Special Senate Committee on the Charitable Sector Submission

This submission by Mowat NFP identifies key issues for reform and outlines options for federal models/mechanisms that could facilitate a more enabling environment for the social sector.¹

Mowat NFP is a research hub within the Mowat Centre that develops evidence-based research and analysis on issues facing the non-profit and charitable sector, both in Ontario and across Canada. Established in 2012, Mowat NFP has conducted extensive research on issues related to the sector labour force, data and information, legislative and regulatory reform, capacity-building and the government-sector relationship.²

Rationale for Reform

1. Canada’s social sector makes an enormous impact. The sector accounts for 8% of Canada’s Gross Domestic Product (GDP) and 2 million jobs; it is a significant driver of social and economic growth and innovation.³ Nonprofit and charitable organizations are also vital for supporting unmet community needs that governments cannot address directly. Imagine Canada predicts that Canada will reach a social deficit (a metric of sector revenues compared against demand for services) of $25B by 2026 under current political and economic conditions.⁴

2. Social sector organizations operate in an increasingly complex and fragmented environment. Other submissions have already shown that:
   - Traditional sector boundaries are increasingly blurred.
   - Social issues are more entrenched and complex than ever.
   - Service provision is increasingly downloaded to social sector organizations.
   - Volunteerism and charitable donations are declining.
   - There are growing fiscal pressures for governments.
   - There is limited coordination among funders and within governments and ministries.
   - There is no “one stop shop” for organizations to work collaboratively with government.

4. The current legislative/regulatory framework has remained the same for decades, despite significant changes in how the sector operates. The governing federal frameworks for the sector - the Income Tax Act and Canada Not-for-Profit Corporations Act - are still oriented towards a traditional charity model, despite significant changes in how the sector operates. The emergence of social enterprises and hybrid organizations and growing interest in social innovation, social finance and impact investing have been significant drivers of change. The current legislative/regulatory approach is preventing the sector from realizing its full potential. Legislative/regulatory frameworks should adapt as the sector’s needs and priorities change to ensure that organizations can effectively fulfill their mandate and use their limited resources effectively.

Constitutional Context

Canada has a fragmented legislative and regulatory framework for the sector. Section 92(7) of the Constitution Act, 1867 gives provincial governments authority over the establishment, maintenance and management of charities “in and for the province”. But issues related to income tax remain a shared provincial and federal jurisdiction, and not-for-profit organizations can incorporate with either level of government.

The CRA Charities Directorate has emerged as the de facto national charities regulator under the Income Tax Act, but its scope has broadened to monitoring the definition of charitable purposes, political advocacy activities

¹ The social sector refers to non-profit and charitable organizations, social enterprises and cross-sector social impact initiatives. Recognizing that the sector continues to evolve over time, this language is used to shift away from legal form to focus on impact.
² Contact: Lisa Lalande, Executive Lead, Mowat NFP, lisa@mowatcentre.ca; 416-978-7103.
⁴ Ibid.
and charitable fundraising. It has become increasingly difficult for a tax-based regulator with a narrow focus on legislative and regulatory compliance to assume a broader, principles-based mandate for the sector overall.5

The key issues facing the sector remain the same, despite decades of reform efforts, new initiatives and changes in governments. These include:

- Reforming the Income Tax Act provisions for the proportion of resources that registered charities can dedicate to political activities, including clarifying the definition of “political activities.”6
- Defining “charitable purposes” in the Income Tax Act.7
- Reforming the provisions that define “related businesses” so registered charities can expand their earned revenue activities.8
- Revising the “direction and control” provisions in the Income Tax Act to allow registered charities to engage in more robust partnerships across sectors.9
- Allowing registered charities to appeal CRA decisions to a lower court (e.g. an independent charity tribunal or the Tax Court of Canada) to allow for full fact-finding trials to be conducted, rather than appealing to the Federal Court of Appeal.10
- Integrating and streamlining government funding processes to remove reporting redundancies and shift the focus from outputs to outcomes.11
- Creating a more integrated data ecosystem, including improved access to government data12 as well as increased legislative alignment regarding charities’ use of data (there is significant overlap between provincial, federal and Indigenous jurisdictions).
- Improving the collection of sector labour market data, and supporting a skills development strategy.

Lessons Learned

1. Fixating on the sector-government relationship has been a barrier to moving forward.

The core issue is not the government-sector relationship itself — it is how the government supports (or detracts from) the sector’s ability to fulfill its mandate and achieve the best outcomes possible. Focusing on the latter would shift the conversation away from how change should be achieved and who has a seat at the table, which undermined previous reform efforts, to why the change is needed and why it should matter to Canadians. It also helps zero in on how to move forward collaboratively on the core legislative/regulatory issues that require long-overdue action.

2. Another barrier has been an outdated conception of the sector and its potential.

Traditionally, the sector’s value has been conceived in terms of its contribution to a healthy democracy and to community life, providing relief to people in vulnerable positions and volunteerism. In today’s reality, this conception is proving too narrow.

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We should reframe the conversation to emphasize the sector as a strategic partner to governments in building thriving communities and improving wellbeing and as a driver for economic growth and innovation.

The Sheldon Kennedy Child Advocacy Centre is an example of an innovative model of service delivery that meaningfully integrates of policy and practice across multiple public agencies to more efficiently and effectively help prevent child abuse. Their approach has been proven to improve the quality of care to urgent cases, more quickly enable information sharing to reduce the systemic traumatization of children, and positively impact the long-term health and wellbeing of children.

13 Improved well-being refers to improved material living conditions (housing, income, jobs) and improved quality of life (community, education, environment, governance, health, life satisfaction, safety and work-life balance). The measurement of well-being focuses on the experiences of individuals, households and communities. The definition is used by United Nations Statistics Division (UNSD) and developed by the Organization for Economic Cooperation and Development (OECD), see OECD (2011). "How's Life?: Measuring well-being." OECD Publishing.
3. We should embrace the opportunity to move beyond incrementalist reform. The Voluntary Sector Initiative was ambitious and well-intentioned, but it identified the “big issues” — financing, regulating advocacy activities, drafting new charity legislation and reforming the regulator — to be out of scope.14 These issues remain unresolved, showing that an incrementalist approach to reform to be largely ineffective. Moving beyond incrementalist reform requires durable, adaptive, “future-proofing” solutions that can be sustained across political cycles and changes of government to achieve meaningful long-term change.

4. Cross-party relationship building is required to deliver solutions that can be sustained across political cycle changes. In the past, sector reform efforts have focused on engaging the government of the day rather than cross-party relationship building. This has proven to be detrimental to reform efforts.15

5. In other jurisdictions, the tax regulator is not expected to address broader sector issues. It has proven difficult for tax-based regulators to apply a principles-based approach in how they regulate the social sector. Many countries are increasingly shifting away from a tax regulator acting as the regulator for charitable registration and compliance issues. Australia, Ireland and the United Kingdom rely on an independent regulatory body (the “commission” model) to monitor regulation and compliance issues for the sector. It has proven difficult for tax-based regulatory bodies to adopt broader functions (education, advocacy, capacity-building) that are needed for the sector to thrive.

6. The success of a regulator depends on its mandate, resources and legislative framework. Whether the regulator is situated within, or external to, government has a less direct impact on its outcomes. Since regulators are designed to interpret and enforce statutory compliance, where they are situated within government matters less.16 It is possible to insulate regulators from political interference, regardless of where they are situated. The UK Charities Act enshrined the independence of its regulator, creating a norm that sector regulatory activities should not be politically motivated. When the regulator is situated within government it can also realize economies of scale with existing infrastructure (e.g. data platforms).

7. Provincial governments can be an active partner in problem-solving and agenda-setting. While the UK model has proven to be very successful, it is difficult to draw parallels to Canada’s federalist system. The Australian example is often more useful in this context. Many Australian state-level governments have partnership committees, in which senior officials meet on a regular basis to address systemic sector issues. In the United States, Attorney Generals at the state level frequently liaise on sector oversight issues through national associations despite significant differences in their regulatory frameworks.17

Defining the Enabling Environment

The enabling environment concept was a central focus of the work of the Voluntary Sector Initiative. We define the enabling environment as one where the government safeguards public interest, supports the sustainability of non-profits and charities and optimizes the policy landscape for innovation and experimentation.18

Creating an enabling environment requires a shift in how governments view the sector - not as a constituency, stakeholder group or service delivery partner but as a strategic partner on mutual initiatives (e.g. addressing homelessness) with shared expectations for effective collaboration.19

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17 In the United States, the IRS provides federal-level oversight on tax-exempt status, while the state-level Attorney Generals have the authority to follow through with criminal prosecution. Lalande & Cave (2017). “Charting a Path Forward: Strengthening and Enabling the Charitable Sector in Canada.” Toronto: Mowat Centre. https://mowatcentre.ca/charting-a-path-forward/.
An enabling environment for the sector has the following dimensions:  
• Enabling structures and governance bodies, including a regulator that listens to and responds to the sector’s needs.  
• Mechanisms for effective collaboration with provincial, municipal and Indigenous governments.  
• Integrated funding models that promote an outcomes-based approach and support innovative approaches (e.g. earned income, social finance).  
• Support for a healthy, dynamic labour force (e.g. decent work, recruitment/retention of young people, retirement security).  
• Data and information, including shared data infrastructure.  
• Active leadership within the sector through umbrella organizations and networks and the capacity to self-regulate, where appropriate.

From Regulating to Enabling
Currently, the federal government primarily interacts with charitable organizations in a regulatory capacity. There are few examples of ministries or departments that work directly with sector stakeholders to maximize their impact. This approach focuses on mitigating risks and ensuring compliance. By contrast, an enabling approach focuses on bringing the sector’s insight to key policy tables and identifying where social sector organizations are unduly constrained in fulfilling their mandates. Unlocking the sector’s potential — from creating a supportive environment for social finance and impact investment to facilitating the sector’s involvement in shaping public policy — could have an immeasurable impact on some of the most complex social, economic and environmental challenges facing Canada today.

## Functions of a New Model

This table summarizes the core functions of different models to address sector issues. They can occur within or outside the federal government, and do not have to exist independently of each other. Other countries have taken very different approaches to defining government’s role in regulating and enabling the social sector, with many embracing combined approaches where sector umbrella organizations also set self-regulation standards.

<table>
<thead>
<tr>
<th>Function</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulating</td>
<td>• Maintaining a record of registered charities&lt;br&gt;• Registering and deregistering charities.&lt;br&gt;• Interpreting and applying common law and relevant legislation (e.g. Income Tax Act).&lt;br&gt;• Publishing guidance and advice on complying with legislation.&lt;br&gt;• Investigating potential non-compliance through audits and implementing penalties in appropriate circumstances.&lt;br&gt;• Educating organizations on compliance issues.&lt;br&gt;• Coordinating with provincial regulators</td>
</tr>
<tr>
<td>Adjudicating</td>
<td>• Providing judicial review of CRA decisions.&lt;br&gt;• Conducting full fact-finding trials of regulatory disputes for charities.</td>
</tr>
<tr>
<td>Enabling/Facilitating</td>
<td>• Proposing legislative and regulatory changes to address issues identified by sector.&lt;br&gt;• Promoting intergovernmental and cross-ministerial collaboration on shared policy issues.&lt;br&gt;• Promoting accountability within the public service for commitments to sector.&lt;br&gt;• Building capacity in emergent sectors and supporting cross-sector partnerships (e.g. social innovation/social finance).&lt;br&gt;• Promoting innovation and experimentation within government.&lt;br&gt;• Ensuring policies and decisions are not subject to undue political interference.&lt;br&gt;• Convening to share best practices and lessons learned.&lt;br&gt;• Liaising with umbrella organizations</td>
</tr>
<tr>
<td>Leading</td>
<td>• Advocating for regulatory or policy reform when required.&lt;br&gt;• Educating organizations on various issues (e.g. effective advocacy).&lt;br&gt;• Researching and collecting data on relevant sector issues.&lt;br&gt;• Consulting and engaging sector on priorities and challenges.&lt;br&gt;• Promoting self-regulation.&lt;br&gt;• Promoting and educating public on issues relating to the sector.</td>
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</tbody>
</table>

## Government Options for Institutional Models/Mechanisms

There are numerous options for the federal government to consider for reform. These options vary significantly in scope and required resources. The tables below are intended to be a preliminary review of some of these options and their impact.
### Judicial Branch

<table>
<thead>
<tr>
<th>Model</th>
<th>Description</th>
<th>Function</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Court as Appeal Court</td>
<td>Change first appeal court for CRA decisions to Tax Court of Canada, followed by Federal Court of Appeal for a subsequent appeal</td>
<td>Adjudicative</td>
<td>Ability to introduce new evidence in fact-finding trials. More streamlined and accessible alternative to Federal Court of Appeal.</td>
<td>Resource-intensive process.</td>
</tr>
<tr>
<td>Charities Tribunal</td>
<td>New administrative tribunal to adjudicate disputes about regulatory decisions for charities; could replace or supplement current internal administrative-level review within CRA</td>
<td>Adjudicative</td>
<td>More streamlined and accessible alternative to Federal Court of Appeal.</td>
<td>Resource-intensive process. Limited scope to promote policy development and institutional reform within CRA; emphasis on adjudicating decisions.</td>
</tr>
</tbody>
</table>

### Legislative Branch

<table>
<thead>
<tr>
<th>Model</th>
<th>Description</th>
<th>Function</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standing Senate Committee on Civil Society</td>
<td>Permanent committee of Senators to identify legislative gaps, commission studies, call expert witnesses</td>
<td>Enabling</td>
<td>Permanent body within Senate to monitor progress on key priorities. Can provide direction across ministries. Less susceptible to political interference.</td>
<td>Limited accountability mechanisms to ensure recommendations are implemented.</td>
</tr>
<tr>
<td>Parliamentary Committee on Civil Society</td>
<td>Permanent multi-party committee of Members of Parliament to identify legislative gaps</td>
<td>Enabling</td>
<td>Permanent body within House of Commons to monitor progress on key priorities. Can provide direction across ministries.</td>
<td>May be susceptible to political interference.</td>
</tr>
<tr>
<td>Civil Society Commission</td>
<td>Commission would be an agent of Parliament (Commissioner appointed by Parliament but an arms-length entity); similar to current Commissioner for Lobbying</td>
<td>Enabling/Regulatory</td>
<td>Direct reporting relationship to Parliament and/or Senate. Existence empowered by statute but arms-length.</td>
<td>Constitutionally challenging. Resource and cost intensive process. Mandate may become diluted (compliance oriented vs nurturing) if Commission is expected to lead entire portfolio. Less direct ministerial links. Unlikely to be supported by current bureaucracy.</td>
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</tbody>
</table>

### Executive Branch

<table>
<thead>
<tr>
<th>Model</th>
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<th>Function</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Cabinet Committee</th>
<th>Ministerial Committee to report to Cabinet on policy priorities and legislative gaps</th>
<th>Enabling</th>
<th>Supports a cross-ministerial “whole of government” approach. Provides high-level oversight of policy priorities.</th>
<th>May be susceptible to political interference.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Civil Society</td>
<td>Department with a Minister appointed to oversee and implement civil society sector portfolio; would typically be aligned with one ministry with opportunities for cross-ministerial collaboration</td>
<td>Enabling</td>
<td>Provides visibility/profile to sector issues. Clear point of contact for sector-government collaboration.</td>
<td>May silo sector issues if situated within one ministry. Limited capacity to promote institutional reform; emphasis on policy development. May be vulnerable to changes in political priorities.</td>
</tr>
<tr>
<td>Coordinating Committee of Deputy Ministers</td>
<td>Committee of Deputy Ministers to oversee and implement civil society sector portfolio across ministries</td>
<td>Enabling</td>
<td>Supports a cross-ministerial “whole of government” approach. Emphasis on collaboration and policy coordination. Less susceptible to political interference.</td>
<td>May maintain status quo without new institutional structure. No role definition or accountability mechanisms defined by statute.</td>
</tr>
<tr>
<td>Dedicated Assistant Deputy Minister (ADM)</td>
<td>ADM (potentially within Innovation, Science and Economic Development or Employment and Social Development) appointed to apply a “sector lens” to policies across government</td>
<td>Enabling</td>
<td>Embedded within existing government structure. Potential for it to be more sustainable.</td>
<td>May be difficult to institutionalize as part of policy development process across government. May become siloed to issues within specific department.</td>
</tr>
<tr>
<td>Office for Civil Society</td>
<td>A standalone office situated within Privy Council Office/a central agency or a specific ministry (similar to UK Office of Civil Society), could have a non-governmental advisory body</td>
<td>Enabling</td>
<td>Supports a cross-ministerial “whole of government” approach. Provides centralized entity to advance policy priorities.</td>
<td>May silo sector issues if situated within one ministry.</td>
</tr>
<tr>
<td>Canada Revenue Agency Charities Directorate (current model)</td>
<td>Charities Directorate administers provisions of Income Tax Act and performs registration/deregistration functions for charities</td>
<td>Regulatory</td>
<td>Existing regulatory infrastructure; effective at executing provisions of existing legislation</td>
<td>Limited ability to support sector outside of regulatory scope</td>
</tr>
<tr>
<td>Embedded within proposed Office for Social Innovation</td>
<td>Incorporate civil society issues (charities and non-profit sector, volunteerism) in proposed Office for Social Innovation; Office may be situated in various ministries/departments with cross-government staff appointments</td>
<td>Enabling</td>
<td>Supports a cross-ministerial “whole of government” approach. Provides centralized entity to advance policy priorities.</td>
<td>- May silo sector issues if situated within one ministry.</td>
</tr>
</tbody>
</table>
Joint Table

Committee of government and sector representatives, typically linked to a specific ministry (e.g. proposed Social Innovation Council)

Enabling
- Model of equal sector-government partnership.

- Typically a short-term structure; would need clear accountability mechanisms within government.

The following table summarizes key considerations for where an enabling body could be located within the federal government. Our research suggests that there is likely to be no consensus on the ideal location and its success will be predicated on its political influence, its leadership capabilities, and the interests of the government of the day.

<table>
<thead>
<tr>
<th>Department/Agency</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Privy Council Office</td>
<td>- Centralized function. Could assist with policy coordination.</td>
<td>- Very broad mandate; potential for competing priorities.</td>
</tr>
<tr>
<td>Treasury Board Secretariat</td>
<td>- Ability to marshal resources across government.</td>
<td>- May lack a broader service delivery perspective (emphasis on fiscal implications).</td>
</tr>
<tr>
<td>Finance Canada</td>
<td>- Existing expertise with Charities Directorate.</td>
<td>- Too closely aligned with regulatory function (CRA).</td>
</tr>
<tr>
<td>Employment and Social Development Canada</td>
<td>- Existing social innovation/social finance infrastructure.</td>
<td>- Narrow scope of mandate.</td>
</tr>
<tr>
<td></td>
<td>- Embedded within existing government structure; potential for it to be more sustainable.</td>
<td>- May silo sector issues if situated within one ministry.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Large ministry with significant responsibility - sector issues may be eclipsed by other policy priorities.</td>
</tr>
<tr>
<td>Innovation, Science and Economic Development Canada</td>
<td>- Federal lead for innovation and economic development.</td>
<td>- May lack a broader service delivery perspective.</td>
</tr>
<tr>
<td></td>
<td>- Embedded within existing government structure; potential for it to be more sustainable.</td>
<td>- May silo sector issues if situated within one ministry.</td>
</tr>
<tr>
<td>Canadian Heritage</td>
<td>- Mandate aligns with traditional views of sector.</td>
<td>- May narrow scope to arts/culture/heritage issues.</td>
</tr>
<tr>
<td></td>
<td>- Embedded within existing government structure; potential for it to be more sustainable.</td>
<td>- May silo sector issues if situated within one ministry.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- May fragment approaches to social innovation efforts.</td>
</tr>
</tbody>
</table>

**Recommendations**

1. **Designate the Tax Court of Canada as the first point of appeal for CRA decisions, rather than the Federal Court of Appeal.** This would make judicial review for CRA decisions more affordable, accessible and rigorous for charities by allowing full fact-finding trials. Improving access to the justice system will have a positive impact on the sector overall because it would result in more extensive judicial direction on interpreting the *Income Tax Act*. This, in turn, would improve the Charities Directorate’s ability to ensure compliance and publish guidance for charities.
2. **Retain the CRA Charities Directorate’s role in granting and revoking tax-exempt status for charities, but reinstate the sector advisory committee that would report to the Minister of National Revenue to address issues in a proactive manner.** The Charities Directorate has demonstrated great improvement in its transparency and collaboration, and retains an important role in implementing the *Income Tax Act* as the regulator of registered charities. Reinstituting the sector advisory committee that reported to the Minister of the National Revenue would support the Directorate by creating an opportunity for improved dialogue with the sector on regulatory issues. This committee would also have an important role in researching and providing feedback on amendments to the *Income Tax Act*. *(The Charities Directorate would continue to be responsible for regulating functions such as those listed on page six.)*

3. **Use regulatory ‘sandboxes’ to explore new regulatory models.**\(^{21}\) In a regulatory sandbox, the regulator applies a different set of rules to a small number of actors for a limited period. The regulator observes its sample and learns by live experience how the regulated use the new rules. A regulatory sandbox would let the federal government test loosened business rules, for example, without risking difficult-to-reverse, sector-wide changes.

4. **Establish the Office for Social Innovation, recommended in the Social Innovation and Social Finance Strategy Co-Creation Steering Group Report, as a permanent Office/Unit for Social Innovation and Civil Society within the Privy Council Office, and broaden its mandate to act as the enabling body for the sector.**\(^{22}\) Broadening the scope of the proposed Office for Social Innovation would create a centralized, forward-looking enabling body for the sector as a whole. Embedding the Office in the Privy Council Office (in alignment with the existing Impact and Innovation Unit) would allow for policy coordination across departments and meaningful consultation and engagement with other sectors. This would advance an outcomes-driven, rather than an issues-driven, approach by positioning the sector as a partner rather than a stakeholder/recipient of funding. *(The Office/Unit would be responsible for enabling/facilitating functions such as those listed on page six.)*

5. **Expand the scope of the Social Innovation Council recommended as an advisory body to the Office.**

   The Social Innovation and Social Finance Co-Creation Steering Group Report recommended a permanent cross-sector Social Innovation Council to advise on how federal policies and programs can facilitate social innovation.\(^{23}\) This role, expanded to focus on enabling the social sector more broadly, would provide a useful advisory function to the Office and could follow up on the important work of the Voluntary Sector Initiative.

6. **Anchor a commitment to long-term policy action by embedding the Office, the Council, and their funding structures in legislation.** Embedding the existence of the Office, the Council and their funding structures in legislation, as recommended, will make them more visible and less vulnerable to changes in political priorities. In doing so, it will also recognize, and enable, the sector as a strategic partner in building thriving communities and improving wellbeing\(^{24}\) and as a driver for economic growth and innovation.

7. **Invest in the social sector infrastructure.** Social sector infrastructure is required to undertake sector-related research, cross-party relationship building, policy engagement and coordination, sector capacity building, and self-regulation. Governments, other funders, and sector organizations all play an important role in ensuring a strong social sector infrastructure. Umbrella organizations would benefit from longer, five year funding cycles to effectively build their own capacity, gain trust and credibility with key stakeholders while being insulated from political pressure, further establish reputations and contribute meaningfully to the policy process.

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\(^{22}\) Ibid.

\(^{23}\) Ibid.

\(^{24}\) Improved well-being refers to improved material living conditions (housing, income, jobs) and improved quality of life (community, education, environment, governance, health, life satisfaction, safety and work-life balance). The measurement of well-being focuses on the experiences of individuals, households and communities. The definition is used by United Nations Statistics Division (UNSD) and developed by the Organization for Economic Cooperation and Development (OECD), see OECD (2011). "How's Life?: Measuring well-being." OECD Publishing.