurement elements of the Policy on Results. Previous to this position Laura held several positions within the Treasury Department of the Government of Canada.

These three new Board members are joining Mark Robinson and Nathaniel Heller who are founding members of the Board of Directors. The terms for all five Board members are listed in the pre-meeting materials provided to the Directors. The next two terms to expire are for our current officers, Nathaniel and Mark, in March 2020. While there is no urgency, we do need to continue cultivating potential board members. Per the bylaws, there is no current single term policy and terms are renewable by appointment through the Steering Committee.

b. Election of Board Officers

Officer positions are renewable annually. Current officers can be re-elected or new officers can be elected. Currently, Treasurer and Secretary are combined roles. The Secretary occasionally needs to physically sign documents and has responsibility for official communications, such as minutes.

Mukelani motioned and Laura seconding the motion to keep Secretary/Treasurer as a combined position with Nathaniel continuing in that role in 2019. The motion carried with all in favor.

Laura then motioned with Maria seconding the motion to re-elect Mark Robinson as Chair. The motion carried with all in favor.

c. Capacity-building for Board of Directors

With three new members, this is a fairly newly constituted Board. To date, the Board has not engaged in a formal assessment of the Board function or in building Board capacity. While the Board was formally constituted in 2016 it began to actively meet only in November 2017, in preparation for the spin-off. This seems like a propitious time to engage in capacity-building activities for the Board. As a Hewlett Foundation grant recipient, OGP has membership with the BoardSource, which provides resources and capacity building for non-profit Boards of Directors. To begin a formal assessment, BoardSource offers a Board Self-Assessment tool (which OGP will purchase). Following this assessment, we can engage in intentional work to enhance the Board's capacity to engage in its responsibilities by using many tools the BoardSource offers to member organizations. In addition to its tools, the BoardSource offers facilitated capacity-building services, on a fee-for-service basis. We anticipate that this capacity-building work could be a year-long process as we use BoardSource's tools and possibly their experts, to determine what our baseline is and where to focus and grow in the coming year. It was confirmed that there is some budget provision to support this work in the draft 2019 budget.

Discussion: Kate, as CFOO, has spoken with BoardSource's Executive Director and can connect Mark with their team to learn more about engaging that self-assessment and beginning the work.

This can be discussed again at the next Board meeting, which we expect to be a virtual meeting early in the new year.

Some particular topics where BoardSource could help would be to support both a close analysis of the bylaws to assess whether changes are in order and an in-depth review of OGP's organizational policy documents (finance/accounting, grantmaking and human resources). Capacity-building would support the Board in providing audit oversight, including a review of our internal controls structure and in upcoming decision-making about regional hubs. By starting with a Board self-assessment, we will be in a better position to identify specific areas of learning for the Board.

This capacity-building work will also be useful as OGP anticipates pursuing U.S. federal funding in 2020. We will want to ensure that our structures are strong in advance of OGP falling under Single Audit requirements. We also want to ensure that we address best practices on transparency overall, as a reflection of OGP's values. We want OGP to be a transparent, progressive organization and to work proactively to move forward on that through the Board.

It was agreed that we will further discuss capacity-building using BoardSource resources at the next Board meeting.

4. Action Items

a. Review of proposed change(s) to OGP bylaws

OGP's bylaws require that we maintain six Board members at all times, which has proved very difficult, given changes occurring on the Steering Committee. It makes sense for OGP to change its bylaws so that the Board can consist of a range, from three to six, which is more common and creates some flexibility. OGP's law firm, Harmon and Curran proposed language found in the Board packet to change the number of Board members from six members to a range of three to six member. In addition, the fact that the Board has not had six members since becoming active in 2017 creates the potential for "someone with standing," such as a Board or Steering Committee member, to challenge the validity of those decisions.

This proposed change to the bylaws would address that issue. Because six members is currently required for OGP's Board of Directors, OGP's law firm advises that the Steering Committee appoint a sixth member in order to approve this change. After the change is approved, this sixth Board could then remain on the Board or resign, as appropriate. The Board could then review a "consensus packet" to re-approve prior decisions made by the Board via email. This plan of action was suggested by our law firm.

Discussion: Does the Section 3.07 of the bylaws, which discusses quorums, provide a way forward by outlining that the Board has always had a quorum at each of its meetings, when decisions were made? It was agreed to pose this question to the law firm and confirm if this is an appropriate interpretation of that section of the bylaws. In the interest of expediency, Kate emailed OGP's law firm to pose this question while the meeting continued.

It was noted that the quorum for a six-person Board is four people, but that a quorum for a five-person board is three people. Records indicate that decisions and approvals were made with a four-person Board.

If we elect to follow the lawyer's proposed solution, taking this request to the Steering Committee would require a relatively simple explanation. The more complicated conversation could be with that temporary Board member and explaining the proposed to him or her.

Another possibility would be to search for a permanent sixth member with familiarity with European nonprofit law and a government background. Because this isn't a strategic body, but rather a legal fiduciary oversight body, we could look for discrete skills rather than ensuring a government/civil society parity in this particular body. Consensus was that searching for this person may take some time, and this change to the bylaws should be made as soon as possible. The Board members agreed to work to identify this sixth member that could be added temporarily to the Board right away, before the upcoming Steering Committee meeting by first approaching Robin Hodess.

Later the Board can consider longer term possibilities from the governments of Argentina, Nigeria, Italy, South Korea or the civil society representatives Lucy McTernan or Delia Ferreira Rubio, keeping in mind the need for familiarity with OGP as well specific skills-sets related to non-profit governance. Laura agreed to reach out to government colleagues as well.

The discussion then turned to the idea of re-approving previous Board decisions through a consent agenda. Several Board members indicated that they would prefer to have an opportunity to both review and discuss the policies prior to approving. It was agreed to fold into the Board's capacity-building work for 2019 the opportunity to review and discuss OGP's policy framework.

A quick review of the bylaws indicated several immediate edits to be made:

· 4.02, 4.03, 4.04 have to be renumbered.
· 5.04 has language around "President" and not "Chair."
· 5.07 references removal of a staff member (CEO) with or without cause. While this aligns with DC labor laws, does this align with OGP's values? The provision applies to the CEO, not to all employees. But in employment letters, we remind staff that hires are at-will to protect the organization. OGP practice is not to treat staff in this way, however. The language protects us, but OGP doesn't treat staff in that way. While legislation guides us, we can always decide to increase our standards. It was agreed that this section merits further discussion.

At this point, the CFOO received an emailed response from Anne Spielberg of Harmon Curran, reiterating her position that it would be most prudent for OGP to establish a Board with six members in order to approve the proposed change to the bylaws.

Decision: Given this confirmation from OGP's lawyer, Maria motioned and Nathaniel seconded the motion to request that the Steering Committee appoint a sixth Board member to enable the Board to change its bylaws to allow for a range of three to six members. All were in agreement.

b. Discussion of proposal to establish OGP offices in Europe

1) Establishing an EU office: This is the first time OGPS has considered establishing a legal entity outside of the United States. A summary of the highlights of the 75-page report written by Koan Law Firm (based in Brussels) was provided to the Board in the packet, along with a copy of the complete report. This is a pressing need at this moment because OGP maintains staff in the EU. We have struggled to find an appropriate mechanism to hire staff in Berlin, for example, due to German labor law and the type of employment contract OGP's professional employment organization, Globalization Partners (GP), could provide. Because of German labor law, GP could only offer temporary, not permanent, work contracts. We have employed these staff through a German partner organization, but even that is not a permanent solution vis-à-vis German labor law.

In the EU, OGPS is proposing to create one subsidiary organization that would hire all of our EU-based staff. This organization would also be eligible to apply for EU funding, which OGPS cannot do. Other financial considerations include the expense of hiring through PEOs and partner organizations. We currently pay \$6,500/year for two Berlin staff and \$13k/year (for 3 staff) in Brussels, \$16.8k/year for Madrid (1 staff) for a total of \$36,311 a year. Not all of that would be recouped because we would have to hire a payroll company.

In its report, we asked that Koan provide us with relevant facts to help us decide whether this EU hub office should be based in Berlin or Brussels, where OGP has a concentration of staff. Legally, we would incorporate in one of these two locations and apply for a secondary level of registration, for employment purposes, in other countries where staff are living. Local labor law would then apply to those employees.

There are one-time fees associated with incorporating in each of the two locations. In Belgium, \$6,000-\$8,500 in ongoing fees and about \$10,000 in one-time fees. In Germany, fees are estimated at \$6,000-8,500 to incorporate and ongoing costs around \$7,000. From a tax perspective, the cost would be the same. For an organizational perspective, it comes down to labor law. German labor law is very protective and strict. Belgium allows for more rights to the employer; social benefits costs are higher, but OGP can get and exemption for the first 10 employees for up to 3 years and a permanent exemption for the first employee hired. Since the legal entity would be either German or Belgian, the legal requirements found in the country of incorporation would flow down to OGP's staff members in the other countries.

Discussion: While it is important to address the immediate concerns around employment issues and financial considerations, the Board asked about the strategic considerations regarding the opening and location of hub offices. Is there a strategic consideration linked to this?

Sanjay indicated a preference for Brussels: we're developing a partnership with the EU that could benefit from our location in Brussels, which is also where our Chief of Country Support is located. These are two important factors we have taken into consolidation.

Would we expect future recruitment to focus around that office location? That is the ideal situation, but the answer is also linked to financial considerations and we would want to have some flexibility.

This is especially the case as we have a very connected, tech-savvy staff where the considerations of distance are somewhat minimized.

Establishing a footprint outside the US is a positive move. Brussels sounds positive both in the link to the EU and the location itself. However, it is not possible to have an office in every country where OGP staff is located, so what schema will we use in different areas for hiring our staff? Would we use partner organizations and PEOs in some areas? Would we find that we cannot hire people who are the best fit based on location?

Kate responded that we are clear on what we want to do in Europe but less clear what we need and want to do in other locations. We see 2019 as a year of organizational development within our country support team to help determine the best answers to these questions.

Are there downsides to the regional hub model and to the Europe office in particular? Sanjay answered that OGP has heard vague feedback that there's a certain amount of hassle to set up and manage subsidiary offices. While PEOs do provide an ease of doing business, they have not delivered for us and have proven to have a high cost. We want to be legally and fiduciarily appropriate. This solution allows us to manage and provide services to our staff at a higher level of satisfaction. The hassle would then be in establishing our internal, operational processes between the core entity and these hub organizations. The balance is then living according to the values of being a global organization.

There is interest from the Board for a strategic conversation around the fiduciary and legal considerations for future hubs beyond Europe in 2019. This would include HR considerations around staff movement between offices.

2) Establishing a UK office: This consideration is also being driven by an HR need and financial considerations.

OGP intends to hire another thematic staff member to support our thematic lead, who is based in London. Currently, we can't justify hiring a lower level staff member with such a high fee from our PEO – it cost $4,000 to set up a new staff member and approximately $1,500 per month per staff member (approximately $18,000 per year, per person). We also have a staff member on an H1B visa from the UK who may want to return at some point. Setting up an office in London addresses this cost issue and is a very cost-effective solution. In addition, DFID is OGP's largest funder and we are in constant conversation with them as a thought partner and also with peer organizations have a presence in London.

Discussion: If Brexit weren't happening would we be able to hire our UK staff via our EU office? Should OGP wait to hear if Brexit actually happens before establishing a new office in the UK? We could hire under a partner organization if the UK lawyers indicate that this is appropriate. It was also noted that there may be difficulty hiring through a partner organization if OGP's salaries are substantially higher or provides better benefits than the partner organization, which would be the OGP staff member's legal employer. We would also have to take into account the potential political considerations in the broader community if OGP hires its staff through partner organizations. How would this be interpreted?

Is there an argument for setting up hubs one at a time in order to learn from one experience first? Kate answered that the EU structure would be more complex and wouldn't translate to any of our other experiences, but that is certainly something to consider. Does it make sense to wait for a year and see what happens in the UK, despite the cost differential? The consensus of the Board is that it does make sense to wait both for Brexit to resolve and for us to learn from the EU office set up.

Decision: Laura motioned and Mukelani seconded the motion to approve the proposal to set up a Brussels office now. All were in agreement.

The Board would like to wait six to eight months before revisiting the prospect of setting up an office in the UK, while consulting the lawyers about the logistics of a subsidiary to the Brussels office in the UK.

1. **Review of proposed auditor for 2018**

A memo from Operations staff was included in the Board packet summarizing work to vet potential accounting firms to conduct the audit OGP's 2018 books in 2019. Six firms received an RFP outlining OGP's auditing needs. Five returned proposals, which were then ranked by a Review Committee (consisting of the CFOO, Finance Director, and an external accountant who has worked with OGP for several years.) All three Committee members independently ranked Gelman, Rosenberg and Freedman (GRF) as the first choice and Raffa as the second. Both firms are the well-known auditors for organizations of our size and scope. Both GRF and Raffa made oral presentations to the Committee. The discussion at those presentations included questions around how their approach would be different for new clients, newly emerging organizations, organizations with specific donors (e.g. DFID), and without Single Audit requirements. The Committee agreed that either firm would be capable of meeting OGP's auditing needs. The estimated cost of the audit is very similar, comparing both proposals. While the Operations team is already familiar with Raffa, which supported OGP in setting up our accounting system, Raffa just merged with Markum which introduces the possibility of change within Raffa, including the proposed auditing team. Both the CFOO and Finance Director have worked with Raffa auditors in the past, with positive experiences. The external accountant on the Committee has worked with the engagement lead at Gelman, with positive results. References were all positive for both. In sum, there is no clear or defining factor among these considerations.

Discussion: The key to a good audit experience is the audit engagement lead.

Both organizations felt that they could bring advisory components around our developing internal controls, which we asked for in order to keep growing and will see in the audit report.

Gelman seemed like the right fit to the Committee that interviewed both firms, but not necessarily for any standout reason. It might be good to work with an auditing partner that the team has not worked with so extensively. Both the CFOO and Finance Director have fairly extensive experience with the proposed Raffa team. The team also felt that GRF demonstrated stronger experience with foreign subsidiaries.

OGP should also ask key questions during the audit around proactively demonstrating our commitment to financial transparency.

Decision: Laura motioned the acceptance of Gelman, Rosenberg and Freedman as OGP's auditors and Nathaniel seconded, with all in agreement.

1. **Overview of 2019 budget and reserves, and medium-term planning process**

As in 2017, OGP is requesting that the Board extend the 2018 budget for 2 months to give more for work planning and budgeting after discussions that will be held at the December Steering Committee meeting. The Management Team has developed a medium term (2021) vision to frame results-oriented questions to help determine what work should be in 2019 and how to allocate financial resources to work towards those medium-term goals. This medium-term vision orientation is key as we secure Sida funding in the next calendar year. The Support Unit is also working as part of this midterm vision to determine appropriate financial reserves.

Staff is already working on the 2019 Implementation Plan of our Strategic Refresh. The goal is to have that reviewed by the Steering Committee in February (after receiving initial feedback on the preliminary Implementation Plan at the December meeting). The Board will review and approve the budget as the final step leading to adoption of the budget.

Discussion: Going forward, is OGP planning to do this financial planning earlier in the year so that the Board doesn't have to extend the prior budget? Sanjay indicated that OGP can try to do that; there is some thinking that needs to go into how to do so effectively.

As we move into Q1 of 2019, the Board would like more detail on the budget, particularly on staff. This could mean a more detailed budget narrative or a further disaggregated budget with program-level statement of activities. This can also help us get a clear sense of what core work is funded only by core support, who has two "hats," and other key learning moments.

On reserves: The Board would like a 2019 month-to-month cashflow projection with an associated burn rate to assist with projections and risk assessment. Gelman Rosenberg and Freedmen had also shared a risk chart with OGP during the auditor interview process, which could also provide helpful information.

OGP expects to end the year with a $2M surplus and sets aside three months of reserves to determine the level of funding is available for programming. Available resources will be used to hire a third Africa staff member, a third Americas staff member, a new thematic staff member, and to support the upcoming Summit.

Decision: Nathaniel motioned and Laura seconded a motion to approve a pro-rata extension of the 2018 budget for the first two months of 2019, with all in agreement.

e. Credit cards

OGP would like to apply for a credit card with Bank of America where OGP has its operating account. We have a corporate account with AMEX because they were the only credit card company willing to extend credit to a newly formed organization. Our credit limit with AMEX is $100,000/month and some travel destinations don't accept AMEX cards. Bank of America has recently expressed interest in receiving an application, though we do not yet know what that credit limit will be.

Decision: Nathaniel motioned and Mukelani seconded the Board's authorization for the Support Unit to move forward with seeking a credit card from Bank of America.

5. Other Business

a. 2018 Financial Report

The 2018 Financial report for the period January – October actuals, and comparatives with the 2018 budget was provided in the Board packet.

It was clarified during the meeting that the Tides number listed in the financial statement as both income and expense is a grant from Tides, moving our monies from one entity to another.

b. Conflict of Interest Forms were then completed by Board members.

6. Adjournment

Mark then inquired if there were any other issues before the Board at this time. Since all business was concluded, Nathaniel motioned, Maria seconded the motion and the Board members agreed to adjourn the meeting at 5:23 pm.