INDEPENDENT REVIEW OF THE GOVERNANCE ARRANGEMENTS OF CANADA'S MULTISTAKEHOLDER FORUM ON OPEN GOVERNMENT

JULY 22, 2022

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1. Introduction

Background

What is Open Government? "Open Government is about making government more accessible to everyone. This means giving greater access to government data and information to the Canadian public and the businesses community."[1] Open Government's core tenets include the public's right to access the records and proceedings of government, as well as its participation in decision-making by Government. Governments around the world are recognizing Open Government as a public good and essential to strengthening democracy, particularly in the age of social media and disinformation.

There are two major goals for Open Government:

1. Improving the quality of governance and services by becoming more transparent, more accountable, and more participatory; and
2. Enabling the public to make better and more informed decisions, resulting in improvement to the quality of their lives.

Openness in Government requires a commitment to Open Data, Open Information and Open Dialogue:

1. Open Data is the proactive release of government data in free, accessible, and machine-readable formats, to encourage it use by businesses, the public and government.
2. Open Information is the proactive release of information about government programs, services, and operations to improve transparency, accountability, increase public understanding and engagement.
3. Open Dialogue is active and intentional in its engagement, by using new ways to give the public a meaningful voice in planning, decision-making and the development of government policies, programs, and services.

Canada became a member of the International Open Government Partnership (OGP) in 2011, joining 76 other participating countries. Once a member, each government must develop a National Action Plan (NAP) on Open Government in collaboration with civil society in their country on a biennial basis. The government must regularly report on its progress and work with civil society to achieve the agreed reforms. Progress is evaluated at regular intervals by an independent researcher appointed by the OGP's Independent Reporting Mechanism (IRM). The OGP emphasises partnership between government and civil society and other actors at all levels. This process is consistent with the United Nations 2030 Agenda, adopted by Canada and 192 other Governments in September 2015, setting out 17 Sustainable Development Goals (SDGs).[2]

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[1] https://open.canada.ca/en/about-open-government

[2] The UN 2030 Agenda aims to promote shared prosperity, environmental sustainability and progress on sustainable development that leaves on one behind. To realise the ambitions of the 2030 Agenda requires a whole-of-society approach involving, Government, Citizen, civil society organization, and academia. According to United Nation 2030 report on "**What is a Good Practice? "** published in 2020, defines the following terms as follows: Stakeholders: It includes **all non-governmental actors that can contribute to the 2030 Agenda,** such as individuals, civil society actors, youth and women organizations, indigenous people, movements and networks, academia, the private sector, trade unions and institutions with an accountability function, such as human rights institutions, parliamentarians, or supreme auditing institutions. In addition, the framework considers **local and regional**

Canada's Multi-Stakeholder Forum on Open Government ("the Forum") was launched on January 24, 2018. Promoted by the Open Government Partnership as a best practice, the Treasury Board of Canada Secretariat (TBS) launched the MSF to create a space for ongoing dialogue between the Government of Canada and Civil Society, creating a permanent mechanism for Civil Society consultation and input. Its mandate is to provide input and advice on the Government of Canada's commitment on open government, identify new areas of focus, and build the open government community across Canada.

Canada has been an active OGP member since 2012; its first National Action Plan on Open Government covered the period of 2012-2014. Canada was elected to the Open Government Partnership Steering Committee in September 2017.

Why is Open Government Important?

Some advocates of Open Government have argued that ultimately, the strongest case for Open Government is better public policy. When confronted with problems to solve or very complex policy decisions, inviting in and collaborating with experts, practitioners and others in the public can radically improve the policy-making process and ultimately, the quality of public policies.

Independent Review of the Governance Arrangements of Canada's Forum on Open Government

The Treasury Board of Canada Secretariat contracted with Mora Johnson, Barrister & Solicitor to conduct a short independent review on the functioning of Canada's Multi-Stakeholder Forum on Open Government. The Statement of Work for this project is found in Annex 1 and the methodology employed is found in Annex 2.

The consultants interviewed 18 former and current members of the Forum, including Co-Chairs and employees of the Secretariat as part of the data gathering. Names of those interviewed are found in Annex 3.

2. Overall Approach to Strengthening the Forum

Without exception, all those interviewed, civil society and government employees alike, expressed a commitment to open government. Many present and past Forum members emphasized the urgent need as ever before for open government: tackling the climate crisis with open data and empirical

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governments as stakeholders, given their dual role as government actors ("duty bearers") and actors that need to be included in national engagement practices. In many cases, however, subnational governments will themselves be important implementers of engagement practices at the regional and local levels where the closest people-government interactions take place. Where the framework refers to diverse stakeholders, this includes diversity across stakeholder groups as well as within a particular type of stakeholder group.
Practice: Practices refer to methods of stakeholder engagement **at different stages such as policy formulation, implementation, monitoring and reporting and follow-up.** for example, consultations and inclusion in reporting cycles are examples of stakeholder engagement practices.
Implementers: Describes those **actors in government institutions that organize and coordinate engagements practices** and are thus responsible for its quality.

public policy, addressing the Covid-19 pandemic with data-driven public health measures, and combatting disinformation in part through transparency.

This section will review the structure and the effectiveness of the Forum. As the Forum is currently structured, there are two co-chairs (one Government of Canada representative at a Director General level, and one civil society representative) plus three government members and seven civil society members who meet regularly. Terms last two years and are renewable. The Forum is supported by a part-time Secretariat of TBS employees (analyst level and manager level) which are located in the same directorate as the Co-Chair and are indirect reports.

2.1 OGP Forums: an experimental model

Before delving more deeply into the OGP model, it is worthwhile to briefly summarize the characteristics of a more traditional governance model for the sake of contrast: i.e. the structures and norms of corporate governance as they have been developed over the decades. A group of people incorporate a for-profit or a non-profit corporation to achieve certain goals, then a predictable structure and set of accountabilities emerges. A legal entity is created that is empowered to enter into contracts, open bank accounts and hire employees. A board of directors is appointed to set strategic goals, likely a multi-year strategic plan, and provide oversight and accountability to those responsible for implementing it. An Executive Director (ED) or CEO is hired to lead a team of full-time employees, to develop annual work plans and ensure that the team is competent and well-resourced to deliver their individual plans. Issues such as employee conduct or conflicts of interest are managed in accordance with pre-existing well-established norms, practices and laws drawing on decades of practice.

While this model in no way guarantees success (non-profits and businesses fail all the time) it has certain benefits of established corporate governance practice and potentially allows for an easier diagnostic when things go wrong. For one thing, the lines of accountability are clear: the employees are accountable through the organization's hierarchy to the ED or CEO, who is in turn accountable to the Board of Directors. If an employee is failing to meet his or her goals, that person can be removed through (legally sanctioned and appropriate) means. If a project fails, or a company does not produce the expected number of widgets, it may be possible to go back and see whether the goals were resourced properly, for example, and have clarity on who was responsible for what.

In a nutshell, the model is characterized by:

- Legal status
- Clear accountabilities
- Strategic planning (e.g. 3 year plans)
- Resource allocation to fulfil strategic goals
- (usually) full-time employees
- Pre-existing norms or rules on problem solving such as conflicts of interest, diagnostics

By contrast, the Open Government Partnership Multi-Stakeholder Forum is an innovative model in which civil society advisors team up with government employees to co-develop National Action Plans on Open Government, as well as monitoring past Plans. Civil society members are not just encouraged to freely co-create the Action plans with Government, but the structure, working methods, of the OGP Forum *themselves* are subject to co-creation and experimentation.

While experimental models can yield excellent results over time, they are not without risks, most notably the risk that experimentation itself and learning by doing may delay success as it could require several attempts and refinements of working methods and structure to achieve a functional design and/or successful outcomes. Yet demonstrating success may be important to attract resources, talent and funds which will help the initiative succeed. If a majority of members want the Forum to go beyond a rotating advisory group to having a bigger mandate and more influence, then the status quo may not be sustainable.

It can be important to focus on this chicken-and-egg problem because not only do growth and success attract more talent, resources, and success, but also initiatives seen to be failing can start to lose talent, interest and resources which makes them harder to succeed.

Building strength and durability requires a careful focus on strategic goals and putting resources, time, and energy on the right things to help make small gains and continue to attract resources that will help propel an initiative toward success.

Radical transformation vs. deliberate steps

This report makes a number of recommendations, some of which are relatively straightforward and easy to implement; others require more resources, time and effort. Generally, radical transformation is very difficult to decide on, plan and implement. The Forum may not have the resources to do so at this time. However, the overall goal of this report is to help point the way to some possible changes which may in the short, medium, and longer term help the initiative strengthen its capacity, improve its performance, and ultimately attract the resources and talent it needs to meet its objectives. Hopefully it can build strength on strength over the longer term and create a durable initiative that achieves the capacity, visibility, and authority that it could, given the talent of its participants, government, and non-government alike.

Rather than aim to transform into a different type of structure, the authors suggest that it is preferable to first seek to improve on the MSF current structures, working methods, resources, in the shorter term before making any decisions on radial changes. In places, the authors make recommendations which aim to borrow or adapt some of the traditional governance features that help other, more traditional initiatives succeed without taking on undue risk. Indeed, there are major risks that adopting a legal entity model and more conventional governance structures would result in the Forum just becoming one more NGO vying for funding, talent, and the ear of government. There is wisdom in preserving what is unique and valuable about the Forum, while seeking more ambitious objectives in the longer term.

Recommendation 1:

This report includes a number of recommendations, most of them intended to improve the effectiveness of the current MSF. As a general principle, it is recommended that in the short-term, the Forum institute incremental measures that resonate best with the membership, for example, changes to the current Terms of Reference, working methods, and allocation of resources. Major reforms that would alter the character of the Forum should be contemplated only in the longer-term after evaluating the results of shorter-term measures.

3 Structure, Mandate and Objectives of the MSF

3.1 Impact of the MSF So Far

Interviewees cited a number of concrete positive impacts of the Forum to date. Many current or past Forum members cited the very existence of the Forum itself as an achievement, that despite its shortcomings, that it was a meaningful advance over the situation that had preceded it, which they characterized as a government averse to openness and transparency and data-driven policy-making. Others pointed to specific victories, big and small: saving the census, beneficial ownership transparency, digital government strategy.

There were intangible factors mentioned as well: embedding civil society organizations into a governmental process, creating a structure that allowed for ongoing dialogue, building trust between civil society and government.

Some members cited NAP implementation meetings in which government officials from a wide variety of departments responded to the NAP in a meeting with the Forum. Civil society members were empowered to ask questions and interact directly with civil servants implicated in NAP commitments. Some members find this a powerful experience of open government – having access to relevant civil servants who are no longer nameless and faceless bureaucrats but responsible actors to work with.

However, there was disappointment and even disillusionment by some who brought forward specific policy proposals that were not taken up. As is currently structured, many feel that the Forum does not have a strong influence. It is not called by parliamentary committees, consulted by the Privy Council or Prime Minister's Office, or interviewed by the media. Overall, several of those interviewed felt that the Forum did not achieve the influence, visibility and authority that might have been expected given the strength of participation and dedication of participants, government and non-government alike.

Another theme raised in some interviews was the perceived failure to more broadly move the needle on open government across the system. It was felt by some that there remains a low level of uptake of the principles of open government within Government, and additionally low- or non-existent understanding of open government in the media and public at large. Rather than see it as a burden or box-ticking exercise (among government officials) or simply non-existent (in the media, public at large), some advocates felt that open government should be better understood as an essential tool to make public policy better and solve complex policy problems by involving experts and the public. Ideally, a vision of open government would be, for some, mainstreaming open government values and practices into the government and public at large.

Taking the long view, focussing the Forum's attention on desirable future impacts (long-term or ultimate outcomes) can be a powerful basis for planning, described further in the next section.

3.2 Strategic Planning based on future outcomes

Present and past Forum members interviewed by the consultants could articulate the broad goals of providing advice to Government in the development of NAPs and in monitoring past action plans and

more generally to promote open government. Everyone accepts that the role of the Forum is advisory only, and there were no illusions that it was a decision-making body.

However, because the Forum follows a more experimental model with more diffuse accountabilities, without strategic objectives backed up by key performance indicators, it may be harder to gauge whether the Forum is meeting its goals or measuring its impact. Given the multi-stakeholder nature of the Forum, success may be defined differently by different stakeholders. Plans and priorities may differ from one member to the next.

Strategic planning based around a theory of change framework, including a vision (ultimate objectives) can be incredibly helpful in allowing an initiative to look long-term and help plan activities, projects and milestones that will help propel it toward critical long-term outcomes it seeks.

Recommendation 2:

Members should engage in Strategic Planning, setting out long-term goals and measurable key performance indicators over a two (2) or ideally, three (3)-year period. It is recommended that a theory of change framework be employed as a way to focus on activities that would advance intermediate and long-term outcomes. Strategic planning should consider resources required to effectuate goals.

3.3 National Action Plans

Every two years, the Forum participates in the development of a National Action Plan on Open Government. The following year, the NAP is monitored as a key activity of the Forum.

Many former members spoke about the NAP process and its perceived value. Several members spoke of the NAP as the centerpiece of Canada's commitment to Open Government and a tangible way to move the needle forward, albeit more slowly than some would have liked. Others pointed to real concrete reforms inside government that had occurred as a result of the NAP process.

It was widely agreed that NAPs were very process-oriented and time consuming. Members recalled the NAP process as requiring numerous steps and urgent deadlines, taking up a great deal of members' available energy for the MSF work. NAPs are negotiated through the Treasury Board of Canada Secretariat and other government departments.

Many civil society members found the process to be opaque and without an effective feedback loop. Forum participants who had gone through the process spoke of new drafts being sent around without explanations for why their proposals were not accepted or significantly altered. One former member quipped that the NAPs represented "homeopathic open government" -- a massive dilution of objectives through the negotiation process.

Several members felt as though the NAP succeeded in advancing objectives, however it was felt that the NAP was better for incremental, smaller reforms. Others commented that the NAP process itself could be reviewed and improved. Some specific comments included:

- A more detailed critical path for the NAP consultation could be developed, with a much longer lead time to allow less hurried consultation

- Relevant outside policy experts beyond the Forum could be called upon to help develop the NAP
- More could be done to encourage Government Departments to reach out to their own stakeholders and subject-matter experts
- The IRM could be more effective it if were active from the earliest stages for NAP development, not just at the monitoring stage

Recommendation 3:

Members should consider ways to capture best practices and continue to build capacity around the process of developing National Action Plans. The goal should be to foster a process which is smoother and more efficient for members and enables the engagement of civil society and experts more broadly. It would be important to install a functioning feedback loop in which members are promptly apprised of decisions taken by government around the NAP process. The NAP process should be crystalized in a critical path/ process document and applied consistently, however this document should be "living" to allow members to continue to refine the practices over time.

3.4 Potential Activities outside the NAP process

Many former members spoke about the significant potential for the Forum to work on longer-term (possibly multi-year) projects, and focus on big picture, strategic objectives outside the NAP process. These could include working on specific issues, mainstreaming open government concepts. They felt that the Government's definition of Open Government might be too narrow and too focussed on the NAP. Some members suggested a particular split, for example 50/50, on NAP and non-NAP activities, another, 50% on NAP development, 25% on NAP accountability and 25% on other activities.

Recommendation 4:

Members should determine how and whether a portion of their time should be spent on non-NAP activities. These could include advancing policy issues outside the NAP process, educating and informing the public about Open Government, improving governance within the initiative, and developing and implementing projects aligned with longer term strategic goals.

3.5 MSF Terms of Reference and Working Methods

Many commented that there was a high turnover in Secretariat staff as well as two-year terms of advisory members. The overall lack of continuity makes it difficult to apply learnings, refine working methods and become more effective. Members should plan to crystallize improvements to working methods through amendments to the MSF Terms of Reference, or guidance documents. Consideration should be given to using technology to help share information and allow for the effective communication with members. For example, collaborative software platforms may offer lighter touch ways of ensuring strong communication and collaboration.

Recommendation 5:

Multistakeholder Forum Terms of Reference should be reviewed and revised, if required, to keep pace with learnings and best practices around working methods as they evolve at the Forum. If appropriate, separate guidance documents could be created establishing working methods. Some suggestions on developing a process to adapt terms of reference are found in Annex 4.

3.6 Member Onboarding

Helping members to hit the ground running through an excellent onboarding process will help to capitalize on members' valuable time and energy and help them be as prepared as possible to contribute to the MSF's strategic goals. Board-style development could be seen as a "perk" for Members and may help attract talent. Onboarding may also help the MSF keep momentum when there is a switchover of membership.

Recommendation 6: Members should consider dedicated orientation sessions, including but not limited to the following topics:

- **Roles and Responsibilities of the Forum Members; Terms of Reference of the Forum**
- **Encapsulate learnings from past Forum members on how to advance key policy objectives**
- **How Ottawa works – budgets, machinery of Government, Cabinet processes, etc.**
- **Negotiation – how to present ideas for win-win outcomes**

4. Participation

4.1 Civil society participation

The participation of civil society is the linchpin of open government. Maximizing their constructive contributions and minimizing their frustrations in trying to reform government are key.

Forum members from civil society, past and present, did note their unfamiliarity with the way government works and how this might have impacted their approach and ultimate success in trying to reform the system from the outside. Some suggested that a deeper onboarding in this area may be helpful (see Recommendation 6).

The definition of civil society has been broad and has included academics and researchers with an interest in open government and open data. This raises questions about whether civil society members represent constituencies *per se*, or whether they should. Some members have urged a narrower definition of civil society, limiting the pool to civil society members who belong to non-profit organizations with the mandate relevant to open government, transparency, etc. They believe that such representatives will have more credibility and influence with senior government decision-makers.

A disproportionate number of the civil society members have an open data background, a critical mass of which has influenced the range of issues considered by the Forum. Because so many people are unfamiliar and possibly intimidated by open data, this may have contributed to broader confusion

around what open government means and how it can benefit public policy-making. It is suggested that a good diversity of public policy areas be covered, if possible, by the civil society membership.

Civil society members acknowledged that efforts to bring just their stakeholders together separately were often very helpful in developing collective goals and priorities. Being able to move beyond individual concerns and focussing on collective approaches has been helpful in advancing some policy initiatives.

There were concerns expressed that unless the Forum develops a track record beyond small, incremental changes, it will not attract strong civil society talent that is required to move the needle on open government. The Forum will need to be seen as valuable and successful in order that representatives from Civil Society Organizations (CSOs) will be attracted to join.

While travel costs of meeting in person are covered, work performed for the Forum is without a *per diem* or honorarium, necessitating the inclusion of only those with sufficient time and funding from other sources to pay for their time. All acknowledged that it is difficult for those with busy day jobs to set aside sufficient volunteer time to advise the Forum. Providing a *per diem* may also serve to attract CSOs to participate.

Recommendation 7:

CSOs should review their participation in the MSF process and suggest appropriate reforms. These may include clearer definitions and entry criteria, improvements to CSO working methods and collective participation, and whether they need better onboarding, and resources (such as a *per diem*) to sustain their participation and attract talent.

4.2 Government Participation

Government members of the Forum interviewed professed strong commitment to the principles of open government and indeed, were attracted to participating in the Forum as a result of their own values. However, many of these also had busy day jobs, like civil society participants, and were limited in what they could contribute.

The Government Co-Chair of the Forum is a Director General level who recently left this position after many years. Members of the MSF Secretariat are also public servants at the Treasury Board of Canada Secretariat, however they do not sit on the Forum. Many of them, past and present, also spoke strongly of their interest in and commitment to open government and the importance of the Forum.

Overall, civil society members and government members alike were positive in their comments about the public servants in leadership and supporting positions. The Secretariat was described as helpful and dedicated and many members had commented on how the government employees had engendered a greater trust amongst civil society members. Any frustrations voiced were about the culture and process of government, not of government employees which were recognized as being personally very committed and hard working.

Overall, government employees hold several roles on the Forum: Co-Chair, MSF Secretariat, Forum Members. However, there is an uneasy reality that behind the Forum, many of these also serve a double role as the interlocutors that are the conduits and liaisons to the rest of the Government.

One of the structural features of the Forum raised by many is that the self-selected government employees participating in the process, however committed they are, often appear to have limited influence over decision-makers in other government departments and senior leaders across government. They are pushing against a culture that is not necessarily as friendly or committed to open government and in the end, they are also very limited in what they can achieve.

This was seen by Members as part of a bigger structural problem – without power or political will, there is nothing to drive the agenda except ideals, ideals which don't stick beyond the open government team. Some members spoke about the regressive attitudes toward open government that were found in other government departments: polite but patronizing, and quoting a public servant saying "we don't want to overload the public with too much data."

Some suggested a more direct relationship with the Minister (President of the Treasury Board) or other powerful actors such as parliamentary committees or Privy Council Office. These suggestions cut back to the question about whether the Forum could have greater visibility and influence.

Some expressed the view that the Open Government file should not have been given to the Treasury Board Secretariat, because, in the view of one interviewee, "[TBS] does not produce open data; its officials are not researchers, statisticians, or data crunchers; they are not experts in managing knowledge."

It was also noted that while the Co-Chair remained in place for many years, that the MSF Secretariat staff changed frequently. This inhibits the lack of building up of experience, expertise and institutional knowledge. Some felt that MSF Secretariat staff were also too junior and did not (though no fault of their own) possess the skills necessary to plan and deliver effective meetings and discussions. Lastly, it was noted that the Secretariat staff are accountable in the government system to their supervisors. It is not realistic to make them formally report to both Co-chairs given strict rules in the public service. However, it may be that working methods around an informal reporting relationship may be possible.

Lastly, MSF Secretariat staff were not dedicated full-time to the MSF; they had other responsibilities and worked part-time on the Forum. This likely can impact their focus and ability to serve the Forum and reduce overall resources dedicated to the Forum.

5. Resourcing the MSF

Initiatives require sufficient resources applied to key strategic priorities in the form of human resources, projects and core activities to succeed, build up influence and effectuate change. Most Forum members agreed that the MSF was insufficiently resourced.

Recommendation 8: It is suggested that the MSF consider seeking further resources, as aligned with strategic objectives articulated in a longer-term strategy. These could include allocation of resources into some or all of the areas below. It is further recommended that the Forum as a whole be

empowered to provide meaningful input into spending decisions and information about the overall budget available.

Civil Society Remuneration

Providing a *per diem* to civil society members to compensate them for time spent providing advice and professional services to the Forum may allow for stronger and deeper participation, as well as expanding the pool of potential participants. Such an arrangement would require a high degree of transparency, ensure the independence and impartiality of the civil society participant receiving the funding, and be written into an agreement that is also signed by the NGO's Board or its organizational authorized signatory. This would create more clear expectations, roles and responsibilities as well as accountabilities.

Resourcing the Secretariat

Given the small number of days per year that the Forum members work and meet, it is also concerning that the Secretariat does not have dedicated full-time staff to the Forum, which would strengthen the capacity of the MSF. Without resources, the Forum will not be able to achieve goals or effectively organizing and meet. One interviewee suggested one part-time and two full-time employees at TBS: Deputy-level champion, manager and senior analyst/technical specialist. If resources are available to better staff up the MSF Secretariat, some consideration could be given to specialized skills such as statistics and research skills, communications skills, etc. Creative solutions for staffing could be contemplated, such as offering internships or seconding a civil society representative, or having a fellow position funded by a foundation.

Communications

If raising profile and influence are important strategic objectives for the Forum, consideration should be given in the medium- to long-term to focussing greater resources on communications. Most organizations successful at raising a profile, growing and building expertise have dedicated resources devoted to communications, typically human resources and a budget for a website and other communications tools. A strong website can help encapsulate knowledge, offer resources and information to the public, help an initiative grow in awareness and influence.   Because open government is still relatively unknown and not well understood, communications around explaining the tenets and benefits of open government with illustrative examples or case studies could be considered.

Project Funding

A modest budget (e.g. 100 – 200k *per annum* or more) allocated to the Forum that could be spent on studies, surveys, research projects, etc. could also be contemplated, aligned with strategic goals developed collectively. An important objective would be to build up the knowledge base, make useful information available to the Forum, government and public at large.

6. Culture, Diversity and Inclusion

Generally, members and former members reported that the culture of the Forum has been respectful and collegial. Many members indicated that the Forum had been genuinely enjoyable. Several raised

the concern that the Forum was too collegial – resulting in a chummy group into which newcomers did not feel comfortable integrating.

Collegiality can also be a way of glossing over differences or avoiding difficult conversations. Progress sometimes requires some deep dialogue that might not be comfortable. The MSF needs to play a greater challenge function and accountability role for government, not just collaboration and co-creation, in the view of some.

Some former members, however, reported feeling that there was not enough space for their perspectives and ideas at the Forum. This experience with the forum was not one that was sufficiently respectful and inclusive of a variety of views and perspectives. Several members or former members remarked that at meetings, some members spoke a great deal, and others, considerably less. Ensuring that all voices are heard may require more active chairing or facilitating to ensure that all members are getting the space to speak up.

Given the diversity of perspectives and positions inherent in a multi-stakeholder initiative, having a pre-existing mechanism to address disputes when they arise, could be useful and easier to set up before it is needed. A code of conduct adopted by the MSF could help clarify expectations for appropriate and unacceptable conduct, which may ensure a culture in which all feel welcome to speak up yet maintain civility.

Diversity and Inclusion

Members indicated that the Forum participation was reasonably gender balanced. However, when it comes to other forms of diversity, there was a resounding agreement that the Forum was insufficiently diverse, taking into account backgrounds, race, religion, official languages, and regions of Canada. Open government dictates that the broad range of citizenry become involved in public policy making but that is difficult if they are not at the table.

It was emphasized that recruitment drives had made efforts to broaden and deepen the pool of participants. MSF members involved in the recruitment process felt that the process was thorough. However, not enough candidates were interested in joining the MSF to adequately select for diversity. The lack of an honorarium or remuneration for time spent can also disadvantage less well-resourced organizations.

Additionally, recruiting people from remote parts of Canada (including East, West and North) would be beneficial to help ensure that these underserved Canadians could more meaningfully access and influence government policy. Such inclusion should take into account that internet connections can be very poor. There are some software platforms that allow participants to work offline in places where internet is spotty.

Conflicts of Interest

The current TORs set out a reasonable process for managing conflicts of interest. However, since the Forum does not typically make contracting decisions, the issue of conflicts of interest may relate more to perceived conflicts and issues such as commercial relationships. Proactive disclosure of all contractual and commercial relationships may help ensure a culture of transparency, high ethical conduct and avoid conflicts of interest arising with short notice.

Recommendation 9:

The MSF should consider adopting a Code of Conduct which sets some basic expectations on comportment and addresses the resolution of conflict. A proactive disclosure policy in which all Members disclose commercial relationships they have, including contracts with or on behalf of their organizations, may build trust. Some considerations for a Code of Conduct are found in Annex 5.

Conclusions

There is tremendous opportunity embodied in the Multi-stakeholder Forum for Open Government. Since its creation in 2018, it has attracted a number of very talented, passionate and committed non-governmental and governmental members to participate in the co-creation and elaboration of National Action Plans and their follow-up. While members have cited some positive impacts of the MSF, many members have felt that the overall impact falls short of what could be accomplished.

The MSF is currently set up as a rotating advisory group with access to government. While the NAP process is acknowledged by many or most as a critically important piece of open government, there is a desire by most members to harness the potential of this talented group to have a greater impact and influence on the broader agenda of open government.

However, in its current form its impact and influence may not be able to grow without some modest reforms. The authors of this report believe that with some concerted effort around strategic planning, purposeful reforms, and allocation of resources aligned with key objectives, the MSF can build capacity, influence and lasting change in favour of open government.

Annex 1: Statement of Work for Independent Review

<ins>Statement of Work (SOW)</ins>

1.0   TITLE

Independent review services for Government of Canada's Multi-Stakeholder Forum on Open Government's governance.

2.0   OBJECTIVE

The contractor must conduct a study on Canada's Multi-Stakeholder Forum (MSF) on Open Government (OG). The study will examine the internal governance and operations of Canada's MSF on OG. Specifically, the objective is to provide a report on the structures, systems, and practices the MSF has in place to:

- assign decision-making authorities, define how decisions are made, and establish the MSF strategic direction;
- oversee the implementation and delivery of its plans and projects and the monitoring and mitigation of key risks; and
- report on performance in achieving intended results and use performance information to drive ongoing improvements and corrective actions.

The report should include recommendations for governance, operations, the role and responsibilities of the MSF secretariat, onboarding of MSF members and a Code of Conduct for MSF members.

3.0   BACKGROUND

[Canada's Multi-Stakeholder Forum on Open Government](#) was launched on January 24, 2018. Promoted by the Open Government Partnership as a best practice ([Multi-Stakeholder Forums (opengovpartnership.org)](#)), the Treasury Board Secretariat (TBS) launched the MSF to create a space for ongoing dialogue between the Government of Canada and civil society, creating a permanent mechanism for civil society guidance and oversight. Their mandate is to provide input and advice on the Government of Canada's commitments on open government, identify new areas of focus, and build the open government community across Canada.

The MSF [Terms of Reference](#) outline the structure of the Forum including the nomination process and membership composition. TBS provides a Secretariat to support the MSF with tasks such as circulating documents, preparing minutes, invitation logistics, preparing communications, etc.

The MSF is composed of twelve members, eight from civil society (CS) and four from the Government of Canada. As of December 2021, there are two active government members and seven active CS members. The terms of four CS members and one government member end in January 2022. To address the need for recruitment, a nomination committee has been established by CS members to identify potential new CS candidates. The MSF Secretariat is also currently in the process of identifying potential government candidates.

TBS has worked with the MSF on two National Action Plans (NAP) on Open Government and jointly identified three key priorities: Access to Information, Beneficial Ownership and Open Contracting. Government and CS collaboration allowed the MSF to push more on core issues, for example by successfully including commitment such as [beneficial ownership in the 4th NAP](#). Working with CS supports Government towards achieving real concrete open government reforms.

4.0 SCOPE OF WORK

The Contractor will develop a study that will examine the governance and operations of the current MSF on Open Government. Research for the study will pull form existing material and interviews with current and past MSF members.

The results of the study will be used to provide TBS recommendations to establish and maintain the MSF on open government to ensure its success, continuity, and self-sustainability.

The results of the study will be the property of the Government of Canada and could be released under the GC Open Government License.

5.0 TASKS

The Contractor will propose a robust approach to establishing and maintaining a Multi-Stakeholder Forum on Open Government to support the implementation of the Open Government Partnership principles and to provide input and advice on the Government of Canada's commitments on open government, identify new areas of focus, and build the open government community across Canada.

The Contractor will conduct interviews of existing and past MSF members and review existing materials, structural design, and operations of the current MSF on Open Government. The report will include best practices, potential risks and issues, and recommendations for governance, operations, roles and responsibilities of the MSF secretariat and onboarding members for maintaining a functional MSF.

6.0 DELIVERABLES and ASSOCIATED SCHEDULE

Deliverable	Target completion
Deliverable 1: • Draft Outline of Study	January 31, 2022
Deliverable 2: First Draft of Study	February 28, 2022
Deliverable 3: • Final Study	March 21, 2022

7.0 CONSTRAINTS

The Contractor must deliver the work according to the deliverables and associated timelines.

8.0 LANGUAGE OF WORK

Work and all communications will be conducted in the official language of choice.

9.0 TRAVEL REQUIREMENTS

There is no travel requirement associated with this contract.

10.0   APPLICABLE DOCUMENTS

[Redacted]

11.0   LOCATION OF WORK

All work will be completed off site at the Contractor's offices.

12.0   SECURITY REQUIREMENTS

This project is considered to be an UNCLASSIFED project, and as such does not contain any security requirements.

Annex 2: Methodology

1. Methodology

Every Initiative is unique. The methodology outlined below is designed to ensure that the work is tailored to the needs of the MSF OG and that the desired results are achieved.

1.1   Kick-off Meeting

The initial kick-off meeting with the client, scheduled as early as possible in the consultancy, will be designed to meet the following objectives:

- To ensure a full and detailed understanding of the mandate and objectives of the consultancy as well as expected results.
- To provisionally agree on a project work plan, steps and schedule including regular check-ins.
- To delve into any past or current challenges that need to be addressed.
- To develop an understanding of the values and organizational culture of the MSF for OG.
- To identify key stakeholders for interviews and facilitated dialogue, obtain their coordinates; and
- To ensure that the consultants have all necessary documents to perform the review.

1.2   Desk-Based Research

The desk-based research will provide the consulting team with an opportunity to understand the OGP MSF's structures, roles, and responsibilities as they are currently articulated. The review will include the following documents and any potentially others identified by the OGP Forum or the consulting team:
- Multi-stakeholder Forum Terms of Reference
- **Designing and Managing an OGP Multistakeholder Forum**
- Internal working documents of the MSF, as appropriate
- National Action Plans on Open Government (Canadian)

1.3   Initial Interviews

Present and past members of the MSF will be contacted and interviewed, plus other stakeholders if appropriate. Given the short time period of the proposed contract, the consulting team will do its best to interview all present and past members subject to members' availability within the ambitious timeframe of the project.

 Interviews will be conducted through a standard questionnaire developed by the consulting team pursuant to the kick-off meeting and the desk-based research. It will be shared with the client in advance for any feedback. Questionnaires aim for the collection of mainly qualitative information, but also some quantitative data will be gathered.

The initial interviews are expected to cover the following topics, among others:

- Vision and long-term goals, strategic planning
- Stakeholder expectations and value proposition of participation
- Decision-making
- Risks and opportunities

Up to a maximum of 12 interviews are expected to be performed. Interviews will be recorded with the permission of interviewees and a summary will be prepared of each interview. Interviews and summaries will be kept confidential to encourage candidness however a high-level summary will be prepared as part of the report which does not identify individual respondents.

1.4   Facilitated Group Discussion

The Consulting Team would conduct one facilitated group discussion in February at a date and time as convenient as possible to the members of the MSF OG. The purposes of the facilitated session are to nurture a process of collective problem-solving and collaboration, and to elicit information about the dynamics of the initiative. The consulting team will initiate the discussion with a presentation summarizing key governance and strategic planning concepts and examples. The facilitated discussion will then explore key questions, for example, around the vision, expectations and roles and responsibilities as determined by the consultants.

1.5   Report Drafting

A report will be drafted providing findings, analysis, and detailed recommendations on each of the items listed in section 2. This draft report will be provided by February 28, 2022.

1.6   Finalizing the Report

The consulting team will set a meeting with the client to seek feedback on the draft report during the first week of March or the week of March 7, 2022. The Consulting Team will provide a final version of the report by March 21, 2022.

Annex 3: Persons interviewed

[Redacted]

Annex 4: Suggestions for Amending Multi-Stakeholder Forum Terms of Reference

The current MSF Terms of Reference (TORs) are concise and offer high-level guidance on the functioning of the MSF.

Amendments to this document should be developed and agreed using a transparent and participatory process that includes all MSF members. For example, a sub-group of two or three participants could be delegated to develop and amended version, but the document should be reviewed and approved by all members on a consensus[3] basis.

Best Practices: TORs for Multistakeholder Initiatives, according to MSI Integrity[4]:

Terms of reference (ToRs) should address a comprehensive set of internal policies, procedures, and expectations for MSF members. At a minimum, each MSG (Multi-stakeholder Group) should consider including provision in the Term of Reference (ToR) to:

- Define the mandate and independence of the MSF

- Clarify the selection process, roles, and responsibilities for MSF members.

- Create a dispute resolution mechanism to address grievances related to MSF governance rules, or breaches of members responsibilities, and public complaints regarding MSF/OG compliance and fulfillment of the MSF mandate.

- Establish the presumption of transparency of MSF process, records, and decision; and

- Specify the mandate and authority of the MSF secretariat or other supportive institution established by the MSF.

Possible areas for Reform in the current MSF TORs:

1. Review the Mission. Does the current text still reflect the mission, vision and long-term objectives of the members?

2. Include language around the requirement to consider strategic objectives and the development of (ideally) successive three (3) year strategies which encapsulate longer-term objectives. A

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[3] Consensus does not always imply unanimity. For example, see the ISO/IEC Guide 2:2004 Standardization and related activities definition of consensus: "General agreement, characterized by the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments…NOTE Consensus need not imply unanimity." See:
https://www.iso.org/sites/ConsumersStandards/1_standards.html#:~:text=According%20to%20ISO%2FIEC%20Guide,to%20take%20into%20account%20the
[4] https://www.msi-integrity.org/

strategy should be developed and approved by the Forum on a consensus basis; it should have dates indicating the timeframe of the strategy and enumerate activities under each strategic objective that will help fulfil the strategic objective.

3. Consider whether the transparent consultation or decision-making around any available budget could be included.

4. Roles, responsibilities and reporting relationships could be clarified.

5. Goals around diversity and inclusion could be included.

Annex 5: Developing a Code of Conduct

The development of a code of conduct may be helpful in providing guidance on acceptable vs. unacceptable conduct for Members of the Forum, including Co-chairs.

A code of conduct can also lay out steps for dispute resolution or management of complaints by members against other members. It can be helpful in having a mechanism set out in advance, rather than dealing with a difficult situation on the fly.

It is suggested that as a starting point, key issues that should be included in the Code of Conduct are discussed and agreed-upon. These might include:

- Ethics and professional standards (e.g., engaging in good faith, duty of civility)

- Transparency and ethical conduct (travel expenses, etc.)

- Conflicts of interest and/or proactive disclosure of all contractual/commercial relationships

- Attendance expectations

- Expectations of Behaviour: Prohibitions against sexual harassment, discrimination, aggressive language or behaviour

- Dispute resolution between members (for example, first encourage complainant to resolve disputes directly with respondent, then allow for a process of escalation)

- Whistleblower protection (e.g., no retaliation against those complaining); and/or

- Privacy of personal information, confidentiality of proceedings

While members should decide the key issues to be included in the Code of Conduct, it can be drafted by the Secretariat or an external party. Members should have an opportunity to review, comment on and approve this final version of the code of conduct.