

# Consultations for the 5<sup>th</sup> National Action Plan on Open Government

## Justice – Framing the discussion

### Executive Summary

**Context:** As part of its membership in the Open Government Partnership (OGP), an international multilateral initiative, the Government of Canada is developing its 5th National Action Plan on Open Government. This Action Plan will apply the principles and tools of open government, such as transparency, accountability, engagement, collaboration, inclusion and open data, to address targeted problems. Creating an action plan in consultation with civil society and the public is a key component of this process.

**Topic:** Access to Justice emerged as a theme in our latest National Action Plan consultations.

**Goal:** Apply transparency, accountability and citizen participation principles and tools to Justice issues

What we heard from participants who have engaged in our consultations:

- **Open Data:** Need to increase the creation, aggregation and publication of justice-related data to promote analysis, identify any possible biases, ensure accountability and promote innovation (example of types of data: courts, judicial officials, legal aid, corrections, caseloads, individual data vs system data, arbitrations, demographics, etc.).
- **Literacy and education:** Need for plain language justice literacy and an educational component to ensure that all citizens are informed of their rights, laws, resources, tools, etc. through reputable sources.
- **Access to justice:** Concerns around citizens, including underrepresented and marginalized communities, not having sufficient access to justice, whether it be programs, legal aid, tools, or plain language information.
- **FPTM:** Need to have access to data down to the municipal level to properly understand the justice landscape and how all communities, including underrepresented and marginalized communities, are impacted. This includes having standardized data across the country.
- **Engagement:** Engaging/consulting directly, specifically with underrepresented and marginalized communities, is key to ensuring their needs and challenges related to justice are reflected.

What are international best practices?

Access to Justice and Open Justice are notable policy focus areas for the OECD and the Open Government Partnership (OGP). The OGP highlighted that [justice is an emerging area in open government](#) with an increased number of commitments and has been publishing a Justice Policy Series (focus on Access to Justice and Open Justice). Canada has been involved in OGP Access to Justice discussions. In 2020, OGP and Open Society Justice Initiative hosted a virtual conversation, [Open Response + Open Recovery: Access to Justice and Open Government During a Pandemic](#) with experts including from Canada's Department of Justice.

For specific best practices, please look at Backgrounder.

Where do we go from here?

This past year shone a light on the importance of justice and brought it to the forefront both through international movements such as Black Lives Matter. We also saw side effects of the pandemic which kindled other access to justice issues, such as legal problems related to detention, employment, housing

and debt. Access to Justice and Open Justice are key to helping all communities across the country have access to the data, information and services they need to interact with an unbiased and fair legal system. This ensures a people-centred approach to justice which works better to understand and meet the legal needs of the people of Canada.

## What the civil society members of the Multi-stakeholder Forum (MSF) suggest:

### *Regarding topics raised by consultation participants*

**On Open Data:** Open Data is an important part of Justice as it enables the public to better understand the outcomes of new laws and who is affected by the justice system. This goes beyond policing data about white collar crime. This would also include disaggregated equity data about people in the justice system, who are incarcerated and being decarcerated, an analysis of policing datasets to assess representations in the data by location, but also data about police services and the composition of their workforce and data about excessive force. There also needs to be more data and transparency about investigation and prosecution of crimes against women. There is very little data about police oversight, violence, and profiling.

**On Access to Justice:** It is essential that we ensure that First Nations, Métis, Inuk, refugees, women and girls, people with disabilities, and new Canadians have sufficient access to justice through legal aid, programs, tools, faster court systems, and plain language information. This can be supplemented by open data about how the courts are doing. Special attention needs to be paid to Indigenous groups about their needs in the justice system considering growing incarceration rates and overrepresentation in the Canadian justice system.

**On FPTM:** Getting standardized data from all levels of government would require increased collaboration with experts on the collection and reporting of crime statistics and police force statistics so that more refined information is provided from a disaggregated equity data perspective, including geography. See [UCRS](#) and [Reported Crime Statistics](#) as a starting point.

### *Additional comments from the civil society members of the MSF:*

**Require proactive disclosure of data by the RCMP:** Since 2016, TBS has been requesting departments and agencies to submit an inventory of all the datasets in their possession. As of February 7, 2021 the agency does “not currently have a timeline for submitting a completed open data inventory,” and has stated that it is consulting with the Treasury Board.

**Reporting White Collar crime:** Government should consider the Transparency International (TI) Canada recommendation from last year's Exporting Corruption report. See [Exporting Corruption report](#) for all recommendations.

**Consider collecting data on the use of free trials of software and software/app subscriptions:** Justice systems need to proactively report any use of privacy invasive software tools including free trials.

**Consider establishing a public registry/inventory of algorithms and artificial intelligence (AI) systems, as well as an independent oversight body for the AI:** The list should include AI technologies used by the RCMP, and other departments implicated in the justice system, immigration and cross border systems, police services, and facial recognition technology. In addition, it is suggested to create an independent oversight body for [responsible use of artificial intelligence \(AI\) in government](#). Among other things, this would help to regulate the private sector and keep track of progress on AI policies.

**Access to Justice for People with Disabilities:** Governments must recognize the unique challenges faced by people with disabilities when trying to access justice services and processes. In order to facilitate access, justice entities should implement inclusive practices in areas of concern (for example: accessibility of justice spaces and documentation; access to courts and their alternatives; access to independent assistance, etc.). In particular, accommodations must be available to people with disabilities to ensure they have the right tools and support. Governments should consider adopting recommendations from the [International Principles and Guidelines on access to justice for persons with disabilities](#).

**Intersectional approach to justice:** Considering who is most marginalized in Canada in the context of Canadian issues, having access to justice is key to helping communities across Canada, including Indigenous women, First Nations, Métis, Inuk, people with disabilities, refugees, and new Canadians. It is also very important to recognize that this has been and continues to be a long-standing issue with First Nation, Metis and Inuit Communities in Canada, most notably with the RCMP, and local police services. Women, in particular poor and racialized women, have also been neglected in the justice system in terms of sexual assault, intimate partner femicide, Missing and Murdered Indigenous Women and Girls, sex workers and women with addictions.

## BACKGROUND

### DETAILED BACKGROUND

#### 5<sup>th</sup> National Action Plan on Open Government Consultations

- Canada must submit its 5<sup>th</sup> National Action Plan on Open Government to the Open Government Partnership in 2021 to meet its international obligations.
- To design the plan, the Government of Canada consulted Canadians from Fall 2019 to the end of 2020. The consultation included meetings with civil society, informational webinars, online discussion forums, virtual online events and telephone town halls.
- Four broad themes emerged for further discussions, namely Financial and Corporate Transparency, Climate Change and Sustainable Growth, Combatting Disinformation and Safeguarding Fair Elections, and Access to Justice.
- Discussions on **Access to Justice** included:
  - **Three virtual online sessions** were held during the week of December 14, 2020, in addition to an online discussion forum was available for people who were unable to attend an event.
  - **38 participants** attended the events.
  - Representatives from **Justice Canada, Public Safety and the RCMP** participated to sessions as technical experts and provided vital context to the conversations.

### WHY ACCESS TO JUSTICE?

#### 1- Continuity: 4<sup>th</sup> National Action Plan on Open Government

- While the theme of justice was not featured as a commitment on its own in the 4<sup>th</sup> National Action Plan, access to justice and social justice goals were behind many of the commitments and milestones, including but not limited to:
  - Healthy democracy
  - Access to information
  - Feminist and inclusive open dialogue
  - Reconciliation and open government
- This year shone a light on the importance of justice and brought it to the forefront both through international movements such as **Black Lives Matter and the issues of missing and murdered Indigenous women and high incarceration rates and maltreatment of Indigenous peoples in Canada** and the side effects of the pandemic such as a greater need for access to justice on a variety of justice-related matters, including but not limited to access to legal aid, health risks in detention centres, issues related to prolonged imprisonment as courts experienced delays, and increases in domestic violence.

#### *What we have done so far*

- At the May 2019 OGP Summit in Ottawa, Justice Canada hosted [Open Doors at Justice](#). The event, held in the Justice Canada library, was the first time the Department opened its front doors to the public. Justice Canada hosted international and local speakers for discussions on access to justice and privacy as well as lightning talks on open government and open justice.

Included were interactive kiosks showcasing Justice Canada's latest open government achievements and initiatives. Many of these initiatives are available on the Open Government Portal.

- Also, at the Summit, the OGP and Canada co-hosted the [launch](#) of the [Coalition on Justice](#), a group of OGP members, civil society organizations, and other national and international partners advancing a people-centred approach to justice in OGP Action Plans through transparent, accessible, and inclusive justice systems that partner with other social services. The Government of Canada formally joined the coalition in August 2019 and collaborated with the OGP in October 2020 to launch the **first working-level meeting of the Coalition convening OGP members** that are currently co-creating or implementing justice commitments in their National Action Plans on Open Government.
- Canada signed onto the Joint Declaration on Open Government for the Implementation of the 2030 Agenda for Sustainable Development (specifically SDG 16 on peace, justice and strong institutions).

## 2- What we heard in 2020 on Access to Justice

*The following is a summary of what was heard during consultations and might not necessarily represent the Government of Canada views.*

### 1. Access to data and information:

- a. **Access to data** – there is a need to increase the creation and disaggregation of justice-related equity data (policing, prisons, profiling, victims, white collar crime) to promote analysis, identify any possible biases, ensure accountability and promote innovation (example of types of data: courts, judicial officials, legal aid, corrections, caseloads, individual data vs system data, arbitrations, demographics, etc.)
  - b. **Literacy, education, and access to plain language laws and legislation** – There is a need for people to understand what their legal rights are (e.g. What are their rights as a renter; how and why their data is being collected, where to get support). There is a need for plain language justice literacy and an educational component to ensure that all people are both informed and understand their rights, laws, resources, tools, etc. through reputable sources.
  - c. **Federal, Provincial, Territorial and Municipal coordination:** There is a need for a coordinated approach to the collection and dissemination of data as well as a reduction of barriers to access across jurisdictions. Access to data down to the municipal level is required to properly understand the justice landscape and how all communities, including underrepresented and marginalized communities, are impacted. This includes having standardized data across the country.
- ### 2. Reforming the justice system and access to justice:
- There are concerns about insufficient access to justice, including for underrepresented and marginalized communities, whether it be programs, legal aid, tools, or plain language data and information;
- a. **Engagement:** Participants noted that engaging and consulting directly with Canadians, specifically underrepresented and marginalized communities, is key to ensuring their needs and challenges related to justice are reflected.
  - b. **Leveraging technology** - Participants suggested leveraging technology to make legal services more accessible while still being aware of and addressing biases.

- c. **Addressing systemic racism** – Participants noted that addressing systemic racism needs to be at the forefront of the justice system (data collection, policy solutions and addressing data bias).
- d. **Transparency in policing** – Increased communications and transparency around policing budgets and funding, policies and processes to ensure bias-free policing, and oversight mechanisms.
- e. **Indigenous legal frameworks:** Reforms to the justice system need to consider the role of Indigenous laws and forms of justice.
- f. **Legal problem topics mentioned in the consultation include:** Greater transparency and reforms around housing laws, family law, youth justice, and laws concerning sex work.

## WHAT ARE INTERNATIONAL BEST PRACTICES?

### 1- OECD Policy Areas

The OECD's Observatory of Public Sector Innovation published a report entitled [Transparency, participation and accountability in the Justice sector](#), which provides a case study on the Government of Argentina's implementation of transparency, participation and accountability in the judiciary through two flagship initiatives: an Open Data Portal that publishes datasets with information from a wide range of justice-related topics, and a digital civic engagement platform on justice-related issues. Through these initiatives, the government is seeking to improve the relationship between society and the justice sector, as well as justice service delivery.

The OECD also showcases an initiative in Costa Rica, called the [Open Justice policy](#). Costa Rica's Judicial Branch created an institutional policy of Open Justice, which promotes judicial management based on transparency, citizen participation and institutional collaboration. The Open Justice policy is the first to be implemented in the world and seeks to solve problems such as the delegitimization of the Judicial Branch due to acts of corruption and a lack of transparency and accountability. The implementation of the Open Justice policy expands and improves the way in which the population can obtain information about the institutional work, which facilitates accountability, public debate and citizen participation. It is expected that with the implementation of the policy, there will be an open data portal with institutional information, and spaces for citizen participation will be strengthened; there will be open courts and open public defence offices, and there will also be more awareness and training for all judicial officers, among other initiatives. Recovering the confidence of citizens and preventing acts of corruption are the main goals of the Open Justice policy.

### 2- OGP Policy Areas

According to the [World Justice Project](#), two thirds of the world's population face some justice problem with disproportionate impacts on the marginalized and poor, which has been further exacerbated by the COVID-19 pandemic. As a result, Open Justice is a central policy area for the OGP, highlighting that [justice is an emerging area in open government](#) with increasing potentially high impact commitments. In high- and upper middle-income OGP countries, housing, consumer, and financial

problems are the most common legal problems. In less affluent OGP countries, problems of basic documentation and services are more common. The OGP's recommendations to address these justice gaps through an open government approach include:

- Building legal capability by improving access to information.
- Strengthening resolution forums and processes.
- Working to improve outcomes and reduce hardships, especially for under-represented communities.

The OGP published a report called [Transparency and Accountability at the Frontlines of Justice](#) which had [Access to Civil or Criminal Legal Aid](#) as a critical component of access to justice. Legal aid can ensure that justice systems are accountable and safeguard the rights of individuals, and the OGP makes recommendations in this respect to government. These recommendations are highlighted in the OGP's report, [Justice Policy Series, Part I: Access to Justice](#):

- **Programs for underserved communities:** Increase funding to existing legal aid services (establish new offices and services to reach isolated or underserved communities). Make budgets (and outcomes) transparent down to the program level.
- **Cooperation to address legal needs:** Protect and deepen civil society partnerships, especially with civil legal aid providers. Launch working groups of government and civil society members to identify legal reforms to improve legal assistance and the courts.
- **Targeted partnerships:** Strengthen and institutionalize civil society partnerships to better serve underserved communities and populations like victims of gender-based violence.

In the [Justice Policy Series, Part II: Open Justice](#), the OGP offers emerging guidance for the types of open government reforms justice systems may undertake to advance open justice. Key takeaways include:

- Open justice is noted as a first step to fairer justice systems, where reforms can start to address issues of fairness and independence.
- Justice has grown as an area of focus in OGP action plans following growing global momentum for action and innovation in this sector (nearly 300 commitments on making justice more accessible, open, and effective).
- According to data from IRM reports, 25% of open justice commitments have led to significant improvements in the communities they affect, which is higher than other justice commitments overall (21%) and OGP commitments overall (19%).
- Existing OGP commitments focus on making justice institutions more transparent by making information and data more accessible. Commitments could be expanded to guarantee accountability mechanisms that allow civil society and the public to hold the system accountable and strengthen the justice system's independence, impartiality, and integrity.

The [Coalition on Justice](#) was [launched at the OGP's Global Summit in Ottawa in 2019](#). The launch was co-hosted by the OGP and the Government of Canada, and organized in association with the Task Force on Justice. The inaugural meeting of the OGP Coalition on Justice was held online on October 21, 2020 during the Global Week for Justice and was organized in partnership with the Government of Canada, Pathfinders and the OECD. Canada also [contributed to the drafting](#) of the [Terms of Reference](#) for the Coalition. The Coalition includes a group of OGP members, civil society organizations, and other national and international partners advancing access to justice through their OGP action plans. All OGP members

currently co-creating or implementing justice commitments will be invited to join this coalition, which Canada is a member of. The Coalition's members agree to work together on strategies to advance justice through OGP, such as:

- Promoting learning and exchange on policies and actions that improve access to justice.
- Promoting new technologies, transparency, citizen participation and increased access to information and data to advance legal empowerment and access to justice.
- Increasing the number of justice-related commitments in OGP action plans that take a people-centred approach to improve access to justice.

The OGP has focused on Open Justice during the COVID-19 pandemic. In [A Guide to Open Government and the Coronavirus: Justice](#), COVID-19 is highlighted as increasing the pre-existing justice gap, further exacerbating existing inequalities. Justice related societal issues are increasing as direct and indirect consequences from the pandemic emerge, including job losses, personal financial concerns, and difficulties accessing healthcare. The OGP provides an extensive list of recommendations to governments to address this, including:

- **Fund innovations that provide remote justice services**, including in courts and detention centres.
- **Expand helplines and other specialized justice and protection services** aimed at women and children, members of the LGBTQIA+ communities and persons, and create safe spaces for adults and children who need to escape their homes.
- **Maintain funding and services of online justice courts and helplines**, as additional capacity will help reduce the backlog.
- **Use technology to create materials to explain legal information** to individuals and families.

Canada has been involved in other OGP Access to Justice discussions. In May 2020, OGP and Open Society Justice Initiative hosted a webinar, [Open Response + Open Recovery: Access to Justice and Open Government During a Pandemic](#), with experts from **Canada's Department of Justice**, AdvocAid (Sierra Leone), the ILF (Afghanistan), and Article 19 South America. The discussions highlighted promising practices in protecting access to justice during a crisis. These examples can assist the OGP community and its coalition on justice in considering how to respond locally to these challenges.

### 3- National Action Plans

A [broad scan](#) of other countries NAPs shows that access to justice and open justice are common commitments, with 210 justice commitments included in OGP action plans since 2011. In total, 61 OGP members have made justice commitments, and 35 OGP members are currently implementing justice commitments. Some notable commitments include:

- [Indonesia](#): Increasing the Quantity and Quality of Legal Aid Services In 2018, Indonesia committed to creating regulations that guarantee funding for legal aid organizations, allowing them to expand their reach to more remote and poorer communities. The government will also begin a civic education campaign to teach citizens how to identify violations of their rights and how legal aid providers can help them win justice for their grievances.
- [Denmark](#): Setting up whistle-blower schemes for employees, in order to increase the likelihood that information will be made public, thus contributing towards a culture of openness, including



prosecutions service, but also in the police, the Danish Security and Intelligence Service (PET), prison service and the Ministry of Justice department.

## WHERE DO WE GO FROM HERE?

- Since Access to Justice has been identified as an important issue during public consultations, and some departments have been focusing on this issue as well, the Government of Canada will continue exploring opportunities to leverage open data and open information to aid in ensuring we have an open, inclusive and accountable justice system for all.
- Beyond telling us their concerns around open justice and access to justice, participants to consultations emphasized that policy and program design, implementation, and evaluation of social, economic, or environmental issues could benefit from open government values. Departments and civil society should thus also start thinking about concrete and actionable initiatives that would integrate the principles of open government to combat disinformation and safeguard fair elections, but that would also increase:
  - **Collaboration** across the Government of Canada, with provinces, territories and municipalities, and external stakeholders including academia, the non-profit sector, and the private sector is necessary.
  - **Meaningful engagement with stakeholders** to raise awareness and communicate decisions on policies and programs throughout the process, not only as a one-off or an afterthought.
  - Integration of a **diversity, inclusion, and equity** lens into the design, implementation, and evaluation of policies and programs (e.g. applying Gender-Based Analysis Plus - GBA+) to all the development stages of the commitment