



# Open Gov Hub

## SEIZE THE MOMENT: REVIVING THE U.S. OPEN GOVERNMENT PARTNERSHIP PROCESS WITH THE NEW BIDEN ADMINISTRATION

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By Nada Zohdy

*Independent consultant for the Open Government Partnership,  
and Director of the Open Gov Hub (an initiative of Global Integrity)*



**GLOBAL INTEGRITY**  
Data, Learning & Action for Open Governance

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## About this Report

In the first quarter of 2021, the Open Government Partnership (OGP) hired the author as a consultant to conduct a series of five roundtables with American civil society organizations to understand what a meaningful next U.S. OGP Action Plan with the Biden Administration would look like. The result is this report.

The primary source of data collection for this three-month research project was the series of five roundtables (along with a few contextualizing interviews and desk review of civil society reports listing their top requests for the new administration). Each roundtable brought together a small, targeted group of civil society leaders working on the same thematic area: *Transnational Corruption, Climate, Justice, Good Government, and Cross-Cutting*. Each of these themes have been relevant in one or more previous U.S. action plans and have a strong link with the open government values of transparency, accountability, and civic participation. The majority of the 50 total participants were already familiar with OGP.

This was not intended to be a representative sample of diverse civil society input, but rather a current snapshot of feedback about how a revived process could be improved in light of previous efforts. In addition, the penultimate report draft was circulated to all civil society participants and a few former government officials previously involved with OGP. Most feedback received during the limited comment period was integrated into the final report. (See Annex for more details on methodology).

# Executive Summary



How can the United States restore and improve democracy at home and resume its place as a beacon of democratic values in the world?

President Biden has directly outlined a vision of resumed U.S. global leadership through *“leading not by the example of our power, but by the power of our example.”* This requires significant investments in reform at home — especially for a more transparent, accountable, and participatory government<sup>1</sup> in the face of numerous (social, economic, political, and health) crises. As a step in the right direction, the Biden Administration can resume and significantly improve the domestic Open Government Partnership (OGP) process, alongside civil society advocates as partners outside of government. A revived OGP process could help achieve vital, timely reforms related to democracy, disclosure, data, justice, global commitments and more.

The opportunity to revitalize OGP comes in the immediate shadow of numerous, unprecedented threats to American democracy under four years of the Trump administration, culminating in the attempted overturning of the 2020 election. The past four years saw challenges to governance rules or norms long taken for granted, including basic asset disclosure, overt conflicts of interest, and Justice Department-driven attacks on civil liberties.<sup>2</sup> Unsurprisingly, during much of this time, the U.S. domestic OGP process was largely dormant, particularly over the last two years. This period followed a mixed set of results from OGP action plans under the prior Obama administration which resulted in some notable reforms, but lacked a robust, participatory co-creation process.

To help provide a path forward on revitalizing OGP as a means to more responsive and democratic governance, the author spoke to 50 civil society leaders working on a variety of issues — democracy reform, justice, climate, and anti-corruption — on what it would take to make OGP a vital reform process in the United States.<sup>3</sup>

## The Case for a Revitalized OGP

There are five reasons the Biden administration should invest in a new and improved U.S. OGP process now.

- **Seize the Moment:** There is a key moment of opportunity to revive OGP after its dormancy during the Trump administration and to go beyond Obama-era levels of domestic engagement in open government. This is more than the natural momentum at the start of any new administration. Rather, it also comes from the escalating democracy crisis in this country. Meaningful action on the domestic level can address challenges at home, while helping to restore U.S. international standing during an upcoming season of global summits, and culminating in the first-ever Summit for Democracy.
- **Re-establish Ethics and Accountability:** Strengthening rule of law and ethics in a variety of ways must be a top priority given recent affronts to American democratic norms and values. This must be done domestically and internationally, and is in line with various statements from the new administration.<sup>4</sup>

<sup>1</sup> Open government is defined by three values: transparency, participation, and accountability. Read more in the OGP Open Government Declaration: <https://www.opengovpartnership.org/process/joining-ogp/open-government-declaration/>

<sup>2</sup> <https://www.brookings.edu/research/if-its-broke-fix-it/>

<sup>3</sup> See Annex for a detailed description of this report’s methodology.

<sup>4</sup> See Biden’s 2020 Foreign Affairs article: “What America Must Lead Again”; the National Security Council’s Interim National Security Strategic Guidance; and USAID Administrator Samantha Power’s “Can-Do Power,” among other resources, which emphasize the need to strengthen democracy and combat corruption domestically and internationally.

- **Open Up Government to Help Mitigate Current Crises:** Beyond helping address America’s democratic crisis, the three values of open government (transparency, accountability, civic participation) could also make a profound difference on achieving top national priorities. This is certainly true across the four interlinked crises Biden has identified — the “*four overlapping and compounding crises of the COVID pandemic, economic downturn, climate change, and racial justice.*”<sup>5</sup> More transparency, accountability, and civic participation could be transformative to help overcome these crises. Making such links explicit between open government values and concrete priorities for everyday people could certainly help attract new civil society participants and more public attention to OGP, beyond the usual suspects. There is a great moment for open government to meaningfully deliver on America’s democracy and other crises.
- **Lead By Example Globally:** OGP is fundamentally designed for countries to lead and inspire one another by example. Now, the U.S. must lead by example, as Biden has pledged. America cannot resume any credible leadership on democracy and anti-corruption in the international arena without meaningful domestic policy reforms affirming these values, as well as close synchronization of foreign and domestic policy.
- **Listen to Civil Society:** There is a great abundance of specific, well-formulated policy recommendations related to how open government can intersect with a variety of issue areas, which civil society organizations would like to see implemented by the new government. These represent a solid existing foundation to build upon for the next U.S. OGP Action Plan co-creation process.



Attendees at the OGP Regional Meeting for the Americas in San José, Costa Rica. OGP events offer an opportunity for significant domestic policy changes.

<sup>5</sup> <https://www.bloomberg.com/news/articles/2021-01-16/biden-plans-first-day-moves-to-roll-back-trump-policies-nyt>



## Five Principles to Guide a Revitalized Process

In light of the above context, what is the right next step to initiate an improved co-creation process that brings together reformers in government and civil society? Input from civil society organizations uncovered five key principles for effective engagement.

For short, these elements can be captured by the mnemonic “OPALS”:

**1. Ownership:** Ensuring proper leadership, coordination, resourcing, and delegation within government

- Senior ownership of the OGP process within government, led by the White House, is vital both to enable interagency government coordination and commitments, and to signal to civil society leaders that this is a worthwhile process for them to prioritize. As the entity that holds official authority in the relationship, government has an obligation to act first. The more the new White House prioritizes OGP (and empowers federal agency engagement with it), the more others will follow. This will mobilize other U.S. stakeholders and have the positive externality of encouraging other U.S. ally countries to prioritize OGP as well.

**2. Participation:** Fostering meaningful, broad dialogue between diverse civil society actors and government through ongoing, regular exchanges

- There is widespread interest in broadening civil society participation in OGP — racially, geographically, thematically, and across gender. A trusted, ongoing forum is needed to enable such participation, which can restore faith in the ability for OGP to deliver meaningful domestic results, thereby bringing previous participants back and helping attract new and more diverse stakeholders (beyond good government groups and especially including groups most directly impacted by the four crises the U.S. currently faces).

**3. Ambition:** Identifying and implementing high-priority policy reforms

- The next plan must present some new (not pre-existing) reforms, which bring open government values to headline national priorities. These can be complemented by securing early wins to restore faith in the process and by crafting reforms that take existing legislation or international pledges to the next level of implementation (e.g., regulations for NDAA beneficial ownership legislation).

**4. Looped Feedback and Follow-Through:** Providing meaningful, timely feedback on civil society inputs, and creating an ongoing forum for continued co-creation and follow-through

- The next process needs to be rooted in a multi-stakeholder forum (or similar structure) that engenders trust and buy-in by closing feedback loops and ensuring follow-through. This can be done through establishing a regular rhythm for joint work, developing transparent criteria for prioritizing ideas, sharing agenda-setting power, and regularly reporting back on inputs and progress.

**5. Synchronization:** Ensuring reinforcement between international engagements and domestic policy

- Finally, the next process should make explicit, deliberate links between domestic and international policy efforts whenever possible for mutual benefit. Perhaps now more than ever, reformers in and outside government recognize the value and necessity of this bridging work, which can take a variety of forms — from linking criminal justice reforms to international human rights commitments, to resuming U.S. democracy promotion in the world with a new level of humility and openness to also learning from other countries about how to combat backsliding democracy and authoritarianism.

## Five Promising Policy Areas for the Next U.S. OGP Plan

The primary focus of this roundtable series was on process over policy. Still, the discussions uncovered a number of desired policy reforms civil society would like to see, which could become commitments in the next U.S. national action plan. These range from many “inward-looking” reforms to help restore American democracy, like long-standing good government and democracy reforms included in Accountability 2021 and H.R. 1, the For the People Act, along with criminal justice, civil justice, and broader access to justice reforms, to more “outward-looking” reforms that require global cooperation, like increased transparency and accountability actions in support of addressing transnational concerns of climate change and corruption.

While these consultations did not include a representative sample of civil society, they did make clear that a robust, rich variety of policy solutions already exist, which civil society brings to the table to address myriad national and global issues.

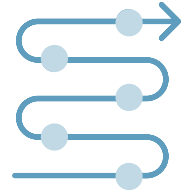
In the end, this report centers on “OPALS,” the five principles for effective engagement because an improved and robust process is the linchpin that will dictate to what extent government and civil society reformers are satisfied with their efforts, and to what extent they can truly work together to enable transformative policy changes. With 2021 Open Gov Week, the Summit for Democracy, and other key moments on the horizon, now is the time to revive the U.S. OGP process.

### Five Policy Priority Areas

There were five policy priority areas that were repeatedly emphasized and thus represent fruitful ground to likely cultivate some of the next OGP Action Plan commitments. They include:

- **Democracy:** *Ensure core democracy and good government reforms*
- **Disclosure:** *Release and declassify information for accountability and the public good*
- **Data:** *Regulate technology and generate more usable data*
- **Justice:** *Criminal justice and access to justice reforms*
- **Global Commitments:** *Further implement international pledges and related laws*

# I. A Time for Course Correction



This report, which charts a path for implementing more open government, was developed in the immediate shadow of numerous, unprecedented threats to American democracy during the four years of the Trump administration, culminating in the attempted overturning of the 2020 election. The Trump administration systematically violated a number of good government norms long taken for granted — from basic asset disclosure (e.g., tax returns) to tremendous conflicts of interest, Justice Department-driven attacks on civil liberties, and more.<sup>6</sup> The fact that the U.S. went entirely dormant with regard to OGP for two years during the last administration was not surprising to most of those close to the process, given these lapses and how the former president's rhetoric and actions were often directly opposed to the values of democratic, open government.

The roundtables were also held in the shadow of mixed experiences and limited results from United States domestic OGP processes over the last several years (since it joined the Partnership as one of its founding members under President Obama's leadership in 2011), producing understandable apathy or frustration in many cases.

Now, there is a clear, momentary window of opportunity to revive and improve how the U.S. government seriously pursues an open government agenda for itself, across agencies and thematic areas, and truly working in partnership with diverse civil society groups. In particular, now is the time to turn a new page regarding how the Administration directly integrates its foreign and domestic policy efforts — resuming American leadership for democratic values on the world stage, but only in tandem with pursuing significant democracy and openness reforms at home.

## Brief History of Open Government and OGP in the U.S.

The OGP has its roots in the earliest reforms of the Obama-Biden administration. The Obama administration prioritized transparency and open government in its 2008 campaign. Following accusations of corruption and rampant secrecy under the George W. Bush administration, many Day One executive orders and administrative instructions prioritized improving transparency, participation, and collaboration between government and the public. This culminated in the Open Government Directive which directed agencies to publicly identify core data sets, enhance means of consultation, and improve collaboration with the public to report on progress. This phase of open government was notable for a number of innovations, including the launch of Recovery.gov, which set a new standard for accessibility, open data, and visualization of government contracts under the American Recovery and Reinvestment Act administered by then Vice President Biden's team.

Shortly thereafter, open government became as much of an international concern as a domestic one. In 2011, in partnership with seven other major democracies, the administration launched the OGP, first in a special event at the State Department with Secretary Hillary Clinton and, soon thereafter, at the United Nations General Assembly with President Obama alongside other world leaders. The U.S. State Department and National Security Council served as the de facto secretariat until the OGP Support Unit and IRM were established in 2012, and the U.S. government passed the mantle of leadership to the government of Brazil.

<sup>6</sup> <https://www.brookings.edu/research/if-its-broke-fix-it/>



OGP differed in some respects from the domestic Open Government Directive. Internationally, OGP is uniquely governed with a Steering Committee composed equally of governments and civil society. Additionally, it has increasingly focused on the goal of securing ambitious, credibly implemented commitments through biennial action plans. These action plans are evaluated by OGP's Independent Reporting Mechanism. The U.S. is currently implementing its fourth biennial action plan.

### *Past Successes*

Highlights from the first three action plans under the Obama administration include:

- Launching of the **Police Data Initiative** which continues to reap dividends in helping understand police-citizen interaction in major metropolitan police departments
- Launching of the Presidential Policy Directive-15 giving **whistleblower protections** to national security contractors
- **Declassification** of the unmanned aerial vehicles (“drones”) program
- Creation of a professional track for **freedom of information** professionals within federal agencies
- Establishment of **open science** policy-making by ensuring federally-funded research is available to the public through federal websites

### *Past Challenges*

Despite notable progress through open government action plans, the U.S. has never been an exemplary model of deep two-way engagement between civil society and government. More broadly, various IRM reports assessing the quality and impact of U.S. OGP processes over the years (including during the Trump administration<sup>7</sup>) have noted a pattern of four recurring challenges that have repeatedly limited the great potential impact of this work:

- **Inconsistent Ownership and Prioritization.** OGP has bounced between a number of federal U.S. agencies and entities, including: the National Security Council, the Office of Information and Regulatory Affairs, the General Services Administration, the Office of Science and Technology Policy, the Office of American Innovation, the Office of Management and Budget, and, most recently, the State Department. This instability has weakened leadership for coordination between implementing agencies and made civil society interaction difficult. In addition, IRM reports have documented ambiguity about whether the OGP process exists primarily as a foreign affairs exercise or a credible domestic reform process. Placement of coordination in foreign affairs offices contributes to this ambiguity.

#### Places OGP has been Housed

- The National Security Council
- The Office of Information and Regulatory Affairs
- The General Services Administration
- The Office of Science and Technology Policy
- The Office of American Innovation
- The Office of Management and Budget
- The State Department

<sup>7</sup> Recommendations from the most recent Independent Reporting Mechanism report.

1. [Ownership and process:] Adhere to the regular OGP action plan co-creation and reporting cycle via the clear designation of a responsible government agency early in the creation process.
2. [Feedback and Inclusion] Engage more fully and with a broader range of key stakeholders during the co-creation process, and systematically respond to all proposed commitments and feedback on draft commitments.
3. [Ambition: Additionality] Design an action plan that makes a more concerted attempt to go beyond existing efforts, as opposed to including a large number of commitments that reflect ongoing efforts.
4. [Ambition: Problem-Focused] Design more ambitious commitments by improving commitment specificity (clearly identifying the public problem the commitment will address and the proposed solution).
5. [Ambition: Scope] Consider a logic model and milestones that lead to the desired results. Expand the thematic scope of future action plans to include strategic commitments related to pressing public issues.

Source: [https://www.opengovpartnership.org/wp-content/uploads/2020/12/United-States\\_Design\\_Report\\_2019-2021\\_For-Public-Comment.pdf](https://www.opengovpartnership.org/wp-content/uploads/2020/12/United-States_Design_Report_2019-2021_For-Public-Comment.pdf)

- **Limited and Ad Hoc Mechanisms for Public Participation.** The U.S. has never had an ongoing multi-stakeholder forum, and still has none. Even when it briefly attempted this, OGP in the United States has always been a primarily “inside of the Beltway” affair, despite the best intentions of many involved. While there was a standing Interagency Open Government Working Group from 2015-2018, civil society participation was ad hoc, occasional, and not well-publicized. In addition, the various offices in charge of OGP have regularly acted as shuttle diplomats between agencies and their constituents, weakening the potential quality of the dialogue relative to other, more regularized executive processes in the U.S.<sup>8</sup> and in comparison to those abroad. The most recent IRM report found that, “*The U.S. should re-engage and deepen trust with stakeholders by designing and implementing a clear, well-publicized, and well-documented co-creation process where civil society has greater buy-in. Future commitments should respond to national priorities with significant, measurable, and specific milestones.*” Even during the Obama administration, there was concern (including from some White House staff) that there was over-reliance on a small group of civil society groups for coordination and engagement.
- **Lack of New and Ambitious Reforms. The most recent IRM report states that,** “*The United States’ fourth national action plan contains commitments of broad interest to the American public. However, almost half of the commitments are recycled from pre-existing, ongoing government programs and, as written, do not signal significant changes in government practice.*” While this refers to the most recent action plan, the IRM had similar, if less pronounced, findings for previous plans.
- **Opaque Prioritization Process and No Feedback Provided.** According to the most recent IRM report, the U.S. government has failed to document how it prioritized and processed the more than 150 proposals from civil society and the public during co-creation. As a result of this failure to close the feedback loop, the U.S. has received a “Notice of Acting Contrary to Process” from the OGP Support Unit.<sup>9</sup> While this requires no immediate action, should the U.S. receive another such letter it would be placed under “Procedural Review,” requiring a documented plan for correction to be submitted to the Steering Committee (in order to remain as a member of OGP in good standing). The U.S. government, as a member of OGP’s Criteria and Standards Subcommittee, has historically been a strong supporter of minimum standards of action plan co-creation to minimize free riding on the reputation of the Open Government Partnership.

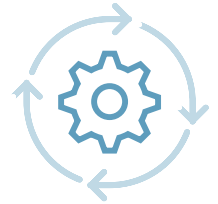
2021 and 2022 provide an opportunity, unprecedented in recent decades, to turn back the tide of authoritarianism internationally. In particular, there are a variety of regional, global, and economic meetings where good governance and rule of law are central themes. This includes the recent OECD Anti-corruption Summit, the Group of Seven meeting, a special session of the United Nations General Assembly, OGP’s 10-year anniversary summit in Seoul, and, importantly, the Biden Administration’s planned Summit for Democracy. These events provide a moment which will test U.S. credibility and demonstrate its ability to emerge stronger from its own multiple crises. At the same time, they also provide an opportunity to work with partners globally on transnational governance issues, from climate to public health and illicit finance.

Reviving the U.S. OGP process will not be easy, but the present moment offers a tremendous opportunity for improvement. This series identified five key principles that address previous challenges and can help set up a credible, generative co-creation process for future success.

<sup>8</sup> Such as the Administrative Procedures Act process and the Federal Advisory Committee Act process.

<sup>9</sup> <https://www.opengovpartnership.org/documents/united-states-contrary-to-process-letter-march-2021/>. This letter has since been responded to by the U.S. Department of State, clarifying the intent to correct issues with consultation: <https://bit.ly/3sNxenH>.

## II. Key Process Recommendations



Improving the actual *process* (“the how”) by which government and civil society reformers work together to define the next open government reforms for the U.S. is the linchpin for OGP in the U.S. to be successful. The satisfaction of the participants (“the who”) and their ability to bring about transformative policy changes (“the what”) are all contingent on a robust, effective process. Therefore, this is the central section of this report.

Many participatory processes struggle with maintaining momentum to ensure meaningful partnerships and reforms. So what guiding principles for engagement could help make the next U.S. OGP process worthwhile?

In light of the persistent U.S. OGP challenges, America’s current democratic reckoning, and the findings of this roundtable series, the Biden Administration can initiate a significantly-improved U.S. OGP process by establishing a true *multi-stakeholder forum*, defined by these five principles, summarized in the acronym “OPALS.” In short, they are:

- **Ownership:** Proper leadership, coordination, and delegation within government
- **Participation:** Meaningful, broad exchange between civil society and government
- **Ambition:** Implementation of meaningful commitments to strengthen high-priority reforms
- **Looped Feedback:** Timely feedback on civil society inputs and ongoing engagement
- **Synchronization:** Reinforcement between foreign and domestic policy



Discussion of the 2015 ORM Progress Reports for Mexico and the United States.

# 1. High-Level Government OWNERSHIP

Time and again, civil society participants emphasized that the White House needs to lead the OGP effort, for effective coordination, resourcing,<sup>10</sup> and commitment both inside and outside government. The White House is seen as a credible leader to work across issues, and leadership from this highest level of government is needed to effectively devolve work to other government entities.

Some specified the National Security Council (NSC) and a few mentioned the Domestic Policy Council (DPO), but there was clear consensus on housing OGP somewhere within the White House, for three key reasons:

- **To enable cross-agency government participation and collaboration:** White House leadership has sufficient authority to mandate various government agencies and other bodies to come to the table and follow through on commitments. (See box, “OGP leadership in other countries” for more information.)
- **To enable diverse and meaningful civil society participation:** White House leadership would signal to civil society that there is high-level government commitment to OGP in the Biden Administration, and therefore it is worth their investing time. Government inevitably holds more power in the relationship, and therefore needs to be the first to act. The more that government prioritizes OGP, the more that civil society counterparts will do the same. Importantly, strong White House leadership could not only help restore previous civil society participants’ faith (and therefore involvement) in the OGP process, but is also vital to help attract new civil society groups to participate.
- **To synchronize domestic and foreign policies, and take full advantage of OGP as a global platform:** The White House is best positioned to help synchronize across foreign and domestic policies, and connect relevant dots (staff,

resources, information) whenever possible. White House leadership will also help take advantage of and contribute to a more fruitful exchange of good practices between the U.S. and other OGP member countries during and outside of related global gatherings of world leaders. In other words, serious executive leadership of OGP in the U.S. is more likely to help encourage the same in other OGP countries.

## OGP Leadership in Other Countries



Central government coordination varies by OGP country. The following examples from U.S. peer countries can help inform decisions about leadership.

G7— The five other G7 members participating tend to house OGP leadership in a central coordination or planning body:

- **Canada:** Treasury Board
- **France:** Interministerial Directorate of Public Transformation
- **Germany:** Federal Chancellery
- **Italy:** Ministry of Public Administration
- **South Korea:** Ministry of Interior and Safety
- **United Kingdom:** Cabinet Office
- **(Japan is not an OGP member at this time)**

**OECD** — Because many OECD members are parliamentary democracies, they are often hosted in cabinet offices or ministries of public administration, which have a central coordinating role for implementing agencies.

**Americas** — Six of fourteen OGP members in the Americas coordinate OGP from the President’s Office, another three from the Treasury, three from the equivalent of the Office of Management and Budget, and two from Digital Secretariats.

<sup>10</sup> A former government official involved with OGP coordination noted during this report’s comment period that the budgets and resources needed to fulfill an improved OGP process do not automatically flow from simply having White House involvement. Therefore, once the structure for government coordination is established, dedicated efforts are needed to mobilize resources accordingly — within and across federal agencies — to bring this work to life.



Capacity to coordinate is more important than sustainability (at least for now). Even when participants were asked about the obvious challenge of political continuity that comes with housing OGP in the White House, they asserted that first seeing meaningful results from the OGP process is more important than worrying about sustainability through changes in administration. As one participant stated:

*“It all depends where OGP is sitting. We have a better chance of integrating [across agencies] when it sits in the White House. Personalities matter, and it matters who is in charge... I have yet to see a Biden commitment to OGP that is senior [from a senior official] and public.”*

Another noted, especially given the urgency and scale of issues like the climate crisis: *“We need another layer of internal accountability that creates pressure... especially for the scale of the climate crisis, we need tight coordination amongst and across multiple agencies.”*

The need for one influential government entity to own the OGP process and coordinate across various stakeholder in and outside government echoes the latest IRM report:

*Individuals knowledgeable about the NAP4 [Fourth National Action Plan] design process suggested that intragovernment ownership of NAP4 was nebulous...This was hindered by the Trump Administration’s initial lack of an umbrella body to shepherd the plan through the channels of government and ultimately toward its publication. The IRM researcher therefore recommends designating a clearly responsible agency earlier in the action plan design process.*

## Additional Ways to Support Meaningful Coordination and Reform

In addition to housing OGP in the White House, participants noted additional ways the Biden administration could demonstrate a strong commitment to open government:

- Appoint a senior, all-encompassing accountability advisor or “czar”(this would build upon and broaden the scope of the “ethics czar” under the Obama administration, such that this official could address a range of transparency, accountability, and ethics issues)<sup>11</sup>
- Issue ethics-related Executive Orders (especially within the first 100 days)
- Issue a Presidential Memorandum outlining accountability and transparency priorities
- Hold an annual Cabinet-level meeting on these issues

## A Government Hub, Keystones, and Nodes

Civil society organizations (CSO) giving input into this report noted that open government efforts are currently spread across multiple agencies, independent commissions, and White House offices. Given the priorities that emerged throughout the consultations, the following typology may be helpful to think about what government representation in the next action plan co-creation process might look like.

- 1. Central hub:** Almost all CSOs participating agreed that the White House needs to play the central role in facilitating coordination, prioritization, and communication. There was some ambiguity about whether this would best be served by the National Security Council, the Domestic Policy Council, the Office of Management and Budget, or some shared responsibility. What was clear was the need for executive action and senior White House leadership — in other words, the White House being the OGP hub.

<sup>11</sup> The Accountability 2021 coalition report calls for this, a “Chief Accountability Officer.”



**2. Keystone agencies and offices:** The emphasis on White House leadership did not negate the importance of also having federal agencies involved, but rather was seen as an effective means to achieve this. A number of specific federal agencies came up again and again, citing the need for these agencies to have a strong presence with dedicated resources and senior staff capable of coordinating in OGP with other regulatory and administrative reforms. The three most oft-mentioned federal agencies were:

- *Department of Justice* (vital for all reforms related to access to justice and criminal justice)
- *Department of State*<sup>12</sup> (vital for all issues that require or benefit from global cooperation, including combating transnational corruption, rising authoritarianism, and climate change)
- *Treasury Department* (vital for all issues related to oversight of monetary flows, from fossil fuel subsidies to beneficial ownership regulations)

**3. Nodes:** A number of reforms require cross-agency coordination. Often these involve multiple agencies, and also quite frequently, independent commissions or federally-established corporations. The responsibility for complicated reforms — especially climate change and transnational corruption — fall across multiple agencies. At least for these two issues in particular, it will be essential to bring in coordinating nodes.<sup>13</sup> Potential nodes could be:

**a. Climate change offices:** The Office of the National Climate Advisor (in close collaboration with the US Special Envoy for Climate) can help coordinate ambitious open government action on climate to complement other domestic and Paris Agreement Nationally Determined Contributions. Both Advisor Regina McCarthy and Ambassador John Kerry have played leadership roles in OGP under previous action plans.

**b. Securities and Exchange Commission (SEC), and Financial Stability Oversight Committee (FSOC):** SEC and FSOC play a key role in coordinating financial regulations and actions - including depository, securities, consumer protection, and government-sponsored entity regulators. All of these regulators have a role to play in climate change and reducing transnational corruption. Because so many agencies have a stake in transnational corruption and control of that corruption, involving staff from SEC and/or FSOC early could provide them an opportunity to elevate their work.

**c. Office of the Director of National Intelligence (ODNI):** Because of the salience of transnational illicit finance and human rights concerns, there is a key role for a “node” within the ODNI which plays a leadership role with key agencies including Customs and Border Protection, Department of State’s Bureau of International Narcotics and Law Enforcement Affairs, and Treasury’s Office of Terrorism and Financial Intelligence among others.

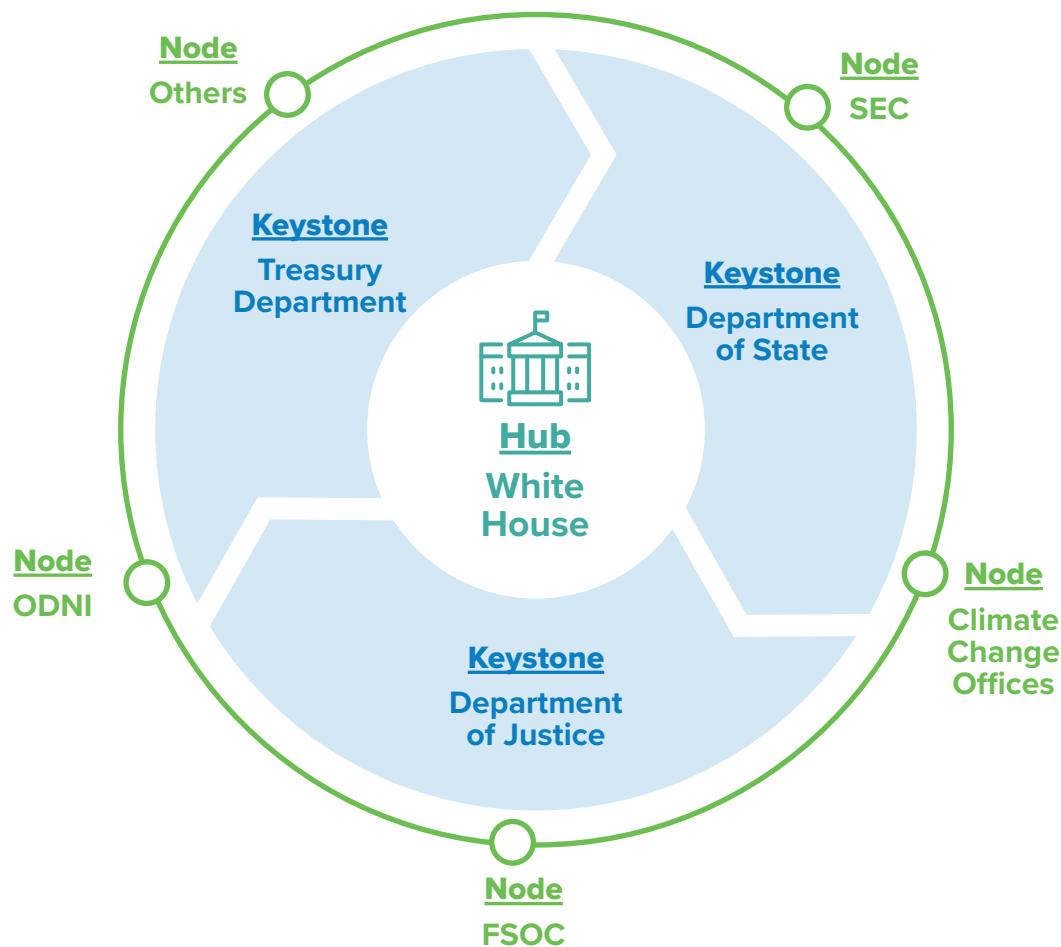
Note that there is already precedent for independent agencies’ involvement in OGP: one roundtable participant noted the valuable previous involvement of the National Archives and Records Administration (NARA), especially the Office of Government Information Service, which retained its public commitment to open government issues throughout the Trump administration.

**Effective OGP processes in other countries allow for direct civil society-agency exchange, especially where well-coordinated by a central hub.** This is because more focused consultations can generate more ambitious reforms. This allows direct, complementary exchange between civil society specialists and their counterparts in government. This also makes it more likely that resulting reforms will not only be desirable, but also feasible.

<sup>12</sup> Secretary of State Antony Blinken’s speech on March 3, 2021 signaled a strong commitment to a variety of open government-related issues, especially under the third priority area: “we will renew democracy because it’s under threat.” <https://www.rev.com/blog/transcripts/secretary-of-state-antony-blinken-speech-on-foreign-policy-transcript-march-3>

<sup>13</sup> Whenever possible, these cross-agency coordination efforts should also learn from and link with existing efforts that may have overlapping stakeholders or goals, like the White House Gender Policy Council.

Figure 1. Recommended Structure for Government Ownership with 3 Levels of Engagement



### Should Congress Also Be Involved?

A few respondents who gave feedback during the comment period on the draft of this report argued that Congress should be involved in OGP. Despite congressional polarization, they felt that the basic nature of OGP is one that can and should attract bipartisan support.

Possible reasons to involve Congress included: elevating OGP’s public profile; broadening the political will behind it and thus momentum to follow through on reforms (for both domestic and international policy); providing more avenues for government-citizen engagement; and even having legislative involvement to secure dedicated funding for OGP work. One possible avenue mentioned is the bipartisan Select Committee on the Modernization of Congress.

## 2. Broader, Two-Way PARTICIPATION

To ensure a more credible and transformative process, government needs to engage with a broader set of civil society stakeholders and ensure that such engagements enable true, two-way co-creation between government and civil society (rather than one-way consultation or other limited engagements).

### Broadening the Tent of Civic Participation

Roundtable participants strongly supported “broadening the tent” of stakeholders in the next OGP process. Some emphasized consulting not only Washington-based policy experts, but also those communities most directly impacted by specific policy reforms whenever possible, including those most impacted by the four major crises in the U.S. Others suggested that it was important that OGP efforts do not seek to recreate the policy brainstorming, proposal, and prioritization that had already gone on across a variety of networks. (See Annex 1 for a compilation of some such proposals.)

In addition, it is vital to ensure that consultations are designed from the start to enable true two-way dialogue. One participant noted the Freedom of Information Advisory Committee (led by the National Archives) as an example, *“If I think that government is really inviting my viewpoint, then I feel good to participate, even if my ideas don’t come out on top.”*

There are undoubtedly challenges to broaden and diversify civil society participation that require consideration:

- Open government reforms can be seen as very technical or jargon-heavy
- Balancing the participation of national and local involvement, or grassroots, and grassroots can face tradeoffs of familiarity with OGP or other processes

- Balancing breadth versus depth of engagement faces difficulties of prioritization

Nonetheless, there are clear ways to leverage a process to minimize these tradeoffs:

- Establish a standing, regular meeting and well-publicized **multistakeholder forum**,<sup>14</sup> to create mutual buy-in, trust, and follow-through between government and civil society. (See “Recommendation 4: Feedback Loops and Follow-Through” for more details.)
- Engage and leverage existing **intermediary organizations**. This includes broad reform coalitions, networks, and other collaborations that already work hard to consolidate opinions and preferences, as well as national networks with local roots.
- One main way of prioritizing efforts is to focus on **existing policy priorities**. The four interlinked crises mentioned by Biden and his team — the “four overlapping and compounding crises of COVID pandemic, economic downturn, climate change, and racial justice”<sup>15</sup> — would benefit from more transparency, accountability, and participatory approaches. Making links between open government values and concrete priorities for everyday people could help attract new civil society participants and more public attention to OGP, beyond a core group of good governance experts.
- Focus on attracting broader, more **diverse civil society participation** particularly in four ways:
  - Geographic diversity
  - Issue area/sectoral diversity
  - Gender diversity
  - Racial and ethnic diversity
- Finally, achieving some **early, significant advances in policy** in the next process, across issue areas, would help create momentum that would naturally attract more diverse civil society (and government) participation. (See Policy Recommendations section.)

<sup>14</sup> Official OGP guidance and a summary of lessons learned is available [here](#).

<sup>15</sup> <https://www.bloomberg.com/news/articles/2021-01-16/biden-plans-first-day-moves-to-roll-back-trump-policies-nyt>

## Layered Participation in Mexican and Australian Multi-Stakeholder Forums



Mexico has long had a more formal process for working on OGP. Until recently, this was largely based on a three-part commission (“The Tripartite Commission”) co-chaired by The Secretariat of the Civil Service, the National Institute for Access to Information, and a small number of civil society groups. Since then, it has become more formal and intentionally inclusive. The current terms of reference lay out: specific functions for the representatives in government, the members of the panel, terms of selection of a “core” or “nucleus” group of civil society, and rules for regular proceedings (like providing minimum advance notice and publishing meeting records). As importantly, it lays out principles and means of bringing in other organizations, many of whom might not see themselves as good governance groups, to participate in ongoing thematic roundtables working on issues such as national security, climate change, and gender.<sup>16</sup>

Similarly, Australia, a large, federated country, has had to take a decentralized approach to its OGP multistakeholder forum. The multistakeholder forum is co-chaired by members of academia, the private sector, religious organizations, and non-profit organizations. In addition, it has working groups co-coordinated by various ministries and civil society representatives on topics including right-to-know, open data, and beneficial ownership transparency.<sup>17</sup>

## Civil Society Investment Depends on Government Investment

Across a number of the roundtables conducted for this report, civil society groups raised a fair question: “What advantage do we get from OGP over other strategies?” There could be a number of good reasons for advocates to pursue their desired reforms through OGP compared to other advocacy channels: to gain elevated attention and accountability (importantly, through OGP’s Independent Review Mechanism), to find internal government reformer allies, and to access peer learning or recognition from other countries, among others.

However, **all of the comparative advantages that exist for civil society to pursue OGP as an advocacy strategy over other methods ultimately hinge on how committed government itself is to making OGP a priority.** In the end, government wields the official authority in the relationship; therefore, government *must* be the first mover and signal that OGP is an ongoing priority to help ensure that civic advocacy efforts through OGP are worthwhile. This means that the more government shows high-level commitment to OGP, the more likely civil society groups are to do the same.

<sup>16</sup> Función Pública, Mexico. 2020. “Lineamientos Del Comité Coordinador De La Alianza Para El Gobierno Abierto En México.” Mexico City. <https://bit.ly/3tNY5kN>

<sup>17</sup> <https://ogpau.pmc.gov.au/open-government-forum>

Opportunities to Raise Public Awareness

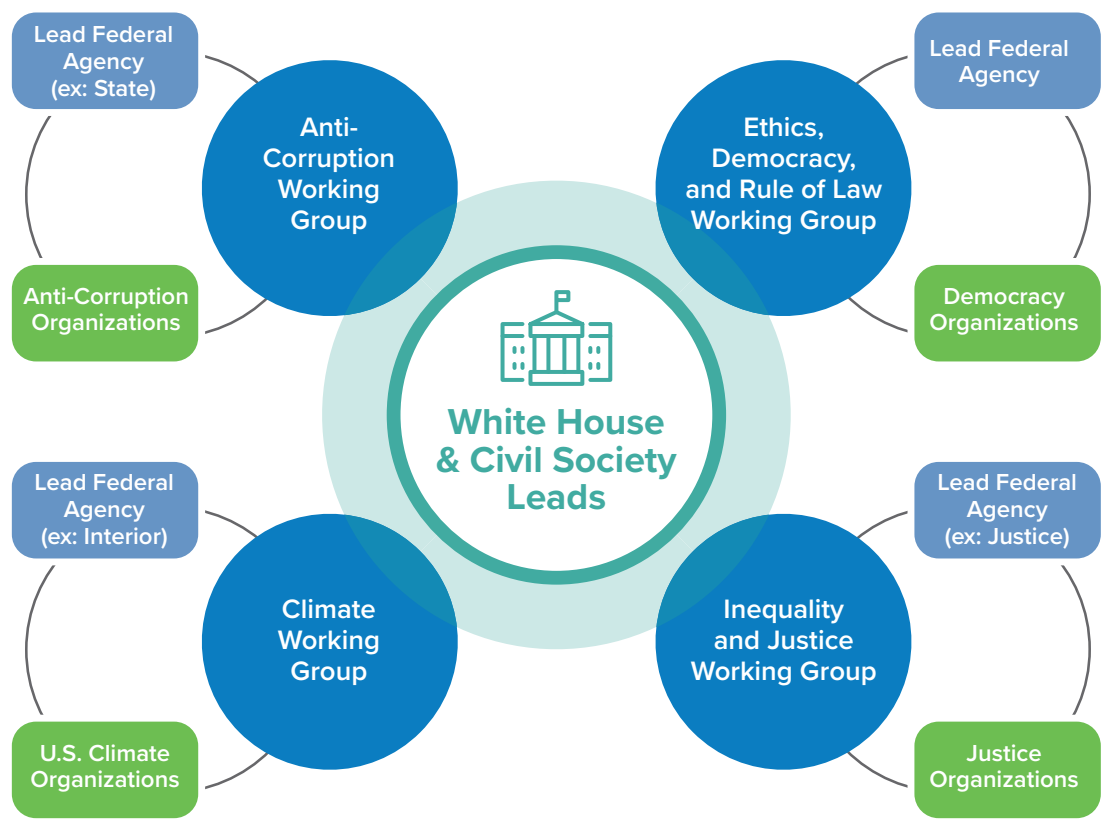
Roundtable participants showed widespread interest in broadening civil society representation and public participation in the next action plan.

Indeed, this is a clear takeaway from the latest IRM evaluation which recommends that the U.S. government, “Engage more fully and with a broader range of key stakeholders during the co-creation process, and systematically respond to all proposed commitments and feedback on draft commitments.”<sup>18</sup> In a good example of integrating local grassroots groups and national, Washington, D.C.-based policy organizations, one participant pointed to their efforts at working with Miami-based

organizations who often have to deal with some of the worst consequences of transnational crime in Latin America.

A few participants acknowledged the challenge, “We are insiders, there’s got to be a way to reach the public so it’s not just a closed group.” They did, however, offer some solutions. For example, they suggested establishing institutional media partnerships during the next round of consultations, and partnerships with technology platforms to enable wider participation by the American public (especially during activities like the action plan co-creation session and the Summit for Democracy). Others pointed to the surge of grassroots social movements in the U.S. in recent years and the great potential to engage movement leaders more directly in this process.

Figure 2. Potential Organization of an OGP U.S. Multi-Stakeholder Forum



Note: Working group names, structures, and topics suggested above are only for illustrative purposes.

<sup>18</sup> This is even the 8th and final commitment in the current 4th National Action Plan (2019-2021) produced under the previous administration. Specifically: “more geographically diverse and diffuse representation of citizen stakeholders in the development of the document. We will aim to conduct a series of consultation sessions, in-person meetings, and live-streamed discussions around the country to generate ideas, encourage public input, and engage in conversations with the most important stakeholder – the American public.” Fourth Open Government National Action Plan for the United States (2019-2021). [https://www.opengovpartnership.org/wp-content/uploads/2019/02/United-States\\_Action-Plan\\_2019-2021.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/02/United-States_Action-Plan_2019-2021.pdf)



### 3. New and Reinforcing AMBITIOUS Reforms

In order to achieve important outcomes, the new OGP action plan will need to have new reforms. While there is always a need to root reforms in other, larger programs and initiatives, there is also a need for an OGP to be additive (not duplicative) to other regulatory and administrative policy efforts.

Many civil society organizations with OGP experience were disappointed that previous commitments in earlier OGP action plans simply replicated or recycled pre-planned reforms. Therefore, **it is critical that the next action plan capture new ideas that bring open government values to headline national priorities.** These can be complimented by commitments that take existing legislation or international pledges to the next level of implementation (such as regulations to enact the National Defense Authorization Act).

A strong reform commitment is:

- Specific (well-defined around a clear and obvious problem)
- Able to align with issues of major national priority (e.g., climate, justice, equity, democracy)
- Ambitious, with potential to change widespread practice and/or with tangible results at scale

The strength of reforms can be considered not only in domestic terms. Commitments that could motivate other countries to be ambitious as well would have added value.

Consequently, the next action plan should strike a balance between some easy wins (to help gain momentum to broaden the tent of stakeholders); some new ambitious reforms; and new, meaningful implementation of existing policies. And as with previous action plans, commitments should generally focus on executive actions — some that are entirely new and others that are importantly reinforcing (e.g., compliment legislation or international pledges and help take those one step further).

#### Beneficial Ownership: How Ambitious Reforms Can Be Both New and Reinforcing

Policy around ending anonymous shell companies illustrates how an OGP action plan might reinforce other actions. The recent National Defense Authorization Act (NDAA) is landmark legislation that Congress passed in January 2021 by overriding President Trump's veto and now mandates the collection of beneficial ownership data for companies (i.e., bans anonymous shell companies). NDAA could also pave the way for the creation of a public registry of the beneficial owners of companies, starting with those who do business with the federal government, from federal contractors building infrastructure in the U.S. to those implementing international development projects abroad.

An ambitious OGP action could:

- Contain a commitment to mandate publishing this information in a public database/registry, and Congress could play a role to enact or oversee disclosure requirements.
- Expand geographic targeting orders requiring beneficial ownership declaration on real estate without additional regulation or legislation.
- Complement ambitious regulation to reinforce Treasury's implementation of the Corporate Transparency Act, especially to the extent that any data or metadata could be disclosed to the public (which is due for regulation in January 2022).
- Support cooperation between OECD members and African and Latin American innovators seeking to minimize money laundering and tax evasion through beneficial ownership transparency.

## 4. LOOPED Feedback and Follow-Through

A successful process will engender trust and buy-in by closing feedback loops — reporting back to contributors on the results of their contributions — and ensuring follow-through of stated plans. Maintaining a structured, ongoing forum for joint work between government and civil society reformers will help enable success.

Stakeholders in and outside government need to be engaged through one central coordinating entity. This may make the process more complex, but it is still possible to set the groundwork for success through a few logical yet critical practices for actually doing the work:

- **Regularity:** Meetings and other opportunities for engagement should be designed around a predictable schedule, with as much advance notice as possible.
- **Prioritization:** Develop transparent criteria and a process, in advance, for how ideas will be prioritized (ideally with contributions from civil society).
- **Power-sharing and agenda-setting:** Noting the inevitable power imbalances in the room, aim to share agenda setting power as much as possible, such as by co-facilitating thematic roundtables (as is often done in federal advisory committees or other, less formal meetings).
- **Report back:** Give direct feedback on major civil society contributions through a documented, reasoned response. (This would rectify a notable previous shortcoming in the 4th National Action Plan process, for which the U.S. has received a notice of procedural violation.)
- **Ongoing monitoring:** OGP rules require some form of ongoing monitoring or evidence of completion of commitments, usually centralized in an online repository or dashboard. During the Obama administration, the White House maintained an open government dashboard and later reported using longer “Self-Assessment Reports.” At the current time, there are a number of countries, especially in Latin America and Europe which are employing online reporting systems, some even requiring quarterly checkups, scorecards, and verification by civil society.

### Canada: “What we heard”



The Canadian government has taken feedback seriously when it comes to their open government action plans. The most recently completed action plan was created through a series of in-person and virtual town halls across the regions of Canada. The process was captured in a “What We Heard” report<sup>19</sup> (the second such report). The report highlights the iterative, coordinated-but-decentralized approach to developing policy priorities.

Importantly, the report goes through the major categories of comment and links them to specific commitments within the action plan. This allowed ongoing improvement across action plans and signaled to Canadian citizens that they were being heard, and better informed them about how they should and could invest in future processes.

<sup>19</sup> <https://open.canada.ca/en/content/what-we-heard-summary-report-open-government-consultations-march-31-july-15-2016> and <https://open.canada.ca/en/content/what-we-heard-summary-report-0>

## 5. SYNCHRONIZATION: Bridging Domestic and International Policy

The final key ingredient for an improved U.S. OGP process is making explicit, deliberate links between domestic and international policy efforts whenever possible, to the mutual benefit of domestic and global reformers. This is an important product of the transformed political context and America's ongoing democratic crisis.

The opportunity, and even necessity, to synchronize on the domestic and international fronts came up time and again across multiple roundtables, from linking criminal justice reforms to international human rights commitments to resuming U.S. democracy promotion in the world with a whole new level of humility and openness to partnerships and learning from other countries about how to combat backsliding democracy and authoritarianism.

Multiple interviewees clearly stated that **OGP can indeed be used to assert American leadership on many issues that require global cooperation, but will only have credibility if the U.S. practices what it preaches.** Some participants saw the main value of OGP as bringing fresh ideas or international pressure to help dislodge roadblocks around inherently polarized issues at home, such as climate reform. (As an example, capital markets that are already reforming in Europe could pressure the U.S. to elevate its own anti-money laundering or climate financial risk regulation standards in tandem with them, thereby encouraging a desired “race to the top.”)

Perhaps more than any other recommendation, the bridging of international and domestic efforts is especially relevant to implement *around* key political moments, including the season of summits that will gather world leaders over the next twelve months.<sup>20</sup> Opportunities include OGP's Global Summit, the Summit for Democracy, Group of Seven (G7) meetings, and the Summit for Democracies, among others.<sup>21</sup> (See the box: “Using OGP events for big policy changes” below for examples of major policy shifts announced at such OGP events.)

There is a great window of opportunity now for establishing an OGP co-creation process that is better than ever before. This stems from the momentum of the new administration, the rising threats to democracy at home and abroad, and the series of international forums over the next 12 months that will gather world leaders and could be leveraged in strategic ways.

### Using OGP Events for Significant Domestic Policy Changes



OGP and closely associated events have provided major opportunities for big announcements on policy changes. Many of these are the result of hard work by advocates inside and outside of government. Such events provide key moments for reformers to bring their efforts to the world stage.

- **OGP Launch 2011:** Brazil's President Dilma Rousseff announced the passage of a long-fought-for right to information law.
- **OGP London Summit 2013:** Prime Minister David Cameron announced the world's first public beneficial ownership registry, a surprise victory for transparency and anti-corruption advocates. Sierra Leone announced passage of its freedom of information law, a significant step forward for the region and a requirement for joining OGP.
- **OGP Ireland Regional Meeting 2015:** Advocates successfully used the event to press the government to remove high cost barriers to request access to information.
- **London Anti-Corruption Summit 2016:** Nigeria announced its intent to become the first African country with a public beneficial ownership registry, now a reality.
- **United Nations General Assembly 2016:** The United States revised its action plan to include a number of ambitious commitments, including those related to declassification.

<sup>20</sup> For more ideas, see “Making the Most of 2021 Global Summits” by Abigail Bellows. Open Government Partnership blog. April 2021. <https://www.opengovpartnership.org/stories/open-opportunities-making-the-most-of-2021-global-summits/>

<sup>21</sup> There are also a number of thematic global convenings to consider, like Generation Equality on gender and COP26 on climate.

## Additional Risks and Ways to Mitigate Them

There are some inevitable risks that could derail the next process, but steps can help mitigate them.



**Risk:** OGP becomes a performative “box-checking” exercise that is duplicative, rather than additive to parallel efforts.



**How to Mitigate:** Ensure that new OGP commitments are high-priority and ambitious.



**Risk:** OGP is seen as an excuse for government to consult civil society even less often than they would otherwise, such as through regulatory processes.



**How to Mitigate:** Design a transparent process (with a multistakeholder forum or otherwise) of mutual trust, buy-in, two-way dialogue, and joint work with strong feedback and follow through.



**Risk:** The next OGP action plan only includes pre-planned or pre-existing commitments.



**How to Mitigate:** Mix entirely new commitments with other commitments that meaningfully implement existing international pledges and domestic laws.



**Risk:** Lessons learned from previous processes are not heeded; institutional memory is not captured and built upon.



**How to Mitigate:** High-level, centralized ownership and one central coordinating agency is needed to ensure flow of information and other lessons.



**Risk:** Government and/or civil society leaders lack sufficient funding or staffing to participate.



**How to Mitigate:** High-level government ownership of the process, including sending signals to federal agencies and to private funders, will help mobilize resources necessary for civil society to also invest in the process.

# III. Key Policy Recommendations



Once a credible and constructive process is initiated, government and civil society reformers will be in a much better position to take meaningful action on a variety of desired policy changes.

## An Abundance of Policy Recommendations

There is certainly no shortage of well-formulated policy recommendations that already exist from outside of government to enhance transparency, accountability, and civic participation across issues. These are described in many civil society reports that have come out since late 2020, which highlight their top advocacy priorities for the new Biden Administration (see Annex 1 for an annotated list). As one participant said, referring to the suite of recommendations in Accountability 2021, a year-long consultation that brought together dozens of leading good government groups, *“The top policy reforms have already been created [with significant civil society consensus]. So we have a real opportunity not to waste time reinventing the wheel, but instead to put collective pressure to advocate for these reforms.”*

Civil society groups have worked hard to use their specialized skills and interests to identify concrete, specific reforms. While these may somewhat vary in terms of their political feasibility, the onus is nonetheless now on government counterparts to initiate a robust co-creation process, informed by these many existing lists of policy recommendations (rather than start entirely from scratch).

Similarly, the U.S. has committed to many noble reforms in international forums (e.g., Climate Accords, human rights treaties, anti-corruption commitments via the OECD, G7, etc). **The OGP process is a good way to ensure those international pledges become concrete domestic actions.** Ambition can be fulfilled not only by introducing entirely new reforms into the next OGP plan, but

also by introducing mechanisms for meaningful implementation of existing good ideas and pledges.

What unifies the myriad open government recommendations that many civil society actors deem a current priority for the Biden administration and might be suitable to include in the next U.S. OGP Plan? One participant with deep previous OGP experience said, *“uncovering shared facts that enable collective action”* on national priorities is one overarching theme that could help define a number of suitable policy reforms for the next plan. Another link to consider is open government “for what” and open government “for whom.” In other words, not promoting open government values for their own intrinsic sake, but rather illustrating how greater transparency, accountability, or participation can bring about instrumental value in helping solve national concerns (including, again, Biden’s stated four interlinked crises).

## Five Cross-Cutting Policy Priorities

The roundtables revealed five cross-cutting policy priority areas. Although the 50 roundtable participants were not a representative sample and their suggestions were not evaluated for OGP plan feasibility, these repeated themes represent likely fruitful areas that new commitments could come from a useful input to consider for the next action plan.

### 1. Core Democracy and Good Government Reforms

This priority area would help to drive the greater ethics, transparency, oversight, and accountability in government that American democracy reform groups have long called for, including all those embodied in the For the People Act (H.R. 1/S.B. 1), and would represent a once-in-a-generation reform. In addition, there are already many strong domestic laws regarding ethics and open government issues (e.g., whistleblower protections and NDAA beneficial ownership provision most recently).



Again, OGP can be a way to help put these laws further into practice. As another participant with deep experience in OGP stated, *“This is what OGP is good at — assessing laws and how they can be improved.”*

Examples of reforms under this theme repeated by a number of civil society groups include<sup>22</sup>:

- Democracy reforms included in H.R. 1
- Whistleblower reforms (detailed in other civil society reports, and including issues like independent due process for COVID-19-related whistleblowers, and for the military and national intelligence community)<sup>23</sup>
- Support proactive FOIA engagement and disclosures across federal agencies

## 2. Disclosures and Declassification

This theme addresses a number key areas, from whistleblower reform, especially in the intelligence community, to disclosure about critical legal opinions as a matter of law not of discretion (e.g., opinions from the DOJ Office of Legal Counsel and those relates to secret law and strikes in Syria), to the use of artificial intelligence in federal agencies (e.g., racial profiling algorithms), to disclosure of criminal justice data (e.g., regarding police use of force and DOJ prosecutor behavior). As one participant said, *“We need to get a handle on the classification system. It’s a trainwreck right now. If we don’t figure out a solution to declassification, we will be overwhelmed.”*

Examples of reforms include:

- Declassification and disclosures related to the use of force: police use of force, extraterritorial use of force on Americans and non-Americans (related secret law), and against protestors and journalists<sup>24</sup>
- Disclosure of fossil fuel subsidies

## 3. Regulating Technology and Generating More Usable Data

This theme ensures more transparency for and laws governing technology, particularly surveillance and use of emerging technologies like AI in federal agencies. And for enabling more usable and useful data about top priorities, as one participant noted in the Climate roundtable, *“We can’t meet national goals without activating all groups of actors. One of the best ways to do that is to give them data.”*

Examples of reforms include:

- Transparency of and new policies to regulate federal agencies’ usage of AI and other emerging technologies
- Disclosure of White House visitor logs data in a useable and useful format

<sup>22</sup> All examples under these Five Cross-Cutting Themes were mentioned or endorsed by three or more participants in this roundtable series.

<sup>23</sup> Advocates of these reforms stated that their implementation would likely need to involve not only the White House and Justice Department, but also the Office of the Director of National Intelligence (ODIN) and possible other entities.

<sup>24</sup> Advocates of these reforms stated that their implementation would likely need to involve not only the White House (National Security Council) and Justice Department (Office of Legal Counsel), but also possibly the Defense Department and other entities.

#### 4. Criminal Justice, Civil Justice, and Broader Access to Justice Reforms<sup>25</sup>

Many participants called for a paradigm shift that reallocates resources away from police, militarization, and mass incarceration and towards equitable justice reforms for marginalized communities. This includes rethinking justice-related data, clemency, criminal treatment of immigrants, policing, and sentencing. Suggestions also included: tracking enforcement of DOJ policies (uneven implementation across states, addressing disparities in federal prosecution and federal prison conditions, disclosure and discovery, etc.)<sup>26</sup>; illuminating how civil justice problems can lead to entanglement in the criminal justice system; and re-establishing the Office for Access to Justice (in the Department of Justice) and the Office of Information Policy.

Examples of reforms include:

- Suite of criminal justice reforms (some of which are in the BREATHE Act): redirect resources from policing and mass incarceration toward marginalized communities; end civil detention of immigrants; end cash bail; and reform sentencing practices and clemency
- Provide access to counsel for marginalized groups in both criminal and civil cases, including immigrants, racial and ethnic minorities, individuals in public benefits denial cases, or matters that threaten basic human needs, etc.
- Tracking uneven enforcement of DOJ policies across states and address disparities in federal prosecution, prisons, disclosure and discovery

#### 5. Better Implement/Fulfill Existing Laws and International Commitments

Time and again, participants noted how the U.S. has already pledged to make many worthwhile reforms on the international stage, from the Paris Climate Accords to anti-corruption reforms in G7 and more. What is often missing is a concrete way to formalize these nebulous pledges into domestic policy reforms, and the next OGP plan can be a strong avenue for that. As one person noted, *“We have no mechanism within the U.S. government to effectuate [our international] human rights obligations.”* Meanwhile, there is an opportunity to further link our international human rights obligations to justice reforms at home.<sup>27</sup>

Examples of reforms include:

- Full implementation (i.e., writing specific regulations) on Beneficial Ownership in the National Defense Authorization Act (NDAA) to end anonymous shell companies in practice
- Strengthen Section 1504 of the Dodd-Frank Act, adding a new or improved regulation to cover project-level reporting of all oil, gas, and mining projects (to help limit overseas corruption and increase the tax base in resource-rich countries)

While the 50 participants in this roundtable series were not a representative sample, these five policy themes nonetheless reflect the shared priorities of multiple civil society organizations interested in open government reforms, and thus should be considered for possible inclusion in the next U.S. OGP action plan.

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<sup>25</sup> It is worth noting that Justice roundtable participants described the highest number of specific government entities that need to be involved to bring such reforms to life. Most involve DOJ, of course; they identified numerous specific offices within DOJ needed to bring about certain reforms.

<sup>26</sup> See resources from organizations like [NLADA](#): National Legal Aid & Defender Association.

<sup>27</sup> For example, as former Department of Justice official Maha Jweid [noted](#): *“International levers, such as human rights treaty reporting and activity centered around the Sustainable Development Goals, can help advance access to justice policies inside the United States, sometimes more quickly than domestic activity alone.”*

# IV. Conclusion: Seizing the Moment



The public's appetite for government accountability, transparency, and civic participation — the three pillars of open government — is high, especially as they relate to our urgent political, social, economic, and health crises. This moment represents an important window of opportunity to significantly improve the U.S. domestic OGP process in order to bring about needed reforms to combat corruption, restore democracy, preserve the climate, uphold justice, and more. Momentum to act comes from the change in administration, rising threats to democracy at home and abroad, and a series of international forums over the next year that will gather world leaders, allowing the U.S. to truly lead not by the example of its power, but by the power of its example (including the December 2021 OGP Global Summit, Biden's Summit for Democracy, and more).

Perhaps now more than ever, U.S. leadership on democratic values in the world is inextricably linked to "practicing what we preach" domestically. Strengthening democracy and rule of law in the U.S. will require action on many fronts, but the OGP process presents a unique opportunity to bridge international and domestic policy efforts.

Certainly, it seems that the political will exists. As stated in the most recent formal communication from the United States government to the OGP Support Unit<sup>28</sup>:

*As one of the eight founding members, the Government of the United States of America strongly believes that the OGP is an effective and valuable platform where governments and civil society organizations can partner in sustaining democratic norms, advancing transparency and accountability, and bolstering citizen engagement. U.S. participation in the OGP is a recognition that good governance requires work and commitment, and we recognize that, ultimately, the success and quality of our efforts hinges on the ability of citizens to work alongside their government to develop and realize a shared vision for reform.*

Of course, expressions of values alone are not enough. Many have witnessed recent affronts to American democracy that they never could have imagined. Yet with such unprecedented challenges also comes the opportunity to seize the moment for change.

Now the current administration should begin the hard work of setting up a robust process to hear from the public and work side by side with civil society leaders to advance open government. This report outlines five foundational principles (summarized by the acronym "OPALS") to help set up that next U.S. OGP co-process and resulting plan for success. Whether or not open government reforms can be a meaningful antidote that rises to the challenge of today's global and domestic crises ultimately depends on those vital reformers, inside and outside of government, working closely together to bring such noble values to life.

<sup>28</sup> "United States – Government Response to Contrary to Process Letter (April 2021)," Open Government Partnership website. <https://www.opengovpartnership.org/documents/united-states-government-response-to-contrary-to-process-letter-april-2021/>



## ANNEX 1: Annotated Bibliography of Select Resources from Civil Society Organizations

The following alphabetical, annotated list includes some of the many resources that OGP-relevant civil society organizations have published in recent months to present their top recommendations to the new Biden administration. Most of these resources were produced by organizations that participated in this roundtable series and many come from coalitions/networks representing multiple like-minded organizations.

1. **“Accountability 2021:** Recommendations for accountability in the federal government.” *Open the Government*. October 2020. <https://www.openthegovernment.org/accountability-2021/>
  - A year-long consultative process involving two dozen American civil society groups resulted in this comprehensive report, which offers a detailed list of Day One, short-term, and long-term recommendations for the Biden Administration across five broad categories: *Open Government, Ethics, Balance of Power, Whistleblowers, and Responsive Government*.
2. **“Day One is Form Democracy:** A blueprint for the next administration.” *Declaration for American Democracy Coalition*. November 2020. <https://dfadcoalition.org/wp-content/uploads/9.28-Day-One-is-for-Democracy-1.pdf>
  - In this report, the Declaration for American Democracy — a coalition formed in 2018 of over 200 organizations including labor, racial justice, faith, environmental, good government groups, and others — identifies six core demands and six priority actions for the new Biden administration to take to help restore American democracy from day one.
3. **“Our Asks:** Biden’s Civil Liberties and Civil Rights To-Do List. January 19, 2021. *American Civil Liberties Union (ACLU)*. <https://www.aclu.org/news/topic/our-asks-bidens-civil-liberties-and-civil-rights-to-do-list/>
  - The ACLU identifies top actions to protect rights and liberties in the administration’s first 100 days and beyond, across several categories: *criminal justice; disability rights; freedom of religion and belief; immigration; LGBT & HIV; national security; racial justice; reproductive freedom; speech, privacy and technology; voting; and women’s rights*.
4. **“Letter to Biden White House on Open Government.”** *Governing Digital*. February 2021. <https://governingdigital.files.wordpress.com/2021/02/letter-to-biden-white-house-on-open-government.pdf> Also available at: <https://whistleblower.org/letter/letter-to-biden-white-house-on-open-government/>
  - Over a dozen good government and accountability organizations signed this letter to the President calling for several actions and asking 25 questions related to White House and broader government transparency concerns.
5. **“The Baker’s Dozen:** 13 Policy Areas Critical to an Effective, Ethical, and Accountable Government.” *The Project on Government Oversight*. February 18, 2021. <https://www.pogo.org/report/2021/02/the-bakers-dozen-13-policy-areas-critical-to-an-effective-ethical-and-accountable-government/#heading-19>
  - This report presents a roadmap for nonpartisan, commonsense reforms to 13 policy areas for both Congress and the executive branch covering topics from protecting whistleblowers and internal watchdogs, to rights and liberties, transparent government spending, judicial branch integrity, and more.

6. **“Transition 2020-21: A Presidential Agenda for Liberty and National Security.”** *Brennan Center for Justice*. October 2020. [https://www.brennancenter.org/sites/default/files/2020-10/2020\\_10\\_LNS%20Transition%20Report\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-10/2020_10_LNS%20Transition%20Report_Final.pdf)

- This report outlines seven priority areas for the new administration to act to address the assault on civil liberties and constitutional limits on the executive: *end immigration bans; end racial and religious profiling; mount an effective and targeted response to white supremacist violence; build guardrails for emergency power; end warrantless spying on Americans; and recommit to national security transparency.*

7. **“Anti-Corruption Recommendations for the Administration.”** *The Coalition for Integrity*. March 2021. <https://www.coalitionforintegrity.org/wp-content/uploads/2021/03/Anti-Corruption-Recommendations-for-the-Biden-Administration-Online-.pdf>

- This report outlines a series of anti-corruption priorities for the Biden administration to tackle, both on the domestic and international policy agendas. Topics addressed range from conflicts of interest and whistleblower protection on the domestic side, to transnational bribery and extractive industry transparency on the international side, among others.

8. **“Make it Safe Coalition Recommendations.”** *Make it Safe Coalition Steering Committee*. 2020. <https://mkus3lurbh3lbztg254fzode-wpengine.netdna-ssl.com/wp-content/uploads/MISC-Recommendation-Memo.pdf>

- This document presents 20 recommendations for the incoming administration to improve whistleblower protections through a variety of executive actions, both on day one and during the first one hundred days of the administration.

9. **“Request for Swift Presidential Leadership to Make Transparency a Top Priority for the Biden Administration.”** *National Coalition Against Censorship and 40 other organizations*. February 2021. <https://ncac.org/news/biden-transparency-coalition>

- A coalition of over 40 organizations — led by the ACLU and the Knight First Amendment Institute — submitted this letter to the President outlining executive actions to update and improve implementation of agency policies and public records statutes governing the release of information to the public, particularly the Freedom of Information Act (FOIA), the Federal Records Act (FRA), and the Presidential Records Act (PRA).

10. **“What Democracy Looks Like.”** *Citizens for Responsibility and Ethics in Washington (CREW)*. December 2020. <https://www.citizensforethics.org/reports-investigations/crew-reports/democracy-reform-blueprint-accountable-inclusive-ethical-government/>

- In this report CREW offers a blueprint for achieving a more ethical and accountable government, from limiting secret money in politics, to restoring checks on the executive, congressional ethics, and more.

11. **“Revitalizing US Democracy Starts with Repairing the Right to Peaceful Assembly.”** *Elly Page and Nick Robinson for Just Security*. December 2020 <https://www.justsecurity.org/73689/revitalizing-us-democracy-starts-with-repairing-the-right-to-peaceful-assembly/>

- This article outlines five ways the Biden administration can contribute to restoring democracy at home and abroad by protecting the right to assembly in the face of a recent assault on assembly rights from federal and state lawmakers.



## ANNEX 2: Methodology

The findings of this report are based on a series of five roundtables with policy experts, most with significant knowledge of open government or of topics traditionally linked to open government approaches.

The roundtables were as follows:

- **Transnational/International Corruption:** Issues such as beneficial ownership, international aid transparency, countering kleptocracy, and money laundering
- **Climate:** Issues such as natural resource management and disclosures, fossil fuel regulation; and a just energy transition
- **Justice:** Issues such as criminal justice reform, access to justice, human rights, and civil liberties
- **Democracy and Rule of Law:** Issues such as ethics and oversight, access to information, money in politics, and election reform
- **Cross-Cutting:** A mix of groups across themes, this roundtable was designed specifically for newcomers to OGP

A total of 51 participants representing 40 different American civil society organizations contributed to the series. It is important to note that this was not intended to be any kind of broadly representative sample: approximately 75 percent at least had some basic familiarity with OGP, and 10 percent were actively involved in one or more of the previous U.S. OGP action plans. Most civil society groups who participated in this series are policy advocates with at least some familiarity and interest in open government issues broadly speaking, and most are located in the Washington, D.C. area (see Process Recommendation 2 above for ideas about how to foster participation from more diverse American civil society groups).

The author facilitated all virtual roundtables, each 60 minutes and limited to 10-20 participants, to ensure meaningful discussion. Key discussion questions each roundtables focused on were:

- *What top-priority policy reforms they would like to see from the Biden administration, and who from government would need to be involved to implement those reforms*
- *Who should own the OGP process in government*
- *How to achieve the right balance of diverse civil society representation and public engagement*
- *What guiding principles could help ensure that co-creation of the next OGP U.S. action plan is a worthwhile process between civil society and government counterparts*

Notes and recordings from all roundtables were reviewed using thematic content analysis. Raw data was grouped according to the methodology questions, then an inductive coding process was used to organize the specific policy and process recommendations from participants. Finally, a hierarchical coding frame was used to identify relative importance of the policy and process recommendations that were mentioned by at least three or more participants.

The author consulted with colleagues from OGP on the report draft, then circulated the penultimate draft to all civil society participants, as well as a few former government officials previously involved in OGP. About a dozen individuals provided responses during this time, and most of this feedback received during the limited comment period was integrated into this final report.

## About the Author

Nada Zohdy is the director of the **Open Gov Hub** (OGH), at Global Integrity. OGH is the world's first meeting place and innovation hub that promotes transparency, accountability, and civic participation worldwide, by fostering resource sharing and collaboration across a network of 50 member organizations and 13 global affiliate hubs. She has been a consultant on civic engagement and democracy reform for the World Bank, the Organization for Economic Cooperation and Development (OECD), the Participatory Budgeting Project, and the Democracy Fund. She was previously the founding program coordinator for civil society partnerships at the Project on Middle East Democracy (POMED), where she created a program to support a dozen local watchdogs and think tanks in democratizing Arab countries in the wake of the Arab Spring. From 2016 to 2020, she served on the board of Rhize, a nonprofit that coaches people-powered social movements around the world. Zohdy received her master's degree in public policy from the Harvard Kennedy School where she was a Pforzheimer Nonprofit Fellow. She received her Bachelor's degree from Michigan State University, where she was a 2009 Truman Scholar.

*The author welcomes any comments, questions or feedback about this report and can be reached at [nada@opengovhub.org](mailto:nada@opengovhub.org)*

## About the Open Government Partnership

In 2011, government leaders and civil society advocates came together to create a unique partnership—one that combines these powerful forces to promote transparent, participatory, inclusive and accountable governance.

Seventy-eight countries and a growing number of local governments—representing more than two billion people—along with thousands of civil society organizations are members of the **Open Government Partnership (OGP)**. The United States is a founding member.